STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
	:	
Petition for the Establishment of Performance Metrics Under Section 16-108.18(e) of the Public Utilities Act	: : :	Docket No. 22-0067

REPLY BRIEF ON EXCEPTIONS OF
COMMONWEALTH EDISON COMPANY

September 7, 2022

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Commonwealth Edison Company ("ComEd") submits to the Illinois Commerce Commission ("Commission" or "ICC") this Reply Brief on Exceptions to the Administrative Law Judges' ("ALJs") August 19, 2022, Proposed Order ("ALJPO"). ComEd's Reply Brief on Exceptions is submitted under Section 10-111 of the Public Utilities Act (the "PUA"), 220 ILCS 5/10-111, Section 200.830 of the Commission's Rules of Practice, 83 Ill. Adm. Code § 200.830, and the schedule established by the ALJs.

ComEd remains committed to the development of performance and tracking metrics that advance the purposes outlined in the Clean Energy and Jobs Act ("CEJA"), including equity, affordability, reliability, and combating climate change. The metrics and positions set forth by ComEd will incentivize it to stretch for advancements towards these important purposes, and reflect enhancements and refinements made over the course of this proceeding, in response to significant dialogue and compromise among the parties. In particular, based on the parties' briefs on exceptions, ComEd has refined its positions to reach following additional compromise positions:

- **Total Basis Points and Basis Points Allocation:** Each performance metric should be allocated 5 basis points, with the exception of Peak Load (2 basis points) and Supplier Diversity (0 basis points), for a total of 32 total basis points.

- **Peak Load Reduction:** The total incentive/penalty applicable to the Peak Load Reduction Performance Metric should be 2 basis points and the ALJPO metric design should be modified to reduce the incremental targets and widen the deadband; and

- **Staff Exception 3**, which makes a minor correction at page 102 of the ALJPO, should be adopted.

ComEd understands that Staff does not oppose the above-listed outcomes. While not a change in ComEd's position, it is ComEd's understanding that Staff does not oppose ComEd's Exception 6, which recommends that the baseline for the reliability-related Performance Metrics 1 and 2 should be calculated as a three-year average of SAIDI in 2021-2023.

Taking those positions into account, only the following issues remain disputed between ComEd and Staff:

- With respect to Reliability Performance Metrics 1 and 2, the question of whether – and how many – major event days ("MEDs") should be excluded from the calculation of SAIDI;

- In addition, for Reliability Performance Metrics 1 and 2, the question of whether the Commission's order should include additional criteria to define an MED, beyond the industry-standard IEEE definition;

- Whether ComEd's proposed Interconnection Performance Metric is sufficiently challenging, and whether the deadbands incorporated into that metric are symmetrical; and

- Whether a basis point incentive/penalty should be applied to the Supplier Diversity Performance Metric.

ComEd's positions on these issues are detailed below and in its Briefs and Brief on Exception. Additional issues remain in dispute between ComEd and the other parties to this proceeding.

In sum, ComEd's proposed metrics satisfy the statutory mandate that approved metrics must be symmetrical, measurable, practicable, and reasonably achievable. In other words, they are practicable and achievable, yet challenging. Where the ALJPO deviates the positions outlined in ComEd's Brief on Exceptions and this Reply Brief on Exceptions, it renders the metrics imprecise, impracticable, outside ComEd's control to achieve, or all of the above. In addition, some of the modifications to ComEd's proposed metrics adopted in the ALJPO lack support in the evidentiary record. In their briefs on exceptions, certain parties have proposed further modifications to the metrics adopted in the ALJPO, which exacerbate the problems ComEd identified. The Commission should reject the exceptions offered by other parties, and instead adopt the ALJPO with the changes identified here and in ComEd's Brief on Exceptions.

COMED'S REPLIES TO EXCEPTIONS

I. INTRODUCTION

II. BACKGROUND

III. LEGAL STANDARDS

Reply to AG Exception 1

In AG Exception 1, the AG argues that the Commission may approve penalty-only metrics, so long as the overall performance metrics portfolio's penalty and incentive structure is symmetrical, and that the ALJPO's finding that the Act requires symmetrical incentives and penalties applicable to each metric is "reversible error." AG BOE at 2, 5. But, it is the AG's position, not the ALJ's recommendation, that is contrary to law. Moreover, the AG's effort to advance its flawed reading of the law is moot because the AG itself failed to set forth any proposal that includes both penalty-only metrics and a penalty/incentive structure that is symmetrical overall.

The AG's argument that the symmetric metrics need not actually be symmetric is based on a difference in wording in two subsections of the statute. The AG contends: (i) Section 16-108.18(e)(6)(A) requires utilities to propose symmetrical incentives and penalties for <u>each performance metric</u>, however, (ii) Section 16-108.18(e)(2)(B) provides that the Commission may disregard the utility's proposal to instead adopt penalty-only or reward-only metrics, so long as the total amount of incentives and penalties across all performance metrics is symmetrical. AG BOE at 3-6. Thus, the AG concedes that Subsection (e)(6)(A) requires the incentive and penalty for each metric to be symmetrical. But the AG erroneously reads Subsection (e)(2)(B) to create a second, entirely different rule for approved rule. The AG's two-step dance is unsupported by any language actually establishing two different meanings for the same symmetry concept, not to mention being overly complex, unnecessary, and counterproductive.

A review of the plain language confirms the AG's error. As the AG correctly recognizes, Subsection (e)(6)(A) states that the utility shall file a Petition seeking approval of its metrics, "which shall include, for each metric … the performance adjustment, which shall be a symmetrical basis point increase or decrease to the utility's cost of equity…." 220 ILCS 5/16-108.18(e)(6)(A). The term "symmetrical" clearly modifies the "each metric" subject. Each metric must therefore be symmetrical and have equal rewards and penalties. Since the plain language is clear, there is no need to look elsewhere for statutory interpretation. *Ill. Bell Tel. Co. v. Ill. Commerce Comm'n*, 362 Ill. App. 3d 652, 657 (2005).

The AG's interpretation of the second section is wrong, however. Subsection (e)(2)(B) provides that

> Performance metrics shall include a description of the metric, a calculation method, a data collection method, annual performance targets, and any incentives or penalties for the utility's achievement of, or failure to achieve, their performance targets, provided that the total amount of potential incentives and penalties shall be symmetrical. Incentives shall be rewards or penalties or both, reflected as basis points added to, or subtracted from, the utility's cost of equity.

220 ILCS 5/16-108.18(e)(2)(B) (emphasis added). Contrary to the AG's assertion, Subsection (e)(2)(B) explains the metric design requirements for each individual metric, including symmetrical potential incentives and penalties. It does not refer to the total summation of the

performance metrics and it does not create an entirely different and contradictory symmetry rule, as the AG suggests. *See* ComEd Rep. Br. at 15-16.

In addition, Subsection (e)(6)(A), requiring each performance metric to be symmetrical, is the more specific of the two provisions. The Commission should read the more specific provision (requiring each metric to be symmetrical) as controlling, which would allow both provisions to be followed. *See People v. Villa*, 2011 IL 110777, ¶ 35 (To the extent portions of a statute appear to conflict, they should, if possible, be construed in harmony); *Durica v. Commonwealth Edison Co.*, 2015 IL App (1st) 140076, ¶ 32 ("recognizing the principle of statutory construction that all provisions are to be given effect if reasonably possible, we will interpret the statute in a manner that reconciles any apparent conflicts."). The Commission should adopt the ALJPO's straightforward reading of the statute. As noted by the ALJPO, "Since the plain language is clear, there is no need to look elsewhere for statutory interpretation." ALJPO at 26, citing *Ill. Bell Tel. Co.*, 362 Ill. App. 3d at 657.

Alternatively, even if Subsection (e)(2)(B) is read (as the AG recommends) to require the metric framework's <u>total</u> penalties and total incentives to be symmetrical, the AG's interpretation still fails. A requirement that the total metrics framework has symmetrical cumulative incentives and penalties does not obviate the requirement that each individual metric has symmetrical incentives and penalties. The two sections of the statute are not in conflict.

The AG next incorrectly claims that the ALJPO's interpretation of the statute constitutes reversible error. AG BOE at 5. The Commission's interpretation of statutes it is authorized to implement is granted great deference. As explained in a case the AG itself cites, "Illinois courts give great deference to the Commission's decisions, as they are the judgments of an administrative body with tremendous expertise in the field of public utilities" and when reviewing the "the

Commission's interpretation and application of the provisions of the [PUA], reviewing courts must give substantial weight to the Commission's interpretation." *Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 328 Ill. App. 3d 937, 941-942 (2002) (internal citations omitted). The ALJPO's common-sense application of the plain language of the statute is superior to the AG's convoluted reading, and should be adopted by the Commission.

Ironically, the AG has mooted its own issue because it has offered nothing practical in this proceeding to implement its statutory interpretation. The AG hypothesizes that its interpretation can be implemented by having one penalty-only metric and either an (i) incentive-only metric, or (ii) a metric that was weighted heavily for incentives. But the AG never proposed either scenario for the Commission's consideration. The issue is not live. The AG is asking the Commission to essentially issue an advisory opinion on this issue, without the benefit of any facts demonstrating how such an interpretation might work in practice. The Commission should decline to do so.

IV. PROPOSED PENALTIES AND INCENTIVES STRUCTURE

A. Total Number of Basis Points

As briefly noted earlier in this Reply BOE, after reviewing the briefs on exception submitted by Staff and Intervenors in this docket, ComEd has refined its position regarding total basis points and basis points allocations further. While ComEd continues to believe that 60 or 40 total basis is appropriate, ComEd believes that a total of 32 basis points would also be appropriate. The 30 basis points would be allocated among six metrics (three reliability and resiliency metrics; affordability; interconnection; customer service) at 5 basis points each. *Cf* ComEd BOE at 2 (recommending 7 metrics receive 5 basis points each for a total of 35). Two basis points would be allocated to Peak Load Reduction, for the reasons ComEd has previously articulated in its Briefs, BOE and this Reply BOE (cite); and zero (0) basis points would be allocated to Supplier

Diversity, again consistent with ComEd's position throughout this proceeding. *See, e.g.*, ComEd Int. Brief at 61. It is ComEd's understanding that Staff does not oppose this allocation, with the exception of ComEd's continued proposal to not allocate any basis points to Supplier Diversity.

Reply to IIEC Exception 1

IIEC continues to argue that the Commission should award ComEd the same number of basis points – 24 total basis points - that Ameren Illinois Company ("Ameren") requested in its performance metrics proceeding (Docket No. 22-0063). IIEC BOE at 5. ComEd disagrees with IIEC's exception for a number of reasons, and supports the ALJPO's conclusion that there is insufficient evidence in the record to support applying Ameren's proposed incentive structure of 24 total basis points to ComEd. ALJPO at 35. The Commission should reject IIEC Exception 1.

First, there is nothing in the record of this proceeding that would support simply importing Ameren's proposal and imposing it on ComEd. *See* ComEd BOE at 19 and 28-29. In support of its argument, IIEC points to its witness Mr. Stephens' brief and conclusory assertions that Ameren's 24 basis point total is a reasonable level of basis points for ComEd. IIEC BOE at 2. However, a bare assertion by a witness that ComEd and Ameren should receive the same incentive level is far from "substantial evidence" on which a Commission decision can rely. 220 ILCS 5/16-108.18(e)(2). More pointedly, just because Mr. Stephens says it does not make it true.

Second, devoid of any factual or legal support for its argument, IIEC instead relies (incorrectly) on the general desire for consistency between the two utilities' performance metrics proceedings. IIEC BOE at 3. But IIEC's observation that ComEd and Ameren "are subject to the same statutory scheme for the first time, including the same categories of metrics, and the same criteria by which they are assessed," IIEC BOE at 3, ignores that there are factual distinctions between the two utilities and their proposed metrics plans. Whatever Ameren provided in support of its proposal in its separate docket (to which ComEd is not a party) does not appear in the record of this case.[1] Section 16-108.18(e)(2)(D) even notes that "[n]othing in this paragraph is intended to require that different electric utilities must be subject to the same metrics, goals, or incentives." 220 ILCS 5/16-108.18(e)(2)(D). Additionally, the topic of total basis points remains a live issue in the Ameren case because no final order has been issued. Even if there was a final order (which there is not), it would have no precedential value in this ComEd proceeding. *Mississippi River Fuel Corp. v. Ill. Commerce Comm'n*, 1 Ill. 2d 509, 513 (1953) (The Commission "is not a judicial body, and its orders are not res judicata in later proceedings before it."). Moreover, to the extent consistency between the two utilities is desirable, IIEC offers no explanation for why ComEd's proposal for total basis points should not be imported to the Ameren proceeding. As a result, there is no evidence in the record of this proceeding to suggest that the total basis points or incentive structure currently subject to the Commission's review in the Ameren docket would be appropriate in this docket for ComEd.

Third, IIEC attempts to characterize Staff testimony as supporting its position, saying "Staff has no objection to 20 bps" if they are evenly divided among metrics. IIEC BOE at 4-5. IIEC is disingenuous. In its Reply Brief, Staff clearly states that "Staff does not support IIEC's proposal for 20 bps" (although Staff shared certain concerns raised by IIEC regarding minimizing customer costs). Staff Rep. Br. at 9.

[1] 220 ILCS 5/10-103 ("any finding, decision or order made by the Commission shall be based exclusively on the record for decision in the case…."); *see also Apple Canyon Lake Prop. Owners' Ass'n v. Ill. Commerce Comm'n*, 2013 IL App (3d) 100832, ¶ 40 ("the Commission must base its factual findings on the evidence and on matters officially noticed and that nothing can be treated as evidence unless it is introduced as evidence and satisfies the threshold evidentiary requirements of admissibility.") (internal citations omitted); *see also N. Shore Gas Co.*, Docket No. 20-0810, Order at 51 (Sept. 8, 2021) ("However, each rate case stands on the evidence filed in that case… Utilities differ greatly in this State, in terms of size, scope, operating expense, etc. The Commission finds North Shore's direct comparison to Nicor Gas or Ameren is inapt and overly simplistic.") (internal citations omitted).

Fourth and finally, IIEC also continues to ignore the substantial evidence in the record in support of ComEd's proposed total basis points (60 total basis points, or alternatively, 40 total basis points). As directed by the statute, ComEd has proposed performance metrics that are challenging, but are "reasonably within control of the utility to achieve." 220 ILCS 5/16-108.18(e)(2)(D). Throughout the proceeding, ComEd has put extraordinary effort into revising its performance metrics, resulting in metrics that are even more difficult to achieve and more beneficial to customers. ComEd has modified <u>all</u> of its eight performance metrics in response to Staff and Intervenor feedback, made numerous performance metrics even more difficult, and a number of its performance metrics are now supported by Staff and Intervenors. ComEd Rep. Br. at 10. The difficulty of achieving ComEd's proposed final performance metrics should correlate with a higher possible incentive level – more risk, more reward. Further, ComEd has made concerted efforts to narrow the issues on this topic, stating in its Brief on Exceptions that while it continues to believe that 60 total basis points is appropriate, in this initial metrics proceeding, it would be amenable to the Commission's adoption of its 40 basis point total proposal, or even ComEd's compromise position of 32 basis points (5 bps for six metrics; 2 bps for Peak Load; 0 bps for Supplier Diversity). These efforts support ComEd's proposed total number of available basis points, and undermine IIEC's recommendations for 20 or 24 bps. IIEC's Exception 1 should be rejected.

B. <u>Proposed Overall BPS Allocation</u>

<u>Reply to CUB/EDF Exception 1</u>

In its Exception 1, CUB/EDF objects to the ALJPO's assignment of equal basis points to each performance metrics category and requests that the Commission instead adopt CUB/EDFs alternative performance metrics plan (the "Alternative Plan"), with its recommended allocation of

42 basis points across six proposed metrics. CUB/EDF BOE at 3-8. The Commission should reject CUB/EDF's Alternative Plan.

While ComEd agrees with CUB/EDF that a more tailored approach to allocating basis points among metrics might achieve the purposes of the statute (*see* ComEd Exception Nos. 2 and 3 at ComEd BOE at 8-14), ComEd does not endorse all of CUB/EDF's reasoning in support of this argument, nor does it support adoption of CUB/EDF's Alternative Plan. ComEd also disagrees with CUB/EDF's suggestion that the Commission adopt CUB/EDF's Alternative Plan (including the allocation of basis points therein), as discussed in ComEd's responses to CUB/EDF's Exception Nos. 2 through 6, below. In particular, ComEd disagrees with CUB/EDF that the Peak Load performance metric should be allocated more basis points than the Customer Service performance metric just because the benefits of the Customer Service performance metric are more difficult to quantify. CUB/EDF BOE at 4-5. There is enough clarity about both metrics to determine an appropriate allocation of basis points. In each of ComEd's proposed 60 total basis points, 40 basis points, and 32 basis points compromise scenarios, the Peak Load performance metric is capped at two basis points at the request of several parties to ensure that ComEd does not receive more incentives than its customers receive in direct benefits. *See* ComEd Init. Br. at 56 and ComEd Rep. Br. at 49-50. In ComEd's proposed 40 total basis points scenario, ComEd's Customer Service performance metric is allocated three basis points because it is expected to generate net benefits despite some uncertainty about changing technology and customer behavior. *See* ComEd Init. Br. at 88 and ComEd Rep. Br. at 81-82. In ComEd's 32 basis points compromise position, ComEd's Customer Service performance metric is allocated 5 basis points, as are most of the other metrics.

In addition, for the same reasons articulated in response to IIEC Exception 1, ComEd strongly disagrees with CUB/EDF's suggestion that it should be bound, in any way, by the amount of basis points proposed by Ameren in its own performance metrics case. *See* CUB/EDF BOE at 5. The differences between ComEd and Ameren go beyond the size of the utility and number of customers served. As a result, a similar (or even identical) performance metric that may be challenging for one utility may, or may not, be challenging for the other. Like IIEC, CUB/EDF has offered no legal basis or evidence in support of its assertion that the basis point allocation in the Ameren proceeding should influence the allocation in this proceeding.

C. BPS Assignment Method

D. Linear Approach to Basis Points

V. PROPOSED NET BENEFITS METHODOLOGIES

Reply to AG Exception 2

Reply to ELPC/JSP/VS Exception 1

The AG and ELPC/JSP/VS propose that the ALJPO's findings with respect to the net benefits methodology should be amended. AG BOE at 7-10; ELPC/JSP/VS BOE at 3-9. Specifically, AG Exception 2 suggests amending the ALJPO to include a finding that "ComEd has an affirmative duty … to show that [its metrics] will result in net benefits to ratepayers." AG BOE at 9-10. Similarly, ELPC/JSP/VS Exception 1 recommends including the statement that the Commission "may not, and does not, approve any metric and associated incentive level in this proceeding that does not ensure that benefits exceed costs for customers." ELPC/JSP/VS BOE at 8.[2] While ComEd does not believe these additions to the ALJPO are necessary, it has no objection

[2] The adjustments that ELPC/JSP/VS propose with respect to the ALJPO's conclusion regarding the Interconnection Timeliness metric are addressed below. *See* Section VI. E. at 52-60.

to them (with one partial exception to AG Exception 2, explained below). Furthermore, ComEd has demonstrated that its proposed performance metrics will result in net benefits to its ratepayers.

The record evidence in this proceeding includes testimony from experts, on ComEd's behalf, setting forth a cost-benefit methodology that supports the statutory requirement that the Commission adopt such a methodology. *See generally,* Zarumba & Shields Reb., ComEd Ex. 11.0; Zarumba & Shields Sur., ComEd Ex. 25.0. The same experts acknowledged that the analysis was limited by the cost and benefit information available at this time. Zarumba & Shields Reb., ComEd Ex. 11.0 at 48. Using all of the information that is reasonably available today, the experts applied their recommended cost-benefit methodology to each of the proposed ComEd performance metrics to conclude that each metric will, or is likely to, achieve net benefits for ratepayers. *Id*. (noting that "[m]any of our conclusions on individual proposed performance metrics will be directional in nature with an understanding that, over time ComEd (and others) will develop a better understanding of the costs to achieve the desired performance.") Thus, to the extent the Commission is persuaded to include in its final order the additional language suggested by the AG, concerning ComEd's "affirmative duty" to present evidence demonstrating net benefits, the Commission can rest assured that the record contains that evidence.

AG Exception 2

While generally agnostic about AG Exception 2, ComEd disagrees with AG Exception 2's request to amend the following sentence of the ALJPO:

> The Commission ~~further agrees~~ disagrees with ComEd that the statute does not require a cost-benefit analysis.

AG BOE at 9. This portion of AG Exception 2 misunderstands Section 16-108.18, which requires the Commission to develop a cost-benefit methodology, but does not require the Commission to apply said methodology as part of a cost-benefit <u>analysis</u> at this stage of performance metrics design and development.

As discussed in ComEd's Reply Brief, the Act requires the Commission to "develop a methodology to calculate net benefits." 220 ILCS 5/16-108.18(c)(2)(F). As ComEd explained in its Briefs and the ALJPO correctly states, ComEd – while not required to develop and propose a cost benefit methodology – did so in the testimony provided by experts Messrs. Zarumba and Shields. Neither Staff nor any intervenor challenged ComEd's proposed cost-benefit methodology or offered an alternative methodology for the Commission's consideration.

To determine whether the proposed metric is net beneficial, the Commission then uses the cost-benefit methodology and considers factors:

> [T]he extent to which the amount [of the incentive] 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 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.

Id. The record contains ample evidence, specifically the testimonies of experts Messrs. Zarumba and Shields, concerning the impact that each individual metric is likely to have on the enumerated factors when assessed in the proposed cost-benefit methodology. The ALJPO correctly considered and weighed that evidence in its analysis of each proposed performance metric. This is all that is required. Therefore, the ALJPO's language must stand.

<u>Reply to IIEC</u>

Finally, ComEd notes that IIEC includes in its BOE several paragraphs addressing the ALJPO's conclusions regarding the net benefits methodology. IIEC BOE at 6-7. Although IIEC states it disagrees with the ALJPO on this issue, it “will not be filing exceptions.” *Id*. at 7. Therefore, there is nothing to which ComEd can respond.

VI. PROPOSED PERFORMANCE METRICS

A. Proposed Performance Metrics Falling Within Section 16-108.18(e)(2)(A)(i) (reliability, resilience, power quality)

Performance Metrics 1 and 2 - MED Criteria

Reply to Staff Exception 2

Staff Exception 2 seeks to eliminate the ALJPO’s third condition (referred to as Condition 3 in the ALJPO and Criteria (3) in the ComEd BOE) that must be met to qualify an event as an MED as redundant. As ComEd explained in its Exception 5, the ALJPO’s errs in modifying the definition of MEDs to include the three conditions, which are vague, ambiguous and have no support in the record. The ALJPO does not explain why any of the three criteria are necessary or provide an improvement over the IEEE Standard 1366 definition of a Major Event Day (“an event that exceeds reasonable design and or operational limits of the electric power system.”). Arns Reb., ComEd Ex. 5.0 at 5:87-90.

In light of those deficiencies, ComEd Exception 5 recommends modifications to Condition 1, the complete deletion of Condition 2, and has no objection to Condition 3. ComEd BOE at 18-24. While ComEd does not believe Staff’s recommendation to eliminate Condition 3 is necessary, ComEd does not object. Staff BOE, at 7. As noted in its BOE, ComEd’s proposal for Performance Metrics 1 and 2 had always contemplated that they would not include planned outages and the substantial issue with the proposed conditions lies in Condition 2’s misguided reference to, and use of, the NESC safety guidance. Arns Sur., ComEd Ex. 19 at 6:125-128; 8:150-154; ComEd BOE at 19. Therefore, ComEd remains neutral to Staff’s Exception 2.

Performance Metrics 1 and 2 – Baseline and Metric Period

Reply to IIEC Exception 2

Both components of IIEC Exception 2, which disagree with two aspects of the ALJPO's decision on Performance Metrics 1 and 2, must be rejected. First, while the ALJPO adopted a baseline of the average of two best (lowest SAIDI) years from 2021 through 2023, IIEC proposes to cap the possible baseline to 35 minutes. IIEC BOE, at 7-8. This is a new proposal, presented for the first time in IIEC's BOE, and for that reason alone it must be rejected. Second, IIEC does not provide any new support for its recommendation that a four-year metric period, rather than the ten-year period, should be used for Metrics 1 and 2. IIEC BOE, at 9. The Commission should reject both recommendations.

Baseline for Metrics 1 and 2

IIEC Exception 2 appears to support the ALJPO's erroneously constructed 2-year average baseline[3] with a newly proposed modification (more on that shortly). IIEC's support of the ALJPO is based largely on its continued dislike of ComEd's proposed three-year average (2021-2023) baseline. IIEC (again) challenges ComEd's proposed 2021-2023 baseline because (1) IIEC asserts that ComEd can manipulate the outcome by its "actions or inactions" and (2) IIEC contends it is bad policy to "award a utility bps in this docket without knowing the baseline and the actual targets." IIEC BOE, at 8. Both assertions are incorrect.

First, IIEC's assertion that ComEd could (and implication that it would) manipulate its SAIDI performance in 2023 to impact the baseline is downright outrageous. IIEC offers no detail as to what "action or inaction" ComEd might take (or not take) to (allegedly) intentionally sabotage its SAIDI performance in 2023, solely for the purpose of setting an "easier" baseline for its

[3] IIEC characterizes the ALJPO's recommended baseline as a "middle ground" between ComEd's proposal for a three-year average based on 2021-2023 data and IIEC's argument to use the 2020 data, which was the lowest (best) SAIDI performance in recent years. IIEC BOE at 8.

performance metrics. If IIEC is suggesting, for example, that ComEd would intentionally delay outage restoration efforts or defer necessary capital investments to negatively impact reliability of a particular area, such accusation is not only highly offensive but irrational. Maintaining safe and reliable service for its customers is ComEd's upmost priority. ComEd has core obligations as a utility to ensure safe and reliable service, and other statutory and regulatory requirements may impose far greater consequences for any "action or inaction" ComEd would take to negatively impact its reliability performance.

Second, IIEC's assertion that ComEd's proposed baseline is "unknown" because it is partially based on future years (the remainder of 2022 and 2023) is a red herring. Under ComEd's proposal, ComEd's performance will be measured according to its ability to make incremental improvements to reliability, above and beyond its known, actual performance over the three years immediately preceding the metrics period. ComEd Rep. Br. at 29. The 2021-2023 three-year average ensures that the metric targets are based on the most recent data. Arns Reb., ComEd Ex. 5.0 CORR at 23:446-449. ComEd's performance in 2022 and 2023 will be known and measurable when ComEd's performance metrics take effect. Therefore, ComEd's proposal is wholly logical and will most accurately capture ComEd's improvement from current level of performance, whereas IIEC's proposal to use 2020 (which was the lowest (best) SAIDI performance in recent years) as the baseline simply seeks to "cherry pick" a target that is more difficult to achieve for the sake of being more difficult to achieve.

IIEC also gratuitously adds that its own baseline proposal (2020) is bolstered by the (alleged) fact that "there is no cost data to support these metrics, and thus no lawfully determined net benefits." IIEC BOE, at 9. As an initial matter, IIEC's statement is incorrect. Even though detailed cost information is not yet available in the early stages of this new performance metrics process, ComEd has shown that there are specific, quantifiable benefits in terms of avoided cost for Metrics 1 and 2. *See generally*, Zarumba and Shields Reb., ComEd Ex. 11.0 at 14-20. The ALJPO also agrees that Metrics 1 and 2 will result in net benefits. ALJPO, at 103. Therefore, it is unclear what "lawfully determined" net benefits are missing, and what such "lawfully determined" net benefits looks like in this instance. Notwithstanding ComEd's disagreement with the accuracy of the statement, it is unclear how the existence/lack of cost data impacts the appropriateness of the baseline.

While IIEC correctly notes that no party recommended the ALJPO's 2-year baseline (IIEC BOE at 7), IIEC suggestion to further modify the ALJPO's already-erroneous baseline must be rejected. IIEC proposes in its Exception 2 to make a "bad" baseline worse by arbitrarily adding a cap to the possible SAIDI outcome. As outlined in IIEC Exception 2, the cap, in effect, would set the baseline at 35 minutes, unless the average of the two best years from 2021 through 2023 is lower than 35. IIEC BOE at 8. This is a brand-new proposal; neither IIEC nor any other party to this proceeding ever proposed such a cap. As noted in ComEd's Brief on Exceptions (ComEd Exception No. 6), Commission decisions must be based on the evidentiary record. 220 ILCS 5/10-201(e)(iv) ("The court shall reverse a Commission rule, regulation, order or decision, in whole or in part, if it finds that… [t]he findings of the Commission are not supported by substantial evidence based on the entire record of evidence presented to or before the Commission for and against such rule, regulation, order or decision."); *see also Chicago & W. T. Rys. v. Ill. Commerce Comm'n*, 397 Ill. 460, 467 (1947); *United Citizens for a Responsible Energy Development, Inc.* (*CURED*) *v. Ill. Commerce Comm'n*, 285 Ill. App. 3d 82, 90 (5th Dist. 1996). The Commission should not adopt a baseline proposal that has no basis in the record evidence, and as such, must reject IIEC's proposal.

Based on the foregoing, IIEC's reasons for adopting a modified baseline over ComEd's proposed baseline are flawed and should be rejected. The Commission should also reject IIEC's proposed modification to the ALJPO's recommended baseline.

Ten-Year Time Period

The ALJPO correctly concludes that a ten-year period for Metrics 1 and 2 is (i) within the statutory requirements and (ii) allows ComEd to consider appropriate investments in improving reliability in the context of its long-term investment plan. ALJPO, at 102. In its Exception 2, IIEC argues that the metric period for Metrics 1 and 2 should be 4 years rather than 10 years. IIEC BOE at 9-10. IIEC provides no new information or arguments in support of its position. The Commission should adopt the ALJPO as written on this point and not adjust the period applicable to Metrics 1 and 2, as recommended by IIEC.

IIEC first challenges the ALJPO's finding that a 10-year metric period will allow ComEd to better plan its investments to meet the metric. IIEC BOE at 10-11; ComEd Rep. Br., at 30-31. IIEC asserts that ComEd was able to make investments to achieve its EIMA metrics, and notes that EIMA formula rates were updated every year. IIEC BOE at 10-11. IIEC is mistaken. While the EIMA <u>rates</u> were updated each year through the formula, the EIMA <u>metrics</u> remained in place for the entire 11-year EIMA period. 220 ILCS 5/16-108.5(f).

IIEC's contention that the shorter 4-year metric period is necessary so that the benefits of these metrics can be reevaluated after 4 years fails to take account of the time needed to plan and execute lasting, systemic changes of the type contemplated here to infrastructure of the size and scope at issue here. IIEC BOE, at 9-10. The ALJPO already found that Performance Metrics 1 and 2 will result in net benefits. IIEC does not take exception to those findings specifically. In addition, the duration of the metric period is irrelevant to the frequency of the metric's performance evaluation. The performance metrics will be subject to annual evaluations pursuant to Section 16-108.18(d)(11). Shortening the metrics period to four years does not alter this timing.

IIEC incorrectly asserts that the 4-year metrics period must be adopted because it "aligns" with the 4-year multi-year grid plan cycle. IIEC BOE at 10. This ignores the fact that the statute expressly permits metrics measurement periods up to 10 years: "the Commission shall approve metrics designed to achieve incremental improvements over baseline performance values and targets, over a performance period of up to 10 years, and no less than 4 years." 220 ILCS 5/16-108.18(e)(2). The General Assembly clearly did not think that strict alignment between the metrics and the grid plan was necessary when it enabled the Commission to exercise its discretion to adopt different periods where appropriate.

Lacking any factual or legal basis for its recommendation, IIEC is forced to posit "what ifs" to cast doubt on the reasonableness of a ten-year metrics period (e.g., asking, "What if the 2022 and 2023 SAIDI scores are… an aberration? … affected by climate change issues?"). IIEC BOE at 10. It is not clear if or how any of these hypotheticals support the reasonableness of IIEC's proposed 4-year metric period. For these reasons, IIEC Exception 2 related to the metrics period should be rejected and the ALJPO's language should stand.

<u>Performance Metrics 1 and 2 – Number of MED Exclusions</u>

<u>Reply to Staff Exception 1</u>

ComEd and Staff finally agree that the ALJPO's conclusion to exclude up to six Major Event Days ("MEDs") per year in the SAIDI calculation used to evaluate performance under Metrics 1 and 2 must be rejected as without evidentiary support. However, the remainder of Staff Exception 1 – which recommends that the Commission exclude up to five MEDs – must also be rejected because it suffers from the same fatal flaws as the ALJPO. Both the ALJPO and Staff's

Exception 1 are supported only by a proposal agreed-to by another utility (Ameren) in a different docket; none of the evidence that may support the outcome in the Ameren docket exists in the record of this case. Therefore, the Commission should modify the ALJPO to permit the exclusion of up to nine MEDs from the calculation of SAIDI, as proposed by ComEd. ComEd BOE at 26-27. The Commission should reject Staff Exception 1.

This topic boils down to determining an acceptable method to decide the number of MEDs excluded from reliability calculations for purposes of Metrics 1 and 2. ComEd has maintained throughout this case that the superior and most acceptable method would be the IEEE 1366 2.5 Beta standard (which excludes all MEDs), which is based on many years of industry analysis, expertise, and learnings, or alternatively, exclude up to nine MEDs per year, because nine is the average number of MEDs experienced in ComEd's service territory over the last five years. Staff has baselessly insisted on excluding up to five MEDs.

Metrics 1 and 2 must provide a clear picture of ComEd's sustained day-to-day reliability, in recognition of ComEd's lack of control over extreme weather and other threats to the grid. *See* Arns Sur., ComEd Ex. 19.0 at 25:497-499. Therefore, if any MEDs are excluded, that number should be set at a level that removes the volatility and variation that major event days introduce into reliability calculations. To achieve this goal, ComEd proposes to use statistics, specifically averages, to determine any appropriate limit on exclusions. ComEd used this rational and evidence-based analytical approach to determine its compromise proposal offered in this case, which is to exclude up to nine MEDs. It is an undisputed fact that nine MEDs have occurred, on average, in the last five years (2017-2021). Arns Sur., ComEd Ex. 19.0 at 12:224-225. Using a larger data set (*i.e*, data from more years) would further support ComEd's proposed nine MED exclusions as reasonable, because the 15-year average is 11.7 MEDs per year. Arns Sur., ComEd Ex. 19.0 at 11:219.

Neither the ALJPO nor Staff employ an analytical or evidence-based approach to reach their MED exclusions. As explained in ComEd's Brief on Exceptions, the ALJPO incorrectly and improperly "borrows" the MED exclusion agreed to by Ameren and Staff in the pending Ameren performance metrics docket, and with no supporting rationale whatsoever, adds an additional MED to arrive at six MEDs. ComEd discusses the flaws of this approach at length in its Brief on Exceptions (ComEd Exception No. 7). In addition to those arguments, which ComEd will not repeat here, ComEd notes that to the extent that the ALJPO's recommendation was intended as a "meet in the middle" compromise between ComEd's surrebuttal proposal (nine) and Staff (five), mathematically seven (not six) would be the appropriate MED exclusion.[4] Although ComEd recognizes that, on occasion, the Commission resolves disputes by averaging party proposals, that approach is not appropriate here. It is typically used to address issues such as return on equity, where averaging can mitigate issues inherent in complex mathematical methodologies, but there are no such issues here. ComEd's proposal represents an average of actual data experienced in ComEd's service territory. Staff's proposal is imported from another case, involving another utility. The flaws in Staff's proposal will not be resolved by averaging it with actual data.

Similarly, Staff's recommendation to limit exclusions to up to five MEDs lacks any evidentiary basis or analytical rigor. Staff offers six reasons in support of its position that only up to five MEDs should be excluded from SAIDI per year. Each reason is meritless, lacking factual support in the record, disingenuous, or all of the above.

[4] ComEd also notes that to the extent the Commission wished to create a "compromise" outcome (which it should not), it is not mathematically possible to find a middle ground between ComEd's (all MEDs excluded) and Staff's (no MEDs excluded) initial positions.

First, Staff argues that five MEDs should be excluded, because five is the <u>smallest</u> number of MEDs ComEd has experienced in any year over the last 15 years. Staff BOE at 3. There is no statistical or analytical basis for this approach; it is simply cherry-picking. Simply selecting the smallest number in a set is not a statistically sound principle (in contrast to ComEd's proposal, which uses the statistical principle of averages/means to determine the appropriate number of MED exclusions). In addition, the logic of selecting the smallest number of MEDs is backwards and willfully contrary to both the fundamental belief embodied in CEJA that climate change is not only real, but happening at an accelerated pace, as well as the CEJA principle that the performance metrics must be within the utility's control to achieve. Staff does not dispute that climate change is occurring and that it will result in more frequent and severe storms in northern Illinois or that MEDs constitute elements outside of the utility's control. Staff Init. Br., 33 (arguing that a performance metric must "plan for and respond to increasing levels of severe weather"); Tr. at 112:6-10 (Staff witness Sunday Balogun acknowledging that at least some MEDs are not controllable). Extrapolating that same logic would only seem to support an approach of selecting the <u>largest</u> number of MEDs that has occurred in the last 15 years (23 MEDs), not the smallest, as an acceptable limit to the number of MED exclusions.

Second, Staff argues, without evidentiary support, that given the substantial capital investments that ComEd has made over the EIMA period and the significant reliability improvements that ComEd has achieved during the same period, "it is reasonable to expect that ComEd's system will be able to withstand typical operating conditions, including storms, and to limit ComEd to excluding five MEDs going forward." Staff BOE, at 4. The critical term in Staff's statement is "typical" operating conditions and storms. As discussed numerous times throughout testimony and in briefs, MEDs, by definition, are events that "exceed[] reasonable design and/or operational limits of the electric power system." Arns Reb., ComEd Ex. 5.0 CORR at 5:87-89 (citing the IEEE definition of MEDs). In other words, MEDs are not typical and not representative of many of the storms experienced in ComEd's territory, and they go beyond the grid's "typical" operational limits. Every year, ComEd's system experiences a substantial number of storms that do not rise to the level of MEDs. Arns Sur., ComEd Ex. 19.0 at 12:224-225. Staff continues to conflate the terms "MEDs" and "storms," either intentionally or mistakenly, however. ComEd acknowledges that its grid investments and strong commitment to improving reliability over recent years have, and will continue to help ensure that its system can withstand *typical* storms. However, no prudent level of capital investment will allow ComEd to weather (pun intended) all atypical operating conditions that are beyond its reasonable control, i.e., MEDs.

Third, Staff states that ComEd's data shows that excluding five MEDs significantly reduces the variability in the SAIDI scores over that period, compared to SAIDI calculated with no MEDs excluded. Staff BOE at 4; Arns Sur., ComEd Ex. 19.0 at 18:352). ComEd appreciates that Staff finally concedes that excluding MEDs reduces the variability of SAIDI results and provides a better picture of ComEd's overall day-to-day performance. However, there are two issues with Staff's observation. First, Staff continues to ignore the fact that the introduction of *any* MEDs into reliability calculations introduces variability and volatility into reliability calculations (which is precisely why the IEEE Standard 1366 excludes *all* MEDs from the industry standard SAIDI calculation). Second, the data and trend lines relied on by Staff for this argument do not demonstrate that five MED exclusions are – in any way – a better choice than nine MED exclusions. In fact, the data expressly shows that excluding nine MEDs from the SAIDI calculation reduces the variability even further, from a range of 44.7-91.2 minutes (if five MEDs are excluded) to a range of 35.1 to 73.3 minutes (if nine MEDs are excluded). Arns Sur., ComEd

Ex. 19.0 at 18:352. Excluding all MEDs provides an even more refined contrast, with a range of 32 to 73.3 minutes. *Id.* Thus, when trying to reduce variability and more accurately reflect system performance during normal day-to-day operations and during typical storm events in reliability calculations, ComEd's proposal to exclude up to nine MEDs is significantly superior to Staff's proposal to exclude up to five MEDs.

Fourth, Staff argues that its proposal to exclude up to five MEDs is "consistent with a compromise achieved between Staff and Ameren Illinois Company ("Ameren") in that company's performance metrics docket." Staff BOE at 4. Staff asserts that "ComEd acknowledged this agreement in its testimony and briefs, and the ALJPO recognized it as well." *Id*. at 4-5. This is disingenuous, and the Commission should disregard it. ComEd acknowledges the existence of a proposal in Ameren's docket[5], but ComEd absolutely did not acknowledge, suggest, or imply that it would be appropriate to apply that outcome in this docket. In fact, ComEd has consistently and repeatedly taken the position that it would be inappropriate to impose an agreement between Ameren and Staff (*see Ameren Ill. Co.*, Docket No. 22-0063, ALJ Proposed Order at 63-64) on ComEd for a variety of reasons, which do not need repeating here. Arns Sur., ComEd Ex. 19.0 at 13:251-256; ComEd Rep. Br. at 28; ComEd BOE, at 29.

Fifth, Staff's assertion that having the same number of MED exclusions will "create consistency across the state" and "allow all stakeholders to more easily compare each utility's performance" is misleading, inaccurate, and frankly hypocritical. Staff BOE at 5. The number of MEDs is just one component of the SAIDI calculation. Excluding the same number of MEDs from the SAIDI calculation is meaningless if every other aspect of the performance metric is

[5] In the Surrebuttal Testimony of Patrick Arns, ComEd provided several reasons why ComEd did not consider adopting the same MED exclusions proposed to by Ameren. Arns Sur., ComEd Ex. 19.0 at 13:251-256.

different. And indeed, the ComEd and Ameren reliability performance metrics are different. For example, as proposed, ComEd and Ameren have vastly different baseline SAIDI performance levels – Ameren's baseline, which is a three-year average of SAIDI data for 2019-2021, is 117.12 minutes. *See Ameren Ill. Co.,* Docket No. 22-0063, Ameren Rep. Br. at 50. For comparison, ComEd's proposed baseline based on a forecast three-year average of SAIDI data for 2021-2023 is projected to be much lower at 35.2 minutes (based on 9 MEDs). Arns Sur., ComEd Ex. 19.0 at 18:352. Importantly, the performance metrics for ComEd and Ameren also have different performance targets (15% over 10 years for ComEd vs. annual 1% improvement over 4 years for Ameren). *See Ameren Ill. Co.,* Docket No. 22-0063, Staff Init. Br. at 13. Furthermore, Staff's assertion that there needs to be consistency among the utilities so their performance can be more easily compared is hypocritical in light of Staff's adamant resistance throughout the proceeding to adopt the IEEE Standard 1366, which is used by at least 695 electric utilities reporting their SAIDI performance. Arns Reb., ComEd Ex. 5.0 CORR at 12:244-246. Were Staff serious about standardization and peer group comparisons, it would have agreed to the industry-standard IEEE Standard 1366 (which excludes all MEDs), negating this entire contested topic.

Sixth and finally, Staff asserts that its proposed exclusion of up to five MEDs is appropriate because it will ensure that Metrics 1 and 2 are "sufficiently aspirational or transformative." Staff BOE at 6. Staff confuses "aspirational or transformative" with the statute's requirement that the metrics must be reasonably within the utility's control and achievable, however. 220 ILCS 5/16-108.18(e)(2)(D). By including more events outside of ComEd's control (i.e., MEDs) into the calculation of these two metrics, Staff makes them potentially so challenging that they are no longer achievable. Furthermore, Staff has provided no evidentiary support to suggest that ComEd would be able to achieve the already aggressive 15% improvement goal for the two metrics if it can only exclude up to five MEDs. Staff has also not considered the additional capital investment that would be required to try and achieve the modified metrics that would demand additional (and potentially excessive) system hardening investment to withstand and nullify the impacts of MEDs (which occur on average across less than 3% of the days in a calendar year), or consider whether the metrics would be cost-effective in light of such additional capital investment. Arns Sur., ComEd Ex. 19.0 at 34:680-684.

In contrast, the record shows that ComEd has experienced an average of nine MEDs. *Id.* at 12:224-225. Therefore, ComEd's proposal to narrow the issue to exclude up to nine MEDs – the number that most closely reflects the average number of recent events that were not within ComEd's reasonable control – offers the only position in the record that provides Performance Metrics 1 and 2 a better chance to satisfy the statutory requirement of achievability, while still meeting the metrics' challenging targets.

In short, Staff is entirely correct when it states that the Commission must make its decision based on the record presented in a case. Staff BOE, at 5. When that principal is applied to this docket, the record evidence shows that, while the IEEE standard method (i.e., exclude *all* MEDs) is most appropriate, the exclusion of up to nine MEDs offered by ComEd to narrow the issue in the record is sufficiently supported by the record. Neither the evidentiary record nor common sense support Staff's proposal (excluding up to five MEDs) or the ALJPO's recommendation (excluding up to six MEDs). Therefore, the Commission should reject Staff's proposal and modify the ALJPO as outlined in ComEd's Exception No. 7 in its Brief on Exceptions. In the event that the Commission adopts Staff's recommendation to cap MED exclusions at five (or the ALJPO's recommendation of six MEDs), ComEd respectfully requests that it be allowed to modify Metrics

1 and 2 (*e.g.*, baseline, deadbands, penalties/incentives, overall goal) to reflect the revised reliability calculation methodology. *See* ComEd BOE at 31.

<u>**Other Intervenor Exceptions on Metrics 1, 2, and 3**</u>

<u>**Reply to AG Exception 3**</u>

<u>Metrics 1 and 2</u>

AG Exception 3 contends that the Metrics 1 and 2, as adopted in the ALJPO, are inappropriate and then asks the Commission to replace them with penalty-only metrics proposed by the AG. AG BOE at 16-20. The ALJPO correctly rejected the AG's alternative metrics because they are "similar to ComEd's [original] Performance Metric 2, but it relies on an asymmetrical 'penalty-only' structure that is inconsistent with P.A. 102-0662." ALJPO at 110. The AG fails to provide any new information or arguments to demonstrate that its proposed alternative metrics are superior to ComEd's proposed Metrics 1 and 2, and the AG's Exception 3 must therefore be rejected.

First, the AG argues that the ALJPO provides no evidence or analysis to support its conclusion that ComEd's proposed metrics are sufficiently challenging. AG BOE at 12. Instead, the AG argues that ComEd's proposed metrics merely "continue[] the status quo, at increased ratepayer expense." *Id.* at 11. In support of this wrong conclusion, the AG continues to make the wrong apples-to-oranges comparison between EIMA metrics and these proposed CEJA metrics. Specifically, the AG compares ComEd's significant improvements under the EIMA metric against ComEd's current proposed performance target of 15% improvement over 10 years to argue that the proposed 15% improvement target is too modest in comparison to the EIMA improvements. *Id.* at 12. As ComEd explained throughout this proceeding, due in large part to the significant reliability improvements that it achieved in the last ten years, maintaining the current level of reliability is already a substantial challenge, and making additional incremental improvements will become more and more challenging. ComEd Init. Br. at 39. The AG's BOE acknowledges this principle that, given ComEd's currently high reliability, it will be more and more difficult to improve as ComEd moves closer to achieving zero SAIDI. AG BOE at 15 (noting that ComEd's proposal is "more challenging"). In light of that acknowledgement, the AG's position that ComEd's proposed metrics are insufficiently challenging must logically fail.

Second, the AG continues to object to the exclusion of <u>any</u> MEDs from the SAIDI calculation for Metrics 1 and 2. AG BOE at 15. The AG argues that resilience cannot be measured by "excluding major events and focusing on blue-sky days," and claims that ComEd's metric will not "improve actual customer experience." *Id.* at 16. The AG's arguments should be rejected. The ALJPO correctly concluded that including all MEDs in the calculation of SAIDI may result in a metric that is not reasonably within ComEd's control and that MED exclusions are appropriate (granted the exact number of exclusions remains a contested issue). ALJPO at 102.

Finally, the AG argues that ComEd's proposed metrics based on SAIDI can "mask poor service for customers who are frequently inconvenienced by power outages" and that a metric based on an aggregate SAIDI score ignores the "vastly different experiences of ComEd's customers across its four operating zones." AG BOE at 14-15. This argument misses the intended goal of ComEd's two proposed systemwide and EJ/R3 focused SAIDI metrics, which is to ensure that *all* customers benefit from improved reliability performance, and to ensure no customer is left lagging behind the rest of the system in terms of reliability performance. Arns Sur., ComEd Ex. 19.0 at 28:552-561. The mere fact that there will be variability among how different areas perform is not indicative of an issue that must be resolved through this metric.

Based on these perceived issues with ComEd's proposed Metrics 1 and 2, the AG suggests that the Commission should replace Metrics 1 and 2, as adopted in the ALJPO, with penalty-only metrics proposed by the AG. As an initial matter, despite the AG's strong objection to ComEd's proposed metrics due, in part, to its perceived lack of an adequate net benefits analysis, the AG offers no cost-benefit methodology at all against which to evaluate its alternative proposed metrics. Also, ComEd's position regarding the AG's penalty-only component of these metrics is discussed above in Section III and does not bear repeating. In addition, the AG's proposed alternative reliability metrics cannot be approved for two reasons.

First, the AG's alternative metric focused on EJ and R3 communities is based on minimum service levels and very similar to ComEd's original Performance Metric 2, which is now Tracking Metric 12. ComEd Init. Br. at 46. Tracking Metric 12 (approved by the ALJPO) will also track service levels in EJ and R3 communities. Therefore, the AG's alternative metric is redundant. *Id.*

Second, the AG's "zonal" performance metric simply applies the same minimum service criteria to a different subset of customers, and it should be rejected for the same reason, namely that it is redundant of Tracking Metric 12 and will not provide meaningfully different/new information. *Id.* Given that ComEd's Tracking Metric 12 will provide very similar information, albeit not identical, the AG does not provide a convincing reason why its proposed alternative is better than, and should replace ComEd's proposed performance Metrics 1 and 2. Therefore, the AG's recommendation should be rejected.

Metric 3

The AG's criticism of the ALJPO's finding in favor of Metric 3 is unsupported by evidence and should be rejected. ComEd's proposed Performance Metric 3 is focused on improving power quality by increasing the percentage of the distribution system (*i.e.*, station bus, circuit mainstream, and lateral segments) that is visible and the health of the communication and control devices that can be used to diagnose and improve power quality. ComEd Init. Br. at 28. It is composed of three measurable components: (i) percent of system visible (60%); (ii) percent of network uptime (20%); and (iii) percent of segments controllable with communication times qualified below a power quality actionable threshold (20%). *Id*. at 29. The AG opposes adoption of Performance Metric 3 entirely, incorrectly asserting that it is a spending metric that can be achieved solely by making specific investments. AG BOE at 23.

The record shows that Performance Metric 3 satisfies all applicable statutory requirements and produces significant customer benefits. ComEd Init. Br. at 40. Staff also found that Performance Metric 3 is "justifiable, reasonable, and meaningful" and recommended that the Commission adopt it. *See* Balogun Reb., Staff Ex. 11.0 at 32:761, 767. The ALJPO agrees with ComEd that Metric 3 meets the goals of the statute and that it is not an "activity-based" metric but is instead designed to measure outcomes. ALJPO at 103. ComEd's proposed metric incorporates a technology-neutral design, which ensures the metric measures on outcomes rather than activities, without prescribing the use of specific software, devices, or application methods. ComEd Init. Br. at 41.

The ALJPO also recognized the numerous qualitative benefits of Metric 3 that were discussed in ComEd's rebuttal testimony. Zarumba and Shields Reb., ComEd Ex. 11.0 at 22:457-25:461. These benefits include: reduced/avoided capital cost; reduced/avoided O&M cost; security and compliance risk improvement; reduced/avoided customer power quality events; customer outage reduction; increased customer satisfaction; and safety risk improvement. ComEd Rep. Br. at 35. No party, including the AG, expressly disagreed with Messrs. Zarumba and Shields explanation of Metric 3's numerous benefits.

In sum, Metric 3 is net beneficial, complies with the statute, and is achievable but challenging. Thus, the ALJPO appropriately found that Metric 3 satisfies the statutory requirements, and the Commission should adopt the ALJPO's conclusion.

Reply to CUB/EDF Exception 2

In its Exception 2, CUB/EDF continues to oppose ComEd's Performance Metrics 1, 2, and 3 and instead advocates for its alternative Reliability and Resiliency in Vulnerable Communities ("RRVC") metric. CUB/EDF BOE at 9-13. CUB/EDF latest advocacy attempt fails to address the key shortcomings of its proposal, which are identified in the ALJPO, including that it is overly complicated and places unreasonable costs/burdens on the utility associated with collecting data necessary for the metric. ALJPO at 110. CUB/EDF's proposal also fails to provide any proposed cost-benefit methodology against which to evaluate its alternative metric. Therefore, the Commission should reject CUB/EDF's proposed alternative RRVC metric.

CUB/EDF argues that the ALJPO lacks analysis of how Performance Metric 1 complies with the statute's requirement that "metrics related to reliability shall be implemented to ensure equitable benefits" to EJ and R3 communities. CUB/EDF BOE at 10 (emphasis omitted). However, this argument contorts the relevant statutory language. The Act provides that "[m]etrics… shall be <u>implemented</u> to ensure equitable benefits." 220 ILCS 5/16-108.18(e)(2)(C). In other words, the requirement of "equitable benefits" goes to how reliability metrics are implemented once approved, not how the metrics are <u>designed</u>. The <u>design</u> requirements for reliability metrics appear in Section 16-108.18(e)(2)(A)(i), which requires the Commission to approve metrics that are "designed to ensure the utility maintains and improves . . . both <u>overall</u> and <u>locational</u> reliability and resiliency…." 220 ILCS 5/16-108.18(e)(2)(A)(i) (emphasis added). ComEd's Metrics 1 (Overall System SAIDI) and 2 (EJ/R3 Community SAIDI) clearly satisfy these requirement requirements related to maintaining and improving overall system and locational reliability and resiliency.

CUB/EDF also argues that, because ComEd's Performance Metric 2 measures reliability in EJ and R3 communities in the aggregate, it is inferior to CUB/EDF's RRVC metric that compares reliability in EIECs to reliability in "similarly situated" non-EIECs. CUB/EDF BOE at 11-12. As ComEd explained in Testimony, CUB/EDF's RRVC proposal is problematic for a number of reasons.

First, CUB/EDF's justification for focusing on comparing reliability performance of EIECs to "similarly situated" non-EIECs (assuming the phrase means those communities in "similar geographical locations" as discussed in CUB/EDF Ex. 4.01), is never sufficiently explained. Arns Sur., ComEd Ex., 19.0 at 31:620-621 It also ignores the fact that electrical flow and connectivity is indifferent to geographic boundaries. Arns Sur., ComEd Ex. 19.0 at 29:582-583.

Second, the RRVC metric is redundant; ComEd's investments will improve reliability performance in all communities, and Performance Metric 2 will allow stakeholders to see improvements from a geographical perspective. Arns Sur., ComEd Ex. 19.0 at 29:575-577. Although system components that serve EIECs also serve non-EIECs, and the performance of any one of those system components impacts both EIEC and non-EIEC communities, Performance Metric 2 ensures that ComEd monitors performance of components that serve EJ and R3 communities and that such performance improves, at a minimum, at the same rate as the system average. *Id.* at 29:589-596. In arguing that its RRVC metric is superior to ComEd's Performance Metric 2, CUB/EDF never addresses the ALJPO's concern that it is overly complicated and seemingly requires unreasonable cost burdens to collect the requisite data. Therefore, CUB/EDF's argument must be rejected.

Third and finally, CUB/EDF reiterates arguments against Performance Metric 3 similar to those made by other intervenors such as the AG, namely that the metric incentivizes spending, and that ComEd would take the actions incentivized whether or not this metric exists. CUB/EDF BOE at 12-13. That assumption is false. The purpose of P.A. 102-0662, and Section 16-108.18 is to encourage utilities to take specific steps to meet the goals of Section 16-108.18(c)(1)-(9). Performance Metric 3 is designed to incentive ComEd to go above and beyond its core obligation and to encourage ComEd to take the additional steps necessary to meet the goals of the statute. Therefore, Performance Metric 3 does not seek to reward ComEd for merely doing what it is supposed to do in the first place. ComEd Rep. Br., at 35. Thus, CUB/EDF's argument must be rejected, and the Commission should adopt the ALJPO's approval of Performance Metric 3.

1. <u>Other Proposals</u>

2. <u>Basis Points</u>

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

<u>Summary Based on ComEd's Non-Opposition to Staff's Compromise Proposal:</u>

1. ComEd does not oppose Staff's compromise position regarding ComEd's final revised proposed Peak Load Reduction ("PLR") performance metric as ComEd understands Staff's proposal anticipated to be presented today in Staff's Reply Brief on Exceptions. ComEd believes that Staff's compromise proposal will yield a PLR performance metric that is practicable and achievable and that it is one of the possible outcomes for this metric that is supported by the evidence in the record.

2. ComEd understands Staff's compromise proposal to provide that ComEd's final revised proposal would be adopted with the following modifications: (a) 2 basis points would be assigned to penalties and incentives for the PLR performance metric; and (b) the ranges for penalties, the deadband, and incentives would be as set forth in Table 1, where "actual PLR" means the actual peak load reductions achieved in a given year attributable to ComEd's final revised program stack for this metric:

Table 1: ComEd's Understanding Regarding Staff Compromise Proposal

Year	-2 to 0 BPS	0 BPS (Deadband)	0 to +2 BPS
2024	0 to 10 MW above 2023 actual PLR	10 to 50 MW above 2023 actual PLR	50 to 60 MW above 2023 actual PLR
2025	0 to 10 MW above 2024 actual PLR	10 to 50 MW above 2024 actual PLR	50 to 60 MW above 2024 actual PLR
2026	0 to 10 MW above 2025 actual PLR	10 to 50 MW above 2025 actual PLR	50 to 60 MW above 2025 actual PLR
2027	0 to 10 MW above 2026 actual PLR	10 to 50 MW above 2026 actual PLR	50 to 60 MW above 2026 actual PLR

3. The Commission, like the ALJPO, should reject CUB/EDF's two proposed alternative metrics (which they treat as one metric), in which one part is based on peak load in general and the other part is based on reducing loads associated with building electrification and electric vehicles ("EVs"). *See* ALJPO at 139. CUB/EDF's Exception 3 urging substitution of their proposal for that of ComEd lacks merit.

Summary of ComEd's Position in the Absence of Staff's Compromise Proposal:

1. The Commission should adopt the ALJPO's recommendation that ComEd's final revised proposed Peak Load Reduction ("PLR") performance metric be approved, but the Commission should not adopt the ALJPO's recommendation that Staff's proposed modifications of the metric be approved. *See* ALJPO at 131; ComEd BOE at 32-44.

2. However, if the Commission were to adopt both of the ALJPO's above recommendations, then ComEd agrees in principle with Staff's Exception 4 that the ALJPO's recommended modifications should be clarified. *See* ALJPO at 129-131; ComEd BOE at 37-39.

3. The Commission, like the ALJPO, should reject CUB/EDF's two proposed alternative metrics (which they treat as one metric), in which one part is based on peak load in general and the other part is based on reducing loads associated with building electrification and electric vehicles ("EVs"). *See* ALJPO at 139. CUB/EDF's Exception 3 urging substitution of their proposal for that of ComEd lacks merit.

Response to Anticipated Staff Compromise Proposal

ComEd anticipates that Staff today will present a proposed compromise regarding ComEd's final revised proposed Peak Load Reduction ("PLR") performance metric in Staff's Reply Brief on Exceptions, with the details of the proposed compromise as stated above.

As an example illustration of ComEd's understanding of Staff's proposed compromise, ComEd also presents the following Table 2.

Table 2: ComEd's Example Illustration of Staff Compromise Proposal

Year	**-2 to 0 BPS**	**0 BPS (Deadband)**	**0 to +2 BPS**
2024	118 to 128 MW	128 to 168 MW (assumes that ComEd 2023 actual PLR is 118 MW)	168 to 178 MW
2025	128 to 138 MW	138 to 178 MW (assumes that ComEd 2023 actual PLR is 128 MW)	178 to 188 MW
2026	138 to 148 MW	148 to 188 MW (assumes that ComEd 2023 actual PLR is 138 MW)	188 to 198 MW
2027	148 to 158 MW	158 to 198 MW (assumes that ComEd 2023 actual PLR is 148 MW)	198 to 208 MW

ComEd believes that Staff's compromise proposal will yield a PLR performance metric that is practicable and achievable, consistent with Section 16-108.18(e)(2), and that Staff's proposal is one of the possible outcomes for this metric that is consistent with the substantial evidence standard in Section 16-108.18(e)(2) and with the requirement that Commission decisions be based on the evidence in the record found in Section 10-201(e)(iv), 220 ILCS 5/10-201(e)(iv).

The following evidentiary citations are intended to show that Staff's compromise proposal meets the applicable evidentiary standards. The citations are not intended to be exhaustive. The basis points component of Staff's compromise proposal is supported by Kirchman Sur., ComEd Ex. 20.0 at 3:60-62, 15:292-313. The widths and formulae in Staff's compromise proposal's penalty, deadband, and incentive ranges are reasonable but very challenging compromises between the proposals of Staff and ComEd. *Id*. at 8:149-14:274, 16:322-17:345, 18:358-19:387; ComEd Ex. 20.01 (CORR.). That conclusion takes into account ComEd's Surrebuttal Testimony regarding what is practicable and achievable based on ComEd's final revised program stack. That conclusion also factors in the differences in structures of the two proposals. ComEd's final revised proposal had a deadband centered the expected results of the existing programs in ComEd's final revised program stack. Staff's compromise proposal ratchets up all three ranges each year based on the prior year's results.

Accordingly, based on the foregoing considerations and in the interests of narrowing the issues, ComEd does not oppose Staff's compromise proposal.

The remainder of this Section VI.B of ComEd's Reply Brief on Exceptions has been prepared to address ComEd's position in the absence of Staff's compromise proposal.

Response to Staff Exception 4

Staff's Exception 4 seeks to clarify Staff's intended modifications of ComEd's final revised proposed PLR performance metric and, thereby, what the ALJPO recommended. Staff BOE at 9-10. ComEd appreciates Staff's efforts to provide clarification. ComEd's Brief on Exceptions previously noted that the ALJPO, and Staff's underlying Initial and Reply Briefs, were not clear on some details of Staff's proposed modifications. ComEd BOE at 37-39.

ComEd's interpretation of Staff's Exception 4 is that it seeks to clarify that, in the scenario in which 6 basis points are assigned to this metric, Staff recommends the following modified penalty and incentives structure for the PLR performance metric:

- The penalty range for any given year within the 4-year PLR performance metric period (2024-2027) is 0 to 50 MW above the applicable actual peak load reductions that ComEd achieved in the prior year. In this context, "applicable" means attributable to the programs in ComEd's final revised program stack.
- The deadband for any given year is 50 to 100 MWs above the applicable actual peak load reductions that ComEd achieved in the prior year.
- The incentives range for that given year is 100 to 150 MWs above the applicable actual peak load reductions that ComEd achieved in the prior year.

See Staff BOE at 9-10.

If that is a correct interpretation, then Staff's penalty and incentives structure, in a formulaic sense, for 2024-27 would be as follows:

Table 3: ComEd's Understanding Regarding Staff Formula

Year	-6 to 0 BPS	0 BPS (Deadband)	0 to +6 BPS
2024	0 to 50 MW above 2023 actual PLR	50 to 100 MW above 2023 actual PLR	100 to 150 MW above 2023 actual PLR
2025	0 to 50 MW above 2024 actual PLR	50 to 100 MW above 2024 actual PLR	100 to 150 MW above 2024 actual PLR
2026	0 to 50 MW above 2025 actual PLR	50 to 100 MW above 2025 actual PLR	100 to 150 MW above 2025 actual PLR
2027	0 to 50 MW above 2026 actual PLR	50 to 100 MW above 2026 actual PLR	100 to 150 MW above 2026 actual PLR

The above interpretation of Staff's position is consistent with the hypothetical example presented in ComEd's Brief on Exceptions (at 39) as "Table 9-2: Staff Penalty and Incentive Structure (Assumed and Illustrative)" and shown below as ComEd Table 4, subject to two provisos. In Table 4: (1) the term "portfolio size" is understood to mean the prior year's applicable peak load reduction and (2) ComEd made 0.1 MW changes to the boundaries of the three ranges in order to avoid overlap.

Table 4: ComEd's Understanding Regarding Staff Formula (Assumed and Illustrative) (Copy of ComEd BOE, p. 39, "Table 9-2: Staff Penalty and Incentive Structure (Assumed and Illustrative)")

Year	-6 to 0 BPS	0 BPS (Deadband)	0 to +6 BPS
2024	99.9 to 149.9 MW	150 to 200 MW (assumes that ComEd portfolio size in 2023 is 100 MW)	200.1 to 250.1 MW
2025	171.7 to 221.7 MW	221.8 to 271.8 MW (assumes that ComEd portfolio size in 2024 is 171.8 MW)	271.9 to 321.9 MW
2026	230 to 280 MW	280.1 to 330.1 MW (assumes ComEd portfolio size in 2025 is 230.1 MW)	330.2 to 380.2 MW
2027	288.3 to 338.3 MW	338.4 to 388.4 MW (assumes ComEd portfolio size in 2026 is 288.4 MW)	388.5 to 438.5 MW

ComEd submits, however, that, if its above interpretation of Staff's position is correct, then Staff's clarification only serves to confirm ComEd's argument in its BOE (at 32-44) that the Staff-proposed modifications recommended by the ALJPO are overly harsh and likely are not "practicable and achievable", contrary to Section 16-108.18(e)(2).

ComEd's final revised proposal, without Staff's proposed modifications, includes challenging but achievable baselines, deadbands, and targets. In ComEd's final proposal:

- ComEd's final revised program stack (or portfolio) consists of: (1) ComEd's existing demand response program portfolio with its Central AC Cycling – Direct Load Control, Peak Time Savings, and Dynamic Pricing ("Rider RRTP") programs that are *not* part of its plan adopted under PUA Section 8-103B; (2) future new solar programs and projects that are verified by third-party analysis as being a direct result of ComEd's PLR performance metric activities; and (3) future energy efficiency and demand response programs developed for this metric that are *not* incentivized through the plans adopted and compensated under Section 8-103B. Kirchman Sur., ComEd Ex. 20.0 at 6:126-9:171. The existing programs that remain within ComEd's final revised program stack are at risk both of declines in customer usage and of being discontinued. Kirchman Sur., ComEd Ex. 20.0 at 7:132-136, 8:157-9:171, 13:257-265. As an example, Rider PTR – Peak Time Rebate is set to sunset at the end of 2022, and it will require Commission-approved renewal and changes in order to continue. *Id*. at 18:374-378.

- ComEd's annual baselines reflect the peak load reductions expected to be achieved by the existing programs in ComEd's final revised program stack. Kirchman Sur., ComEd Ex. 20.0 at 6:126-9:171. ComEd's projection of the results of those existing programs is a slight *decline* each year from 2024 to 2027, not an increase: 109.8 MW in 2024, 106.1 MW in 2025, 102.4 MW in 2026, and 98.6 MW in 2027, although actual results could vary in either direction. *See* the centers of ComEd's final revised deadbands (Kirchman Sur., ComEd Ex. 20.0 at 10:198, Table 3), set forth in ComEd BOE at 37, "Table 9-1: ComEd Ex. 20.0, Table 3: Surrebuttal Peak Load Performance Reduction Metric Targets and Deadband (provided on a linear scale)", which for the reader's convenience also is set forth below as Table 5.
- The annual deadbands are designed to accommodate variances and unknowns, with eligibility for penalties or incentives only starting if the variance exceeds 10 MW from the baselines. Thus, simply meeting the annual baseline, or even the baseline plus 10 MW, will not qualify ComEd for any incentive. Kirchman Sur., ComEd Ex. 20.0 at 13:251-256.

- Finally, the annual targets range in each year from 0.1 MW to 62 MW above the upper end of the deadbands, and the incentives resulting from meeting the targets are made subject to ComEd's proposed customer benefits sharing model proposed. ComEd's final proposed targets are based on the view that an achievable upper end of the incentives range for a 2 bps incentive is an incremental increase of 62 MW per year over the projected peak load reduction attributable to the existing programs in the final revised program stack. *See* Kirchman Sur., ComEd Ex. 20.0 at 10:198, Table 3. The 62 MW figure is based on a 30% benefit share (or an average of 4.6 bps of value for customers per year to 2 bps of value to ComEd). *See* Kirchman Sur., ComEd Ex. 20.0 at 15:292-313, 17:341-343.

As noted above, ComEd's final revised proposal results in the following Table 5.

Table 5: ComEd Ex. 20.0, Table 3: Surrebuttal Peak Load Performance Reduction Metric Targets and Deadband (provided on a linear scale)

Year	-2 to 0 BPS	0 BPS (Deadband)	0 to +2 BPS
2024	0 MW to 99.8 MW	from 99.9 MW to 119.7 MW	119.8 MW to 171.8 MW or higher
2025	0 MW to 96.1 MW	from 96.2 MW to 116 MW	116.1 MW to 230.1 MW or higher
2026	0 MW to 92.4 MW	from 92.5 MW to 112.3 MW	112.4 MW to 288.4 MW or higher
2027	0 MW to 88.9 MW	from 89 MW to 108.8 MW	108.9 MW to 346.9 MW or higher

Kirchman Sur., ComEd Ex. 20.0 at 10:192-13:265 and Table 3, 15:292-313.

The cumulative results of these metrics design elements are that ComEd's final PLR performance metric appropriately reflects reasonable program stack forecasts and establishes a penalty and incentives structure that is challenging but achievable. The structure is not "too easy." Kirchman Reb., ComEd Ex. 6.0 at 7:133- 11:220; Kirchman Sur., ComEd Ex. 20.0 at 5:87-11:209, 13:251-265, 16:322-17:345, 19:390-20:419; ComEd Ex. 20.01 (CORR.). For example, in order for ComEd to receive a full 2 bps incentive for this metric (under its 40 bps proposal) in any year, ComEd will have to achieve: (1) current projections (*i.e.*, the annual baseline) of roughly 100 MWs of peak load reductions from the existing programs in the final program stack, **plus** (2) another 62 MW in annual (incremental) load reduction, as shown in Table 5. In other words, ComEd's proposed metric requires ComEd to achieve an additional 60% more than its currently projected load reductions to receive the full basis point incentive. An additional 60% is achievable, but challenging.

In contrast, Staff's proposal requires an annual incremental increase of 150 MW per year, or an additional 150% more than its currently projected load reductions, to receive the full basis point incentive, as shown in Tables 3 and 4. An additional 150% - almost 3 times ComEd's goal – is more than challenging. It is likely not achievable, contrary to Section 16-108.18(e)(2) (performance metrics must be "practicable and achievable").

To illustrate the harshness of Staff's (and the ALJPO's) proposed penalty and incentives structure, if the above interpretation is correct, for example, under Staff's proposed modifications (based on the ALJPO's 36 bps total, with 6 bps allocated to the PLR performance metric):

- If ComEd achieved 25 MW more of peak load reduction over the prior year in each of 2024 – 2027, then ComEd nonetheless would be penalized by 3 basis points each year. Or, to put it another way, for example, a roughly 25% improvement in 2024 would still yield a 3 bps penalty.
- If ComEd achieved 75 MW more of peak load reduction over the prior year in each of 2024 – 2027 (75% more than the prior year), then ComEd would receive neither a penalty nor an incentive (deadband).

- If ComEd achieved 116.7 MW more of peak load reduction over the prior year in each of 2024 – 2027, then ComEd would receive an incentive of just 2 basis points each year.

See Tables 3 and 4.

ComEd understands Staff's intentions are to ensure that the approved performance metrics are challenging. ComEd agrees with that sentiment wholeheartedly, which is why ComEd has designed its PLR metric to require more than 60% more load reduction than the current "business as usual" projections. The problem is that Staff's efforts to create a challenging metric has only succeeded in created a metric that significantly overreaches, which is neither practicable nor achievable.

Accordingly, while ComEd shares Staff's view that the ALJPO should be clarified, ComEd believes that Staff's clarification confirms that the ALJPO's recommendation of Staff's modifications results in a penalty and incentives structure that is too harsh and likely unachievable, and, therefore, that Staff's modifications should not be adopted by the Commission.

<u>Response to CUB/EDF Exception 3</u>

CUB/EDF's Exception 3 seeks to replace ComEd's final revised proposed PLR performance metric, as approved and modified by the ALJPO, with CUB/EDF's two proposed alternative metrics (which they treat as one), in which one part is based on peak load in general and the other part is based on reducing loads associated with building electrification and EVs. CUB/EDF's Exception 3 rests on the incorrect premise that ComEd's final revised proposed PLR performance metric, as modified by the ALJPO, still is "too easy to achieve." *See* CUB/EDF BOE at 16-17. Additionally, the ALJPO correctly rejected CUB/EDF's two proposed alternative metrics on the merits. ALJPO at 139.

CUB/EDF's assertion that ComEd's final PLR performance metric is "too easy" is mistaken, as discussed above with respect to Staff's Exception 4 and in ComEd's BOE (at 32-44). ComEd's final revised proposal is challenging, but achievable. In contrast, ComEd's final revised proposal, as modified by the ALJPO, is harsh and likely unachievable.

CUB/EDF incorrectly claim that their witness proved that ComEd can achieve even greater peak load reductions. CUB/EDF witness' Direct Testimony was based on the obsolete combination of ComEd's original much larger program stack (before the stack was whittled down to the final program stack) and very large projected increases in distributed solar (before existing distributed solar was removed from the stack). CUB/EDF's witness' Rebuttal Testimony also was based on very large projected increases in distributed solar. *See* CUB/EDF BOE at 16-17 (citing Barbeau Dir., CUB/EDF Ex. 1.0 at 35-36; Barbeau Reb., CUB/EDF Ex. 4.0 at 10).[6] In contrast, ComEd's final revised penalty and incentive structure took into account the much-narrowed program stack as well as what ComEd considers to be achievable, including with respect to reasonably anticipated growth in distributed solar. Kirchman Sur., ComEd Ex. 20.0 at 5:87-10:191, 16:322-17:337; ComEd Ex. 20.01 (CORR). Thus, CUB/EDF's claim that ComEd can achieve even greater peak load reductions is based on irrelevant and outdated information about the program stack, and it -lacks merit.

CUB/EDF's Exception 3 also lacks merit due to the dearth of evidence that it has incremental benefits over ComEd's final revised proposal and should be adopted in lieu of ComEd's proposal. ComEd's final revised proposal already incorporates many useful features of CUB/EDF's general peak load reduction proposal. CUB/EDF have failed to identify quantifiable

[6] CUB/EDF also cite several statutory provisions, but none of that changes the record evidence. *See* CUB/EDF BOE at 17.

benefits for the remaining features of their proposal relating to the reducing of loads associated with building electrification and EVs. Moreover, if it is assumed that the benefits of the latter peak load reductions are the same or similar to those of reducing peak load in general, then ComEd's final revised proposal fulfills the same need without the additional cost of analysis to determine if the implemented changes are creating a positive or negative effect and can be measured. Kirchman Reb., ComEd Ex. 6.0 at 17:333-348; Kirchman Sur., ComEd Ex. 20.0 at 21:443-23:487. ComEd also provides a cost-benefit methodology specific to its proposed metric, as well as an initial analysis demonstrating that its metric will likely provide net benefits. ComEd Init. Br. at 54-55. CUB/EDF never provided substantial cost-benefit methodologies or net benefit analyses for their two alternative performance metrics.

The ALJPO correctly rejects CUB/EDF's proposal. The ALJPO appropriately finds that CUB/EDF's alternative proposals (in particular, the second metric) are very narrow, that ComEd's final revised proposal allows the expansion of its program stack to include future programs designed to curtail peak load usage by EVs, and that limiting the PLR performance metric to one program (*i.e.*, EVs) versus having the flexibility to add other programs is not appropriate at this time. ALJPO at 139.

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

1. **ComEd Proposals**

2. **Other Proposals**

Reply to CUB/EDF Exception 4

In its Exception 4, CUB/EDF continues to argue that ComEd's Supplier Diversity performance metric, as agreed between ComEd and Staff and as adopted in the ALJPO, is insufficient. CUB/EDF BOE at 22-28. ComEd disagrees with CUB/EDF and supports the

ALJPO's conclusion that ComEd's performance metric will accomplish the goals of the statute. ALJPO at 146. The Commission should reject CUB/EDF's alternative Supplier Diversity performance metric and approve ComEd's proposed Supplier Diversity metric, as agreed to between Staff and ComEd and adopted by the ALJPO, which will produce a meaningful increase in diverse supplier spend while additional data is gathered for possible use in the next metrics proceeding (to be filed in 2026).

In support of its alternative supplier diversity metrics, CUB/EDF reiterates arguments from its Briefs that (i) the statute requires a more complicated metric, (ii) the metric adopted in the ALJPO rewards actions rather than outcomes, and (iii) the metric allows ComEd to rely extensively on increasing spend with women-owned and veteran-owned businesses. CUB/EDF BOE at 22-25. These arguments remain unpersuasive.

As explained in ComEd's Briefs, and acknowledged by the ALJPO, ComEd is unable to adopt CUB/EDF's alternative performance metric at this time. ComEd Rep. Br. at 54; ALJPO at 149. ComEd does not have historical data for the second (addressing barriers to access) or third (mentoring) components, and therefore is not able to design a practical, measurable and achievable performance metric in this docket, that is complete with a clearly defined baseline and appropriate incentives/penalties. White Reb., ComEd Ex. 7.0 at 14:280-285. Staff finds ComEd's concerns "persuasive." Robinson Reb, Staff Ex. 13.0 REV at 6:111-113.

ComEd disagrees with CUB/EDF's assertion that it can collect the necessary baseline data prior to the beginning of the performance period. CUB/EDF BOE at 24. First, as previously mentioned, ComEd needs that information *now* to design the metric for the Commission's review and approval in this docket. Second, even if ComEd could stand up its systems to collect the data (which it cannot), it would only be for one year (2023). That is not enough time or data to establish a performance metric that is to be implemented in 2024.

ComEd concurs with CUB/EDF that these are important topics to track in the hopes of developing a performance metric in the next metrics docket, which is exactly why ComEd proposed (and the ALJPO adopts) a tracking metric for the number of diverse contractors completing ComEd development programs (Tracking Metric 8). But it must have sufficient time to gather and analyze the data. Once ComEd has collected data that will allow it to establish a baseline, ComEd is open to considering a supplier diversity metric proposal as suggested by CUB/EDF in a future metrics proceeding. ComEd Rep. Br. at 54; ComEd BOE at 45.

While CUB/EDF continues to assert that ComEd's supplier diversity performance metric would provide a reward for actions rather than outcomes (CUB/EDF BOE at 25), it fails to offer any support for this assertion. CUB/EDF is likely unable to support its position because an increase in diverse supplier spend is, in fact, an outcome of ComEd's efforts to provide educational opportunities, job creation and mentoring of diverse suppliers. White Reb., ComEd Ex. 7.0, at 8: 156-159; *see also* ALJPO at 146.

CUB/EDF also suggests, without evidence, that ComEd will achieve the Supplier Diversity performance metric simply by increasing spending with women-owned and veteran-owned businesses. CUB/EDF BOE at 25. The evidence regarding ComEd's supplier diversity performance proves this assertion to be false. As Ms. White demonstrated in her Surrebuttal Testimony, women-owned and veteran-owned businesses have made up less than half of ComEd's diverse supplier spend in 2020 (46% of total diverse spend) and 2021 (29% of total diverse spend). White Sur., ComEd Ex. 21.0 at 9:172-176.

Finally, CUB/EDF argues in the alternative that if the Commission does not adopt its alternative Supplier Diversity performance metric, it should "at a minimum amend the PO to adopt as a tracking metric equity investment eligible entities as a percentage of total spend." CUB/EDF BOE at 26. This is a new proposal from CUB/EDF, which is inappropriate at this stage in the proceeding. In addition, this additional tracking metric is unnecessary in light of ComEd's existing tracking metrics related to supplier diversity (Tracking Metrics 6, 7 and 8, *see* ComEd Init. Br. at 95-96), which will provide ComEd with sufficient data to design future performance metrics.

3. <u>Basis Points</u>

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

Summary:

1. The ALJPO rightly finds that COFI's suggestions related to ComEd's credit and collection ("C&C") practices cannot be adopted as a performance metric and are not within the scope of this docket. ALJPO at 169. COFI's Exception 1 relates to ComEd's C&C practices, and, in particular, ComEd's use of a customer risk-ranking methodology. COFI now frames its proposal essentially as a request that the Commission in this docket should order that COFI's ideas, specifically about the customer risk-ranking methodology used in ComEd's C&C practices, be included as part of the scope of a future docket on amendments to 83 Ill. Admin. Code Part 280. COFI's Exception 1 is beyond the scope of, and cannot be approved in this docket. COFI's new framing of its proposal does not alter that fact.

2. IIEC's Exception 2 relating to management of how ComEd may achieve the Affordability performance metric lacks merit and is redundant with what the ALJPO already has recommended. *See* ALJPO at 169.

<u>Response to COFI Exception 1</u>

COFI's Exception 1 is a somewhat revised position whereby COFI now urges the Commission to adopt COFI's criticism of ComEd's C&C processes, and, in particular, of ComEd's use of a customer risk-ranking methodology, and require that the topic be the subjects of a future (as to now, hypothetical) Commission proceeding regarding revisions to 83 Ill. Admin. Code Part 280. COFI BOE at 3-7.

COFI's proposal may not and should not be ordered in this docket. The Commission's authority in this docket is limited to the review and approval of performance and tracking metrics that comply with Section 16-108.18(e), and, in particular, with respect to performance metrics, to approve, or to approve and modify, the utility's proposed performance metrics. 220 ILCS 5/16-108.18(e)(6)(A). COFI's credit and collections proposals, and its focus on ComEd's customer risk-ranking methodology, are not within Commission's authority to adopt in this docket.

Furthermore, COFI's witness, Mr. Howat (COFI Exs. 1.0 and 2.0), has not presented his recommendations as a proposed performance metric to be evaluated in this docket. The information he provided is far too incomplete to establish a baseline, deadband, and targets. COFI appears to acknowledge that, as framed, its C&C proposals are not proposed as, and cannot be adopted as, a performance metric. *See* COFI BOE at 2. At most, his proposals might be thought of as suggestions to ComEd as to how to achieve the Affordability performance metric.

However, even that suggestion poses a problem in this proceeding. Section 16-108.18 does not appear to provide for, or support, another party proposing, or the Commission approving, what would amount to (unnecessary) detailed management of the utility's methods and underlying activities designed to achieve a performance metric's targets. Directing the utility's actions would seem to be antithetical to the idea of a performance metrics structure with penalties and incentives that apply to the utility. Also, more specifically, COFI's proposal is an inappropriate attempt to interfere with ComEd's efforts to comply with its legal obligations relating to credit and collections, including the utility's general obligations of prudence and reasonableness in managing its costs, and its specific statutory obligation of working to minimize its uncollectible expense socialized through rates. ComEd Init. Br. at 72; 220 ILCS 5/16-111.8(c).

Moreover, there is an insufficient record on those topics, and COFI's evidence should not be treated as undisputed or sufficient. ComEd, in several respects, does not share Mr. Howat's views, but ComEd's testimony did not discuss his views in detail because, as ComEd stated repeatedly in testimony, they are outside the scope of this docket. Chu Reb., ComEd Ex. 8.0 at 4:68-69, 10:199-11:209; Chu Sur., ComEd Ex. 22.0 at 17:318-323. ComEd should not have been expected to refute material that does not belong in this docket. ComEd's silence on the topic should not be treated as agreement or acquiescence.

Finally, COFI's legal argument to the effect that ComEd's risk-ranking of customers somehow violates Section 9-241 or Section 8-101 of the PUA is not correct. COFI claims that the "practice of disconnecting customers deemed high-risk for nonpayment along an accelerated timeline as compared to other customers considered better credit risks" violates Section 9-241 and / or Section 8-101. *See, e.g.*, COFI Init. Br. at 4, *et seq*. Section 9-241, however, states in relevant part:

> No public utility shall, as to rates or other charges, services, facilities or in other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any <u>unreasonable difference</u> as to rates or other charges, services, facilities, or in any other respect, either as between localities or as between classes of service.

220 ILCS 5/9-241 (emphasis added). If COFI were to pursue a formal complaint before the Commission on this subject, then COFI would have the burden to show that the difference in treatment of customers with different risk-rankings is unreasonable. *See, e.g., Field v.*

Commonwealth Edison Co., ICC Docket No. 17-0373, p. 7 (final Order May 25, 2022) ("When a Complaint is filed with the Commission, the Complainant has the burden of proof to establish a utility's error, by a preponderance of the evidence.") (citation omitted). COFI's briefing discussed at considerable length alleged impacts of ComEd's practices, but COFI did not show that they were based on unreasonable differences. Indeed, COFI's discussion appears to confirm that ComEd is making differentiations in disconnection processes based on the fact that some customers posing higher financial risks. *See* COFI Init. Br. at 57-61. COFI does not show that this reason for the differentiation unreasonable; COFI's not showing an unreasonable difference means that such a claim fails. *See, e.g., Keeven v. City of Highland*, 294 Ill. 3d 345, 347 (5th Dist. 1998) ("When a charge of unreasonable discrimination in rates is made, the test used for deciding the validity of the difference in rates is "whether the difference is reasonable, and not arbitrary, based on a consideration of such factors as differences in the amount of product used, the time when used, or any other relevant factors reflecting a difference in costs.") (citation omitted) (rejects the claim that a water utility's higher rate for non-residents was discriminatory where the utility submitted evidence that the rate had cost basis).[7] COFI's argument under Section 9-241, therefore, not only is misplaced in this docket, but it also lacks merit. COFI also does not argue or show that Section 8-101's language relating discrimination in utility service provides any independent standard applicable here that would support COFI's claim.

[7] The same principle that a claim of discrimination must show unreasonable differences also applies in Commission dockets other than complaint cases. For example, in the 2007 rate cases of North Shore Gas Co. and The Peoples Gas Light and Coke Co., the Governmental and Consumer Intervenors ("GCI") argued for their proposed rate design based in part on the argument that the proposed rate increases disproportionately impacted customers with less ability to pay. The Commission rejected the GCI position, noting it was "unaccompanied by sufficient analysis or justification in the form of a cost study or some other measure", and stating that GCI had not shown that the utilities' proposals employed anything less than settled broad objectives of rate design. *North Shore Gas Co., et al.*, ICC Docket Nos. 07-0241, 07-0242, pp. 247, 249-250 (final Order Feb. 5, 2008).

In summary, this docket is not a suitable or appropriate forum for the Commission to start ordering the placement of items on the agenda for a potential rulemaking regarding amendments to 83 Ill. Admin. Code Part 280. To be clear, ComEd agrees that COFI's and Mr. Howat's ideas can be discussed in suitable and relevant future dockets, as well as in forums outside of this proceeding. Moreover, as ComEd stated in Surrebuttal, it plans to continue such discussions with COFI. Chu Sur., ComEd Ex. 22.0 at 3:50-55. That, however, does not make COFI's proposal within the scope of this docket or a successful claim on the merits.

Response to IIEC Exception 3

IIEC's Exception 3 relates to the means by which ComEd may achieve the Affordability performance metric and, more specifically, is based on a concern that ComEd may let arrearages rise, without seeking disconnection, as a means to achieve this metric. *See* IIEC BOE at 12-13. IIEC's concern also previously was raised by COFI. COFI and ComEd reached a reasonable agreement, however, on this subject. The ALJPO already recognized and added that agreement as a condition of the Affordability metric. *See* ALJPO at 169.

ComEd's view is that the ALJPO's adding that condition to the Affordability performance metric is unnecessary, not only because of the ComEd-COFI agreement but also for several additional reasons articulated in ComEd's Brief on Exceptions. ComEd BOE at 50-51.

In any event, however, IIEC's Exception 3 does not add anything new to or advance the issue. IIEC's Exception does not warrant any addition or change to the ALJPO's language on this subject, and it should be rejected.

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

The Commission, like the ALJPO, should reject the "Distributed Energy Resource Interconnection [DER] and Utilization for Value" ("DERIUV") proposal of ELPC/JSP/VS (their

Exception 2), which also is espoused by CUB/EDF (their Exception 5). The ELPC/JSP/VS proposal is two metrics that they seek to treat as one metric: one part being an Interconnection metric and the other part relating to achieving the value of DERs (the "DUV" metric). The ALJPO correctly rejected their proposal on multiple grounds, including: not presenting a fully formed specific metric that could be approved by the Commission; seeking to merge two different metrics into one and thereby unfairly requiring ComEd to excel in two separate categories to earn an incentive; and, relying in part on a valuation of DERs that will occur in a later separate proceeding without identifying a legal basis for the Commission adopting a metric that is dependent on variables that will be determined in a later separate docket. ALJPO at 197.[8]

<u>Response to ELPC/JSP/VS Exception 2</u>

ELPC/JSP/VS's Exception 2 argues that: (1) ComEd's final revised proposed Interconnection metric as modified and approved by the ALJPO results in customer benefits but does not produce net benefits when the potential incentives are treated as costs of achieving the metric; and (2) the Commission instead should approve ELPC/JSP/VS's DERIUV proposal which, again, combines an Interconnection metric and the DUV metric about the value of DERs. *See* ELPC/JSP/VS BOE at 1-2, 3-7, 10-20.[9]

ComEd's position is that the Commission should approve ComEd's final revised proposed Interconnection Timeliness metric, without Staff's modification. ComEd's final proposal focuses on "Days Saved" in the steps of the interconnection process that are performed by the utility, for all four levels of interconnection. ComEd provided testimony demonstrating that its metric will

[8] IIEC's BOE mentions this subject, but it does not submit an Exception. *See* IIEC BOE at. 13. ComEd accordingly is not responding to IIEC's very brief remarks on this topic.

[9] Some of the pages of ELPC/JSP/VS' BOE that are cited here are part of their discussion of their Exception 1, relating to cost/benefit methodologies. However, those pages also relate to their Exception 2.

produce benefits, including net benefits, for directly affected interconnection applicants, for applicants behind them in the queue and potential applicants, and possibly for residential customers as a whole. ComEd BOE at 51-60.

No party nor Staff has opposed the basic "Days Saved" construct of ComEd's proposed Interconnection Timeliness performance metric or still argues that interconnection timeliness is not important to stakeholders. "[T]imeliness to customer requests for interconnection" is even called out specifically in the section of the Act that discusses the Interconnection performance metric (Section 16-108.18(e)(2)(A)(v)). In fact, ELPC/JSP/VS now concede that ComEd's final revised proposal will generate customer benefits (*see* ELPC/JSP/VS BOE at 2) and that the Interconnection metric portion of the DERIUV proposal incorporates ComEd's proposed Days Saved approach (*see, e.g., id.* at 10).

ELPC/JSP/VS's argument that ComEd's final revised proposed Interconnection Timeliness performance metric does not generate net benefits, if one were to add in the costs of the potential incentives that ComEd could earn on the metric (*e.g.*, ELPC/JSP/VS BOE at 1-2), **lacks merit for multiple reasons**. As the outside experts from Black & Veatch explained in Surrebuttal in response to JSP's and other parties' same argument:

> No, any assumption or implication made by each of these witnesses that the value (or penalty) of a performance metric incentive should be included in the cost-benefit analysis is untenable and must be rejected. Reasons that basis point incentives must be excluded from the Cost-Benefit Analysis include:
>
> **1**. The performance incentives as proposed in this proceeding provide both incentives and penalties. If an incentive to the utility is included in the Cost-Benefit Analysis increasing the cost, it is logical to assume that the penalty would also be included to reduce the cost;
>
> **2**. Each performance metric has non-quantifiable benefits, many associated with achieving social goals. By definition, the Commission needs to capture these goals (benefits) and consider the achievement of them when determining financial incentives to the utility even though quantification of these goals is not possible;

3. Many jurisdictions which have adopted advanced ratemaking mechanisms have included performance incentives. We are unaware of any such jurisdiction that includes the incentive or penalty as a cost or benefit in its cost-benefit analysis;

4. Many of the performance metrics adopted "conservative" (i.e., understated) levels of benefits in our analysis. ****.

****

Ultimately, deciding whether a performance metric is net beneficial is and should be based on an analysis of the metric. Decisions about basis points and the formulae for applying them are a separate task.

Zarumba & Shields Sur., ComEd Ex. 25.0 at 20:414-22:445, 22:448-450 (emphasis added). Essentially, adding the incentives as a factor in a metric net benefits assessment is a one-sided analytical mistake that ignores the penalties and distorts the evaluation.

In addition, there also are at least six serious problems with the DERIUV proposal. **First**, the second part of the DERIUV proposal, the DUV part, is outside the scope of the PUA's Interconnection performance metric category, Section 16-108.18(e)(2)(A)(v), because the DUV part is not an Interconnection metric.

Section 16-108.18(e)(2)(A)(v) states as follows:

Metrics designed around the utility's timeliness to customer requests for interconnection in key milestone areas, such as: initial response, supplemental review, and system feasibility study; improved average service reliability index for those customers that have interconnected a distributed renewable energy generation device to the utility's distribution system and are lawfully taking service under an applicable tariff; offering a variety of affordable rate options, including demand response, time of use rates for delivery and supply, real-time pricing rates for supply; comprehensive and predictable net metering, and maximizing the benefits of grid modernization and clean energy for ratepayers; and improving customer access to utility system information according to consumer demand and interest.

220 ILCS 5/16-108.18(e)(2)(A)(v) (emphasis added).

Section 16-108.18(e)(2)(A)(v) is new statutory language, of course, so there are not yet on-point legal authorities defining this subsection. The plain statutory language quoted above in bold, however, directs that the performance metric has to be an interconnection timeliness metric.

ELPC/JSP/VS have gone to great lengths to argue that the remainder of Section 16-108.18(e)(2)(A)(v), plus the larger context of the DER-related objectives of Section 16-108.18(e), together mean that a more expansive reading of this subsection is warranted. *See* ELPC/JSP/VS Init. Br. at 2-3, 23-27.

That argument is problematic. Their reading would allow the performance metric under this subsection to be anything or almost anything that relates to or promotes DERs. That reading goes too far. If the legislature had wanted this subsection to be an "anything DER goes" performance metric, so to speak, then the legislature could have written that. They did not. *Ill. Bell Tel. Co. v. Ill. Commerce Comm'n*, 362 Ill. App. 3d 652, 661 (4th Dist. 2005) (taking into account that the legislature knew how to use a term in the Public Utilities Act and had not done so in a particular provision). Even more importantly, that reading improperly renders meaningless the above-bolded language of the subsection. *Durica v. Commonwealth Edison Co.*, 2015 IL App (1st) 140076, ¶ 32 (Public Utilities Act should be construed to produce a harmonious whole such that no term is rendered superfluous or meaningless). Perhaps there is a legal basis to read the "such as" language and the examples that follow it to allow some latitude in interpreting the scope of the subsection, but such a construction cannot plausibly go so far as to make what plainly is "the interconnection metric" not an interconnection metric. That reading also is problematic because then the subsection might be argued to mean that the Commission essentially has a sort of general jurisdiction to order things that are "pro-DER" thereunder. That is not consistent with the nature of the Commission's authority. *See, e.g., Turgeon v. Commonwealth Edison Co.*, 258

Ill. App. 3d 234, 251 (2d Dist.), *appeal denied*, 157 Ill. 2d 524 (1994) (because the PUA is in derogation of common law, no requirement to be imposed on public utilities can be read into the Act by intendment or implication).

This legal issue matters. The first part of the DERIUV proposal, the Interconnection Index metric that adopts ComEd's Days Saved Index, setting aside its relative merits, at least falls within the subject matter scope of Section 16-108.18(e)(2)(A)(v). However, the second part, the DUV metric, does not because it is not an Interconnection metric. ComEd Init. Br. at 79.

Here is a high-level description of the second part by ELPC/JSP/VS:

> JSP witness Karl Rábago presents Part II of the combined DERIUV metric—the DER Utilization for Value ("DUV") component. (JSP Exhibit 2.0) The DUV component measures the utility's performance in utilizing DERs to maximize grid modernization and clean energy benefits for ratepayers. The DUV component incentivizes the utility to facilitate the integration and utilization of DERs by: (1) identifying grid needs that can be beneficially and cost-effectively served by DERs, and (2) implementing the programs and other market participation pathways needed to unlock that value. The DUV component is fundamentally anchored in aligning the utility's earning opportunity with achieving the CEJA goals of maximizing grid modernization and clean energy benefits.

ELPC/JSP/VS Init. Br. at 27; *see also* ELPC/JSP/VS BOE at 10-11. That does not sound like an interconnection metric, but rather a generically "pro-DER" concept. Indeed, ELPC/JSP/VS themselves appear to distinguish the two parts as involving "interconnection processing" versus "integrating DERs to maximize the benefits of grid modernization and clean energy for ratepayers". *See* ELPC/JSP/VS Init. Br. at 26-27. ELPC/JSP/VS also refer to the second part, for example, as being about: "the efficient utilization of DERs" (*id*. at 2); and "rewarding ComEd for identifying services and value that DERs can provide to the grid and implementing the programs and other market participation to unlock that value" (*id*. at 4). Thus, while there may be some flexibility in interpreting Section 16-108.18(e)(2)(A)(v), the second part of the DERIUV proposal falls outside what the Commission can approve as an Interconnection performance metric in this case.

Second, the DERIUV proposal is two performance metrics, not one. ELPC/JSP/VS try to argue that the DERIUV proposal is only one performance metric (*see, e.g.*, ELPC/JSP/VS Init. Br. at 27-28), but it is difficult to argue that one plus one equals one. What were previously proposed as two separate metrics, ELPC/JSP/VS have attempted to collapse together and present as one. Yet, each of the two metrics comprising the DERIUV proposal (*i.e.*, the Interconnection Index metric and the DUV metric) is, by definition, a singular metric in that each has its own distinct construct, baseline, targets, incentive/penalty structure, basis point assignment, calculation methods, and units of measurement. *See also* ComEd Init. Br. at 25.

The fact that the DERIUV is two metrics, masquerading as one, is problematic for three reasons. To begin with, the DUV part (Part II) cannot escape its being outside of the scope of Section 16-108.18(e)(2)(A)(v) simply by being combined with Part I. Such an approach would allow any "in-scope" performance metric to drag along in its wake "out-of-scope" metrics. In addition, treating the combination of the two metrics as one metric would allow the metrics to escape the fact that each of them, contrary to Section 16-108.18(e)(2)(B), has inappropriate asymmetrical penalty and incentive structures, a fact that is masked by combining them to create an appearance of symmetry. ComEd Init. Br. at 25. Finally, if they are two metrics, not one, then they use up two of the maximum eight slots for performance metrics in this case. 220 ILCS 5/16-108.18(e)(2)(A). The DERIUV proposal has not been shown to have sufficient value to take *any* slot, much less two slots, as discussed further below.

Third, the DERIUV proposal lacks sufficient detail to be a performance metric under Section 16-108.18(e)(2). Staff's Rebuttal recommended against adoption of the two ELPC-VS and JSP proposals that later were adopted by both parties as the DUV metric, because neither proposal was a fully formed and measurable performance metric (with baselines and penalties/incentives), and because they are not necessarily achievable by ComEd. Rearden Reb., Staff Ex. 15.0 at 7:147-149, 8:160-10:201.

JSP and ELPC-VS added some details in their respective Rebuttal Testimony, as they point out in their Brief on Exceptions (at 11-12). However, they provided full details only for the Interconnection part (Part I) of the DERIUV proposal. The DUV part of the proposal (Part II) remains based on unknown factors and yet-to-be determined outcomes, *i.e.*, the results of the future DER value investigation that the Commission will conduct under 220 ILCS 5/16-107.6(e). ComEd Init. Br. at 80. ELPC/JSP/VS acknowledge that the DUV part of their proposal will require inputs from the DER value investigation (and from the potential future Multi-Year Integrated Grid Plan docket). ELPC/JSP/VS BOE at 13. They argue that these holes in their proposal "will not change the essential structural components of the DUV metric" (*id*.), but that does not alter the fact that essential components of the DUV proposal are "TBD" – "to be determined" – and they will not be determined until 2023 at the earliest. *See* ELPC/VS/JSP BOE at 13. ELPC/VS/JSP try to fend off this problem by characterizing the DUV metric as simply relying on numbers to be determined in a later proceeding, and by noting that, on a potential Multi-Year Integrated Grid Plan docket, the utility will be required to present a proposed performance metrics implementation plan. ELPC/VS/JSP BOE at 15-16. That does not alter that the DUV proposal contains extreme unknowns. To set a performance metric now with such extreme unknowns, or, conversely, to make the value of DERs the subject of a premature performance metric, is not appropriate or useful. ComEd Init. Br. at 80-81.

Fourth, the DERIUV proposal is not sufficiently under the control of the utility to achieve to comply with Section 16-108.18(e)(2)(D). ELPC/JSP/VS argue that the DUV part (Part II) of the proposal is sufficiently within the control of the utility to achieve (ELPC/JSP/VS BOE at 13-15), but their argument is unconvincing. They essentially point to the utility's role with respect to the distribution grid and various respects in which the utility has influence over DERs, but they do not show that all of that adds up to the DUV metric being sufficiently within the control of the utility to achieve. The DUV metric is driven predominately by customer / developer behavior, which ComEd might be able to impact, but certainly cannot control. In contrast, ComEd's Interconnection Timeliness performance metric only addresses steps performed by the utility, and thus are reasonably in the utility's control. Gabel Reb., ComEd Ex. 9.0 at 13:255–14:257, 19:381-383, 20:386-403; Rearden Reb., Staff Ex. 15.0 at 9:185-190; Gabel Sur., ComEd Ex. 23.0 at 21:420-423.

Fifth, for all these reasons, the DERIUV proposal lacks merit and should not displace the ComEd Interconnection Timeliness performance metric (and a second metric if the DERIUV proposal counts as two metrics). ELPC/JSP/VS speak much (in the abstract) of the value of DERs, and it is true that DERs can generate value, and they also extol the "shared savings" feature of the DUV part of their proposal. *See, e.g.*, ELPC/JSP/VS Init. Br. at 2-3, 23-27. Yet, they have not presented meaningful evidence of the DERIUV proposal's merits or its costs. ComEd understands that it has made the point that this docket inherently involves imperfect information, and significant uncertainties, but ELPC/JSP/VS have not made sufficient showings in evidence, even in this context, that their proposal can reasonably be expected to have value or net value, or proposed a cost-benefit methodology. They have not presented evidence comparable to that presented by ComEd, especially the testimony of the outside experts from Black & Veatch: Zarumba & Shields

Reb. and Sur., ComEd Exs. 11.0, 25.0. This is especially hypocritical in light of ELPC/JSP/VS's criticism of ComEd's cost-benefit methodology as insufficient. See Section V of this Reply Brief on Exceptions.

Sixth and finally, the ALJPO adds the point that the DERIUV proposal, by combining two metrics into one, unfairly forces the utility to meet the targets of two different metrics to obtain any incentives on either of them. ALJPO at 197. ELPC/JSP/VS cannot deny the fact, so they essentially just argue that interconnection is inextricably tied to DERs and that tying them together is a desirable outcome. *See* ELPC/JSP/VS BOE at 13-19. That does not negate the ALJPO's point, and, again, it is not consistent with the specifics of Section 16-108.18(e)(2)(A)(v)), as discussed above.

The ALJPO correctly concludes:

> CUB/EDF, AEE, and JSP/ELPC/VS argue neither ComEd's nor Staff's proposal address DER integration benefits. Although each respective proposal differs in some aspect, they are both founded and rely on the adoption of the DERIUV metric.
>
> The Commission agrees with Staff that JSP/ELPC/VS and CUB/EDF fail to propose a fully formed, specific metric that can be approved by the Commission in this proceeding. The proposed alternative metrics attempt to marry two separate and distinct metrics into one, unfairly requiring the Company to excel in two separate categories to earn an incentive. JSP/ELPC/VS, CUB/EDF, and AEE, in their respective proposals, rely to some extent on the value of DER, a variable not yet established or in the utility's control. Furthermore, no party has identified a legal basis for which the Commission may adopt a metric that is dependent on variables that will be defined in a separate proceeding following this docket but before the MRP begins. Accordingly, the alternative metrics proposed by JSP/ELPC/VS, CUB/EDF, and AEE are not adopted.

ALJPO at 197.

<u>Response to CUB/EDF Exception 5</u>

CUB/EDF's Exception 5 argues to the same effect and purpose as ELPC/JSP/VS' Exception 2. *See* CUB/EDF BOE at 29-33. CUB/EDF's Exception 5 does not add any fact supported by evidence, or any legal authority, that refutes any of the flaws shown above in ELPC/JSP/VS' arguments for the DERIUV proposal and in the DERIUV proposal itself. CUB/EDF's Exception 5 thus also lacks any merit and should be rejected.

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

The ALJPO's recommendation of ComEd's Customer Service proposal and its rejection of the CUB/EDF proposal should be sustained. The ALJPO correctly finds that ComEd's proposal is a reasonable and properly designed Customer Service performance metric. The ALJPO also correctly finds that CUB/EDF's proposal is improperly based on data relating to the Ameren Illinois electric utility and the assumption that the proposal also is achievable by ComEd. ALJPO at 203, 205.

<u>Response to CUB/EDF Exception 6</u>

CUB/EDF's Exception 6 proposes to replace ComEd's final revised Customer Service performance metric, which is founded on "first call resolution" ("FCR") of types of customer contacts that are amenable to FCR, with a metric that instead is limited to types of customer contacts that, while very important, by their very nature do not involve subjects amenable to FCR. CUB/EDF's position lacks merit.

CUB/EDF's main complaint is that, in their view, the ALJPO assignment of 6 basis points to ComEd's final revised Customer Service performance metric is excessive in relation to the metrics benefits, and that instead as few as 1 basis point should be assigned. CUB/EDF BOE at 33. ComEd's final proposal did not recommend 6 bps for this metric. ComEd recommends that only 3 bps be assigned to this metric. *See* ComEd BOE at 8-14. ComEd also notes that the estimate of benefits for this metric provided by the outside experts from Black & Veatch was conservative and did not include all potential benefits. ComEd Init. Br. at 85-86.

CUB/EDF argue for their proposal on the theory that their Customer Service performance metrics proposal is superior to ComEd's because their proposal focuses on "high-leverage customer inquiries…." CUB/EDF BOE at 34.

That actually is one of main problems with CUB/EDF's proposal.

ComEd's final revised proposal is focused on improvement in the percentage of incoming customer contacts to ComEd (with certain important practical exclusions) that are resolved on the first contact. The metric applies to customer contacts with: (1) ComEd's Customer Service Representatives ("CSRs"), (2) Interactive Voice Response ("IVR") system, (3) ComEd's web site ("Web"), and (4) ComEd's mobile application ("Mobile App"). The metric is limited to contacts regarding three subject areas: (1) billing and payments, (2) credit and collections, and (3) start/stop/move service. Menard Supp. Reb., ComEd Ex. 17.01 at 3:54-60.

Various types of customer contacts fall into those three subject areas. These three subject areas were selected because they are amenable to resolution on first contact. The metric does not include contacts in subject areas that, by their nature, are unable or generally unlikely to be addressed directly by the customer's first contact, such as power outages and wire-down emergencies. *See, e.g.*, Menard Supp. Reb., ComEd Ex. 17.01. For example, a CSR does not have the ability, of course, to end an outage or repair a downed wire for a customer over the phone. Menard Reb., ComEd Ex. 10.0 at 5:100-101.

Staff supports ComEd's proposed Customer Service performance metric. Howard Reb., Staff Ex. 14.0 at 8:149-161; Staff Init. Br. at 57-58.

In contrast, CUB/EDF advocates an inferior and impractical alternative metric. CUB/EDF prefers a Customer Service performance metric that focuses on customer contacts during four types of heightened need and vulnerability (*i.e.*, emergencies / "trouble", service disruptions during extreme weather events, low-income customer arrearages, and disconnections). *See, e.g.*, Barbeau Dir., CUB/EDF Ex. 1.0 at 17:311-314, 49:973-54:1069, 75:1520-1524. The four types of customer contacts raised by CUB/EDF cannot be resolved through the customer's first contact, such as power outages and wire-down emergencies, as discussed above.

CUB/EDF's proposal thus is unwarranted and impractical and should not be adopted. As ComEd witness James Menard explained in his Rebuttal Testimony:

> First, Mr. Barbeau' proposal is impractical for a first contact resolution performance metric. I agree that his categories of hardship events involve very important contacts, but by their nature they generally will not be resolved or completed on first contact. For example, few outages or other electric service-related emergencies can be solved on first contact with a CSR over the phone or through IVR.
>
> Second, Mr. Barbeau's limitation of the metric to exclude digital (self-service) channels is too narrow, fails to recognize customers' preferred contact method, and is impractical. ComEd's belief that customers prefer digital channels is objectively based on the number of contacts received each year. In 2021 (see Table below), there were approximately 5 million customer contacts to ComEd through the digital channels (i.e., IVR and Web) compared to about 686,000 telephone calls to CSRs (i.e., calls to the Call Center) for the three subject areas: (1) billing and payments, (2) credit and collections, and (3) start/stop/move service.
>
> We anticipate that the percentage of digital contacts will continue to increase with the inclusion of App data by 2024. (The mobile application exists now, but the App data will not be collected in this manner until 2024.) Digital contacts (i.e., IVR, Web, App), collectively referred to as "self-service", continue to grow in popularity with our customers because they can be accessed 24-7 by our customers to provide information quickly and efficiently, through all digital devices (i.e., phone, computer, tablet).

Table 1: <u>ComEd 2021 Customer Contacts (by month; by channel)</u>

Month	Web Contacts	IVR Contacts	CSR Contacts	% Self Service
January	250776	178405	45297	90.45%
February	225755	165586	39416	90.85%
March	274354	202652	60194	88.79%
April	268968	200685	83888	84.85%
May	84514	110970	64389	75.22%
June	278912	190949	71046	86.87%
July	283913	190590	69107	87.29%
August	311397	204165	74093	87.43%
September	260236	226569	46252	91.32%
October	128644	149769	36428	88.43%
November	188776	227457	48225	89.62%
December	207604	154129	48000	88.29%
Total	**2763849**	**2201926**	**686335**	**87.86%**

> The 2021 data from Table 1 was exported from Exelon's Data Analytics Platform, the system of record for the metric. Also, while the ComEd digital channels are designed to handle many hardship events, such as reporting an outage and receiving an initial restoration estimate, that kind of information is focused on the sharing and reporting information between ComEd and the customer, not on completing a customer's request.

Menard Reb., ComEd Ex. 10.0 at 10:183-11:208. CUB/EDF witness Mr. Barbeau's Rebuttal Testimony failed to effectively refute, and to some degree did not even address, Mr. Menard's criticisms. Menard Sur., ComEd Ex. 24.0 at 10:201-12:234.

Finally, CUB/EDF complain that the ALJPO, in rejecting their proposal, should not have relied upon the fact that the proposal relies in part on data relating to the Ameren Illinois electric utility that does not apply to ComEd. CUB/EDF BOE, p. 34. CUB/EDF have it twisted. It was *CUB/EDF's witness* who inappropriately relied on data from Ameren Illinois to develop his proposal for ComEd. Menard Sur., ComEd Ex. 24.0 at 12:235-13:257. As ComEd explained in Surrebuttal, CUB/EDF's proposal would not even be achievable by ComEd because ComEd lacks the technology and thus the data needed under his proposal (as CUB/EDF's witness appears implicitly to acknowledge when seeking to explain his use of Ameren data). *Id*. at 12:245-251. An unachievable performance metric is contrary to Section 16-108.18(e)(2). CUB/EDF's attempt to spin this fatal flaw of its proposal as ComEd contending that ComEd should be held to a lower standard of performance than Ameren Illinois (CUB/EDF BOE at 34) is empty rhetoric.

Staff also does not support CUB/EDF's proposal. Howard Reb., Staff Ex. 14.0 at 7:131-133.

While the ALJPO did not explicitly reject the CUB/EDF proposal based on all of the proposal's flaws, the ALJPO correctly found that:

> The Commission finds the foundation of CUB/EDF's proposal is improperly based on data pertaining to Ameren and the assumption that ComEd can follow suit. Therefore, CUB/EDF's proposal conflicts with the guidelines established under Section 16-108.18(e)(2)(D) and is not adopted. *See* CUB/EDF Reply Brief at 30.

ALJPO at 205.

VII. PROPOSED TRACKING METRICS

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

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

ELPC/JSP/VS' Exception 3 urges the Commission to approve JSP's proposed Tracking Metrics 10-19, but the Exception lacks merit. The ALJPO correctly recommends rejection of those Tracking Metrics. ALJPO at 217.

Response to ELPC/JSP/VS Exception 3

JSP's Direct Testimony proposed 19 Tracking Metrics in a Table labeled: "Table KRR-1: Description of Metrics to Track Utility Progress toward Meeting DUV metric Goals." Rábago Dir., JSP Ex. 1.0 at 62:Table KRR-1. ELPC/JSP/VS' Exception 3 contends that the ALJPO should have recommended adoption, not rejection, of JSP's proposed Tracking Metrics 10-19. ELPC/JSP/VS BOE at 20-23.

JSP's proposed Tracking Metrics 10-19 are stated as follows in a Table submitted by JSP (ComEd has added the numbers 10 through 19 for the reader's convenience):

2. Implementation of DER programs (10)	Timeliness of bill crediting	Monthly reporting of number of calendar days between when electricity is generated and when the corresponding bill credit is applied to the customer bill.
2. Implementation of DER programs (11)	Accuracy of bill crediting	Monthly reporting of data from prior month on (1) number of requests from customers or owner/operators (or their agents) to adjust bill credits for community solar participants, (2) number of requests that resulted in an adjustment, and (3) the total value of the requested adjustments for the reported month.
3. Identification of Grid Needs (12)	Identification of grid needs with potential for DER solution	Total MW and dollar value of grid service needs identified in approved Grid Plan and DG Rebate investigation, including but not limited to voltage support, frequency regulation, load factor improvement, load modification (e.g., load build, load reduce, load shift).
3. Identification of Grid Needs (13)	Identification of grid needs with potential for DER solution	Total number of NWA projects identified as potential for DER solution, including total MW of need broken out by circuit across the distribution system.
4. Utilization of DERs to meet grid need (14)	DER grid service enablement	Total number of programs that enable DERs to provide passive grid services and total number of programs that enable DERs to provide dispatchable or non-passive grid services.

4. Utilization of DERs to meet grid need (15)	DER grid services capability and enrollment	(1) Total MW of DER systems on the system capable of providing passive grid services, (2) total MW of DER systems on the system capable of providing non-passive / dispatchable grid services; (3) total number of customers and total MW of DERs enrolled by eligible device type for (1) and (2).
4. Utilization of DERs to meet grid need (16)	NWAs pursued	Total number of NWA projects pursued by the Company for a DER solution, including total MW of need pursued and means by which the Company pursued the solution (e.g., tariff-based program such as BYOD or advanced rate design, competitive solicitation, or otherwise) broken out by identified NWA.
4. Utilization of DERs to meet grid need (17)	High value locational DER deployment	Total capacity of new DERs installed in areas previously identified as high-value geographical or locational areas.
4. Utilization of DERs to meet grid need (18)	Peak reduction achieved through DERs	Total peak reduction attributed to utilization of DERs achieved from each program and other mechanisms through which utility utilized DERs to provide the peak reduction service.
4. Utilization of DERs to meet grid needs (19)	Value of savings achieved from utilization of DERs	Annual reporting of total dollar value of savings achieved from utilization of DERs in meeting all identified grid needs with comparison to baseline target.

Rábago Dir., JSP Ex. 1.0 at 62:Table KRR-1 (items 10-19 at 64-66).

As is indicated by the title of JSP's witness' Table KRR-1 quoted above, JSP proposed Tracking Metrics 10-19 in order to track ComEd's performance toward achieving what eventually became ELPC/JSP/VS' proposed DUV metric (Part II) within their DERIUV proposal. *See*

Rábago Dir., JSP Ex. 1.0 at 61:1188-1193. JSP's witness emphasized that those 10 metrics would support the proposed DUV metric, although he also included a general reference to the possibility of their being used to develop additional performance metrics in the future and to identify opportunities where DERs might provide value. *Id*. at 61:1194-1204; *see also, id.* at 9:142-10:153, 66:1211-67:1226. ELPC/JSP/VS' Initial Brief (at 43-44) also primarily described the Tracking Metrics as "support[ing] the Company's achievement of its goals under the Solar Intervenors' proposed DERIUV metric and enhance future iterations of that metric," although it also referred to development of additional performance metrics.

The ALJPO, however, recommends against adoption of ELPC/JSP/VS' proposed DUV metric and their DERIUV proposal. ALJPO at 197. Accordingly, the ALJPO also reasonably found that it should not approve the proposed supporting Tracking Metrics:

> JSP/ELPC/VS propose a series of tracking metrics that would create a feedback structure and provide necessary data to calibrate and improve the DERIUV metric, as proposed above. ComEd notes it modified its Tracking Metrics 14 and 15 to incorporate relevant tracking metrics proposed by JSP/ELPC/VS. The Commission notes it rejected JSP/ELPC/VS's proposed DERIUV performance metric above. Requiring the Company to track indices related to a performance metric that was not adopted is unwarranted. Therefore, JSP/ELPC/VS's proposed tracking metrics are not adopted.

ALJPO at 217.

ELPC/JSP/VS' Brief on Exceptions (at 21-22) now argues that, even if the Commission does not adopt the DUV or DERIUV proposals, the Commission still should adopt JSP's proposed Tracking Metrics 10-19.

JSP's case for approval of Tracking Metrics ("TM") 10-19, however, is nothing more than conceptual and speculative. ComEd's Rebuttal pointed out that JSP had not demonstrated a need for, or the value of, JSP's four categories of proposed Tracking Metrics (the second, third, and fourth categories comprised Tracking Metrics 10-19), nor the frequency at which they proposed that ComEd should be required to make the data available (*i.e.*, burdensome monthly reporting with no value shown for that frequency). ComEd already collects, publishes, and reports a large amount of data relating to DERs, including better data serving many of the very same objectives that JSP claimed for its proposals. Moreover, JSP did not show the need or value of TMs 10 and 11. Also, JSP TM 11 would require burdensome manual tracking of reasons for items that already are handled through multiple channels. JSP TMs 12-19 also generally are redundant with ComEd's TMs <u>4 (Avoided Outage Costs Due to Grid Modernization) and 5 (Number of NWA Opportunities)</u>, <u>which are approved by the ALJPO</u>. JSP TMs 12-19 also inappropriately and prematurely overlap with the value of DERs investigation under PUA Section 16-107.6(e), 220 ILCS 5/16-107.6(e), that will occur in 2023 with implementation in 2025. The Commission, therefore, should not adopt JSP Tracking Metrics 10-19. Gabel Reb., ComEd Ex. 9.0 at 23:459-25:506; Gabel Sur., ComEd Ex. 23.0 at 25:510-26:542, 27:550-28:568.

JSP's Rebuttal sought to defend the proposed Tracking Metrics, but that discussion was highly conceptual and speculative, and it did essentially nothing to show in a meaningful way the benefits of the metrics or to defend their specifics, including the burdens that they would place on ComEd. *See* Rábago Reb., JSP Ex. 2.0 at 38:657-40:700. The bare potential that one or more of these ten Tracking Metrics might, down the road, yield information that could assist the development of a future performance metric is a poor rationale for, in essence, imposing four years of detailed monthly discovery on ComEd, especially when that monthly discovery primarily was designed to support a proposal that lacked sufficient merit to be recommended by the ALJPO.

The ALJPO's rejection of JSP's proposed Tracking Metrics 10-19 should be sustained. They lack benefit and cannot justify their burdens.

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

D. <u>Proposed Tracking Metrics Falling Within Section 16-108.18(e)(3)(D) (jobs and opportunities)</u>

E. <u>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)</u>

VIII. <u>INDEPENDENT EVALUATOR</u>

IX. <u>PROPOSED PERFORMANCE METRICS PLAN AND RIDER PIM COMPLIANCE FILINGS</u>

X. <u>FINDINGS AND ORDERING PARAGRAPHS</u>

XI. <u>CONCLUSION</u>

The Commission should adopt the ALJPO, with the modifications identified and supported in ComEd's Brief on Exceptions and this Reply Brief on Exceptions.

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Respectfully submitted,

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