STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	)))	
Proposal for changes to new service requests for large demand project applicants or customers.	)))	**ICC Docket No. 25-0677 (cons.)** **ICC Docket No. 25-0679**
	))	
Proposal for revisions to Rider Distributed System Extensions.	))	

VERIFIED INITIAL BRIEF OF
NRG ENERGY, INC.

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November 10, 2025

TABLE OF CONTENTS

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COMMONWEALTH EDISON COMPANY	)	
	)	
Proposal for changes to new service requests for large demand project applicants or customers.	)	**ICC Docket No. 25-0677 (cons.)**
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NRG Energy, Inc. ("NRG"), by and through its attorneys, CJT Energy Law, LLC, pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), respectfully submits this Initial Brief in the above-captioned consolidated proceeding regarding the proposals of Commonwealth Edison Company ("ComEd" or the "Company") for changes to new service requests for large demand project applicants or customers and revisions to Rider Distributed System Extensions ("Rider DE").

I. INTRODUCTION[1]*

The purpose of this proceeding is for the Commission to evaluate ComEd's proposed changes to the General Terms & Conditions of its delivery services tariffs related to new service requests and revisions its Rider DE related to customers with large demands (i.e., 50 MW or above) ("Large Demand Project Applicants and Customers" or "LDPACs") who apply for and receive retail electric delivery services from ComEd.

[1] This Initial Brief follows the Common Outline of Issues agreed to among the parties. The agreed-upon headings are marked with an asterisk; additional subheadings are included for clarity.

NRG intervened in this case because it owns and is actively developing property within ComEd's service territory for potential customers with anticipated loads exceeding 50 MW. As such, NRG or its future tenants will be directly affected by ComEd's proposed tariffs.

NRG agrees that the Commission has a legitimate goal of ensuring that existing customers are protected from costs attributable to serving new large-load developments. That principle is firmly rooted in Illinois law and policy. At the same time, Illinois is competing nationally for highly energy-intensive industries and the jobs and other economic benefits that can come with them. A well-reasoned tariff structure that protects customers while providing regulatory clarity and predictability is essential to maintaining Illinois' competitiveness.

This Commission has consistently recognized that its authority extends to distribution service and retail terms, but not to setting the terms governing transmission service, because the Federal Power Act vests exclusive jurisdiction over transmission rates, terms, and conditions with the Federal Energy Regulatory Commission ("FERC"). ComEd's proposal to condition retail service on a future Transmission Security Agreement ("TSA") tied to ten (10) years of projected transmission revenues veers into FERC's exclusive jurisdiction over transmission rates, terms, and conditions. If transmission-related collateral requirements are necessary, they should be evaluated and approved in the federal forum established for that purpose. Maintaining clear jurisdictional lines -- including deferring matters involving transmission credit requirements to FERC -- benefits all market participants, reduces regulatory risk, and supports economic development. When jurisdictional boundaries blur, uncertainty increases, and customers, utilities, and capital providers face unclear obligations and potential duplicative or conflicting requirements.

If the Commission elects to test its jurisdictional reach and establish the methodology for calculating collateral associated with a future TSA, the record demonstrates that ComEd's proposed approach -- based upon hypothetical lost revenues rather than incremental costs -- fails to achieve the Commission's objectives. NRG presented data from actual proposed large load projects that demonstrated that ComEd's methodology would in some circumstances under-secure the utility, thereby exposing existing customers to risk, and in other circumstances over-secure the utility, creating unnecessary barriers to large-load development. The variance in proposed security requirements between projects is so great as to be unduly discriminatory, radically favoring some projects over others without relation to their incremental costs. In all cases, ComEd's approach lacks a cost-based locational signal, undermining efficient siting and system planning.

NRG proposed an alternative collateral calculation methodology grounded in cost-causation principles that protects existing customers from actual incremental costs, ensures appropriate and proportionate security, and provides meaningful price signals that encourage siting in lower-cost areas. Accordingly, if the Commission determines that it has authority to adopt or influence a TSA collateral standard, it should adopt NRG's approach to ensure that any such requirements are cost-based, non-discriminatory, economically efficient, and supportive of Illinois' development goals.

The Commission also should reject ComEd's proposal to expand Rider DE to require large-load customers to provide security for so-called "on-premises" facilities that have long been treated as standard, utility-provided distribution infrastructure. Illinois' extension rules have always drawn a careful line between customer-driven incremental upgrades, which customers appropriately fund, and standard facilities necessary to serve load, which the utility appropriately plans for and recovers through rates. ComEd's proposal, which ComEd admits is based upon theoretical risks as opposed to actual experience, would blur that established policy line by requiring large-load customers to collateralize ordinary components of standard service simply because of their size, regardless of whether their "on-premises" costs actually are more than those of other customers. Expanding Rider DE in this manner risks deterring beneficial development, imposing inconsistent treatment across similarly situated customers, and shifting Illinois away from the balanced, pro-growth framework that has historically supported load expansion in the State. The Commission should reaffirm its precedent and maintain the long-standing distribution extension principle that only customer-specific incremental facilities -- not on-premises standard system facilities -- are subject to customer funding or collateral requirements.

For these reasons, and as further discussed below, NRG respectfully requests that the Commission enter an Order modifying ComEd's proposal to:

- Maintain a clear division between distribution ratemaking and security arrangements for transmission service;
- If the Commission determines it has authority to influence the methodology, to calculate the TSA collateral requirements, adopt NRG's Incremental Revenue Requirement based approach which is firmly grounded in cost-causation principles;
- Reject ComEd's proposal to modify Rider DE to include on-premises costs; and
- Establish fair grandfathering protections for large load customers who already have entered the "cluster study" process.

This approach would respect jurisdictional roles, protect existing customers, and strengthen Illinois' ability to attract major beneficial development projects, increasing investment and jobs in the State.

II. <u>BACKGROUND*</u>

A. The Parties

1. NRG Energy, Inc.

NRG is a leading energy company with substantial real estate holdings and ongoing development initiatives within ComEd's service territory, where it is actively preparing infrastructure to support large-scale energy projects. NRG owns and is developing property specifically designed to accommodate one or more customers with projected electric demands exceeding fifty megawatts (50 MW). As such, NRG would be directly and materially affected by ComEd's proposed changes to its tariffs. NRG's participation in this proceeding is to protect its interests in the evolving processes governing new service requests for large-demand projects and underscores its role as a key enabler of industrial and commercial energy development in Illinois. (*See* NRG Pet. to Intervene, at 1-2.)

NRG presented comprehensive expert testimony of James R. Dauphinais, a Managing Principal at Brubaker & Associates, Inc., a firm specializing in energy, economic, and regulatory consulting. Mr. Dauphinais has over 40 years of experience in the electric utility industry and holds an Associate's Degree in Electrical Engineering Technology from Hartford State Technical College as well as a Bachelor's Degree in Electrical Engineering from the University of Hartford, and has completed graduate-level courses in power system analysis, transients, and protection through the University of Idaho's Engineering Outreach Program. Dauphinais has a long record of testifying before FERC and the Commission (in nearly 20 proceedings), as well as commissions in over a dozen states on issues including transmission planning and rates, cost allocation, generation interconnection, resource adequacy, and large load additions, including recent proceedings addressing data center expansions, as well as open access transmission matters. He serves on the MISO Advisory Committee, has participated in numerous MISO and SPP working groups, completed a University of Wisconsin HVDC Transmission course, and is a member of the IEEE Power and Energy Society.

B. The Potential for Substantial Large Load Customer Growth

The potential for substantial large load customer growth in the ComEd service territory is driven primarily by an unprecedented surge in applications from high-demand projects such as data centers and AI-related facilities, reflecting broader economic and technological trends in Illinois. (*See* Dauphinais, NRG Ex. 1.0 at 8.) According to ComEd's filings and related analyses, the utility's current pipeline includes approximately 100 large demand projects totaling about 28 gigawatts (GW) of potential load, exceeding the region's all-time peak system demand of just under 24 GW -- a scale that underscores the transformative impact of these developments. (*See id*. at 8.) The average size of new applicants over the past 12 months has been around 700 MW. (*See id.*)

C. The Benefits Associated With Large Load Customer Growth

ComEd acknowledges that large-load customers, including data centers, provide material benefits to the electric system, the Illinois economy, and other customers -- including job creation, tax-base expansion, and substantial contributions to system revenues that help reduce costs for other ratepayers. ComEd witness Leichtman testified that such projects provide "investment, jobs, tax revenue, and economic development benefits to Illinois." (ComEd Ex. 1.0 at 8:148-149.) He explained that these projects "bring growth and investment and jobs" and "bring economic benefits to the states and localities" where they are constructed. (Tr. at 190:12-14.) Staff witness David Rearden likewise agreed that given the size and potential importance of large load project customers such as data centers to the overall economy, any revisions to ComEd's tariffs in this proceeding should not unnecessarily discourage the creation of economically important large load projects. (*See* Tr. at 55:9-56:22.)

NRG witness Dauphinais explained that the primary benefits of large load customer growth in the ComEd service territory include lower transmission and distribution rates for existing customers, achieved by spreading fixed costs across a larger customer base when the loads fully materialize. (*See* NRG Ex. 1.0. at 3:60-4:72, 38:802-805.) ComEd witness Perkins amplified this point: "Due to the significant projected load associated with these projects, large-load customers will be making significant contributions to the distribution and transmission revenue requirements for many years to come, thus contributing to cover the costs of investments already in-service and not fully depreciated as well as future infrastructure investments that will be added to rate base." (ComEd Ex. 6.0 at 10:201-206.)

As Mr. Dauphinais explained, new large load additions provide "a new additional contribution toward covering ComEd's existing fixed transmission and distribution costs that would act to lower ComEd's transmission and distribution rates," provided reasonable safeguards (such as an "incremental revenue requirement" guarantee) prevent existing customers from subsidizing unrecovered incremental service costs if the loads fail to materialize. (NRG Ex. 1.0 at 9:237-243, 10:254-256.) He further notes that any surplus revenues from fully realized loads, beyond covering the revenue requirement for incremental investments, would yield even greater benefits by further reducing rates "from the level they would have otherwise been at absent the new large load addition customer." (*Id*. at 12:291-298.) Overall, these benefits position Illinois competitively against other states in attracting such growth, enabling the state to "safely capture the upside of large loads (lower rates for all)" while mitigating risks like stranded costs. (*Id.* at 40:843-845.)

Accordingly, as the Commission evaluates ComEd's proposals, it should expressly recognize that attracting large-load customers to Illinois not only stimulates job creation and capital investment, but also delivers tangible rate benefits to existing customers by lowering their overall system costs as a result of spreading fixed system costs more broadly.

III. <u>LEGAL STANDARD AND JURISDICTION</u>*

The General Assembly has vested the Commission with broad authority to review and modify tariff proposals affecting the rates, terms, and conditions of public utility service. That authority encompasses examination of tariff language to ensure that proposed provisions are just, reasonable, nondiscriminatory, and consistent with Illinois law. (*See* 220 ILCS 5/4-101; *Citizens Util. Bd. v. Ill. Commerce Comm'n*, 166 Ill. 2d 111, 138 (1995); *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 398 Ill. App. 3d 510, 534 (2nd Dist. 2009).) However, the Commission's authority is not boundless. It extends only to those matters within its statutory authority, and it cannot regulate activities reserved to exclusive federal oversight. While NRG does not dispute that ComEd's state jurisdictional tariffs can require a large load customer to have executed a FERC-approved TSA, ComEd's proposed tariff goes further and dictates the specific terms of the TSA. Namely, ComEd's proposal would require that a TSA include a 10-year revenue guarantee to the utility with the collateral requirement based upon the utility's revenue instead of its incremental costs. These requirements both veer squarely into FERC's exclusive jurisdiction over transmission ratemaking and are inconsistent with historic ratemaking principles.

A. Legal Standard

The Commission's plenary authority extends to the evaluation not only of utilities' numerical charges, but also the rules and conditions of service that determine how service is provided and costs are allocated. (*See Citizens Util. Bd.*, 166 Ill. 2d at 138-139.) In exercising this authority, the Commission may approve, reject, or modify tariff components that materially affect ratepayer interests or the provision of utility service. (*See Commonwealth Edison Co. v. Ill. Commerce Comm'n*, 375 Ill. Dec. 451, 455 (2013).)

Illinois law embeds cost-causation as a foundational regulatory principle. The Public Utilities Act expressly requires the allocation of costs to those who cause them:

> It is further declared that **the goals and objections of such regulation shall be to ensure**
> ***
> Equity: the fair treatment of consumers and investors in order that … (iii) **the cost of supplying public utility services is allocated to those who cause the costs to be incurred**;

(220 ILCS 5/1-102(d)(iii). (Emphasis added).) The General Assembly has specifically directed the Commission to ensure that electric utilities' delivery services rates are cost-based:

> **Charges for delivery services shall be cost based**, and shall allow the electric utility to recover the costs of providing delivery services through its **charges to its delivery service customers that use the facilities and services associated with such charges**.

(220 ILCS 5/16-108(c). (Emphasis added).) These directives provide that existing customers should not be required to subsidize service for new load, and that utilities receive recovery only for prudent, cost-caused investments.

Federal ratemaking principles align fully with this statutory framework. Long-standing FERC precedent on cost causation and ratemaking principles require that rates remain just and reasonable, that customers pay for transmission upgrades based upon their roughly commensurate benefits, and that new generators pay the costs for the return of and return on network upgrades if such upgrades would not be needed but for the new generator(s). (*See KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); *Illinois Commerce Comm'n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009). *See also Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 at P 622 (2011) ("Order No. 1000"), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012) ("Order No. 1000-A"), *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012) ("Order No. 1000-B"), *aff'd sub* *nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).) In applying principles of cost-causation, the Seventh Circuit in *Illinois Commerce Commission v. FERC* reversed a FERC decision approving PJM's proposed pricing mechanism for new transmission facilities with a capacity of 500 kV or higher, in part because FERC had not adequately followed the principle of cost causation. The Seventh Circuit noted:

> We do not suggest that [FERC] has to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars . . . If it cannot quantify the benefits to the Midwestern utility from new 500 kV lines in the East . . ., but it has *an articulable and plausible reason to believe that the benefits are at least roughly commensurate* with those utilities' share of total electricity sales in PJM's region, then fine; [FERC] can approve PJM's proposed pricing scheme on that basis.

(576 F.3d at 477.) Thus, for benefits that cannot be more precisely quantified, there must be an "articulable and plausible" reason to believe that such benefits are roughly commensurate to the costs.

ComEd bears the burden of demonstrating that its proposed tariff language is lawful, cost-based, and consistent with sound regulatory principles. (*See* 220 ILCS 5/9-201(c); *Chicago v. Ill. Commerce Comm'n*, 13 Ill. 2d 607, 617-618 (1958).) This includes showing that tariff terms (1) protect existing customers from inappropriate cost shifts, and (2) support reasonable load growth without imposing obligations beyond what is necessary to serve new customers safely and reliably.

B. Jurisdiction

Although the Commission has broad authority over distribution service and retail rates, the Commission's statutory authority is strictly construed. (*See Monsanto v. Touchette*, 63 Ill. App. 2d 390, 400-01 (5th Dist. 1965).) The Commission possesses no authority beyond that which the legislature confers, and the facts necessary to establish its jurisdiction must affirmatively appear in the record. (*See Ill. Commerce Comm'n v. E. S. L. & C. R. Co.*, 361 Ill. 606, 611 (1935).) The Commission may not extend its jurisdiction by implication or policy preference. (*See Illinois Landowners Alliance v. Illinois Commerce Comm'n*, 406 Ill. Dec. 248, 256 (3d Dist. 2016) *citing Sheffler v. Commonwealth Edison Co.*, 399 Ill. App. 3d 51, 60 (1st Dist. 2010), *aff'd* Illinois Landowners Alliance v. Illinois Commerce Comm'n, 418 Ill. Dec. 290 (2017).)

Under the Federal Power Act, FERC has exclusive jurisdiction over the rates, terms, and conditions of transmission in interstate commerce and practices affecting those rates. (*FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 264 (2016).) Illinois courts have recognized the same boundary. (*Ill Landowners Alliance*, 418 Ill. Dec. at 295; *Gen. Motors Corp. v. Ill. Commerce Comm'n*, 143 Ill. 2d 407 (1991).) Thus, while the Commission retains authority over retail distribution service, it may not regulate FERC-jurisdictional transmission matters.

The Commission's own decisions consistently reflect this jurisdictional boundary. In *Fortis Inc. and ITC Midwest, LLC* (ICC Docket No. 16-0315), the Commission expressly deferred to FERC's exclusive authority over wholesale transmission rates, concluding that any attempt to influence such matters would contravene federal law. The same principle was reaffirmed in *Energy Storage Systems* (ICC Docket No. 22-0237), where ComEd urged the Commission to respect jurisdictional boundaries to avoid delay, litigation, and market uncertainty, and the Commission noted that the Federal Power Act grants FERC sole authority over transmission rates. (*See* Order at 3.) Most recently, in *ITC Midwest LLC-Verified Petition for Declaratory Ruling* (ICC Docket No. 24-0476), the Commission held that regulation of transmission utilities lies "within the exclusive purview of FERC." (Order at 6-7.)

In sum, the Commission's deference to FERC on transmission issues prevents regulatory overlap, preserves federal supremacy, and promotes efficient market administration. Accordingly, any proposal that would condition retail service on compliance with federally governed transmission terms or shift FERC-jurisdictional costs to retail customers exceeds the Commission's authority and must be rejected.

In this proceeding, ComEd must demonstrate that each proposed tariff revision -- including those addressing the definition and terms of a prospective Transmission Service Agreement and modifications to Rider DE -- falls squarely within the Commission's jurisdiction, comports with cost-causation principles, and reasonably protects customers without imposing burdens on large-load customers that are inconsistent with state law or federal regulatory authority. To the extent ComEd's proposals affect matters reserved to federal oversight or depart from long-standing Commission policy on customer contributions for distribution facilities, those provisions must be rejected or modified.

IV. COMED'S PROPOSED REVISIONS TO THE GENERAL TERMS & CONDITIONS ("GT&C") TARIFF*

ComEd proposes fundamental revisions to its General Terms and Conditions ("GT&C") tariff to impose new requirements applicable to large-demand applicants and customers. These changes establish an entirely new regulatory framework for customers expected to reach 50 MW or more. Among other things, ComEd proposes to:

(1) **Create a new "Large Demand Project Applicant or Customer" category** applicable to projects expected to reach 50 MW within ten (10) years (*see* ComEd Ex. 1.02 at 4, Ill. C.C. No. 10, 7th Rev. Sheet No. 129);

(2) **Define the terms of an "Acceptable Letter of Credit"** and require that deposit amounts above $2 million be secured exclusively through such an LOC, subject to specific banking requirements and unilateral draw provisions (*see id*. at 2, 6th Rev. Sheet No. 127);

(3) **Require submission of a ten-year, monthly Maximum Kilowatts Delivered ("MKD") load-ramp forecast** as a condition of ComEd performing engineering studies (*see id*. at 5, Original Sheet No. 149.2);

(4) **Mandate multi-million-dollar deposits** for large-load customers, including a $1 million base deposit plus $500,000 for each 100 MW above 200 MW, with any incremental amount above $2 million required to be collateralized by an "Acceptable LOC" (*see id*. at 10, 1st Rev. Sheet No. 151.3);

(5) **Authorize ComEd to conduct "Cluster Studies"** and require large-load customers included in a cluster to fund an equal share of the total study cost (*see id*. at 6, Original Sheet No. 149.3); and

(6) **Condition retail electric service on execution of a yet-to-be-developed Transmission Security Agreement ("TSA")** tied to a ten-year projected revenue guarantee that ComEd admits is subject to the exclusive jurisdiction of FERC (*see id.* at 8, 2nd Rev. Sheet No. 150.1).

NRG agrees that it is necessary to develop clear and appropriate terms for large-load interconnections. However, several of ComEd's proposed GT&C revisions are unreasonable, inconsistent with Illinois law and policy, and would unnecessarily impose significant costs and risks on large-load customers while providing ComEd with "protections" that are not tied to any demonstrated need. As explained below, the Commission should reject or modify these provisions to ensure that customer protections, cost-causation principles, competitive neutrality, and jurisdictional boundaries are preserved.

A. Revisions Related to Definitions*

ComEd's proposed revisions to its GT&Cs include the addition of two new defined terms: (1) "Large Demand Project Applicant or Customer" and (2) "Acceptable Letter of Credit." NRG did not oppose ComEd's effort to define the new large-demand customer category but notes that other parties proposed several appropriate refinements to that definition. Further, NRG presented expert testimony objecting to ComEd's proposed definition of "Acceptable Letter of Credit," which is unnecessarily restrictive and unsupported by any quantitative evidence, benchmarking, or industry-standard analysis. Adopting such a narrow collateral definition would impose avoidable and potentially substantial financing burdens on large-load customers, increasing project costs and making Illinois less competitive for the high-value economic-development opportunities these projects represent -- projects that would bring substantial investment, job creation, and long-term cost benefits to existing ratepayers through recovery of fixed delivery costs.

1. ComEd's Proposed "Large Demand Project Applicant or Customer" Definition

ComEd proposes to define "Large Demand Project Applicants or Customers" as those who are seeking new or modified service for facilities that will reach 50 MW of demand within ten years. (*See* ComEd Ex. 1.02 at 4, Ill. C.C. No. 10, 7th Rev. Sheet No. 129.) NRG agrees that defining large-load customers can support planning transparency and protect existing customers if implemented correctly. However, ComEd's proposed definition lacks essential clarity and transitional protections that are necessary to ensure fairness, regulatory certainty, and competitive neutrality.

NRG proposed that the Commission condition approval of any large-load definition and framework on explicit grandfathering protections for projects with completed or in-process cluster studies and for customers where ComEd has already commenced engineering or construction work. (*See* NRG Ex. 1.0 at 7:197-205; 39:832-838.) Microsoft similarly testified that ComEd's proposal "would undermine the very Large Demand Project category that it seeks to address" if applied without grandfathering and explained that ComEd's lack of clarity regarding projects already underway "could substantially undermine the development process for projects that have already interconnected but are still increasing their load." (Microsoft Ex. 1.0 at 6:49-60.) Illinois courts and the Commission have repeatedly held that regulatory certainty and protection of reasonable reliance on regulatory structures are critical. (*See, e.g., Citizens Util. Bd. v. Ill. Commerce Comm'n*, 166 Ill. 2d 111, 124 (1995); *BPI v. Ill. Commerce Comm'n*, 146 Ill. 2d 175, 244-45 (1991); *Commonwealth Edison Co.*, ICC Docket 13-0387, Final Order at 259 (Dec. 18, 2013).)

ComEd confirmed in discovery and testimony that cluster-study projects and those that have begun construction will be grandfathered, and it stated it is amenable to the Commission memorializing these commitments. (*See* ComEd Ex. 3.0 at 21:427-22:454; NRG Ex. 1.5 at 4-5, 9-10.) Therefore, the Commission should condition approval on ComEd honoring those commitments. As Mr. Dauphinais testified, the Commission should "condition any approval…on ComEd committing…that it will provide the indicated grandfathering and restudy protection" for pending applications. (NRG Ex. 2.0 at 13:200-205.) Specifically, the Commission should condition approval of ComEd's tariff amendments on ComEd honoring its commitments to: (1) apply current tariff terms to projects already in active cluster studies; (2) preserve existing initial deposits for current applicants; and (3) prevent unnecessary restudies of cluster studies based solely on other participants accelerating or increasing their load ramps. (*See id.* at 41:880-886; NRG Ex. 1.5, ComEd Response to NRG-ComEd Data Request No. 1.04. *See also* NRG Ex. 2.0 at 38:738-744.)

2. ComEd's Proposed "Acceptable Letter of Credit" Definition

ComEd proposes to limit acceptable collateral for large-load projects to cash or bank letters of credit ("LOCs"). The record shows this restriction is unsupported, unduly burdensome, out of step with industry practice, and would increase project costs without improving ratepayer protections.

The Commission should modify ComEd's proposal to allow other forms of credit as proposed by NRG witness Dauphinais.

As NRG demonstrated, ComEd's proposal is not based on analysis, benchmarking, or evidence of risk. ComEd "could not produce any policies or tariffs… nor did [it] perform… any benchmarking analyses" and "could produce no sensitivity analyses or scenario modeling" to support a cash-and-LOC-only requirement. (NRG Ex. 1.0 at 35:741-747.) ComEd testified that it "would not consider" parental guarantees or surety bonds -- forms of credit support commonly accepted by other major utilities and by PJM -- demonstrating an unnecessarily rigid approach to credit assurance that would hinder Illinois's efforts to attract and accommodate large-load customers. (NRG Ex. 1.0 at 35:732-739 *citing* ComEd Response to NRG-ComEd Data Request Nos. 1.10d, 2.02, 2.06 and 2.07.)

NRG provided evidence demonstrating that surety bonds are widely used across the utility sector, including at PJM and in other PJM jurisdictions, and can be "functionally equivalent to a letter of credit" in providing financial assurance. (NRG Ex. 2.0 at 26:487-498.) NRG witness Dauphinais recommended that ComEd be directed to accept surety bonds as a form of collateral to meet their transmission security requirement in the same way that PJM accepts surety bonds in Attachment Q of the PJM OATT. (*See* NRG Ex. 2.0 at 25:488-494 *citing* Section V.D. of PJM OATT Attachment Q.) PJM's form of surety bond includes "pay now/fight later" provisions that specify that the surety, like the issuer of a letter of credit, agrees it will not assert defenses to a PJM demand for payment on the bond, agrees that its obligation to pay on the bond on demand by PJM is unconditional and absolute, waives its right to investigate or verify any matter related to a demand for payment under the bond that would delay payment or delivery of funds, and requires the surety to pay out on the surety bond within one business day of the demand for payment. Mr.

Dauphinais explained that provisions like these "can ensure that the surety's obligation is solid, unconditional, and payable within one business day of the demand -- functionally equivalent to the payment mechanics of a Letter of Credit." (*Id.* at 25:494-26:500.) NRG also cited tariff language from Dominion recognizing surety bonds as an acceptable form of security, subject to reasonable utility review ("Surety Bond must be in a format acceptable to and approved by the Company"). (NRG Ex. 2.0 at 27:515-518.)

Mr. Dauphinais explained that restricting customers to cash or LOCs would unnecessarily increase the cost of capital for large-load customers and place Illinois at a competitive disadvantage compared to other states actively courting major load development. He testified that surety bonds are a commercially standard financial instrument, carry the same enforceable guarantee of performance as LOCs, and can provide strong credit assurance "without imposing unnecessary financing costs on customers." (*See* NRG Ex. 2.0 at 26:487-498; NRG Ex. 1.0 at 35:748-758.) Those additional costs ultimately increase the risk that otherwise viable projects will not locate in Illinois, depriving existing customers of the system-wide benefits of load growth -- including increased contributions to fixed system costs.

ComEd offered no contrary evidence showing that alternative credit instruments pose unreasonable risk, and no evidence that a LOC-only rule is required to protect customers. Instead, ComEd witness Mr. Perkins asserts that only LOCs can provide "prompt and immediate" payment and suggests PJM's acceptance of surety bonds occurs only "in the range of tens of millions of dollars," implying those instruments are ill-suited to large-load collateral requirements that "easily" reach into the hundreds of millions. (ComEd Ex. 5.0 at 23–24.) That critique is misplaced for two independent reasons.

First, PJM's Attachment Q is not a casual or weak assurance; it is an explicit "pay-now/fight-later" regime that renders a surety bond functionally equivalent to an LOC for purposes of immediacy and certainty of payment. As NRG witness Dauphinais explained, the Attachment Q form requires the surety to waive defenses, accept an unconditional and absolute obligation to pay on demand, and fund within one business day -- precisely the "cash-equivalent" timing ComEd claims is necessary to protect other customers. (*See* NRG Ex. 2.0 at 25:488-26:500.)

Second, ComEd offers no evidence that Attachment Q collateral is confined to "small" exposures or that surety instruments cannot be structured to support larger obligations. Moreover, what matters is not the nominal size of any single bond, but whether the tariff specifies equivalent draw mechanics and allows reasonable structuring (e.g., layering and tiering) to achieve the required total assurance. The record shows the potential TSA collateral could exceed $400 million, which is exactly why a flexible, multi-instrument framework is needed to minimize financing costs without compromising protection.

The record shows that ComEd's approach is unnecessarily restrictive, unsupported by analysis, and out of alignment with established utility practice, including practices under the PJM tariff. Therefore, NRG respectfully requests that the Commission reject ComEd's proposed LOC-only requirement and direct ComEd to accept surety bonds and tiered credit structures, consistent with industry norms and sound economic and regulatory practice by including the following language at the conclusion of ComEd's proposed definition of "Acceptable Letter of Credit":

> For purposes of satisfying security requirements applicable to Large Demand Project Applicants or Customers, the Company shall accept alternative forms of credit support that provide equivalent financial assurance, including but not limited to surety bonds and parental guarantees, provided such instruments are issued by entities of comparable credit quality and in forms reasonably acceptable to the Company. The Company shall not unreasonably withhold acceptance of any such alternative credit instrument, and may condition acceptance only on reasonable demonstration that the instrument

> provides the same enforceable payment assurance as an Acceptable LOC. Nothing in this section shall preclude the use of tiered or combined collateral structures (e.g., partial cash, partial surety bond, or parental guarantee) so long as the total secured amount meets the Company's required level of financial assurance.

Allowing this reasonable flexibility in acceptable collateral forms will protect ratepayers, preserve system planning certainty, and avoid deterring beneficial, large-load development in Illinois.

B. Revisions Related to Analysis of and Deposits for Large Demand Projects*

ComEd's proposed modifications to the GT&C improperly embed references to a yet-to-be-created FERC-jurisdictional Transmission Security Agreement ("TSA") as a retail service eligibility requirement and detail certain commercial terms of the TSA. Specifically, the proposed state distribution tariffs would require that the collateral requirements in this FERC-jurisdictional document guarantee ComEd's transmission revenues for a period of exactly ten (10) years. There are at least three (3) fundamental problems with ComEd's proposal.

First, ComEd's proposed tariff language relates to a FERC-jurisdictional document that does not yet exist. As NRG expert witness Dauphinais explained, "the Commission lacks jurisdiction to approve, enforce, or reference ComEd's proposed TSA within ComEd's tariffs because the TSA relates [to] FERC-jurisdictional transmission service… This approach is improper because it effectively requires the ICC to endorse or enforce the terms of a TSA that has not been filed with or accepted by FERC." (NRG Ex. 2.0, 28:538-548; 29:545-554.) As ComEd admits, this provision would enable ComEd to deny the large load customer retail service simply by ComEd itself not creating a TSA or filing the TSA at FERC. (*See* Leichtman, Tr. at 227:21-228:5.) Additionally, ComEd admits that under its proposed language, FERC could prevent a customer from receiving retail service by (1) not approving a TSA; (2) approving a TSA with a term that is either longer or shorter than ten (10) years; or (3) approving a methodology for calculating the collateral other than

ComEd's revenue guarantee. (*See* Tr. at 319:10-12, 322:9-323:1, 321:24-322:8.) The Commission should not empower either ComEd or FERC to unilaterally deny Illinois the benefits that large-load customers provide to the State.

Second, ComEd's proposed tariff language would put the Commission in the position of dictating commercial terms of a document that is exclusively in the jurisdiction of FERC. Specifically, ComEd's proposal would attempt to lock in both the term of the TSA guarantee (10 years) and the methodology of calculating the collateral (ComEd's unprecedented revenue guarantee approach). (*See* NRG Ex. 1.0 at 18: 391-399, 29:648-657. S*ee also* Tr. at 303:2-11.) However, as ComEd admits, "The TSA is a contract that will be filed with and reviewed by FERC under Section 205 of the Federal Power Act" (ComEd Ex. 6.0, 27:510-511. *See also* ComEd Ex. 4.0 at 19:376-384, ComEd Ex. 1.02 at 8.) ComEd repeatedly refused to respond to data requests related to the way the TSA would function because ComEd itself believes the terms of the TSA are "within the exclusive jurisdiction of FERC." (NRG-ComEd Cross Ex. 1. *See also* Perkins, Tr. at 331:18-332:23.) As detailed *supra* in Section II. B. of the instant Initial Brief, the Commission, FERC, and the courts have recognized that there is a bright line: just as FERC has no jurisdiction over distribution rates, the Commission has no jurisdiction over transmission-related agreements. As a matter of law, because the TSA's rates, terms, enforcement, and collateral obligations fall solely within federal jurisdiction, the Commission cannot dictate the terms of that agreement.

Finally, ComEd has not presented sufficient evidence that its proposed commercial terms would provide the appropriate balance between protecting its customers and attracting large load customers to Illinois. ComEd presented no evidence or analysis that ten (10) years is the appropriate term. Likewise, ComEd presented no evidence that its revenue guarantee is likely to be acceptable to FERC, much less that it strikes the right balance for attracting large load customers. ComEd provided no examples where either the Commission or FERC approved collateral requirements based upon a utility's projected revenues. Further, as discussed *infra* in Section V of the instant Initial Brief, NRG's proposed "incremental revenue requirement" or "IRR" approach provides a more reasonable methodology that would require cost-based collateral, encourage development at the lowest cost locations, and better protect ComEd's other customers.

NRG respectfully requests that the Commission reject the proposed "TRANSMISSION REVENUE SECURITY" language included in ComEd's proposed amendments to Original Sheet No. 150.1.

V. COMED'S PROPOSED REVISIONS TO RIDER DE – DISTRIBUTION SYSTEMS EXTENSIONS ("RIDER DE")*

ComEd proposes two substantive changes to Rider DE that would materially alter long-standing Commission-approved cost allocation and customer protection frameworks. Specifically, ComEd seeks to (1) expand the scope of "standard facilities" for which large-load customers must provide deposits to include facilities located on the customer's premises, and (2) require that customers with a Rider DE deposit obligation of $2 million or more provide an "Acceptable Letter of Credit" in lieu of cash. (Perkins, ComEd Ex. 2.0 at 3:51-63; 4:57-63.) ComEd asserts that these changes are necessary to "strengthen[] the deposit and collateral requirements for large load projects" yet provides no quantitative evidence showing that Rider DE has failed to protect ratepayers or that the proposed burdens are proportionate to any identified risk. (Perkins, ComEd Ex. 6.0 at 3:35-39.) Rather than address a non-existent problem in this proceeding, NRG respectfully requests that the Commission direct ComEd to address this issue in its upcoming rate case, multi-year rate case, or rate design proceeding where the Commission can adjust ComEd's proposal as well as any other rates it deems appropriate.

A. ComEd Proposal*

ComEd's proposals to significantly modify Rider DE are unsupported, inconsistent with cost-causation principles, and would impose unjustified and avoidable financial barriers to large-load commercial development in Illinois at precisely the time when the State is pursuing policies to attract such economic activity.

First, ComEd seeks to expand Rider DE to require deposits for standard distribution facilities located on certain customer premises, which are currently funded through embedded rates. (Perkins Sur., ComEd Ex. 6.0 at 2:26-33.) As ComEd describes it: "ComEd proposed to include… the costs to provide any standard facilities that happen to be located on the property of Large Demand Projects Applicants or Customers." (Perkins Sur., ComEd Ex. 6.0 at 2:26-29 *citing* ComEd Ex. 1.03, 3rd Rev. Sheet No. 270.) ComEd acknowledges this is a departure from current tariff practice, under which Rider DE applies only to facilities extended to the premises, yet ComEd does not identify any instance in which the existing approach has failed to protect customers, nor does it present any quantitative support, study, or analysis demonstrating that current Rider DE treatment has resulted in cost-shifting or uncollected investment or that the risk is imminent. (*See id. See also* Tr. at 350:5-17, 351:2-.352:13.) As ComEd's witness Perkins admitted, ComEd did not perform benchmarking or sensitivity analyses and relies instead on hypothetical scenarios. (*See* Tr. at 354:19-355:4.)

Second, ComEd proposes to require customers with Rider DE deposit obligations of $2 million or more to provide an "Acceptable Letter of Credit," as defined in its tariff, in lieu of posting cash. (ComEd Ex. 6.0 at 2:31-33). Under ComEd's language, once a customer's deposit exceeds $2 million, the excess amount must be secured with a qualifying LOC that meets ComEd's proposed credit instrument criteria. (*See id.*; *see also* ComEd Ex. 1.02, Ill. C.C. No. 10, 1st Rev. Sheet No.

151.3.) However, ComEd offers no empirical basis for selecting the $2 million threshold nor any study of the impacts of restricting acceptable collateral instruments.

ComEd offers **no study, analysis, or quantified evidence** that current Rider DE treatment has produced cost-shifting or that this change is necessary to protect ratepayers. To the contrary, over the last five (5) years, has not experienced ***any*** customers over 50 MW that required significant "on-premises" costs. (*See* NRG-ComEd Cross Ex. 3. *See also* Tr. at 357:23-359:8.) Instead, ComEd points to generalized concerns regarding the potential that large-load growth customers could impose those costs, without identifying a single instance where on-premises facilities have resulted in costs being paid by other ratepayers. (Perkins Dir., ComEd Ex. 2.0 at 2:47-49.) If ComEd or any other stakeholder saw this as an actual issue, it could have been raised in ComEd's rate design proceeding that was filed last year but neither ComEd nor any other party raised this issue. (*See* Perkins, Tr. at 360:22-361:9.) Further, for the primary driver of these on-premises facilities – the transformers, which can cost in excess of $50 million – customers who connect at over 345 kV are required to purchase those facilities under Rider ZSS Zero Standard Service and all other customers are given the option to purchase those facilities or pay a variable "high voltage transformer rental" charge. (*See* Tr. at 357:14-22.)

ComEd failed to provide data and detail regarding:

- A breakout of the component costs that it fears could drive higher costs at a large-load customer's premises;
- The basis for setting the cut-off at 50 MW rather than some higher or lower level of demand;
- The likelihood that the over-50 MW customer's on-premises would exceed $10 million or be less than $2 million; or
- The anticipated average on-premises standard facilities costs for large load customers.

(*See* Perkins Tr. at 351:14-355:4.) ComEd has the burden of proof for each element of its proposal. (*See* 220 ILCS 5/9-201(c); *Chicago*, 13 Ill. 2d at 617-618.) As NRG witness Dauphinais explained, "ComEd still has failed to provide any analysis or supporting data related to its proposal to include on-premises facilities in Rider DE deposits change. Without such evidence, ComEd's proposal is unjust, unreasonable and unduly discriminatory against customers with projected or actual demand in excess of 50 MW." (NRG Ex. 2.0 at 34:663-35:666.)

Under ComEd's proposal, identical high-voltage equipment with identical costs would receive entirely different rate treatment depending solely on the size of the customer it serves. Equipment serving smaller customers would be classified as "standard" and recovered through ComEd's base rates, while the same equipment serving a large-load customer would be separately identified and subject to Reider DE for that customer. This disparate treatment plainly contravenes the Public Utilities Act's mandates that rates be cost-based, just, and non-discriminatory. (*See* 220 ILCS 5/1-102(d)(iii); 220 ILCS 5/16-108(c); 220 ILCS 5/9-241(a). *See also Ameren Illinois Co. v. Illinois Commerce Comm'n,* 2025 IL App (5th) 240014-U, ¶ 134 (ICC does not have authority to have authority to have one set of customers pay costs assigned to another).)

If circumstances evolve in a way in which the treatment of certain on-premises facilities becomes an actual issue, and ComEd believes the treatment of on-premises facilities warrants further examination, there is an appropriate forum in which it can present supporting data and propose a consistent, system-wide approach. As ComEd witness Perkins acknowledged, under the Climate and Equitable Jobs Act, ComEd must file either a traditional rate case or another multi-year rate case in 2027, for rates effective in 2028. (*See* Tr. at 359:17-360:1. *See also* 220 ILCS 5/16-108.18(d)(9).) Moreover, if rate design issues are not included in that filing, ComEd is required to initiate a rate design proceeding no later than January 2028. (*See* Perkins, Tr. at 360:18-

361:13.) Those upcoming proceedings—not this narrowly focused tariff docket—are the proper venue to address any broader reconsideration of cost allocation for on-premises facilities.

In short, ComEd's Rider DE revisions would impose new financial burdens on large-load customers, without record support that such changes are necessary or appropriate at this time to protect existing ratepayers or consistent with cost-causation principles. NRG respectfully requests that the Commission enter an Order directing ComEd to address this issue in its upcoming rate case, multi-year rate case, or rate design proceeding so that the Commission can issue a more informed data-based decision consistent with cost-causation principles.

B. Intervenor Alternative Proposals*

NRG reserves the right to respond to any alternative proposals advanced in the initial briefs other parties.

VI. TRANSMISSION SECURITY AGREEMENT (TSA)*

ComEd proposes to condition retail electric service for any Large Demand Project Applicant or Customer on executing a new FERC jurisdictional Transmission Security Agreement ("TSA"), which has not yet been developed by ComEd or approved by FERC. Under ComEd's proposal, each TSA would require customers to guarantee ComEd's expected transmission revenues from that customer for ten (10) years even if the customer never takes service or develops load more slowly than forecast. As the proceeding evolved, ComEd indicated it does not propose a single TSA template but instead plans to negotiate and file individual TSA agreements with FERC on a case-by-case basis. (*See* ComEd Ex. 6.0 at 24:489-495.) It was unable or unwilling to identify which terms would vary among the various TSAs. (*See* ComEd witness Perkins, Tr. at 229:4-22.)

NRG supports protecting existing customers from undue risk but opposes ComEd's TSA structure because it improperly links retail service to a FERC jurisdictional document that does not yet exist, bases collateral on projected revenues rather than incremental costs, and requires massive collateral postings before customers have reliable cost estimates.

As explained below, the Commission should reject ComEd's reference to the TSA in its tariffs or, at minimum, adopt NRG's modifications that ensure any such security is tied to actual incremental transmission costs rather than hypothetical revenue projections and provide the customer with a reasonable sense of its transmission and distribution costs.

A. ComEd's Proposal Would Improperly Condition Retail Service Upon FERC Approving a Yet-to-be-Developed FERC-Jurisdictional TSA

ComEd acknowledges that its proposed tariff language is designed to make the filing of a TSA with FERC a prerequisite for retail service. (*See* ComEd Ex. 1.02 at 8; NRG Ex. 1.0 at 19:403-405.) In effect, ComEd seeks to make state-regulated retail access contingent on the future approval of a FERC-jurisdictional contract that neither the Commission nor any party has reviewed, much less negotiated or litigated. This approach is unprecedented, jurisdictionally flawed, and contrary to sound regulatory policy.

The first problem is that ComEd has not finalized -- let alone filed and received approval of -- the TSA that would control large-load customers' rights. Key commercial elements, including (a) the percentage of load ramp to be guaranteed, (b) whether collateral may be adjusted mid-stream, and (c) the timeline for collateral release, remain entirely unknown. (*See* ComEd Ex. 4.0 at 3:41-47, 6:49-69. *See also* NRG-ComEd Cross Ex. 3.) ComEd's witness Mr. Perkins could not identify which provisions might vary across TSAs. (*See* Tr. at 329:4-22.) Without knowing these mechanics, the Commission cannot determine whether the TSA (or TSAs) would strike the appropriate balance between attracting beneficial new load and protecting existing ratepayers.

Adopting a tariff that references a non-existent, undefined FERC instrument would abdicate the Commission's duty to ensure just and reasonable retail terms.

Second, even more problematic is that ComEd's language contains no requirement that ComEd actually finalize or file a TSA with FERC. This omission would allow ComEd to unilaterally block a customer from taking retail service simply by withholding a FERC filing. Under cross-examination, Mr. Perkins admitted that if ComEd does not file a TSA with FERC, "the customer doesn't get service." (Tr. at 318:15-319:4.) Such unchecked discretion is antithetical to the Public Utilities Act's nondiscrimination mandate and would effectively place ComEd in the role of gatekeeper determining who may receive retail service in Illinois. (*See* 220 ILCS 5/9-241(a).) The Commission – not the utility – must control that determination.

Third, ComEd repeatedly refused to discuss or commit to the TSA's commercial provisions, stating that those terms are "exclusively FERC-jurisdictional" and outside this Commission's authority. (*See* NRG-ComEd Cross Ex. 1; ComEd witness Perkins Tr. at 331:18-332:23. *See also* ComEd 6.0 at 24:485-488.) NRG agrees that the commercial terms of the TSA are FERC-jurisdictional. (*See supra* at Section II. B. of the instant brief.) As NRG witness Dauphinais explained: "The Commission cannot require execution of a TSA that FERC has not approved… This is purely a matter for FERC to decide… The Commission should continue to maintain the current Rate RDS language and not allow ComEd to force Large Demand Project Applicants to execute a TSA, unless and until FERC approves a TSA for ComEd." (NRG Ex. 2.0 at 30:585-590.) Because the TSA falls squarely within FERC's jurisdiction, the Commission cannot lawfully dictate its terms or require execution of a contract that FERC has not accepted.

Finally, ComEd's proposal assumes FERC will eventually approve a TSA with the conditions included in ComEd's proposed tariff. However, there is no guarantee that FERC will do so -- or that FERC will even view a TSA as the appropriate mechanism for addressing large-load risks. As NRG witness Dauphinais explained, there is a real risk the terms in ComEd's proposal will not be embraced by FERC. (*See* NRG Ex. 1.0 at 22:482-498.) Even ComEd witness Leichtman acknowledged that he does not know "what actions FERC might take or how it might modify a proposed agreement in front of it." (Tr. at 146:15-20.) If FERC declines to approve a TSA or modifies the terms in a way that is inconsistent with the conditions included in ComEd's proposal, ComEd's tariff language would bar all large-load customers from taking retail service until the Commission reopens and revises the tariff. Mr. Perkins conceded that in this event ComEd would have to petition the Commission to modify the tariff before any new customers could take service. (*See* Tr. at 317:15-323:13.) That outcome would create an indefinite moratorium on large-load development in Illinois as ComEd again would be in a position to block these customers from connecting due to the operation of its proposed language.

In short, conditioning Illinois retail access on a FERC filing that has not been drafted, approved, or even concretely conceptualized creates regulatory uncertainty for all parties. It invites conflict between state and federal jurisdiction, vests excessive discretion in the utility, and threatens to freeze new investment. The Commission cannot evaluate -- let alone enforce -- terms that do not exist and fall outside its jurisdiction. The proper course is clear: the Commission should delete all references to a TSA from ComEd's proposed tariffs and maintain the existing Rate RDS framework unless and until FERC independently approves a TSA structure that this Commission can subsequently reference with confidence and clarity.

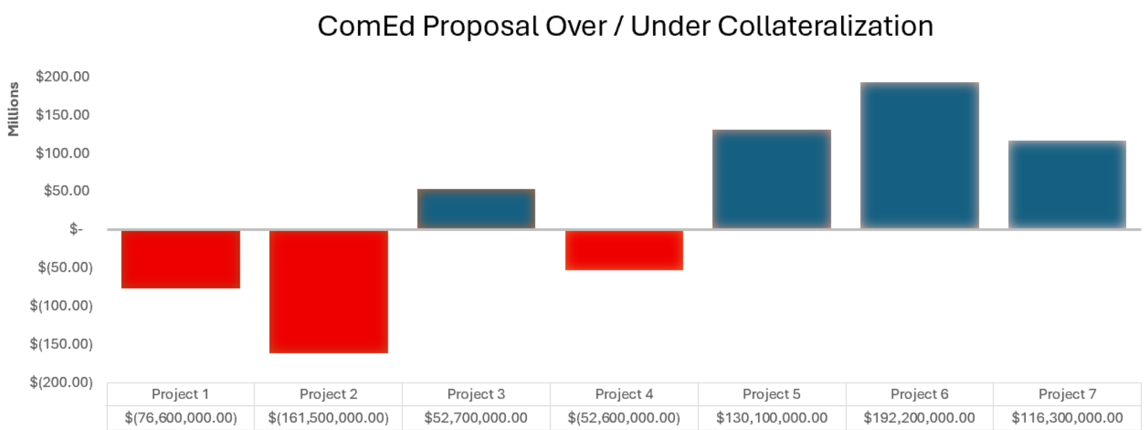
B. ComEd's Proposal Would Improperly Base The TSA Collateral Upon ComEd's Revenue Requirement Rather Than Incremental Costs

ComEd confirmed that under its proposal the TSA: (1) does not seek to recover directly allocable incremental costs, (2) sets collateral levels based upon long-term load forecasts rather than actual load, (3) requires customers to cover "revenue shortfalls" relative to forecasted load; and (4) may demand letters of credit of nearly a half billion dollars for large load projects. (*See* NRG Ex. 1.0 at 20:433-451; Leichtman Tr. at 191:22-192:4.) ComEd has confirmed the proposed TSA would serve as a guarantee of ComEd's transmission revenue requirement, rather than act as a cost-based security instrument. (*See* Perkins, Tr. at 338:3-10.) ComEd provided no examples where the Commission has approved collateral requirements based upon a utility's projected revenues. (*See id.* Tr. at 341:19-23.)

Requiring a minimum revenue guarantee based on a large load addition's submitted load ramp applied to ComEd's standard transmission and distribution rates, which is what ComEd has proposed, is inconsistent with cost-based rates and well-established principles of cost causation-. The Public Utilities Act requires that rates be just and reasonable, and that there are no customer or class subsidies without lawful justification. (*See* 220 ILCS 5/9-201, 9-241(a). *See also* NRG Ex. 1.0 at 10:251-252.) The Commission and the courts have consistently interpreted this standard to mean that rates should be designed in a way that is both cost-based and consistent with cost--causation principles. (*See Central Illinois Light Co. v. Illinois Commerce Comm'n*, 252 Ill. App. 3d 577, 586 (3rd Dist. 1993) (rates must be designed to bring charges closer to cost of service, reducing inter-class imbalances and ensuring that cost-causers are cost-payers); *City of Chicago v. Illinois Commerce Comm'n,* 281 Ill. App. 3d 617, 625 (1st Dist. 1996) (It is unjust to charge one group of ratepayers for the costs of serving another group). *See also* NRG Ex. 1.0 at 10:252-254.) As NRG witness Dauphinais explained, "Any framework that departs from cost-based ratemaking should be presumed to be unjust, unreasonable, unfair, and harmful to Illinois ratepayers." (NRG Ex. 1.0 at 254-256.)

NRG expert witness Mr. Dauphinais presented quantitative, empirical, data-driven analysis showing that ComEd's proposed revenue-based TSA collateral formula would, in practice, generate wildly inconsistent and inequitable collateral requirements -- too little in some cases to protect existing customers and too much in others, imposing excessive financial burdens on new projects. (*See* NRG Ex. 1.0 at 12:303-17:390.) As explained by Mr. Dauphinais, Table JRD1 in his Direct Testimony compares the collateral that would be required under ComEd's proposed formula (based on ten years of forecasted load multiplied by ComEd's Network Integration Transmission Service rate) against the actual incremental transmission costs identified by ComEd in its PJM planning data for seven (7) actual large load projects that have been proposed in the ComEd service area. (*See id.* at 14:345-362.) The table below summarizes Mr. Dauphinais' analysis of each of the projects as compared to that of ComEd's proposal:

<u>NRG Initial Brief Table 1</u>



(Source: NRG Ex.1.0 at 16, Table JRD-1, "Comparison of Guaranteed Revenues Based on Load Ramp Applied to Standard Rate to Revenue Requirement of Required Incremental Transmission System Reinforcement Investment for First Ten Years of Service," at Column 4.)

Thus, the results of Mr. Dauphinais' analysis show a substantial mismatch between collateral and cost: "For some large load projects, the transmission revenue requirement of the incremental transmission facilities needed to serve the Large Demand Project significantly exceeds the guaranteed revenues that the TSA would provide. For other projects, the TSA would require collateral several times greater than the cost of the facilities actually needed." (NRG Ex. 2.0 at 33:634-639.) For three of these actual projects, ComEd's proposal would collect collateral that would be between $52.6 million to $161.5 million short of covering the incremental costs imposed by the projects, leaving other ratepayers exposed. For the other four projects, ComEd's calculation would result in a request for collateral that is $52.7 million to $192.2 million more than their incremental costs, which does not send the appropriate pricing signal and may result in the project simply not being built in Illinois. As Mr. Dauphinais explained, "To the extent other utilities elsewhere are more accommodating than ComEd with respect to forms of allowed collateral for distribution facility deposits and transmission security requirements, they will be more attractive for locating new large demand projects than the ComEd service territory." (NRG Ex. 1.0 at 34:730-735. *See also* Rearden, Tr. at 56:13-18 (recognizing the need for large loads to be "interconnected in an efficient way.")) Mr. Dauphinais' analysis demonstrates that ComEd's proposal would undercollateralize high-cost projects and overcollateralize low-cost ones, depending entirely on the product of its calculation, not actual system impacts or costs.

ComEd did not dispute Mr. Dauphinais' underlying data or analysis. To the contrary, Mr. Perkins acknowledged that "in some instances the collateral would exceed the incremental transmission facility costs" and in other instances it would not. (*See* ComEd Ex. 6.0 at 27:555558). This confirms ComEd's approach is not cost-reflective.

Mr. Perkins asserts that it is "to be expected" that in some instances ComEd's proposed TSA collateral would exceed incremental transmission facility costs and in others it would fall below, and asserts that this variation somehow undermines NRG's analysis. (*See id.* at 27:557558.) In fact, that very inconsistency is the central point of NRG's evidence -- it demonstrates that ComEd's TSA formula is untethered from cost causation and produces irrational project-specific results.

As shown in Table JRD1, Mr. Dauphinais compared seven representative large load projects using ComEd's own PJM-filed incremental transmission cost data against the TSA collateral that would result from ComEd's proposed "revenue-times-rate" (revenue x rate) formula. (*See* NRG Ex. 1.0 at 16; NRG Ex. 2.0 at 33:634639.) The analysis shows that for some projects, the proposed collateral would be several times greater than the actual cost of the required transmission facilities, while for others it would be materially lower -- meaning existing customers would not be adequately protected. As Mr. Dauphinais testified: "The results of my analysis confirm that ComEd's TSA proposal cannot be justified as a cost-based security mechanism. It would neither assure adequate protection to ratepayers in all cases nor avoid imposing excessive, anticompetitive collateral in others." (NRG Ex. 2.0 at 33:640644.) Mr. Perkins himself concedes the same pattern -- acknowledging that the formula will produce both excessive and insufficient collateral -- but offers no explanation for why a method that over and undersecures projects simultaneously could be considered "just and reasonable."

Mr. Perkins asserts that "Covering the cost of incremental infrastructure development … does not protect other customers" because a project that fails to materialize could deprive ComEd of expected revenues. (ComEd Ex. 4.0 at 25:558566.) This exposes the true nature of ComEd's proposal: it is not a cost-based protection mechanism but a revenue guarantee structure, which requires full funding even if the customer never takes service.

That approach directly violates the principle of cost causation, which requires that customers pay only for the costs they cause. (*See supra* at Section II. B. of the instant brief.) Once incremental transmission investment is fully secured, other customers are made whole; ComEd is not entitled to a guaranteed level of load realization to pay for the "old" system. ComEd presented no analysis to demonstrate that the hypothetical risk that a large-load customer could "shut out other customers" would ever occur – especially if the "departing" large load customer already has paid for the incremental infrastructure needed to prepare a location. Nothing in the Public Utilities Act or FERC precedent allows ComEd to demand advance collateral to guarantee speculative revenues from unbuilt facilities.

Further, Mr. Perkins' assertion that unrealized load "exposes customers to risks that exceed by many times the value of incremental investment" is unsupported. (ComEd Ex.6 .0 at 27:562-564.) No evidence shows that failure of a large-load project leads to stranded system costs or ratepayer harm beyond the incremental facilities built for that load. To the contrary, transmission expansion in PJM is modular and regionally planned; if a project fails to materialize, any facilities already approved can either be deferred or reallocated to serve other load growth.

C. NRG's Incremental Revenue Requirement ("IRR") Approach Is Consistent With Cost-Causation Principals

NRG's Incremental Revenue Requirement ("IRR") approach would tie the collateral obligation directly to the specific transmission facilities required to serve a project -- aligning responsibility with identifiable cost impacts and eliminating both under- and over-collateralization. (*See* NRG Ex. 1.0 at 11:280-17:390; NRG Ex. 2.0 at 31:591-33:645.) Mr. Dauphinais explained how this methodology would work:

> The Commission should direct ComEd to require an "incremental revenue requirement" guarantee. That is, a large load customer should guarantee a level of annual minimum revenues equal to the annual revenue requirement of the transmission and distribution investments that would not have been necessary but for that new large load addition. As long as revenues from the new large load addition customer in this amount are reasonably guaranteed, it will hold existing customers harmless. It will do so because that guaranteed amount of new revenue from the new large load addition customer will completely offset the increase in ComEd's revenue requirement caused by that new large load addition.

(NRG Ex. 1.0 at 11:282-12:290.) By basing the collateral on the incremental revenue requirement, the costs which the new customer caused would be covered by the guarantee and existing customers would benefit from the new additional contribution toward ComEd's existing fixed transmission and distribution costs. This would act to lower ComEd's transmission and distribution rates from the level they would have otherwise been at absent the new large load addition customer. (*See* NRG Ex. 1.0 at 12:295-302.) NRG's incremental-cost approach ties collateral to the transmission facilities that would be required "but for" the large-load project. (NRG Ex. 2.0 at 33:603-608.) Unlike ComEd's one-size-fits-all formula, the IRR method scales the security to each project's real cost impact -- providing adequate protection without distortion. As a result, unlike ComEd's proposal, the IRR approach also sends an appropriate price signal for large load additions to locate in locations where the required transmission and distribution investments for the large load addition would be lower. (NRG Ex. 1.0 at 13:326-14:344.) This cost-based framework mirrors the established Rider DE methodology and advances cost-causation principles long recognized by this Commission and FERC. (*See supra* at Section II. B. of the instant brief.)

ComEd witness Perkins asserts that while ComEd tracks individual project costs, those data "cannot or should not be allocated to individual large-load customers" because its transmission investments are part of an integrated network benefiting all customers. (ComEd Ex. 6.0 at 25:569-578.) This argument misrepresents both the purpose and practicality of Mr. Dauphinais's recommendation. As Mr. Dauphinais testified, ComEd already identifies incremental transmission costs associated with new load additions through its participation in PJM's Regional Transmission Expansion Plan and cluster study processes. (*See* NRG Ex. 2.0 at 32:630–33:633.) The integrated nature of ComEd's system does not prevent identifying marginal costs; it simply requires that engineering and planning data be used to assign responsibility for facilities that would not exist "but for" the large-load project.

Mr. Perkins's testimony concedes that ComEd tracks project-specific costs but seeks to avoid using them to align collateral with cost causation. Cluster studies already apportion responsibility for incremental facilities among participating customers, confirming that such allocations are both accurate and practical. NRG's IRR framework builds upon ComEd's existing data and PJM planning processes to ensure collateral reflects actual incremental cost exposure, providing a transparent and cost-based alternative consistent with Commission precedent and established cost-causation principles.

AG witness Seryak criticized the IRR method, asserting that because it is limited to ten years of collateral, it produces an alleged "$900 million under-recovery" when compared to ComEd's 40-year cost of service. However, on cross-examination, Mr. Seryak admitted that the ten years of collateral in NRG's IRR approach understandably mirrored the ten years of collateral in ComEd's proposal. (*See* Tr. at 87:10-19.) Further, Mr. Seryak's workpapers reveal that he stopped calculating customer *revenues* after year 10 while continuing to accumulate *costs* through year 40. (*See* Tr. at 94:18-22; NRG-AG Cross Ex. 9.) When the revenues from years 11-40 are properly included, the alleged shortfall disappears -- and overall becomes an over-recovery, confirming the way in which these large-load customers contribute to ComEd's "old" system costs. The AG's analysis therefore fails to measure true ratepayer exposure and misrepresents the balance between customer payments and system costs. NRG's IRR approach properly focuses on the early-stage exposure period when a project's load uncertainty could impact incremental facilities -- not on guaranteeing ComEd's lifetime rate-base recovery.

As Mr. Dauphinais testified, large-load customers should be responsible only for the incremental revenue requirement associated with transmission facilities that would not exist "but for" their load for their initial ten (10) years of service. (NRG Ex. 1.0 at 15:325–331). Mr. Seryak's proposal to extend the IRR cost responsibility over a 40-year cost horizon would transform a targeted cost-protection mechanism into a revenue guarantee, violating cost-causation principles and Commission precedent. The record confirms that NRG's IRR framework is the only approach grounded in empirical evidence, proportional to actual risk, and consistent with the Commission's duty to ensure just and reasonable rates.

NRG's proposal ties the security obligation actual incremental transmission costs, not forecasted revenue requirements and protects customers without turning transmission tariffs into a forward earnings guarantee.

D. ComEd Should Be Required To Provide A "Reasonably Binding" Estimate Of All Costs Prior To Execution Of The TSA

NRG further recommends that no Large Demand Project Customer be required to execute a TSA until at least 30 days after receiving from ComEd a reasonably binding, complete estimate of all Rider DE deposits, long-lead-time deposits, and non-standard service payments. (*See* NRG Ex. 1.0 at 20:428-430). This would ensure that customers have a reasonable understanding of their full financial obligations before being compelled to post multi-million-dollar security.

ComEd has recognized that execution of the TSA will bind the customer to providing collateral that could total nearly a half billion dollars. (*See* Leichtman Tr. at 191:22-192:4. *See also* NRG Ex. 1.0 at 20:433-451.) To make such a non-revocable commitment, it is only reasonable that customers be provided with a "reasonable binding" estimate of all the transmission and distribution cost and deposit obligations they will be subject to by ComEd. Although the cluster study will provide an understanding of the transmission costs, the customer needs to know both its transmission and distribution cost exposure. As NRG witness Dauphinais explained, "It would be commercially unreasonable to expect any customer to commit to posting collateral on the TSA, without knowing the full extent of the financial obligation they will ultimately be expected to make, including the Rider DE costs." (NRG Ex. 1.0 at 30:585-590.)

Mr. Dauphinais explained that a "reasonably binding" estimate does not require a precise calculation, but rather a ballpark estimate that is no worse in accuracy than an American Association of Cost Engineers International ("AACE") Class 3 cost estimate. (*See id.* at 31:686-32:693 *citing* AACE Recommended Practice 10S-90, Engineering Terminology, July 23, 2025, at 37.) This is the class of cost estimate, with an expected accuracy typically in the range of -20% to +30%, that is typically required before substantial financial commitments and generally prepared to form the basis for budget authorization, appropriation and/or funding. (*See id.*) Mr. Dauphinais explained that the magnitude of financial commitment that is being made by executing a TSA is consistent with providing this class of estimate. (*See id.* at 32:692-693.)

ComEd did not take issue with the commercial reasonableness of providing such an estimate but rather discussed the difficulty of providing a precise calculation of its distribution costs. (*See* ComEd Ex. 5.0 at 19:386-402.) However, on cross-examination, ComEd witness Mr. Leichtman admitted that ComEd presented no evidence that it was incapable of providing estimates in the range that NRG witness Dauphinais recommended. (Tr. at 212:18-213:22.)

E. Additional Time Limits And Guidance Should Be Included In ComEd's Tariffs

During cross-examination, it was revealed that, under the language proposed by ComEd, there are several ways in which ComEd improperly could give preference to projects that ComEd wanted to advance and inappropriately disadvantage projects it wanted to negatively impact. Several discrete changes to the language ComEd has proposed could prevent such improper and potentially unduly disciminatory results.

ComEd admitted that it did not include in its tariffs any obligation that ComEd timely provide a draft TSA to large load clients. ComEd witness Leichtman recognized that it would reduce uncertainty if ComEd's tariffs were to require ComEd to present a draft TSA to its large load customers no later than forty-five (45) days following the completion of the cluster study. (*See* Tr. 196:1-23.)

F. Conclusion: The Commission Should Remove Or Significantly Modify ComEd's Reference To A TSA

The record demonstrates that ComEd's proposal to include a reference to a TSA exceeds the Commission's authority by conditioning retail service on execution of an yet-to-be-drafted, unapproved FERC-jurisdictional document, violates cost-causation by basing collateral on revenues rather than incremental costs, and imposes unjust barriers to load development that would otherwise benefit all customers. NRG respectfully requests that the Commission reject ComEd's TSA-related tariff language or, at minimum, condition approval on ComEd revising the language to incorporate NRG's incremental-cost methodology and providing cost transparency before requiring customers to execute a TSA.

VII. OTHER ISSUES

A. Future Proceeding

In his rebuttal testimony Staff witness Rearden proposed that the Commission direct ComEd to file a new, formal "future proceeding" within two years of the Final Order to revisit broad policy issues concerning service to large load customers. (*See* Staff Ex. 2.0, 3:59-7:135.) Dr. Rearden characterizes such a follow-up docket as a forum to "develop a record on which the Commission can make informed and reasonable decisions" regarding "wide ranging" issues raised by intervenors but offers no statutory basis for such a result. (*Id.* at 4:69-70, 82-86.) He further asserts that informal workshops would be "not the most effective approach," urging instead a Commission-ordered formal docket to gather data on ComEd's processes and progress. (*See id.* at 5:91-96.)

NRG respectfully opposes Staff's recommendation. A Commission-ordered "future proceeding" of the breadth proposed by Dr. Rearden is unnecessary, beyond the scope of this docket, and inconsistent with Commission practice and policy favoring regulatory certainty. The record demonstrates that the Commission can address many of the issues in other forums where similar issues are being addressed and can ensure adequate oversight through existing tools without pre-judging the need for a subsequent contested case.

First, the record does not support the Commission finding that a separate, follow-up docket is required to protect customers or to evaluate ComEd's implementation. ComEd's proposed tariffs and intervenors' proposed revisions already introduce meaningful transparency, deposit safeguards, and procedural improvements. (*See* ComEd Ex. 6.0, 2:23-59; *see also* ComEd Ex. 5.0, 26:1-27:3; NRG Ex. 2.0 at 31:591-33:645.) To the extent that ComEd has not justified its proposals, they should be rejected. (*See* 220 ILCS 5/9-201(c). *See also* NRG Ex. 2.0 at 34:646-

35:666.) As ComEd explains, the Commission retains ample authority to require informational or compliance filings if additional reporting becomes warranted. (*See* ComEd Ex. 5.0, 26:3-27:12.)

Second, establishing a mandatory "future proceeding" would inject regulatory uncertainty precisely where stability is most needed. Large-load and data-center developers require predictable cost-allocation and interconnection processes when evaluating multi-hundred-million-dollar investments. By signaling that all provisions adopted here may be reopened within two years, the Staff proposal would undermine the confidence of customers and investors in the durability of the Commission's determinations. ComEd explains that embedding a requirement for a new docket would "make it impossible for a prospective customer to know how their project will be studied" and could hinder economic-development opportunities in Northern Illinois. (Leichtman Sur., ComEd Ex. 5.0 at 3:65-68.) Such an outcome directly contradicts the Commission's objectives of attracting large-scale economic development and maintaining competitive neutrality among potential host jurisdictions.

Third, there already are a number of forums that are currently open or are soon to be initiated within which broad-based policy proposal can be comprehensively explored or additional tariff revisions can be fully evaluated. For example, the ongoing Future of Gas workshops and soon-to-be-initiated Renewable Energy Access Plan (REAP) docket are forums in which stakeholders consider both legislative issues and regulatory solutions, making them appropriate forums to consider the Joint Non-Governmental Organizations' proposals. (*See* ICC webpages dedicated to the Renewable Energy Access Plan and Future of Gas workshops. See also NRG Ex. 2.0 at 14:267-15:293.) Additionally, ComEd is required to file cases to consider the rates in and rate design of its tariffs. The Commission also soon will be filing a joint report together with the Illinois Power Agency ("IPA") and the Illinois Environmental Protection Agency regarding resource adequacy issues that will result in another proceeding to develop solutions to any identified issues. (*See* IPA Resource Adequacy Study webpage. *See also* 415 ILCS 5/9.15(o).)

Finally, the Commission's established mechanisms -- periodic compliance filings under Section 8-101, tariff revisions under Section 9-201, and rehearing or investigation authority under Section 10-113 -- already provide the procedural safeguards Staff seeks. (*See* 220 ILCS 5/801, 9-201, and 10-113.) Mandating a new docket would therefore be redundant and inefficient, imposing litigation costs on all parties without enhancing consumer protection or transparency.

In contrast to Staff's proposed "follow-up docket," ComEd supports a single post-order compliance filing to implement the Commission's determinations and provide the Commission with the data necessary to monitor tariff implementation. (*See* ComEd Ex. 5.0, 26:3-27:12; Staff Ex. 2.0, 5:94 – 96.) This approach strikes the proper balance between transparency and efficiency – allowing the Commission, Staff and stakeholders to review implementation without reopening the proceeding or imposing unnecessary regulatory burdens.

NRG therefore respectfully requests that the Commission reject Staff's proposed future docket and instead adopt ComEd's more measured compliance-filing proposal as the appropriate mechanism for continued oversight.

B. Compliance Filing

C. Load Ramp

D. Cluster Study

During cross-examination, it was revealed that, under the cluster study language proposed by ComEd, there are several ways in which ComEd improperly could give preference to projects that ComEd wanted to advance and inappropriately disadvantage projects it wanted to negatively impact. Several changes to the language ComEd has proposed could prevent such improper results.

First, there is no requirement that ComEd timely release the results of its cluster studies. (Leichtman Tr. at 215:2-8.) Thus, under ComEd's proposal, it is possible that ComEd could complete the cluster study and then – for any reason – decide not to provide the study results to the large load customers, thereby delaying the development of the projects. ComEd witness Leichtman indicated that ComEd would not object to being required to share those results as soon as practical. (Tr. at 215:9-13.)

Second, under ComEd's proposed tariff language, there is no requirement that ComEd provide the results of the cluster study to all members of the cluster simultaneously. Thus, there is nothing in the tariffs that would prevent ComEd from sharing the cluster study results to one customer months before releasing the results to others, enabling the one customer to move forward with the interconnection process while the other customers were sidelined. (*See* Leichtman Tr. at 201:11-16.) NRG respectfully requests that ComEd be required to share the cluster study results contemporaneously with all members of the cluster study.

Third, the language in ComEd's proposal would allow ComEd ***at its sole discretion*** to require a new engineering study if there is ***any*** modification to the load ramp schedule that the customer provided at the outset of its application process. Thus, even with an enormous project an insignificant revision to a single month's projected load over a period of ten years could result in ComEd deciding to delay the project and restart the engineering process. (Leichtman, Tr. at 205:16-21.) NRG respectfully requests that the tariff language to be revised to provide that ComEd only be allowed to require a new engineering study be conducted if ComEd ***reasonably*** determines that there is a ***material*** change to the customer's load ramp.

E. Load Forecasting
F. Transition Issues

ComEd's proposal failed to include transitional protections that are necessary to ensure fairness, regulatory certainty, and competitive neutrality. The Public Utilities Act specifically contemplates that the Commission should ensure that "regulation allows for orderly transition periods to accommodate changes in public utility service markets". (220 ILCS 5/1-102(d)(v).)

As discussed *supra* in Section III. A. 1. of the instant brief, NRG has proposed that the Commission condition approval of any large-load definition and framework on explicit grandfathering protections for projects with completed or in-process cluster studies and for customers where ComEd has already commenced engineering or construction work. (*See* NRG Ex. 1.0 at 38:816-39:842.) This is consistent with similar calls from Microsoft. (Microsoft Ex. 1.0 at 6:49-60.) Illinois courts and the Commission have repeatedly held that regulatory certainty and protection of reasonable reliance on regulatory structures are critical. (*See, e.g., Citizens Util. Bd. v. Ill. Commerce Comm'n*, 166 Ill. 2d 111, 124 (1995); *BPI v. Ill. Commerce Comm'n*, 146 Ill. 2d 175, 244–45 (1991); *Commonwealth Edison Co.*, ICC Docket 13-0387, Final Order at 259 (Dec. 18, 2013).)

ComEd confirmed in discovery and testimony that cluster-study projects and those that have begun construction will be grandfathered, and it stated it is amenable to the Commission memorializing these commitments. (*See* NRG Ex. 1.0 at 38:816-39:842 *citing* NRG Ex. 1.5 ComEd Responses to NRG-ComEd Data Request Nos. 1.04(a), 1.04(c), 2.01(a), 2.01(b).) Therefore, the Commission should condition approval on ComEd honoring those commitments. NRG respectfully requests that the Commission condition approval of ComEd's tariff amendments on ComEd honoring its commitments to: (1) apply current tariff terms to projects already in active cluster studies; (2) preserve existing initial deposits for current applicants; and (3) prevent unnecessary restudies of cluster studies based solely on other participants accelerating or increasing their load ramps. (*See id.* at 41:880-886.)

VIII. CONCLUSION

Illinois' ability to attract high-demand large load projects depends on a regulatory framework that offers clarity, fairness, and predictability. NRG's recommendations achieve these goals while enhancing the protection of existing ratepayers. For the foregoing reasons, NRG respectfully requests that the Commission enter a Final Order consistent with the arguments and requests for relief contained herein and granting such further or additional relief as it deems appropriate.

Respectfully submitted,

NRG ENERGY, INC.

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VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the document are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: November 10, 2025

Isl Christopher J Townsend
Christopher J. Townsend

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	)	
	)	
Proposal for changes to new service requests for large demand project applicants or customers.	)	**ICC Docket No. 25-0677 (cons.)**
	)	**ICC Docket No. 25-0679**
Proposal for revisions to Rider Distributed System Extensions.	)	

NOTICE OF FILING

Please take note that on November 10, 2025, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission the Verified Initial Brief of NRG Energy, Inc.

Dated: November 10, 2025

Isl Christopher J. Townsend
Christopher J. Townsend

CERTIFICATE OF SERVICE

I, Christopher J. Townsend, certify that copies of the foregoing Verified Initial Brief of NRG Energy, Inc. were served upon the parties on the Illinois Commerce Commission's service list as reflected on e-docket via electronic delivery on November 10, 2025.

Isl Christopher J. Townsend
Christopher J. Townsend