STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	**)**	
	)	
	)	**Docket No. 22-0067**
Petition for the Establishment of Performance	**)**	
Metrics Under Section 16-108.18(e) of the	**)**	
Public Utilities Act.	**)**	

REPLY BRIEF

OF

COMMUNITY ORGANIZING AND FAMILY ISSUES (COFI)

July 22, 2022

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Community Organizing and Family Issues ("COFI"), through its attorney, the National Consumer Law Center ("NCLC"),[1] hereby files its Reply Brief in the above-captioned proceeding, in accordance with the schedule established by the Administrative Law Judges ("ALJs"). This proceeding involves the Illinois Commerce Commission's ("the Commission") review of Commonwealth Edison Company's ("ComEd" or "the Company") proposed performance metrics to be incorporated in a multi-year performance-based ratemaking ("PBR") regulatory framework that it may file under Section 16-108.18(e) of the Public Utilities Act ("the Act").

I. Introduction and Summary

As noted in COFI's Initial Post-Hearing Brief ("COFI IB"), this case involves the Commission's first step in implementing a transition away from traditional cost-of-service

[1] The National Consumer Law Center is a non-profit law and policy advocacy organization using expertise in consumer law and energy policy to advance consumer justice, racial justice, and economic security for low-income families and individuals in the United States.

regulation for ComEd pursuant to, Public Act 102-0662, otherwise known as the Clean Energy Jobs Act ("CEJA"), which took effect in September of 2021. CEJA, an expansive 956-page law amending the Act and several other Illinois statutes, altered the regulatory paradigm for Illinois' large electric public utilities, with a focus on ensuring the achievement of new clean energy goals, improving affordability of public utility rates for the State's low-income customers in particular, and addressing historical inequities experienced by environmental justice and energy equity communities. As noted in COFI's Initial Brief, the General Assembly made clear in several provisions in CEJA that affordability for low-income customers and, more specifically, a review of existing utility practices impacting affordability, is a critical component to establishing equitable utility service that truly benefits all customers and PBR metrics in particular.

As highlighted in both COFI's and ComEd's initial briefs ("ComEd IB"), the Company and COFI have reached agreement on an appropriate Affordability metric, guided by the directives of Section 16-108.18(e)(2)(A)(iv) of the Act[2], and incorporating a modified version of COFI's original Affordability metric proposed by NCLC Senior Energy Analyst John Howat.[3] As noted in COFI's Initial Brief, Mr. Howat is an expert with decades of experience analyzing and proposing utility rates and tariffs addressing the affordability of utility service with a particular emphasis on improving the affordability of utility service for low-income customers in states across the country.[4]

[2] 220 ILCS 5/16-108.18(e)(2)(A)(iv).

[3] COFI's original recommendation was an Affordability metric based on a 10% annual reduction over a four-year period in residential disconnections for non-payment in the 20 zip codes in its service territory with the highest 2013 - 2019 disconnections ratios. The baseline disconnections ratio would be calculated by totaling residential disconnections over the three-year period and dividing by the number of residential customers in the zip code. COFI Ex. 1.0 (2d CORR) at 33.

[4] *See* COFI IB at 3.

The agreed-upon metric would provide the Company with financial incentives (penalties and bonus ROE payments) based on its achievement of a 10% aggregate reduction annually in disconnections in the 20 zip codes with the highest rates of disconnection during the 2017-2019 time period based on a baseline of the 2019 disconnection rates in those zip codes.[5] Should ComEd achieve this metric each year over the 2024-2027 multi-year rate plan time period, disconnections would be reduced by 34.4% in the aggregated 20 zip codes.[6] Commission Staff witness Joan Howard supported the metric, as did the Attorney General's Office ("AG") and the Citizens Utility Board/Environmental Defense Fund ("CUB/EDF") in their respective briefs.

COFI urges the Commission to adopt this proposed metric, which satisfies the very specific directives of what an Affordability metric should reward and penalize, as provided in Section 16-108.18(e)(2)(A)(iv) of the Act. It also reflects the directives of the General Assembly to incentivize extraordinary performance tied to improving the affordability of ComEd's electric service for low-income customers, and specifically addresses the rate of "disconnections for (low-income) households specifically and for customers overall to ensure equitable disconnections, late fees, or arrearages as a result of utility credit and collection practices, which may include consideration of impact by zip code" as the statute directs.[7] Moreover, as noted in COFI's Initial Brief, achievement of the metric would also begin to address racial justice aspects of ComEd's disconnection practices. COFI IB at 48-53.

In addition, COFI requested that the Commission, as part of its findings in this proceeding, order the Company to cease its practice of disconnecting customers deemed high-risk for nonpayment along an accelerated timeline as compared to other customers considered

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[5] *See* ComEd Ex. 22.01 (Chu), p. 1 of 5; COFI Cross Ex. 1 at 1.
[6] *Id.*
[7] 220 ILCS 5/16-108.18(e)(2)(A)(iv).

better credit risks. This practice, the evidence demonstrates, not only increases the unaffordability of ComEd's rates for customers who struggle each month to afford essential utility services, but also violates the anti-discrimination provision of Section 9-241[8] of the Act. Issuing this finding and other directives, discussed below and in COFI's Initial Brief, would immediately improve uninterrupted access to essential utility service and is consistent with the directives of CEJA to address the inequities that have harmed low-income and energy justice communities.

Finally, COFI responds to the Company's and other parties' recommendations regarding the appropriate number of basis points assigned to the metrics, cost/benefit analysis issues, and the fine-tuning needed to improve ComEd's proposed Peak Load Reduction and Supplier Diversity metrics to help ensure that the Commission-established metrics reward truly extraordinary efforts by the Company to reduce peak load energy usage and diversify supplier contracting, and not business-as-usual or already-committed-to practices.

II. Background and Context

A. Procedural History

See COFI's Initial Brief at page 5.

B. Statutory Framework

COFI outlined the statutory framework that will guide the Commission as it assesses the proposals in this docket at pages 5-8 of its Initial Brief.

[8] 220 ILCS 5/9-241.

It is worth highlighting again that the statute provides that the Commission "shall approve performance metrics that are reasonably within control of the utility to achieve," and that the metrics "should measure outcomes and actual, rather than projected, results where possible."[9] The statute further provides that metrics must be "designed to achieve incremental improvements over baseline performance values and targets,"[10] and be cost-effective investments that support achievement of Illinois' clean energy policies… ."[11]

As the Commission examines ComEd's and other parties' specific metric proposals in this docket, it is worth repeating that the Commission should be guided by the detailed language in sections 16-108.18(a), 16-108.18(c) and 16-108.18(e) of the Public Utilities Act ("the Act"), which provide the framework for the transition to a performance-based assessment of an electric utility's achievement of the new CEJA clean energy and equity directives. The General Assembly in Section 16-108.18(a), for example, provides, among other directives, that:

- There is urgency around addressing increasing threats from climate change and assisting communities that have borne disproportionate impacts from climate change, including air pollution, greenhouse gas emissions, and energy burdens. *Addressing this problem requires changes to the business model under which utilities in Illinois have traditionally functioned.* (220 ILCS 5/16-108.18(a)(2) (Emphasis added).

- Discussions of performance incentive mechanisms must always take into account the affordability of customer rates and bills for all customers, including low-income customers. (220 ILCS 5/16-108.18(a)(7)).

- The General Assembly therefore directs the Illinois Commerce Commission to complete a transition that includes a comprehensive performance-based regulation framework for electric utilities serving more than 500,000 customers. *The breadth of this framework should revise existing utility regulations to position Illinois electric utilities to effectively and efficiently achieve current and anticipated future energy needs of this*

[9] 220 ILCS 5/16-108.18(e)(2)(D).
[10] 220 ILCS 5/16-108.18(e)(2).
[11] 220 ILCS 5/16-108.18(c).

State, while ensuring affordability for consumers. (220 ILCS 5/16-108.18(a)(8)) (Emphasis added).

C. Statutory Criteria for Metrics

See COFI's Initial Brief at pages 9-10.

III. Legal Standards

See COFI Initial Brief at 10-12.

IV. Proposed Penalties and Incentives Structures

A. Proposed Total Number of Basis Points

COFI addresses all issues surrounding basis points allocation in part IV.C. below.

B. Proposed Overall BPS Allocation

COFI addresses all issues surrounding basis points allocation in part IV.C. below.

C. BPS Assignment Method (by Metric)

The question of how many total points should be assigned to ComEd's eight proposed metrics is perhaps one of the most contested issues in this case. IIEC recommends the Commission award ComEd no more than 20 basis points.[12] IIEC points out in its brief that "(o)ne basis point will cost ratepayers $820,000 per year; 60 bps, if awarded, would cost $49.2 million per year, and over a 4 year period, the cost would be nearly $200 million." IIEC IB at 5.[13]

[12] IIEC Ex. 1.0 (Stephens) at 14-15:301-303.
[13] IIEC Ex.2.0 (Stephens) at 19:343-346.

Staff recommended no more than 36 basis points in total, though Staff witness Freetly testified she has no objection to 20 basis points, as long as the assignment of points is equally distributed among the metrics.[14] The AG also supports a 20-point total basis points assignment since this is the first set of performance metrics under the new law and the new multi-year rate plan, and there is a lack of data available to evaluate potential net benefits.[15]

COFI has approached the issue within the context of its focus on the Affordability metric and the need to ensure the ROE basis points assigned to it are significant enough to inspire reductions in disconnections. COFI IB at 12-17.[16] Again, COFI witness Howat testified that it ComEd's original proposal to assign 5 points to the metric was particularly insufficient given the General Assembly's emphasis on affordability of rates, and in particular for low income customers in CEJA's PBR provisions, and the need to "address the particular burdens faced by consumers in environmental justice and equity investment eligible communities, including shareholder, consumer, and publicly funded bill payment assistance and credit and collection policies, and ensure equitable disconnections, late fees, or arrearages as a result of utility credit and collection practices, which may include consideration of impact by zip code," as required under Section 16-108.18(c) (5) and (8).[17]

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[14]ICC Staff Ex. 10.0 (Freetly) at 4.
[15] AG Ex. 1.0 (Whited and Havumaki) at 6.
[16] In direct testimony, COFI witness Howat expressed concern that ComEd's assignment of only five ROE basis points was insufficient to incentivize behavior that will improve affordability for lower-income, environmental justice and equity investment-eligible communities. The Company's total revenues requirement is $13,035,493,000 (from the 2021 formula rate revenues requirement),[16] according to ComEd's response to AG Data Request 1.08 Supplemental. ComEd calculates that a five-point ROE incentive payment would adjust the Company's revenue by a total of $4,092,000 upwards or downwards. That amount represents about .03 percent (less than 1%) of the Company's total revenue requirement. In Mr. Howat's view, that amount is unlikely to incent extraordinary effort on the Company's part to alter the Company's credit and collection procedures to achieve the goals of an Affordability metric. *See* COFI Ex. 1.0 (2d CORR) at 43-44.
[17] *Id.* at 44.

COFI witness Howat testified that, at a minimum, a doubling of ComEd's initially proposed five-point Affordability metric is necessary to incentivize exceptional performance relative to an Affordability metric.[18] ComEd revised its initial proposal in its rebuttal testimony, doubling its proposed basis point level, consistent with Mr. Howat's recommendation.[19]

In surrebuttal testimony, ComEd proposed, for the first time, that Affordability be assigned 13 basis points.[20] ComEd states that it proposes to add 3 ROE points because it decided to reduce the basis points allocated to the Peak Load Reduction metric from 5 to 2 points and re-allocate the extra points to Affordability.[21] ComEd IB at 20.

Regarding the issue of selecting the appropriate total number of points, COFI appreciates the various positions and understands the inclination to tread carefully in this first foray into performance-based ratemaking. The Commission's mission here is to thoughtfully balance the General Assembly's direction to incite change in utility outcomes while ensuring that the benefits of such financial incentives outweigh the costs, which will be incurred by ratepayers who provide the incentive payments.

As noted in COFI's Initial Brief, Section 16-108.18(e)(2)(F) of the Act provides specific guidance on the Commission's assignment of ROE basis point values for metrics proposed by a utility. In determining the appropriate level of a performance incentive, the provision requires the Commission to consider the following factors, which shall result in an incentive level that ensures that benefits exceed costs for customers:

- the extent to which the amount is likely to encourage the utility to achieve the performance target in the least cost manner;

[18] *Id.* at 46.
[19] ComEd Ex. 8.0 (Chu) at 10:188-198.   .
[20] ComEd Ex. 18.0 (Newhouse) at 29.
[21] *Id.*

- the value of benefits to customers, the grid, public health and safety, and the environment from achievement of the performance target, including in particular benefits to equity investment eligible community;
- the affordability of customers' electric bills, including low-income customers, the utility's revenue requirement, the promotion of renewable and distributed energy; and
- other such factors that the Commission deems appropriate.[22]

Thus, increases or enhancements to an existing performance goal or target must be considered in light of other metrics, cost-effectiveness, and other factors the Commission deems appropriate.

COFI continues to believe that three of the metrics should not be assigned any ROE point values because the Company already has incentives to invest in the infrastructure needed to achieve the stated goals. Specifically, these metrics are:

1. Overall Reliability based on SAIDI improvement in the System Average Interruption Duration Index ("SAIDI"), excluding major event days and planned interruptions;
2. Customers Exceeding Minimum Service Levels of Reliability or Resiliency (Improvement in the number of customers whose reliability and resiliency performance does not meet certain minimum service level targets; and
3. System Visibility Index (Increase in the percent of the system with visible, continuous communications, telemetry, and control).[23]

As Mr. Howat testified, each of these metrics, in order to be achieved, requires investment in electric infrastructure to achieve the improved performance metrics described in the statute. Stated another way, a utility under rate of return regulation already has an incentive to pour additional financial resources into infrastructure investments that increase its rate base, since the return on investment that a utility received is multiplied by its rate base as a part of establishing its revenue requirement. That is true now under the current Section 16-108.5 formula ratemaking environment and will be true under the four-year performance-based ratemaking structure that will begin in 2024.[24]

[22] 220 ILCS 5/16-108.18(e)(2)(F).
[23] *Id.* at 44-45.
[24] *Id.* at 45.

If the Commission adopts Staff's proposal, which would allocate each metric point value equally among a total of 36 points, COFI urges the Commission to set the Affordability metric at no lower than six points, *assuming the COFI-ComEd agreed-upon metric is adopted* in a Commission final order. If the Commission assigns a total of 20 basis points, as IIEC and the AG recommend, no less than 1/6 of the total should be assigned to the Affordability metric. If the Commission approves a total of 60 basis points for the metrics (which is not recommended given the uncertain status of the overall cost/benefit methodology), as ComEd proposes, the Affordability metric should be assigned 10 basis points or more if the Commission adopts COFI's and the AG's recommendation that the reliability metrics not be provided any incentive basis points. Otherwise, in COFI's view, a maximum of 10 points would properly incite the Company to achieve the Affordability metric in either a 40- or 60-point total scenario.

V. Proposed Net Benefits Methodologies

As noted in COFI's Initial Brief, Section 16-108.18(e)(2)(F)[25] provides that "(f)or the purpose of determining reasonable performance metrics and related incentives, the Commission shall develop a methodology to calculate net benefits that includes customer and societal costs and benefits and quantifies the effect on delivery rates." The statute requires the consideration of the following factors, which "shall result in an incentive level that ensures benefits exceed costs for customers":

- the extent to which the amount is likely to encourage the utility to achieve the performance target in the least cost manner;
- the value of benefits to customers, the grid, public health and safety, and the environment from achievement of the performance target, including in particular benefits to equity investment eligible community;
- the affordability of customer's electric bills, including low-income customers,
- the utility's revenue requirement,
- the promotion of renewable and distributed energy, and

[25] 220 ILCS 5/16-108.18(e)(2)(F).

- other such factors that the Commission deems appropriate.[26]

These statutory passages emphasize the importance of recognizing the benefits that flow to both low-income customers and society in general.

In its Brief, Staff notes that calculating net benefits of future performance metrics as a means to determine the reasonableness of those metrics is inherently difficult where the costs and benefits are as yet unknown, but will be easier in future performance metric proceedings with experience and time. Staff IB at 20. Staff recommends, however, that the Commission should approve ComEd's proposed performance metrics as modified by Staff because the record evidence supports a conclusion that the benefits will be equal to or greater than the cost to achieve those metrics. *Id.* Staff submits that the COFI-ComEd Affordability metric is cost/beneficial. No party presented evidence to the contrary.

IIEC was particularly critical of ComEd's attempt to assign costs and benefits to proposed metrics, particularly the Company's failure to forecast forecasted costs for its metrics. IIEC IB at 8-16. COFI noted in its Initial Brief that when it comes to assessing the costs and benefits of the Affordability metric, COFI witness Howat testified that it is important to acknowledge and assign a value to several important societal costs that are incurred when customers are disconnected from essential utility services as well as the customer and societal benefits that exist when customers remain connected to essential utility services.[27] Mr. Howat noted that some of those benefits include:

> **Utility system payment benefits** – (1) increased contributions to fixed costs; (2) reduced costs for (a) arrearages, (b) uncollectibles; (c) collection costs; (d) termination and reconnection costs; (e) negotiation and administration of payment plans; and (f) regulatory costs.

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[26] *Id.*
[27] COFI Ex. 1.0 (2d CORR) (Howat) at 38-40.

> **Societal benefits –** (1) reduced medical costs; (2) reduced fire and public safety costs; (3) incremental economic development; and (4) reduced need for homeless shelters and related public services.
>
> **Participant benefits –** (1) reduced home energy burden; (2) reduced disconnections; (3) enhanced cash flow; (4) improved health and safety; (5) homelessness prevention; (6) reduced need to forego other necessities; (7) reduced broadband interruption; and (8) reduced educational harms.[28]

As COFI noted in its Initial Brief, ComEd could not *specifically* identify any additional technology or infrastructure investment that is needed to establish and achieve the Affordability metric.[29] ComEd witness Jie Chu stated further that "based on ComEd's preliminary (tentative) judgment, ComEd anticipates that this performance metric (as originally proposed and as of the rebuttal position) currently is not expected to have material incremental costs, although some information technology changes might be needed and, if so, they would incur some costs."[30] She also noted that "ComEd does not expect any significant systems or people changes to support this metric."[31]

ComEd itself admits it still is developing a plan for increasing customer outreach, along with other metric activities.[32] Ms. Chu testified that the Company currently believes that the possible incremental costs of increased customer outreach are somewhat likely to be incurred, but that they are speculative in amount at this time.[33] Importantly, too, Ms. Chu notes that with respect to benefits, "the efforts that ComEd plans to undertake will benefit individual customers in terms of reduced risks of disconnections and in qualitative terms and may benefit customers as

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[28] COFI Ex. 1.0 (2d CORR) (Howat) at 39-40.
[29] ComEd Ex. 8.0 (Chu) at 15:294-295.
[30] *Id.* at 15:291-295.
[31] *Id.* at 15:302-303.
[32] *Id.* at 15:295-296.
[33] *Id.* at 15:306-308.

a whole in terms of reduced uncollectibles expense and possibly reduced costs associated with disconnection processes such as field calls."[34]

In the Company's rebuttal and surrebuttal filings, ComEd witnesses Ralph Zarumba and James Shields presented an admittedly incomplete cost/benefit analysis for each proposed metric, including the ComEd-revised Affordability metric (the modified version of Mr. Howat's proposed metric) and a revised version in surrebuttal, based on the modified COFI/ComEd-agreed metric.[35] The Company did, however, present its best estimate of the net benefits associated with that metric, although the witnesses state that many of the benefits are qualitative and non-quantifiable. These witnesses testified:

> "Customers who are assisted in avoiding disconnections will avoid associated disruptions in their daily lives, and potentially incurring the costs of alternative housing, and other lifestyle disruptions. The impacts are real, but difficult to quantify.[36]

Notwithstanding that observation, the witnesses concluded that in current year dollars, the benefits of the Affordability metric are conservatively estimated[37] to be more than $1.6 million over the 2024-2027 period[38]

IIEC states in its brief that ComEd's cost-benefit analysis is flawed and speculative. IIEC IB at 9-15. For the affordability metric, IIEC states that ComEd claims it could possibly see reduced call center workload, but did not estimate the associated cost. IIEC asks, in the absence of incremental costs, signaling no additional effort is needed to achieve the metrics, whether it is

[34] *Id.* at 16:309-312.
[35] ComEd Ex. 11.0 (Zarumba and Shields), *gen'ly.*
[36] *Id.* at 39:748-750.
[37] It should be noted that when quantifying the benefits of not being disconnected, the witnesses assumed a disconnection would last only one day – a conservative assumption given that LIHEAP agencies are given 48 hours to provide reconnection assistance grants – twice the amount of time assumed in the benefits analysis. *Id.* at 40:777-779.
[38] ComEd Ex. 25.0 (Zarumba and Shields) at 6-7:126-127.

fair to ask customers to provide ComEd excessive rewards for performance that is already supported in rates. IIEC IB at 7.

The AG likewise criticized the Company's cost/benefit presentation, although not the Affordability metric analysis specifically. (The AG supports adoption of the COFI/ComEd-proposed metric.)[39] The AG states ComEd did not provide costs for specific investments or actions but instead provided "a methodology for decision-making."[40] AG IB at 15. The AG complained that instead of assessing cost during this proceeding, ComEd recommended the Commission should first approve the Company's metrics and then review their costs "in future grid plan and ratemaking proceedings."[41] The ComEd methodology, according to the AG, contained minimal quantified benefits, with no degree of certainty as to how ComEd would achieve its metrics, no quantification of costs or effect on ComEd's delivery rates, or how they would meaningfully benefit ratepayers. AG IB at 15. This concern, according to the AG, supports Commission adoption of the minimal *total* amount of basis points for the metrics as a whole.

To the AG's point, ComEd witnesses Zarumba and Shields admitted in rebuttal testimony:

> there were challenges for ComEd when estimating the costs (only some of which are known at this time) to achieve a challenging metric (at the target levels). By its nature, a metric that is truly challenging will require the utility to develop a strategy as to what processes and resources will be required to optimize performance and to be flexible. These changes may not be known upfront, and in our experience, achievement of such goals is not always a matter of increasing costs but instead may come from things such as a team focus on achieving a particular goal, a reallocation of resources, new processes, tools, etc.[42]

[39] AG IB at 46-48.
[40] *See* ComEd Ex. 25.0 at 146-150.
[41] ComEd Ex. 25.0 at 11:204-207
[42] ComEd Ex. 11.0 (Zarumba and Shields) at 20.

To the extent that some level of uncertainty exists as to costs and benefits (and ComEd admits that uncertainty is present), Staff's and other parties' concern about selecting a total number of basis points that is less than the 60 basis points has merit. As both IIEC and the AG point out, achievement of 60 basis points would translate into a ratepayer-funded incentive payment of some $49.1 million per year, and $194.6 million over the four-year MRP period, without even accounting for the costs of new plant and other investments needed to achieve ComEd's goals, the return on and of these investments, or other costs and expenses associated with ComEd's proposed metrics.[43] AG IB at 15.

That being said, as noted in COFI's Initial Brief, ComEd witnesses testified that the COFI/ComEd-proposed Affordability metric will, at a minimum, provide net benefits of $475,878[44] annually, *not including non-quantifiable benefits*, to customers who are able to retain essential utility service as a result of the Company's actions to achieve the reduced disconnections, and are likely to bring benefits to customers as a whole through reduced credit and collections costs. No party provided specific evidence that approval of the COFI/ComEd-proposed Affordability metric will create new, significant costs, or not produce net benefits. Notwithstanding its concern about applying more than 20 points total to all of the metrics, the AG supported a concentration of ROE basis points on Affordability. AG Brief at 47-48. 2. Specifically, the People recommended that the Commission increase the basis points attributable to the Affordability metric as an incentive to balance the AG request that penalty-only mechanisms be set for ComEd's reliability metrics. *Id.* at 48, 31-33.

[43] AG Ex. 1.0 at 17:316-18:321

[44] COFI's IB incorrectly stated that the total annual net benefit was $322,403. That number reflected ComEd's rebuttal calculation. The correct net benefit dollar figure, as computed by ComEd, is $475,878.

The focus on Affordability as a superlative cost-effective metric is consistent with the larger, equity goals of CEJA and the PBR statute (Section 16-108.18) in particular. COFI urges the Commission to adopt findings related to the cost/benefit analysis consistent with these and COFI's recommendations, and find that the Affordability metric proposed by COFI and ComEd is cost-beneficial.

VI. Proposed Performance Metrics

A. Proposed Performance Metrics Falling Within Section 16-1018.18(e)(2)(A)(i)(reliability, resilience, power quality)

As noted in COFI's Initial Brief, COFI primarily focused its arguments on issues surrounding the Affordability metric. COFI continues to urge the Commission to not assign any performance metrics points to the Reliability categories of metrics because, as previously noted, and for the reasons stated in the AG's brief, the Company already has incentives to invest in the infrastructure needed to achieve the stated goals.[45] These metrics are:

1. Overall Reliability based on SAIDI improvement in the System Average Interruption Duration Index ("SAIDI"), excluding major event days and planned interruptions;
2. Customers Exceeding Minimum Service Levels of Reliability or Resiliency (Improvement in the number of customers whose reliability and resiliency performance does not meet certain minimum service level targets; and
3. System Visibility Index (Increase in the percent of the system with visible, continuous communications, telemetry, and control).[46]

B. Proposed Performance Metrics Falling Within Section 16-108.18(e)(2)(A)(ii)(peak load)

[45] COFI Ex. 1.0 (2d CORR) at 44-45; AG IB at 17-35.
[46] *Id.*

Section 16-108.18(e)(2)(A)(ii) of the Act states that at least one performance metric must be designed to encourage the utility to "reduce peak load attributable to demand response programs."[47] As the briefs reveal, ComEd's Peak Load Reduction metric proposal has evolved over time, highlighting the uncertainties associated with creating a metric that does not doubly reward existing the Company with incentives for actions and behavior that are expected to occur under existing peak load reduction programs, and existing statutory incentives for energy efficiency and solar programs.

The COFI Initial Brief highlighted the evolution of the proposed metric. COFI IB at 22-28. In response to ComEd's original proposal, AG/COFI witness Philip Mosenthal expressed significant concerns that the proposal would reward the Company for peak load reductions that will occur without any performance incentive. Mr. Mosenthal[48] examined the proposed metric and concluded that the Company will likely achieve, and significantly exceed, its entire Load Reduction Capability Metric targets through accomplishing the megawatt-hour reduction goals it must achieve under its current, Commission-approved 2022-2025 energy efficiency ("EE") Plan under Section 8-103B of the Act without any performance incentive mechanism. He also testified that the targets in ComEd's Load Reduction Capability Metric will likely be accomplished, and exceeded independently, just with the growth in Illinois solar programs, which the Company proposes to include in the metric.[49]

In response to Mr. Mosenthal's and other parties' criticisms, ComEd reconfigured the Load Reduction Capability Metric such that the Company no longer proposed to achieve a portion of its load reduction capability targets through the energy efficiency program that

[47] 220 ILCS 5/16-108.18(e)(2)(A)(ii).
[48] Mr. Mosenthal's qualifications can be found at AG/COFI Ex. 1.0 at 1-2 and AG/COFI Ex. 1.1.
[49] AG/COFI Ex. 1.0 at 3.

ComEd must execute pursuant to Section 8-103B of the Act. The other programs included are: (1) Central AC Cycling – Direct Load Control, (2) Peak Time Savings, (3) Real Time Pricing (Hourly), (4) Community Solar, and (5) Rooftop Solar.[50] Under that proposal, ComEd would receive one basis point for every 10 MW of peak load reduction it achieves over 102% of its yearly goals, up to a total of 50 MW and five earned basis points.[51]

In his rebuttal testimony, AG/COFI witness Mosenthal testified that he continues to have concerns related to the continued inclusion of community and rooftop solar generation programs in the metric. He noted that much like the EE programs, ComEd already has an incentive to increase the installation of community and rooftop solar because it receives a return on the rebate it pays to a subset of these customers.[52] *See* COFI IB at 23-28.

In their surrebuttal case, ComEd next proposed three changes to its Rebuttal position:

(1) removing *existing* private and community solar from the program baseline;
(2) including a modified set of targets and an expanded deadband ROE basis point penalty/incentive allocation; and
(c) capping the basis points allocated to this metric for penalties and incentives to 2 basis points.

In addition, ComEd requests that the Commission allow the Company the option to include in the Load Reduction Capability Metric new (1) solar programs and projects that are verified by third-party analysis as being a direct result of ComEd's activities and (2) energy efficiency programs that are funded outside of Section 8-103B(d) and 8-103B(g)(7) of the Act.[53] ComEd posits that the flexibility to add new programs is necessary "for several reasons, e.g., some of the existing programs might experience a decline in customer usage or be discontinued." ComEd IB

[50] ComEd Ex. 4.01 at 8.
[51] *Id.* at 9.
[52] AG/COFI Ex. 2.0 at 5-6.
[53] ComEd Ex. 20.0 at 8-9, 14.

at 51. As noted in COFI's Initial Brief, the timing of ComEd's surrebuttal proposal did not permit Staff and intervenors an opportunity to respond to this latest proposal, putting the Commission in the difficult position of weighing the reasonableness of the Company's latest proposal without input from other experts.

As highlighted in COFI's Initial Brief, if the Commission provides the Company with an ROE incentive through its Peak Load Reduction metric performance, it must also ensure that the Company is not receiving a double-incentive for program activity, such as through solar and energy efficiency programs for which it already receives a financial incentive. ComEd already receives the opportunity for a 200-basis-point bonus on its energy efficiency investment for exceptional energy savings performance that exceed annual approved goals under Section 8-103B(d) and (g)(7) of the Act. Likewise, it has the opportunity to earn a return on the distributed generation rebate that it pays to the owners/operators of community solar and non-residential rooftop solar, and which residential solar customers post-CEJA can also elect to receive, pursuant to Section 5/16-107.6(h)(1) of the Act.[54] There is nothing cost-effective about permitting additional ROE payments for a metric for performance incited elsewhere under the Act. AG IB at 40-44.

Moreover, the Commission should incorporate the recommendation of NRDC witness Ron Nelson proposed a Peak Load Reduction metric that would incorporate electric vehicle ("EV") growth proposed an EV peak load reduction metric to limit EV charging during the annual top 50 system peak hours, requiring ComEd to limit the average MW demand from EV charging during these hours to 10% of the average monthly peak demand from EV charging in

[54] *See Id*. at 5/16-107.6(h)(1) (allowing ComEd to collect a return on "all of the costs of the rebates made under a tariff or tariffs approved under . . . this Section.").

the previous year to push EV charging to off peak hours.[55] Mr. Nelson also testified that if the Commission chooses not to implement the EV PLR performance metric, he recommended the Commission increase the PLR performance target to incorporate EV load given that such load is flexible and given that ComEd has already projected increased EV load between 2024-2027.[56] Based on ComEd's System Peak Forecast Projection of 111 MW of EV load added by 2027, he recommends the Commission increase the PLR annual targets to reflect forecast EV additions by the following amounts:

- 2024: 30 MW
- 2025: 18 MW
- 2026: 22 MW
- 2027: 28 MW[57]

COFI's recommendation is rooted in the principle that the Commission must not reward the Company for business-as-usual or forecasted growth in peak load reduction that would have occurred without the PBR metric incentive. The baseline for any metric must account for these forecasts (business-as-usual and forecasted growth in peak load reduction) in order to provide a net benefit to ratepayers who are financing the incentive payments. To that end, the Commission should continually monitor, throughout the life of any PBR plan, any claimed peak load reduction savings to ensure that the payments are not providing double incentives to the Company, as AG/COFI witness Mosenthal warned against relative to including additional EE programs and solar program growth incorporated in earlier versions of the metric.

[55] NRDC Ex. 2.0 at 13:235-238.
[56] *Id.* at 16:306-315.
[57] *Id.*

In addition, given all of the uncertainties that accompany a peak load reduction forecast and EV growth in the state, no more than the ComEd-proposed two basis point incentive should be established for this metric.

Accordingly, COFI urges the Commission to adopt a Peak Load Reduction metric in line with these recommendations.

C. Proposed Performance Metrics Falling Within Section 16-108.18(e)(2)(A)(iii)(supplier diversity)

Section 16-108.18(e)(2)(A)(iii) provides specific direction in the establishment of an incentive mechanism and metric associated with the goal of increasing supplier diversity. It requires the establishment of a metric that provides for:

> (iii) Supplier diversity expansion, including diverse contractor participation in professional services, subcontracting, and prime contracting opportunities, development of programs that address the barriers to access, aligning demographics of contractors to the demographics in the utility's service territory, establish long-term mentoring relationships that develop and remove barriers to access for diverse and underserved contractors. …The metric shall include reporting on all supplier diversity programs by goals, program results, demographics and geography, with separate reporting by category of minority-owned, female-owned, veteran-owned, and disability-owned business enterprise metrics. The report shall include resources and expenses committed to the programs and conversion rates of new diverse utility contractors.[58]

For its Supplier Diversity metric, ComEd first proposed to increase the amount of overall spending on diverse suppliers from a baseline of 42% diverse supplier spend in 2020 to a goal of 43% diverse supplier spend by the end of the performance period in 2028.[59] ComEd calculates diverse supplier spend by "summing . . . the total invoices paid by ComEd to diversity-certified suppliers and . . . the total invoices paid [by ComEd's non-diverse prime contractors] to

[58] 220 ILCS 5/161-08.18(e)(2)(A)(iii).
[59] ComEd Ex. 1.01 (CORR) at 6.

diversity-certified subcontractors" and dividing that total diverse spend "by the total invoices paid by ComEd to diverse and nondiverse suppliers."[60] In response to criticisms of its proposed metric, ComEd maintained the baseline of 42% diverse supplier spend, but increased the diverse supplier spend goal to 45% for an increased goal of 3% over the four-year MRP. ComEd Brief at 56. ComEd increased its goal to reflect an incremental gain of 5% (increasing the original target from 43% to 47%) based on the Company's historical performance wherein ComEd averaged annual increases of 2.1% from 2012 to 2021.[61] ComEd witness E. Elaine White testified, too, that Staff had accepted this increase and that their concerns were resolved.[62] ComEd proposes that zero points be assigned to this metric, stating in testimony that it is necessary to ensure that the metric is narrowly tailored and does not circumvent the Equal Protection Clause.[63] ComEd IB at 61-65.

In its Brief, Staff stated that it supported the metric, citing ComEd's testimony[64] that the 3% increase is higher than the Company's average year-over-year return for the past 10 years, which was approximately 2.1% (average). Staff IB at 45-46. Accordingly, Staff supports the revised goal of 3% total increase over the baseline in diverse spending by 2028.[65]

AG/COFI witness Mosenthal criticized ComEd's initial Diversity Metric because it appeared to not offer a challenging goal. He testified that this was especially the case given that the Company has a ratepayer-funded program specifically designed to increase diverse supplier contracting in its energy efficiency program.[66] As part of ComEd's 2022-2025 energy efficiency

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[60] *Id.*
[61] ComEd Ex. 7.0 at 7:146–8:149; Staff Ex. 5.0 REV at 7:144–152.
[62] ComEd Ex. 21.0 (White) at 5:102-107.
[63] ComEd Ex. 2.0 at 20:357-360.
[64] ComEd Ex. 7.0, 7-8.
[65] Staff Ex. 13.0 REV, 6-7.
[66] AG/COFI Ex. 1.0 at 31:614-626.

plan, the Company will spend $4.0 million per year of the plan cycle on a Market Development Initiative (“MDI”).[67] The two goals of the MDI are to “(1) increase contracting opportunities for diverse business enterprises and [community-based organizations] and assist them in developing the necessary capabilities to participate in the delivery of the EE Portfolio; and (2) improve the diversity and inclusiveness of the ComEd EE Department’s supplier and supplier workforce.”[68] The program is a high-priority for both the People and COFI, who wish to improve contracting opportunities for diverse suppliers in the energy efficiency market. He repeated concerns about ensuring the metric truly incentivizes extraordinary action in his rebuttal testimony.[69]

ComEd misunderstands this criticism, writing in its brief that “Mr. Mosenthal does not explain why diverse MDI spend should be treated differently than any other diverse energy efficiency spend and fails to appreciate that diverse spend in ComEd’s energy efficiency portfolio (which will include the MDI in future years) is a small fraction of ComEd’s overall diverse spend (less than 6% of diverse spend in 2021).” ComEd IB at 50-51. ComEd notes, too, that “it is not likely possible to quantify the exact impact of the MDI on ComEd’s diverse spend, as the MDI program’s development is incomplete, and its results are likely to be influenced by factors outside of ComEd’s control.” *Id.* at 51.

The point Mr. Mosenthal made is that the MDI program is an *existing* obligation that the Company has committed to in a stipulation in its existing four-year energy efficiency plan under Section 8-103B of the Act. The fact is, if successful to any degree, it will likely boost the

[67] *See Approval of the Energy Efficiency and Demand Response Plan Pursuant to Section 8-103B of the Public Utilities Act*, ICC Docket No. 21-0155, ComEd Ex. 1.01R at 22.
[68] *Id.* at 94–95.
[69] AG/COFI Ex. 2.0 at 14-15.

Company's energy efficiency diverse supplier spend.[70] Moreover, Mr. Mosenthal pointed out, spending on its EE Program appears to represent a significant amount of ComEd's total spend.

Mr. Mosenthal noted, too, that it is likely that stakeholders will continue to support the MDI into the 2026-2029 EE Plan cycle, meaning that the MDI will receive ratepayer funding throughout the lifetime of the Diversity Metric and *during the life of the four-year PBR plan*.[71] Thus, like the concern regarding the Peak Load Reduction Metric, the issue is whether the Diversity Metric (3% growth over 4 years) will truly incentivize any behavior or outcome that will not already be accomplished through the normal operation of the 2022-2025 and 2026-2029 EE Plans. In addition, like other EE spending, the Company already receives a shareholder return on its MDI spending as part of its EE portfolio budget under Section 8-103B of the Act.[72]

As noted throughout this brief, any metric goal should reflect a significant improvement over what would otherwise be expected from the existing MDI and other activities already in place, as Section 161-108.18(e)(2) requires. In response to Mr. Mosenthal's concerns about the MDI, ComEd asserted that it is a new program and "it is not clear exactly what the impact of the program will be on ComEd's overall supplier diversity efforts."[73]

While the increase in target diverse spending to 45% is appreciated, Mr. Mosenthal testified that ComEd still does not address in its revised Diversity Metric the percentage increase in diverse supplier spend that the MDI is likely to create. If the energy efficiency spend is close to 20% of total spending, then it seems reasonable that the MDI should make a significant contribution to improving ComEd's total diverse supplier spending percentage. Mr. Mosenthal

[70] AG/COFI Ex. 1.0 at 31:623-626.
[71] *Id.* at 32:634-636.
[72] *Id.* at 32:639-642.
[73] ComEd Ex. 7.0 at 11:220–225.

testified that ComEd should be required to meet Diversity Metric targets that are more aggressive and will require incremental action over and above the MDI.[74]

In sum, COFI urges the Commission to establish appropriate goals for the Diversity Metric that are set at a level that incentivizes extraordinary commitment to increasing diverse contractor participation, and that recognizes the Company's MDI program and the growth in diverse supplier spend that will occur organically because of CEJA. Establishing a metric of 47% rather than ComEd's proposed 45% will assist the Company in further committing to its goal of increasing diverse spending, and is consistent with the Act's direction that PBR incent extraordinary achievement of CEJA goals. The Commission should approve a Supplier Diversity metric of 47%, Staff's original proposal, rather than the ComEd-proposed 45% level.

In terms of basis points, COFI does not object to ComEd's proposal to assign zero points to this metric, given the Company's stated the legal concerns (ComEd IB at 61-65).

D. Proposed Performance Metrics Falling Within Section 16-108.18(e)(2)(A)(iv)(affordability)

1. An Affordability metric should adhere to the statutory directives found in Sections 16-108.18(c) and 16-108.18(e).

As noted in COFI's Initial Brief, an Affordability metric should follow the dictates of Section 16-108.18(c) and 16-108.18(e)(2)(A)(iv) of CEJA, which give specific definition to the concept of affordability, with a particular emphasis on addressing past inequities that have negatively impacted low-income customers and environmental justice communities. *See* COFI IB at 33-36.

[74] AG/COFI Ex. 2.0 at 15:285-289.

In addition, Section 16-108.18(c) requires the utility choosing a PBR framework to focus specifically on the financial burdens financially struggling customers face, and design a PBR framework that will achieve affordability for low-income customers, address the particular burdens faced by consumers in environmental justice and equity investment eligible communities, keep these customers' utility bills within a manageable portion of their income, and reduce disconnections.[75] The statute specifically invites the utility and Commission to incorporate zip- code-level credit and collections data in formulating the Affordability goal and metric set forth in Section 161-108.18(e)(2)(A)(iv).

After the filing of rebuttal testimony, COFI and ComEd reached a common understanding of a proposed Affordability metric, which slightly modified COFI's original proposal, that incorporates that goal, along with the following specific terms, as provided in ComEd Ex. 22.01 (Surrebuttal testimony of Ms. Chu):

- **The metric would require the Company to achieve a 10% aggregate reduction annually in disconnections in the 20 zip codes with the highest rates of disconnection during the 2017-2019 time period**. The metric baseline is comprised of the 2019 disconnection actual number of disconnects in those zip codes (rather than the originally proposed 2017-2019 average baseline).[76] Should ComEd achieve this metric each year over the 2024-2027 multi-year rate plan time period, disconnections would be reduced by 34.4% in the aggregated 20 zip codes.[77]

- **This affordability metric would incorporate each year, as its new target, an aggregated 10% reduction from the prior year target in the ComEd customer zip codes listed below.** These zip codes represent the top 20 zip codes with the highest disconnection rates, excluding those zip codes with fewer than 50 customers. This understanding, along with the 20 zip codes that would constitute the metric, is reflected below:

[75] 220 ILCS 5/16-108.18(c)(5), (8), (e)(2)(A)(iv).
[76] *See* ComEd Ex. 22.01 (Chu), p. 1 of 5; COFI Cross Ex. 1 at 1.
[77] *Id.*

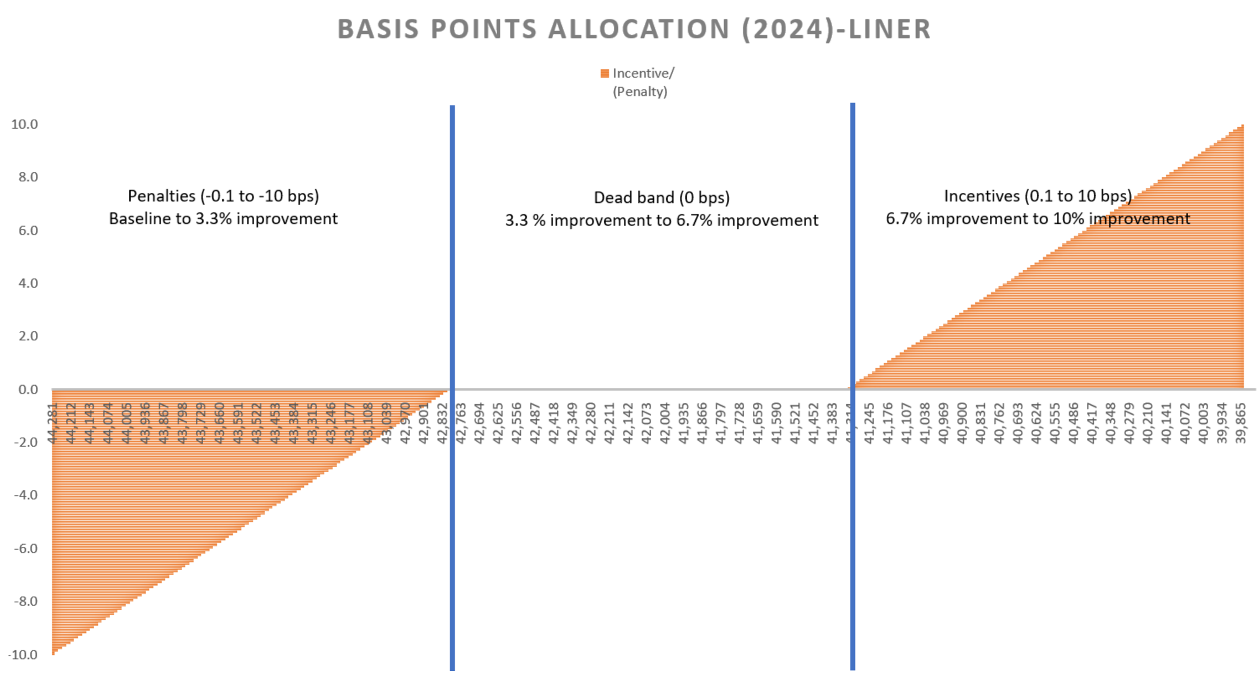
	(A)	(B)	(C)	(D) = A+B+C	(E)	(F) = D / E
Zip Code	**2017 Disconnects**	**2018 Disconnects**	**2019 Disconnects**	**2017-2019 Disconnects**	**Mar 2022 Res. Customers**	**Disconnection Ratio**
60958	10	16	23	49	55	0.89
60621	2,385	2,459	2,912	7,756	12,976	0.60
60636	2,226	2,186	2,525	6,937	12,027	0.58
61057	4	10	13	27	52	0.52
60827	1,453	1,400	1,670	4,523	8,992	0.50
60472	260	264	286	810	1,668	0.49
60944	11	26	29	66	138	0.48
60426	1,843	1,984	2,049	5,876	12,390	0.47
60624	1,937	2,363	2,716	7,016	15,066	0.47
60628	4,057	3,840	4,076	11,973	25,998	0.46
60649	3,595	3,559	4,449	11,603	25,236	0.46
60428	65	93	91	249	545	0.46
60419	1,179	1,199	1,423	3,801	8,545	0.44
60644	2,050	2,696	3,075	7,821	18,078	0.43
60637	3,093	3,123	3,799	10,015	23,809	0.42
60620	3,808	4,025	4,346	12,179	30,201	0.40
60619	3,934	4,051	4,606	12,591	31,264	0.40
60623	3,379	3,606	4,145	11,130	28,740	0.39
60484	48	50	77	175	454	0.39
60409	1,640	1,776	1,971	5,387	15,365	0.35
Total	**36,977**	**38,726**	**44,281**	**119,984**	**271,599**	**0.44**

Baseline	44,281.00	*(2019 disconnect total in Top 20 zip codes)*
2024 Target	39,852.90	*10% reduction from baseline*
2025 Target	35,867.61	*10% reduction from prior year target*
2026 Target	32,280.85	*10% reduction from prior year target*
2027 Target	29,052.76	*10% reduction from prior year target*

- **It should be noted that incorporating the 2019 actual disconnection numbers from these 20 zip codes raises the baseline** from what had been previously proposed (2017-2019 average), as the year 2019 had the highest total number of disconnections for nonpayment.[78]

- **The proposed Affordability metric would apply a linear basis points allocation of financial penalties and incentives** that includes
    - penalties (-0.1 to -10 basis points) tied to a 3.3% improvement (reductions in disconnections) or less
    - a dead band (0 basis points) tied to a 3.3% to 6.7% improvement (reduction in disconnections)
    - incentives (0.1 to 10 basis points) tied to a 6.7% to 10% improvement (reduction in disconnections)
    -

  A visual representation of the points system to be applied for the metric is below:



- **Although COFI and ComEd initially agreed to support an allocation of 10 basis points for penalties and incentives associated with the Affordability metric, ComEd now proposes an assignment of 13 basis points to this metric if the ICC approves a total of 60 basis points for all performance metrics in the aggregate**, based on a proposed reduction to its Peak Load Reduction

[78] ComEd Ex. 2.0 (Chu) at 9:172-174.

metric.[79] It states that if the Commission were to approve 40 total basis points, ComEd proposes that 8 basis points be allocated to the Affordability metric. COFI does not object to that alternative proposal.[80] If some other total number of basis points were to be approved, ComEd and COFI have agreed to support an allocation of at least 1/6 of the total approved basis points.

- **Importantly, this agreement with ComEd is premised on ComEd's agreement to monitor, each month, and work to reduce disconnections in *all 20* zip codes included in the affordability metric.** ComEd agrees not to achieve this metric by simply allowing arrearages in the top 20 zip codes to grow as a result of the reduction in disconnections, narrowly focusing its efforts on reducing disconnections in a select-few zip codes, or strategically timing disconnections for maximum company benefit, but instead will actively take other measures, such as improved outreach with customers whose ComEd arrearage levels indicate are struggling to afford essential utility service in order to connect those customers with financial assistance, and to adopt other measures that will improve long-term affordability of monthly electric bills for these customers.

- **As part of the agreement, has agreed to meet with COFI and other interested stakeholders to address observed static or minimal disconnection reductions as compared to other zip codes (reductions that fall below 6.7% or greater) in any of the top 20 zip codes.**

- **Notwithstanding the basis point cap on the Affordability metric, ComEd agrees that nothing in this agreement should be interpreted to preclude the Company from achieving reductions that exceed the 10% level incentivized through this metric in the 20 zip codes incorporated in the metric, or any other zip code within its service territory.[81]**

As noted in COFI's Initial Brief, COFI requests that the Commission include each of these specific parameters to the agreed metric, if approved, as *specific findings* in its final Order in order to ensure that ComEd is accountable for these agreement terms. COFI IB at 44-48.

[79] It should be noted that in Surrebuttal testimony, ComEd witness Newhouse testified that if the Commission decides that basis points must be allocated to this metric, ComEd recommends that basis points be taken from the Affordability metric and applied to the Supplier Diversity metric. Specifically, with a 60 basis points total, ComEd recommends that 3 bps be removed from Affordability (decreasing from 13 bps to 10 bps) and added to Supplier Diversity (increasing from 0 bps to 3 bps). ComEd Ex. 18.0 at 34:630-634. COFI's position is that the Affordability metric should not drop below 1/6 of the total basis points assigned to all metrics, regardless of the total number of basis points set by the Commission.
[80] COFI Cross Ex. 1, p. 4 of 6.
[81] All of these terms are reflected in ComEd Ex. 22.01 (Chu) and confirmed in COFI Cross Ex. 1.

In its Brief, the AG supports adoption of the COFI/ComEd Affordability metric, with one caveat: To alleviate its concern that ComEd has not estimated "the incremental costs with the programs that will be leveraged to achieve" this metric, it recommends that the Commission direct ComEd to "take active measures to reduce disconnections that include outreach to struggling ratepayers, offering lower cost deferred payment arrangements, connecting customers with financial assistance, and working to reduce delivery rates and make bills more affordable for all customers," rather than simply by allowing arrearages to increase. AG IB at 47. CUB/EDF, which also supports that COFI/ComEd-proposed metric, raised a similar point about ensuring that the metric not be achieved by simply allowing uncollectibles to grow. CUB IB at 34.

COFI supports that directive, which is in fact consistent with the commitment ComEd made to not simply allow arrearages to grow as a means of reducing disconnections in the 20 identified zip code communities, as highlighted above. *See* ComEd Ex. 22.01 (Chu), p. 1 of 5; COFI Cross Ex. 1 at 1. COFI urges the Commission to include that directive in its approval of the Affordability metric.

Staff likewise supports the COFI/ComEd-proposed Affordability metric, noting that the metric appropriately measured outcomes (not processes). Staff IB at 49. Importantly, Staff witness Joan Howard offered her support for the ComEd-modified metric in her rebuttal testimony, and "recommend[s] that the Commission approve this proposed metric, because it measures outcomes and allows the Company to determine how best to accomplish the affordability goal."[82]

[82] Staff Ex. 14.0 at 5-6:91-101.

IIEC was the only party to object to approval of the COFI/ComEd-proposed Affordability metric, arguing ComEd failed to prove a net benefit – again because, like other ComEd-proposed metrics, costs were not fully defined. IIEC IB at 28-19. IIEC opines that because the costs to achieve the metric are speculative in amount, "the effort to be undertaken by ComEd is likely little more than maintaining the status quo." *Id.* IIEC then makes the cryptic comment that "the irony is not lost on IIEC that success in meeting ComEd's affordability metric has the result of its rates increasing to customers, or becoming less affordable." *Id.* In making this assertion, IIEC cites IIEC witness Stephens' testimony (IIEC Ex. 1.0 at 40:695-699), but that citation references testimony that addressed ComEd's original metric, which has been withdrawn. Moreover, IIEC fails to offer an alternative metric. In terms of costs and benefits, both ComEd and COFI witnesses testified that benefits would exceed costs.[83] For these reasons, IIEC's criticisms of this metric should be rejected.

It should be noted, too, that Mr. Howat provided several recommendations as to actions that the Company can take beyond customer outreach that *are within the specific control of ComEd* that will lead to fewer disconnections and improved affordability for the statutorily identified customer groups.[84] COFI IB at 61-64. Commission findings that encourage the Company to take these actions will assist the Company in not only achieving the metric, but improving affordability in general, thereby increasing the net benefits of the COFI/ComEd metric.

As COFI noted in its Initial Brief, as part of his analysis, there are racial justice ramifications of addressing unaffordable electric bills and elevated disconnection rates. Mr.

[83] ComEd Ex. 8.0 (Chu) at 15; COFI Ex. 1.0 (2d CORR) at 39-40.
[84] COFI Ex. 1.0 (2d CORR.) at 35-37.

Howat's analysis entailed matching zip code-level American Community Survey race and population data with the zip code-level disconnections data provided by the Company. He then calculated total disconnections by zip code over the period from 2013 – 2019 and created a ratio of total disconnections to total residential accounts for each of the zip codes served by ComEd.[85] Finally, he sorted and ranked zip codes by percent of the population consisting of people of color non-white population.[86] The data show a striking overlap between race and service disconnections, as shown in the table at page 52 of COFI's Initial Brief. The table provided therein shows that among the 20 zip codes with the highest disconnections ratio, 13 were among the top 20 zip codes with the highest non-white populations.[87] Addressing these inequities is a paramount goal of the provisions of Section 16-108.18 in general and in Section 16-108.18(e)(2)(A)(iv) in particular.

As noted in COFI's and ComEd's initial briefs, the COFI/ComEd-proposed Affordability metric achieves the specific goals of Section 16-108.18(e)(2)(A)(iv) of the Act. It is supported by all but one party of all the parties that offered an opinion on the metric. It specifically measures outcomes, not processes or investments, consistent with Section 16-108.18(e)(2)(D). ("Performance metrics should measure outcomes and actual, rather than projected, results where possible.") It will provide net benefits to all customers, and low-income and energy justice community customers in particular.

The COFI-ComEd-proposed Affordability metric should be approved, with the specific findings recommended above included in its Final Order in this case.

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[85] *Id.* at 15.
[86] *Id*.
[87] *Id.*

5. The Commission has an obligation to address unlawful practices.

Section 16-108.18(a)(8) of the Act highlights the overall mission of the CEJA amendments, and provides:

> The General Assembly therefore directs the Illinois Commerce Commission to complete a transition that includes a comprehensive performance-based regulation framework for electric utilities serving more than 500,000 customers. *The breadth of this framework should revise existing utility regulations to position Illinois electric utilities to effectively and efficiently achieve current and anticipated future energy needs of this State, while ensuring affordability for consumers.* (Emphasis added.)

As noted in COFI's Initial Brief, Mr. Howat came across other factors that in his view impacted whether lower income customers remain connected to essential utility service in his assessment of ComEd's credit and collection practices. COFI's Initial Brief highlighted the Company's practice of risk-ranking its residential customers for purposes of establishing the timing of certain collection activities, including disconnections, for customers with arrearages.[88] *See* COFI IB at 53-61. The facts as to how this two-tiered disconnection timeline works are not in dispute. The evidence points to a conclusion that accelerated disconnection of customers deemed high-risk of nonpayment created by ComEd's risk-ranking process constitutes unlawful discrimination in the provision of essential utility service, in violation of Sections 9-241 and 8-101 of the Act.

COFI urges the Commission to order ComEd to cease use of its risk-ranking algorithm and more specifically, its accelerated disconnection of customers deemed higher-risk for nonpayment, until a full investigation of these practices is resolved in the upcoming Part 280 rulemaking that ICC Staff will begin this summer. Until that proceeding is completed, customers deemed high risk should enjoy the same benefit of the doubt that low-risk-ranked customers do:

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[88] *Id.* at 18.

that nonpayment may have been an oversight. Allowing customers who struggle to afford essential utility service each month more time to pay bills is reasonable, given the need to allow these same customers time to access financial assistance through LIHEAP, PIPP program and utility-sponsored funding sources.

Addressing this inequity, here and now, is appropriate and consistent with the General Assembly's admonition that there is "urgency" in addressing inequitable practices that have impacted certain communities (220 ILCS 5/16-108.18(a)(2)) and its requirement that "the breadth of this (PBR) framework should revise existing utility regulations to position Illinois electric utilities to effectively and efficiently achieve current and anticipated future energy needs of this State, while ensuring affordability for consumers." (220 ILCS 5/16-108.18(a)(8)).

In response to COFI's argument, ComEd stated that COFI's request to have the Commission revise the Company's credit and collections processes are outside the scope of this proceeding. ComEd IB at 72-73. ComEd states Mr. Howat's proposals might be thought of as suggestions to ComEd as to how to achieve the Affordability performance metric or otherwise to modify some of its C&C practices, and can be discussed "in suitable future dockets and forums outside of this proceeding." *Id.* at 73.

The problem with that approach is that the evidence points to a conclusion that the risk-ranking criteria for accelerating disconnections constitutes an ongoing violation of Section 9-241 (and 8-101 by extension). The Commission has an obligation to address unlawful practices when the facts themselves (ComEd's accelerates the disconnection timeline for customers considered high-risk for nonpayment) are uncontested and the Public Utilities Act prohibits them.

At a minimum, the Commission should enter an order here that directs a further examination and litigation of this practice in the upcoming Part 280 proceeding, in which credit and collection practices will be revisited. The Commission, too, should order the Company, regardless of any reference to ComEd's risk-ranking process, to provide financially struggling customers with the time needed to obtain energy assistance – not accelerate the disconnection process based on some unsupported conclusion that doing so improves revenue collections. Moreover, it should revisit the disconnection trigger arrearage amounts that are, in COFI's view, too low to achieve CEJA's goal of improving the outcomes of utility practices, and encourage ComEd to adopt the practices COFI lists at pages 61-64 of its Initial Brief to help ensure achievement of the metric and overall improvement in affordability and connectivity to the utility network.

E. Proposed Performance Metrics Falling Within Section 16-108.18(e)(2)(A)(v)(interconnection)

COFI's brief focused on issues related to the Affordability metric and leaves it to other parties to address the remaining metrics.

F. Proposed Performance Metrics Falling Within Section 16-108.18(e)(2)(A)(vi)(customer service)

COFI's brief focused on issues related to the Affordability metric and leaves it to other parties to address the remaining metrics.

VII. Proposed Tracking Metrics

A. Proposed Tracking Metrics Falling Within Section 16-108.18(e)(3)(A)) (minimize emissions)

1. ComEd Proposals

2. Other Proposals

B. Proposed Tracking Metrics Falling Within Section 16-108.18(e)(3)(B)) (grid flexibility)

1. ComEd Proposals

2. **Other Proposals**

C. **Proposed Tracking Metrics Falling Within Section 16-108.18(e)(3)(C) (grid modernization cost savings and use of DERs to forego investments)**

1. **ComEd Proposals**
2. **Other Proposals**

D. **Proposed Tracking Metrics Falling Within Section 16-108.18(e)(3)(D) (jobs and opportunities)**

1. **ComEd Proposals**
2. **Other Proposals**

E. **Proposed Tracking Metrics Falling Within Section 16-108.18(e)(3)(E) (allocation of grid planning benefits to environmental justice and economically disadvantaged customers and communities)**

1. **ComEd Proposals**
2. **Other Proposals**

VIII. Independent Evaluator

IX. Proposed Performance Metrics Plan Compliance Filing

X. Proposed Rider PIM Compliance Filing

XI. Other

XII. Conclusion

The General Assembly has made clear in several provisions in the Clean Energy Jobs Act ("CEJA") that affordability for low-income customers and a reduction in disconnections through revisions in credit and collections policies are critical components of establishing equitable utility service that truly benefits all customers. The COFI and ComEd-proposed metric, which would reduce disconnections in the 20 zip codes with the highest 2017-2019 disconnection ratios by 10% in the aggregate annually over a four-year period, better encapsulates the goals listed in Section 16-108.18(a), (c) and (e)(2)(A)(iv) of the Act than the Company's original proposal, and specifically addresses the statutory direction to reduce disconnections for low-income households and to ensure equity in credit and collection practices. It should be adopted by the Commission.

In addition, COFI requests that the Commission, as part of its findings in this proceeding, order the Company to cease or revise certain activities. The Commission should order the Company to:

- cease its two-tiered disconnection timeline based on an opaque and inequitable algorithm that discriminates against financially struggling residential customers, and provide the customers deemed high risk for nonpayment the same amount of time that customers deemed low-risk are afforded when arrearages occur;
- revise and increase the arrearage disconnection trigger amounts from current levels that are too low and lead to more frequent disconnections.

These and other actions recommended by COFI witness Howat[89] that the Company could take now or in the near future[90] to improve affordability would help ensure the goals of Section 16-108.18(e)(2)(A)(iv) are achieved.

Finally, COFI recommendations regarding ComEd's proposed Peak Load Reduction and Supplier Diversity metrics, designed to ensure that the Commission-established metrics reward truly extraordinary efforts by the Company and not business-as-usual or already-committed-to practices, should be adopted by the Commission.

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Respectfully submitted,

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[89] COFI Ex. 1.0 (2d CORR) at 35-37, *See also* section VI.D., *supra.*

[90] COFI encourages ComEd to support the implementation of discount rates, now being investigated by the Commission pursuant to Section 9-241 of the Act.