STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company : 

Approval of Multi-Year Performance : 11-0772
Metrics pursuant to Section 16-108.5(f) : 
& (f-5) of the Public Utilities Act. : 

ORDER

April 4, 2012
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Approval of Multi-Year Performance Metrics pursuant to Section 16-108.5(f) & (f-5) of the Public Utilities Act. 11-0772

ORDER

INTRODUCTION

On December 8, 2011 Commonwealth Edison Company (“ComEd” or the “Company”) filed a petition with the Commission pursuant to subsections (f) and (f-5) of Section 16-108.5 of the Illinois Public Utilities Act (“PUA”, 220 ILCS 5/16-108.5(f), (f-5)), for the Commission to issue an order on or before April 6, 2012 approving ComEd’s Multi-Year Performance Metrics Plan (“Plan”) and its proposed penalty mechanism, Rider DSPM – Delivery Service Performance Metrics (“Rider DSPM”). Along with its petition, ComEd filed its Multi-Year Performance Metrics Plan, the Direct Testimony of Ross C. Hemphill, PhD. and the Direct Testimony of Michael B. McMahan, P.E.

The following parties intervened in this matter: the Attorney General of the State of Illinois (“AG”), the Illinois Industrial Energy Consumers (“IIEC”), the Building Owners and Managers Association of Chicago (“BOMA/Chicago”), the Citizens Utility Board (“CUB”) and AARP. Appearances were filed by the City of Chicago (“City”) and the Staff of the Commission (“Staff”).

A status hearing was held on January 4, 2012 at which time the Administrative Law Judge (“ALJ”) approved a schedule in this matter to fit within the 120-day timeframe provided for by Section 16-108.5 that included: (1) Staff and Intervenor testimony in reply to the Company’s prefiled direct testimony; (2) Company rebuttal testimony; (3) a hearing; (4) simultaneous briefs; and (5) briefs on exception to the ALJ’s proposed order.

Testifying for Staff in this matter was John Vance Stutsman, P.E. and Theresa Ebrey, CPA. Testifying for the AG and AARP was Barbara Alexander. Testifying for CUB was Christopher C. Thomas. Testifying for the Company in response to the Staff and Intervenor
testimony was Michael B. McMahan, P.E.

On February 17, 2012, an evidentiary hearing was held in this matter at which time the prefiled testimony of the Company, Staff, AG/AARP and CUB was admitted into evidence. The record was not marked heard and taken but was continued generally at the request of counsel for the AG pending the possible filing by the AG of a motion to take administrative notice of certain material. Tr, February 17, 2012, p. 121. No motion has been filed by the AG. Briefs were filed by the Company, Staff, CUB/City and AG/AARP on February 28, 2012. The record was marked “heard and taken” on March 14, 2012. The Proposed Order was issued on March 15, 2012. Briefs on Exceptions were filed by Staff, ComEd, AG/AARP and CUB/City on March 23, 2012.

OVERVIEW OF SECTION 16-108.5(f) & (f-5) OF THE PUBLIC UTILITIES ACT

Section 16-108.5 of the PUA provides that an electric utility or combination utility serving more than one million customers may elect to become a “participating utility” and voluntarily undertake an infrastructure investment program as described in the Section. A participating utility is allowed to recover its expenditures made under the infrastructure investment program through the ratemaking process, including, but not limited to, the performance-based formula rate and process set forth in the Section. 220 ILCS 5/16-108.5(b).

On November 8, 2011 ComEd filed its performance-based formula rate tariff, Rate DSPP – Delivery Service Pricing and Performance (“Rate DSPP”) and committed to undertake investments set forth in Section 16-108.5 of the PUA. ComEd is seeking approval of Rate DSPP in ICC Docket No. 11-0721. ComEd Petition, p. 2.

Under Section 16-108.5(f) ComEd must achieve improvements over baseline performance values (“ratably i.e. in equal segments”) (220 ILCS 5/16-108.5(f)) for the following ten metrics over a ten year period:[1]

1. Twenty percent improvement in the **System Average Interruption Frequency Index (SAIFI)** using a baseline of the average of the data from 2001 through 2010;
2. Fifteen percent improvement in the system **Customer Average Interruption Duration Index (CAIDI)** using a baseline of the average of data from 2001
through 2010;

3. Twenty percent improvement in the System Average Interruption Frequency Index for its Southern Region (SAIFI-Southern) using a baseline of the average of data from 2001 through 2010;

3.5 Twenty percent improvement in the System Average Interruption Frequency Index for its Northeastern Region (SAIFI-Northeastern) using a baseline of the average of data from 2001 through 2010:

4. Seventy-five percent improvement in the service reliability targets set forth in subparagraphs (A) through (C) of paragraph (4) of subsection (b) of 83 Ill. Admin Code Part 411.140 as of May 1, 2011, using 2010 as the baseline;

5. Ninety percent improvement in reducing the number of estimated electric bills issued using a baseline of the average number of estimated bills for the years 2008 through 2010;

6. Ninety percent improvement in the consumption of electricity on inactive meters using a baseline of the average unbilled kilowatt hours for the years 2009 through 2010;

7. Fifty percent improvement in unaccounted for energy using a baseline of the non-technical line loss unaccounted for energy kilowatt hours for the year 2009;

8. Thirty million dollar reduction in uncollectible expense using a baseline of the average uncollectible expense for the years 2008 through 2010; and

9. Set a goal for creating opportunities for minority-owned and female-owned business enterprises consistent with state and federal law using a base performance value of the percentage of ComEd’s expenditures paid to minority-owned and female-owned business enterprises in 2010.

Under Section 16-108.5(f-5), there are financial penalties imposed on the Company for failing to meet improvements on the first nine metrics listed above (i.e. items 1, 2, 3, 3.5, 4, 5, 6, 7, and 8). The specific penalties for failing to meet the improvements required under the law are imposed by the Commission on the Company as a basis point reduction to the Company’s return on equity through a tariff (Rider DSPM) which is separate from ComEd’s formula rate tariff (Rate DSPP). The basis point reduction can vary depending upon which annual goal is not achieved and the specific year within the ten year period when the goal(s) is/are not achieved. See, 16-108.5(f-5).

If the Company fails to make improvement on metrics 1, 2, 3, 3.5 and 4 the Commission’s authority to reduce or obviate the penalty for that failure apparently is prohibited given that 16-108.5(f-5) provides that “[n]othing in this Section shall authorize the Commission to reduce or otherwise obviate the imposition of financial penalties for failing to achieve one or more of the metrics established pursuant to subparagraph (1) through (4) of subsection (f) of this Section.” With respect to metrics 5, 6, 7 and 8, the imposition of a
penalty for failing to meet a goal apparently is subject to the following language from section (f):

The metrics and performance goals set forth in subparagraphs (5) through (8) of this subsection (f) are based on the assumptions that the participating utility may fully implement the technology described in subsection (b) of this Section, including utilizing the full functionality of such technology and that there is no requirement for personal on-site notification. If the utility is unable to meet the metrics and performance goals set forth in subparagraphs (5) through (8) of this subsection (f) for such reasons, and the Commission so finds after notice and hearing, then the utility shall be excused from compliance, but only to the limited extent achievement of the affected metrics and performance goals was hindered by the less than full implementation.

220 ILCS 5/16-108.5(f). Finally, if the Company fails to make improvements on metric 9, expenditures for minority-owned and female-owned businesses, there appears to be no language in the section providing the Commission with authority to impose a penalty on the Company for a failure to make improvement on the metric.

DEVELOPMENT OF THE SECTION 16-108.5(f) PERFORMANCE METRICS AND TARIFF MECHANISM

1 Calculation of the Reliability-Related Metrics

1 System Average Interruption Frequency Index (“SAIFI”) Metric

Under Section 16-108.5(f) ComEd must achieve improvements over baseline performance values “ratably (i.e., in equal segments)” (220 ILCS 5/16-108.5(f)) for the following metric over a ten year period.

Twenty percent improvement in the System Average Interruption Frequency Index (SAIFI) using a baseline of the average of the data from 2001 through 2010.

The penalties applicable to ComEd under Section 16-108.5(f-5) for failure to achieve the annual goal shall result in a 5 basis points (“bps”) reduction for years 1 through 3; a 6 bps reduction for years 4 through 6; and a 7 bps reduction for years 7 through 10.
ComEd’s Position

This reliability-related metric relates to ComEd’s provision of reliable electric service to its customers. ComEd Ex. 1.0 Corrected, pp. 4-5. Neither Staff nor any intervenor takes issue with the calculations of the baseline values or the annual performance goals for any of these metrics. In fact, ICC Staff witness Mr. Stutsman performed his own calculations of the reliability-related metrics’ baseline values and annual performance goals reflected in the Plan and confirmed their accuracy. ComEd Ex. 4.0, p. 3; Staff Ex. 1.0, p. 5.
**Staff’s Position**

Staff witness John V. Stutsman determined that the Company’s calculations and baseline values for this metric are correct and consistent with the statute. Mr. Stutsman reviewed the Company’s worksheets. His analysis and review yielded the same annual and baseline values that the Company presented in its Exhibit 1.0 Corrected. As part of his analysis, Mr. Stutsman also confirmed that the Company’s daily service interruption data which impacts the calculations did in fact reflect the actual data occurring over the relevant time period. Staff Ex. 1.0, p. 4.

**Commission Analysis and Conclusion**

Neither Staff nor any intervenor takes issue with the calculations of the baseline values or the annual performance goals for this metric. Therefore, the Company’s proposal on this issue is approved by the Commission.

**2 Customer Average Interruption Duration Index (“CAIDI”) Metric**

Under Section 16-108.5(f) ComEd must achieve improvements over baseline performance values “ratably (i.e., in equal segments)” (220 ILCS 5/16-108.5(f)) for the following metric over a ten year period.

Fifteen percent improvement in the system **Customer Average Interruption Duration Index (CAIDI)** using a baseline of the average of data from 2001 through 2010. The penalties applicable to ComEd under Section 16-108.5(f-5) for failure to achieve the annual goal shall result in a 5 bps reduction for years 1 through 3; a 6 bps reduction for years 4 through 6; and a 7 bps reduction for years 7 through 10. ComEd Ex. 4.0, p. 3; Staff Ex. 1.0, p. 5.

**ComEd’s Position**

This reliability-related metric relates to ComEd’s provision of reliable electric service to its customers. ComEd Ex. 1.0 Corrected, pp. 6-7. Neither Staff nor any intervenor takes issue with the calculations of the baseline values or the annual performance goals for any of these metrics. In fact, ICC Staff witness Mr. Stutsman performed his own calculations of the reliability-related metrics’ baseline values and annual performance goals reflected in the Plan and confirmed their accuracy.
Staff’s Position

As set forth in Staff witness John V. Stutsman’s testimony, he determined that the Company’s calculations and baseline values for this metric are correct and consistent with the statute. Mr. Stutsman reviewed the Company’s worksheets and his analysis and review yielded the same annual and baseline values that the Company presented in its Exhibit 1.0 Corrected. As part of his analysis, Mr. Stutsman also confirmed that the Company’s daily service interruption data which impacts the calculations did in fact reflect the actual data occurring over the relevant time period. Staff Ex. 1.0, p. 4.

Commission Analysis and Conclusion

Neither Staff nor any intervenor takes issue with the calculations of the baseline values or the annual performance goals for this metric. Therefore, the Company’s proposal on this issue is approved by the Commission.

3 Regional SAIFI Metrics

1 Southern Region

Under Section 16-108.5(f) ComEd must achieve improvements over baseline performance values “ratably (i.e., in equal segments)” (220 ILCS 5/16-108.5(f)) for the following metric over a ten year period.

Twenty percent improvement in the System Average Interruption Frequency Index for its Southern Region (SAIFI-Southern) using a baseline of the average of data from 2001 through 2010. The penalties applicable to ComEd under Section 16-108.5(f-5) for failure to achieve its annual goals for both SAIFI-Southern and System Average Interruption Frequency Index for its Northeastern Region (SAIFI- Northeastern) (infra., Section III.A.3.b.) shall result in a 5 bps reduction for years 1 through 3; a 6 bps reduction for years 4 through 6; and a 7 bps reduction for years 7 through 10.

ComEd’s Position

The reliability-related metrics relate to ComEd’s provision of reliable electric service to its customers. ComEd Ex. 1.0 Corrected, pp. 8-9. Neither Staff nor any intervenor takes issue with the calculations of the baseline values or the annual performance goals for any of these metrics. In fact, ICC Staff witness Mr. Stutsman performed his own calculations of the reliability-related metrics’ baseline values and annual performance goals reflected in the
Staff’s Position

Staff witness John V. Stutsman determined that the Company’s calculations and baseline values for this metric are correct and consistent with the statute. Mr. Stutsman reviewed the Company’s worksheets and his analysis and review yielded the same annual and baseline values that the Company presented in its Exhibit 1.0 Corrected. As part of his analysis, Mr. Stutsman also confirmed that the Company’s daily service interruption data which impacts the calculations did in fact reflect the actual data occurring over the relevant time period. Staff Ex. 1.0, p. 4.
Commission Analysis and Conclusion

Neither Staff nor any intervenor takes issue with the calculations of the baseline values or the annual performance goals for this metric. Therefore, the Company’s proposal on this issue is approved by the Commission.

2 Northeastern Region

Under Section 16-108.5(f) ComEd must achieve improvements over baseline performance values “ratably (i.e., in equal segments)” (220 ILCS 5/16-108.5(f)) for the following metric over a ten year period.

Twenty percent improvement in the System Average Interruption Frequency Index for its Northeastern Region (SAIFI-Northeastern) using a baseline of the average of data from 2001 through 2010. The penalties applicable to ComEd under Section 16-108.5(f-5) for failure to achieve its annual goals for both SAIFI-Southern and SAIFI-Northeastern shall result in a 5 bps reduction for years 1 through 3; a 6 bps reduction for years 4 through 6; and a 7 bps reduction for years 7 through 10.

ComEd’s Position

This reliability-related metric relates to ComEd’s provision of reliable electric service to its customers. ComEd Ex. 1.0 Corrected, pp. 9-11. Neither Staff nor any intervenor takes issue with the calculations of the baseline values or the annual performance goals for any of these metrics. In fact, ICC Staff witness Mr. Stutsman performed his own calculations of the reliability-related metrics’ baseline values and annual performance goals reflected in the Plan and confirmed their accuracy. ComEd Ex. 4.0, p. 3; Staff Ex. 1.0, p. 5.

Staff’s Position

As set forth in Staff witness John V. Stutsman’s testimony, Mr. Stutsman determined that the Company’s calculations and baseline values for this metric are correct and consistent with the statute. Mr. Stutsman reviewed the Company’s worksheets and his analysis and review yielded the same annual and baseline values that the Company presented in its Exhibit 1.0 Corrected. As part of his analysis, Mr. Stutsman also confirmed that the Company’s daily service interruption data which impacts the calculations did in fact reflect the actual data occurring over the relevant time period. Staff Ex. 1.0, p. 4.
Commission Analysis and Conclusion

Neither Staff nor any intervenor takes issue with the calculations of the baseline values or the annual performance goals for this metric. Therefore, the Company’s proposal on this issue is approved by the Commission.

2 Calculation of the Service Reliability Targets Metric Related to Part 411.140

ComEd’s Position

The service reliability targets metric relate to ComEd’s provision of reliable electric service to its customers. ComEd Ex. 1.0 Corrected, pp.12-14. Neither Staff nor any intervenor takes issue with the calculations of the baseline values or the annual performance goals for any of these metrics. Staff Ex. 1.0, p. 3; ComEd Init. Br. at 7.

Staff’s Position

With regard to the Company’s service reliability targets, metric 4, Staff witness John Stutsman reviewed ComEd’s 2010 Supplemental Reliability Report. Based upon his review, Mr. Stutsman determined that the Company’s service reliability target metrics meet the requirements of Section 16-108.5(f)(4) of the PUA. Staff Ex. 1.0, p. 3.

Commission Analysis and Conclusion

Neither Staff nor any intervenor takes issue with the calculations of the baseline values or the annual performance goals for this metric. Therefore, the Company’s proposal on this issue is approved by the Commission.

3 Calculation of the Customer Benefits Metrics

ComEd’s Position

The customer benefits metrics are those metrics designed to reduce ComEd’s costs of providing electric service through achievement of reductions in the issuance of estimated
electric bills, consumption on inactive meters, non-technical line loss unaccounted for energy, and uncollectible expense. ComEd Ex. 1.0 Corrected, p. 14; ComEd Ex. 3.0 Corrected, pp. 11-12. Consistent with Section 16-108.5(f)’s directive, the customer benefits metrics “are based on the assumptions that the participating utility may fully implement the technology described in subsection (b) of [Section 16-108.5], including utilizing the full functionality of such technology and that there is no requirement for personal on-site notification.” 220 ILCS 5/16-108.5(f). In other words, the customer benefits metrics do not assume or speculate as to whether ComEd will be subject to future limitations, and therefore reflect the most aggressive and robust goals that can be proposed under Section 16-108.5(f). ComEd Init. Br. at 8.

Like the reliability-related metrics, neither Staff nor any of the intervenors proposes any alternate values or methodologies relating to the proposed baseline values and annual performance goals for the customer benefits metrics. ComEd Init. Br. at 8-12.
AG/AARP’s Position

ComEd has proposed customer service metrics that assume activation of the remote disconnect switch in the AMI meters installed over the relevant 10-year performance metric period, “and that there is no requirement for personal on-site disconnection notification.” ComEd Ex. 2.0 at 11; Tr. at 24. ComEd's proposed performance metric tariff, Rate DSPP, also incorporates language that assumes no on-site visit. ComEd Ex. 1.1 TB, ILL.CC. No. 10, Original Sheet No. XX +11. Accordingly, each annual performance metric incorporates this same assumption.

As noted in AG/AARP testimony of Barbara Alexander, the Commission’s current Part 280.130(d) clearly states that the utility shall attempt to advise the customer that service is being discontinued by making contact “at the time service is being discontinued.” AG/AARP Ex.1.0 at 5, citing 83 Ill.Admin.Code Part 280.130. This important requirement for an attempt at in-person notification is in addition to a requirement that if disconnection cannot be accomplished "during a call made at the customer’s premise," the utility shall attempt to leave a notice "at the premise or billing address" informing the customer that disconnection was attempted and their service continues to be subject to disconnection. Id.

As noted in Ms. Alexander’s testimony, the retention of the premise visit requirement for disconnection for nonpayment for residential customers would not likely impact the savings associated with the move-in/move-out function, connection of service, reconnection of service, or other connection and disconnection activities other than those relating to nonpayment for residential customers. In addition, neither ComEd’s proposed performance relating to estimated bills, nor the Company’s ability to detect theft or other unauthorized use of electricity should be impacted by the premise visit requirement related to disconnections. It should be noted that the Company would be able to disconnect remotely and without notice even under the existing Part 280.130(d) for dangerous conditions or evidence of tampering. Finally, the premise visit requirement should not result in any impact on savings associated with Unaccounted for Energy, which is primarily a function of ComEd’s current practice of leaving meters on in between customers or tenants. Accordingly, the only metric that will likely be affected by adherence to the Commission rule requiring the premise visit associated with disconnection for nonpayment is the Uncollectible Expense metric.

1 Reduction of Estimated Electric Bills Metric

Under Section 16-108.5(f) ComEd must achieve improvements over baseline performance values “ratably (i.e., in equal segments)” (220 ILCS 5/16-108.5(f)) for the following metric over a ten year period.

Ninety percent improvement in reducing the number of estimated electric bills issued using a baseline of the average number of estimated bills for the years 2008 through 2010. The penalties applicable to ComEd under Section 16-108.5(f-5) for failure to
achieve at least 95% of the annual goal shall result in a 5 bps reduction.
ComEd’s Position

This customer benefits metric is designed to reduce ComEd’s costs of providing electric service through achievement of reductions in the issuance of estimated electric bills. ComEd Ex. 1.0 Corrected, pp. 15-16. Like the reliability-related metrics, neither Staff nor any of the intervenors proposes any alternate values or methodologies relating to the proposed baseline values and annual performance goals for the customer benefits metrics. ComEd Init. Br. at 8.

Commission Analysis and Conclusion

Neither Staff nor any intervenor takes issue with the calculations of the baseline values or the annual performance goals for this metric. Therefore, the Company’s proposal on this issue is approved by the Commission.

2 Unaccounted for Energy Metric

Under Section 16-108.5(f) ComEd must achieve improvements over baseline performance values “(ratably i.e., in equal segments)” (220 ILCS 5/16-108.5(f)) for the following metric over a ten year period.

Fifty percent improvement in unaccounted for energy using a baseline of the non-technical line loss unaccounted for energy kilowatt hours for the year 2009. The goal shall be calculated in terms of the percentage of the achievement. The percentages for the metrics relating to unaccounted for energy, consumption on inactive meters, and uncollectible expense shall be aggregated and averaged; if ComEd does not achieve an aggregated average percentage value of at least 95% in a given year, then the return on equity shall be reduced by 5 bps.

ComEd’s Position

This customer benefits metric is designed to reduce ComEd’s costs of providing electric service through achievement of reductions of unaccounted for energy. ComEd Ex. 1.0 Corrected, pp. 18-19. Like the reliability-related metrics, neither Staff nor any of the intervenors proposes any alternate values or methodologies relating to the proposed baseline values and annual performance goals for the customer benefits metrics. ComEd Init. Br. at 8.

Commission Analysis and Conclusion
Neither Staff nor any intervenor takes issue with the calculations of the baseline values or the annual performance goals for this metric. Therefore, the Company’s proposal on this issue is approved by the Commission.

3 Consumption on Inactive Meters Metric

Under Section 16-108.5(f) ComEd must achieve improvements over baseline performance values “ratably (i.e., in equal segments)” (220 ILCS 5/16-108.5(f)) for the following metric over a ten year period.

A ninety percent improvement in the consumption of electricity on inactive meters using a baseline of the average unbilled kilowatt hours for the years 2009 through 2010. The goal shall be calculated in terms of the percentage of the achievement. The percentages for the metrics relating to unaccounted for energy, consumption on inactive meters, and uncollectible expense shall be aggregated and averaged; if ComEd does not achieve an aggregated average percentage value of at least 95% in a given year, then the return on equity shall be reduced by 5 bps.

ComEd’s Position

This customer benefits metric is designed to reduce ComEd’s costs of providing electric service through achievement of reductions in the consumption on inactive meters. ComEd Ex. 1.0 Corrected, pp. 16-18. Like the reliability-related metrics, neither Staff nor any of the intervenors proposes any alternate values or methodologies relating to the proposed baseline values and annual performance goals for the customer benefits metrics. ComEd Init. Br. at 8.

Commission Analysis and Conclusion

Neither Staff nor any intervenor takes issue with the calculations of the baseline values or the annual performance goals for this metric. Therefore, the Company’s proposal on this issue is approved by the Commission.

4 Uncollectible Expense Metric

Under Section 16-108.5(f) ComEd must achieve improvements over baseline
performance values “ratably (i.e., in equal segments)” (220 ILCS 5/16-108.5(f)) for the following metric over a ten year period.

Thirty million dollar reduction in **uncollectible expense** using a baseline of the average uncollectible expense for the years 2008 through 2010. The goal shall be calculated in terms of the percentage of the achievement. The percentages for the metrics relating to unaccounted for energy, consumption on inactive meters, and uncollectible expense shall be aggregated and averaged; if ComEd does not achieve an aggregated average percentage value of at least 95% in a given year, then the return on equity shall be reduced by 5 bps.
ComEd’s Position

This customer benefits metric is designed to reduce ComEd’s costs of providing electric service through achievement of reductions in uncollectible expense. ComEd Ex. 1.0 Corrected, pp. 19-21. Like the reliability-related metrics, neither Staff nor any of the intervenors proposes any alternate values or methodologies relating to the proposed baseline values and annual performance goals for the customer benefits metrics. ComEd Init. Br. at 8.

AG/AARP’s Position

According to AG/AARP, ComEd’s proposed Uncollectibles Expense performance metric and tariff Rate DSPP do not reflect the current status of the Commission’s Part 280.130(d) rule pertaining to the disconnection of customers from utility service for nonpayment, nor the specific directive of a Commission Order (Docket No. 09-0263). The Commission should reject ComEd’s Rate DSPP tariff to the extent that it presumes that the on-site visit requirement included in Part 280.130(d) does not exist.

In addition, ComEd’s Rate DSPP includes language that references a penalty of “zero” should the Company “be found exempt from the requirement to meet such target level of achievement in accordance with the provisions of Section 16-108.5(f) of the Act... .” ComEd Ex. 1.1 TB, Ill.C.C.No. 10, Original Sheet No. XX+11. This reference to “zero” penalty implies that the continuation of the on-site visit requirement would insulate the Company from any financial penalty as a result of failure to achieve the Uncollectibles Expense annual metrics. That implication is inconsistent with the language in Section 16-108.5(f) that states that a utility shall be excused from compliance with the metric (and penalty) “only to the limited extent achievement of the affected metrics and performance goals was hindered by the less than full implementation.” 220 ILCS 5/16-108.5(f). ComEd’s Rate DSPP should be rejected in this regard.

Commission Analysis and Conclusion

Neither Staff nor any intervenor takes issue with the calculations of the baseline values or the annual performance goals for this metric. While AG/AARP take exception to this metric due to the notice provision, this is addressed below. Therefore, the Company’s proposal on this issue is approved by the Commission.

5 AG/AARP Proposal for ComEd to Identify How On-Site Notification Requirement Impacts the Proposed Customer Benefit Metrics
AG/AARP’s Position

Neither of the ComEd witnesses who testified in this proceeding discuss in their pre-filed testimony which of the performance metrics might be impacted by the retention of the current regulation in Part 280 that requires a premise visit prior to disconnection for nonpayment. Likewise, the Company failed to discuss or identify in testimony the degree to which the current regulatory obligation for a premise visit and attempt to contact the customer might impact one or more of the required metrics.

ComEd witness Hemphill testified that whether an on-site notification of a customer about to be disconnected impacts the Company’s ability to achieve the Uncollectibles Expense metric. Tr. at 55. Dr. Hemphill, however, could not say how significant the impact would be and had no idea of what kind of data the Company would need to collect in order to evaluate the effect of the on-site notification requirement on achievement of this performance metric. Id. at 55-56. AG/AARP argue that until the Commission has information from the Company as to how the on-site notification requirement impacts ComEd’s ability to achieve the annual and overall 10-year uncollectibles performance metrics being proposed in this case, it will be unable to assess the appropriateness of the metrics being proposed in this docket or any potential request by ComEd to be excused from compliance with an annual metric.

The degree to which its performance will be impacted, however, is primarily a function of ComEd’s efficiency in debt collection and targeting customers who could pay and who do not pay for stricter collection actions allowed under the current regulations, according to Ms. Alexander’s unrebutted testimony. AG/AARP Ex. 1.0 at 8-9. Yet ComEd witness McMahan, who heads the Company’s smart grid implementation plans, testified that he was not aware of any specific Company plans to monitor how the on-site notification requirement and other factors, such as debt collection practices, impact ComEd’s ability to achieve the Uncollectible Expense performance metrics being proposed in this docket. Tr. at 108-110.

The Commission should require ComEd to identify in this case how and to what degree the retention of the current premise visit requirement associated with disconnection of service for nonpayment for residential customers would impact the Company’s ability to achieve its required performance standards for each of the AMI-related metrics during the 10-year plan, as well as the data it will collect to document the ongoing connection, if any, between each of these metrics and associated performance standards and the premise visit requirement of the current Commission Part 280 rule. Once such information has been identified and proposed by ComEd, other parties and the ICC Staff should have an opportunity to review and comment on the Company’s estimated impacts. The Commission could then issue an order making findings of fact and conclusions with respect to this matter. ComEd has proposed that the AMI-related customer service metrics will take effect 14 months after the Commission approves an AMI deployment plan. As a result, there is sufficient time to determine how and to what degree the retention of the premise visit
requirement would impact these proposed performance metrics. This information should then be linked to the degree to which its promised performance to comply with Part 280’s disconnection rules will impact the Uncollectibles Expense metric, in particular.

On exceptions, AG/AARP again argue that the Commission should require ComEd to specifically identify the potential impact of the on-site notification requirement in this proceeding. As noted above, Section 16-108.5 contemplates the Commission’s retention of the current obligation by the utilities to visit a residential customer’s premise prior to disconnection of service for nonpayment. Moreover, the statute does not give ComEd carte blanche release from meeting the performance standards if the premise visit requirement of the current law is maintained. Rather, ComEd is excused from compliance “only to the limited extent achievement of the affected metrics and performance goals was hindered by the less than full implementation.” 220 ILCS 5/16-108.5(f). Thus, it is important to determine in this docket how achievement of any performance metric might possibly be hindered. The only way to make that determination is to identify the exact connection, if any, that exists between the proposed performance metrics and the current consumer protection and public health and safety policy, so there is no argument about the impact of premise visits on future compliance claims. The alternative is to allow ComEd to make allegations in the future about noncompliance without any firm basis for understanding how the premise visit requirement will impact these performance metrics.

ComEd’s Position

Because the customer benefits metrics are based on the assumptions that ComEd can fully implement and fully utilize the technology described Section 16-108.5(b) of the Act, the General Assembly recognized and provided for a situation in which those assumptions prove to be incorrect: “If the utility is unable to meet the metrics and performance goals set forth in subparagraphs (5) through (8) of this subsection (f) for such reasons [i.e., the utility is unable to fully implement and fully utilize the technology], and the Commission so finds after notice and hearing, then the utility shall be excused from compliance, but only to the limited extent achievement of the affected metrics and performance goals was hindered by the less than full implementation.” 220 ILCS 5/16-108.5(f). ComEd Init. Br. at 7. In other words, the General Assembly has left it up to the utility to decide whether it will seek to be excused from a customer benefits-related annual performance goal in the future following the end of a performance year. If the utility decides to request a waiver, the burden will be on the utility to demonstrate that “achievement of the affected metrics and performance goals was hindered by the less than full implementation.” 220 ILCS 5/16-108.5(f); ComEd Init. Br. at 9. AG/AARP witness Ms. Alexander takes issue with the General Assembly’s directive and instead proposes that the parties and Commission engage in a speculative and hypothetical inquiry now (or in the near future) regarding whether ComEd will ever seek to be excused from an annual performance goal due to an on-site notification requirement. Alexander Dir.,
AG/AARP Ex. 1.0, at 8:158-64; 12:255-66. Because it cannot be known at this time whether ComEd will ever fail to achieve its annual performance goals or whether there will be an on-site notification requirement during the 10-year metrics period, the Commission should decline AG/AARP’s invitation to pre-litigate or pre-excuse ComEd’s future performance now based only on inappropriate speculation and assumptions about conditions that might exist in the future. ComEd Init. Br. at 9.

As an initial matter, AG/AARP do not propose any different values or methodologies regarding the calculations of the customer benefits-related baseline values and annual performance goals. Id. at 10. Indeed, as ComEd witness Mr. McMahan testified during the evidentiary hearing, these values and goals are based on simple mathematical computations:

Our goal in filing the metric testimony was as faithfully as we could reproduce the statute. The statute laid out how to calculate the baseline. We did that, and it laid out what the [ratable] improvements were over 10 years. We did that. There was no linkage to on-site notification or not on-site notification. It was just simply math, the way the statute’s laid out. Tr. at 115:12-21. In summary, ComEd calculated the baseline values in accordance with Section 16-108.5(f)’s specific directives, determined the 10-year goals pursuant to the statutorily-mandated improvements, and proposed annual performance goals designed to achieve the 10-year goals ratably. ComEd Init. Br. at 10.

Rather, AG/AARP propose that ComEd identify how the current disconnection rules set forth in Part 280 of the Commission’s Rules “would impact the Company’s ability to achieve its required performance standards for each of the AMI-related metrics during the 10-year plan.” Alexander Dir., AG/AARP Ex. 1.0, at 2:38-40. This proposal, however, is irrelevant to both the historic baseline values and annual performance goals proposed in this docket, and instead seeks to engage the parties and the Commission in speculation regarding future and unknown performance and how that future performance might be limited. ComEd Init. Br. at 10. As summarized below, the structure set up by the General Assembly in subsections (f) and (f-5) of Section 16-108.5 is designed to consider issues of waiver only after all of the relevant facts can be gathered. Id. In general, the chain of events leading up to a waiver determination based on an on-site notification requirement would include the following steps:

> Identification of a Relevant Performance Year for the Assessment of a Customer Benefits-Related Goal: Although ComEd has not yet elected when the customer benefits metrics will begin, the statute requires that they commence no later than 14 months following the Commission’s order approving the AMI Plan. 220 ILCS 5/16-108.5(f). ComEd must file the AMI Plan within 180 days of the effective date of Public Act 97-0616, which means by April 23, 2012, and the Commission must issue its order within 60 days of that filing. 220 ILCS 5/16-108.6(c). Assuming that the Commission takes the full 60 days and ComEd takes the full 14 months, the first performance year would commence in August 2013 and end in August 2014.
Identification of a Failure to Achieve a Customer Benefits-Related Annual Performance Goal: Following the end of a performance year, the utility will file its annual report by June 1 regarding, *inter alia*, whether it achieved each of its customer benefits-related annual performance goals. Of course, if the utility reports that it has achieved such goals, the issue of waiver is irrelevant.

Identification of Whether an On-Site Notification Requirement was in Effect During the Performance Year: The Commission is currently considering in the Part 280 rulemaking docket whether the new rules will impose an on-site notification requirement. See ICC Docket No. 06-0703. Therefore, it is not known at this time what on-site notification requirement, if any, might be in effect during any of the 10 performance years.

Determination of Whether the On-Site Notification Requirement Caused the Failure to Achieve the Annual Performance Goal: In the event an on-site notification requirement was in effect during a performance year in which ComEd failed to achieve a customer benefits-related annual performance goal, ComEd must determine whether that requirement was the reason it failed to achieve the annual performance goal.

Utility Election of Whether to Seek a Waiver from an Annual Performance Goal: If ComEd determines that an on-site notification requirement was responsible for its failure to achieve an annual performance goal, then it may petition the Commission to be excused from compliance with that goal.

ICC Determination of Whether to Permit a Waiver After Notice and Hearing: Following an evidentiary hearing during which Staff and intervenors can present evidence rebutting ComEd’s request to be excused from an annual performance goal, the Commission will make a determination as to whether the on-site notification requirement hindered ComEd’s ability to meet one or more of the annual performance goals, and to what extent, and whether ComEd should be excused from compliance.

ComEd Init. Br. at 11. In summary, not one of these events has occurred. ComEd is not requesting to be excused (or pre-excused) from any performance goal in this docket and therefore the issue of waiver is irrelevant in this docket. Moreover, it is wholly unknown (i) when the customer benefits metrics will commence, (ii) whether ComEd will ever fail to achieve a customer benefits-related annual performance goal, (iii) whether an on-site notification requirement will be imposed during any year of the 10-year metrics period, (iv) if ComEd fails to achieve a customer benefits-related annual performance goal, whether that failure was caused by any on-site notification requirement that existed, and (v) assuming a failure to achieve such a goal due to such a requirement, whether ComEd would in fact petition the Commission for a waiver. *Id.* at 11-12.

Commission Analysis and Conclusion
The Commission declines to adopt the proposal of AG/AARP to require the Company to identify how the current disconnection rules set forth in Part 280 of the Commission's Rules impact the Company's ability to achieve its required performance standards for each of AMI-related metrics during the 10-year plan. This docket is for approval of the annual performance goals under the metrics. At the present time there is a notice provision contained in Part 280. The Commission will be reviewing all of the information provided by the Company to determine whether compliance with the Act and Commission rules has taken place.

4 Design and Calculation of the Opportunities for Minority-Owned and Women-Owned Business Enterprises (“MWBE”) Metric

Under Section 16-108.5(f) ComEd must achieve improvements over baseline performance values “ratably (i.e., in equal segments)” (220 ILCS 5/16-108.5(f)) for the following metric over a ten year period.

Set a goal for creating opportunities for minority-owned and female-owned business enterprises consistent with state and federal law using a base performance value of the percentage of ComEd’s expenditures paid to minority-owned and female-owned business enterprises in 2010. ComEd set as its ten year goal a fifteen percent improvement in the amount of expenditures paid to minority-owned and female-owned enterprises.

Commission Analysis and Conclusion
See Conclusion Below Section E. (3.)

5 Rider DSPM and Penalty Calculations

1 Tariff Language

ComEd’s Position

With the exception of the clarifying language for Rider DSPM agreed to by Staff and ComEd (see Section III.E.2., infra), no party proposed any alternative tariff mechanism or alternative language for proposed Rider DSPM. ComEd Init. Br. at 12.

However, during the February 17, 2012, evidentiary hearing, certain questions posed to ComEd witnesses by intervenors' counsel suggested that some intervenors may take issue with the language in Rider DSPM related to how the penalty is determined in the event of a waiver request. Although ComEd believes that the language of the tariff reflects an accurate and faithful interpretation of the statute and does not limit the Commission's authority in any way, the following changes could be made to the tariff during the compliance filing to alleviate any concern:
Notwithstanding the previous provisions of this Determination of the Penalty section, in the event the Company does not meet the target level of achievement provided in the definition of an aforementioned penalty, but the Company is found to be exempt requests to be excused from the requirement to meet such target level of achievement in accordance with the provisions of Section 16-108.5(f) of the Act, then such penalty, if any, is equal to such amount as determined by the ICC in accordance with such section of the Act zero (0.0).

ComEd circulated these proposed changes to counsel for Staff and intervenors on February 24, 2012. Counsel for Staff indicated that it had no edits to the proposed language.

**Staff’s Position**

With the exception of the proposed revision to Rider DSPM by Staff witness Theresa Ebrey discussed below, Staff did not propose any other language changes to Rider DSPM in its testimony. However, at the evidentiary hearing in this matter, it became apparent that certain language in Original Sheet No. XX+11 may be subject to different interpretations. Tr., February 17, 2012, pp. 84-85 and 90-94. The language at issue is the following:

Notwithstanding the previous provisions of this Determination of the Penalty section, in the event the Company does not meet the target level of achievement provided in the definition of an aforementioned penalty, but the Company is found to be exempt from the requirement to meet such target level of achievement in accordance with the provisions of Section 16-108.5(f) of the Act, then such penalty is equal to zero (0.0).

Rider DSPM, Original Sheet No. XX+11. The issue with this language is whether it is consistent with the following language of Section 16-108.5(f):

The metrics and performance goals set forth in subparagraphs (5) through (8) of this subsection (f) are based on the assumptions that the participating utility may fully implement the technology described in subsection (b) of this Section, including utilizing the full functionality of such technology and that there is no requirement for personal on-site notification. If the utility is unable to meet the metrics and performance goals set forth in subparagraphs (5) through (8) of this subsection (f) for such reasons, and the Commission so finds after notice and hearing, then the utility shall be excused from compliance, but only to the limited extent achievement of the affected metrics and performance goals was hindered by the less than full implementation.

220 ILCS 5/16-108.5(f) (emphasis added).

Given that under 16-108.5(f) the Commission will ultimately determine whether the
Company is excused from compliance with the goals set forth in (5) through (8) but only after the Company seeks such relief after notice and hearing, Staff recommends that in that proceeding the Commission also address the issue of the amount of the penalty. Consistent with Staff’s position, Staff has reached agreement with the Company on certain revisions to Rider DSPM, Original Sheet No. XX+11 to address the possible inconsistency between the language in the tariff and the relevant language in Section 16-108.5(f). Staff and the Company have agreed to the following changes to Original Sheet No. XX+11:

Notwithstanding the previous provisions of this Determination of the Penalty section, in the event the Company does not meet the target level of achievement provided in the definition of an aforementioned penalty, but the Company is found to be exempt requests to be excused from the requirement to meet such target level of achievement in accordance with the provisions of Section 16-108.5(f) of the Act, then such penalty, if any, is equal to such amount as determined by the ICC in accordance with such section of the Act zero (0.0).

Commission Analysis and Conclusion

Based upon the above, this modified language is agreed to between Staff and the Company. This modification should satisfy the concerns of all parties on Rider DSPM. The Commission adopts the proposed language revisions as set forth above by Staff.

2 ComEd and Staff Agreement Relating to Addition of Clarifying Language in Rider DSPM

ComEd’S Position

In ComEd’s currently pending formula rate case in ICC Docket No. 11-0721, Staff proposed a new workpaper to include the Performance Metrics Penalty that will be incorporated into ComEd’s performance-based formula rate, Rate DSPP. ComEd did not object to this proposal. Accordingly, Staff witness Ms. Ebrey proposed in the present docket that a reference to this workpaper be included in Rider DSPM (Ebrey Dir., Staff Ex. 2.0, at 3:47-50), and ComEd did not object. Staff and ComEd therefore agree that if the Commission approves the proposed workpaper in ICC Docket No. 11-0721, ComEd will implement the change through a compliance filing following the issuance of the Commission’s order in ICC Docket No. 11-0721. The proposed change is reflected in the attachment to ComEd’s Response to Staff Data Request TEE 1.07, labeled as TEE 1.07_Attach 1 and attached to Ms. Ebrey’s direct testimony as Attachment B.
Staff’s Position

Staff proposed certain limited language changes to Rider DSPM. For consistency and sake of clarity purposes Staff witness Ebrey testified that Rider DSPM should include language indicating how any penalty determined under the Rider would be reflected in the annual reconciliation of the Company’s formula rate, Rate DSPP. Staff Ex. 2.0, p. 3. Ms. Ebrey testified that in ComEd’s formula rate docket, Docket No. 11-0721, she proposed that with respect to Rate DSPP, an additional workpaper be provided by the Company to reflect the calculation of the penalty under Rider DSPM. Ms. Ebrey proposed specific language for Rider DSPM to be included in the “Implementation of Penalty” section of Rider DSPM. See, Staff Ex. 2.0, Attachment B.

In the Company’s rebuttal testimony, Mr. McMahan testified that if the Commission approves the workpaper proposed by Ms. Ebrey in Docket 11-0721, which the Company does not oppose, ComEd will implement the change proposed by Ms. Ebrey, through a compliance filing following the issuance of the Commission’s order in ICC Docket No. 11-0721. ComEd Ex. 4.0, pp. 3-4.

Based upon the above, this issue is uncontested. Staff recommends the Commission adopt Ms. Ebrey’s recommendation on this issue.

Commission Analysis and Conclusion

Staff proposed certain limited language changes to Rider DSPM. For consistency and sake of clarity purposes Staff witness Ebrey testified that Rider DSPM should include language indicating how any penalty determined under the Rider would be reflected in the annual reconciliation of the Company’s formula rate, Rate DSPP. Staff Ex. 2.0, p. 3. Ms. Ebrey proposed specific language for Rider DSPM to be included in the “Implementation of Penalty” section of Rider DSPM. See, Staff Ex. 2.0, Attachment B. The Company does not oppose the change proposed by Staff. Therefore the Commission approves the change and ComEd will implement the change proposed by Ms. Ebrey, through a compliance filing following the issuance of the Commission’s order in ICC Docket No. 11-0721.

3 Annual Reporting on Metrics, Including ComEd’s Agreement to Report on Action Taken in Response to Any Failure to Achieve an MWBE Goal

ComEd’s Position

Although Staff witness Ms. Ebrey recognizes that Section 16-108.5(f-5) does not assess a penalty for a failure to meet the MWBE annual goals (Ebrey Dir., Staff Ex. 2.0, 2:32-33), she requested that ComEd “address in its rebuttal testimony any actions it will take in the event that it fails to meet the MWBE performance metrics
(other than the reporting of such failure).” Id. at 2:37-39. While ComEd agrees with Ms. Ebrey that Section 16-108.5(f-5) does not assess a penalty for a failure to meet an MWBE annual performance goal, ComEd notes that it will nevertheless report any shortfall related to an MWBE annual performance goal in its annual report to the Commission. See 220 ILCS 5/16-108.5(f-5) (each year on or before June 1 ComEd must “file a report with the Commission that includes, among other things, a description of how the participating utility performed under each metric…..”). To further address Ms. Ebrey’s concerns, for a year in which ComEd does not meet the annual MWBE performance goal, ComEd voluntarily agrees to include in its annual report for that year a description of actions taken in response to the shortfall. McMahan Reb., ComEd Ex. 4.0, at 5:89-92.
Staff’s Position

With regard to metric 9, expenditures for minority-owned and female-owned businesses, Staff witness Ebrey expressed concern about the lack of incentive for the Company to meet the performance goal given that there appears to be no authority for the Commission to impose a penalty on the Company for not meeting its goal. Staff Ex. 2.0, p. 2. Ms. Ebrey further testified that the Company in its rebuttal testimony should address any actions it would take in the event it fails to meet the goal. Id.

In his rebuttal testimony, ComEd witness Mr. McMahan testified that if the Company fails to reach the goal it has set for itself on expenditures for minority-owned and female-owned businesses this metric as required under the PUA, in particular 16-108.5(f-5), it will include that failure in its report to the Commission and will also include in that report the corrective action taken by the Company to address its failure to meet the goal. ComEd Ex. 4.0, p. 5.

Staff does not take issue with the Company’s proposal on this issue, therefore this issue is uncontested. Staff recommends the Commission adopt the Company’s proposal.

Commission Analysis and Conclusion

ComEd has proposed that if the Company fails to reach the goal it has set for itself on this metric, expenditures for minority-owned and female-owned businesses, as required under 16-108.5(f-5) of the PUA, it will include that failure in its report to the Commission. ComEd will also include in that report the corrective action taken by the Company to address its failure to meet the goal. Staff recommends the Commission adopt the Company’s proposal.

Therefore, the Commission approves the Company’s proposal on this issue.

IV. CUB PROPOSED WORKSHOP PROCESS TO IDENTIFY ADDITIONAL METRICS

ComEd’s Position

According to ComEd, CUB witness Mr. Thomas improperly asks the Commission to order a separate workshop process to identify additional metrics that “can be used to evaluate whether or not ComEd’s investments are in fact delivering an ‘enhanced customer experience’.” Thomas Dir., CUB Ex. 1.0, at 4:68-5:71. As explained below, however, the Commission only has authority to consider the metrics described in Section 16-108.5(f).
Section 16-108.5(f) unambiguously sets forth the 10 metrics that a participating utility must develop and file with the Commission, and specifies penalty provisions related to nine of those metrics. Moreover, after notice and hearing, the Commission must enter an order within 120 days after these metrics are filed. The subject of that order is limited to “approving, or approving with modification, a participating utility’s tariff or mechanism to satisfy the metrics set forth in subsection (f) of this Section.” 220 ILCS 5/16-108.5(f-5) (emphasis added). It is well established that “[t]he Commission, because it is a creature of the legislature, derives its power and authority solely from the statute creating it, and its acts or orders which are beyond the purview of the statute are void.” The Commission’s authority to enter [an] order … must, therefore, find its source in the Act.” Commonwealth Edison Co. v. Ill. Commerce Comm’n, 332 Ill. App. 3d 1038, 1048 (2d Dist. 2002) (quoting City of Chicago v. Ill. Commerce Comm’n, 79 Ill. 2d 213, 217-18 (1980)). Accordingly, because the undefined and unidentified metrics suggested by Mr. Thomas are neither contemplated by nor described in Section 16-108.5(f), the Commission does not have authority to consider them in this docket or order their consideration in a separate docket or workshop process.

To the extent CUB seeks additional metrics related to the deployment of AMI (Thomas Dir., CUB Ex. 1.0, at 6:112-117), ComEd will file its AMI Plan by April 23, 2012, which will contain “annual milestones and metrics for the purposes of measuring the success of the AMI Plan in enabling Smart Grid functions; and enhancing consumer benefits from Smart Grid AMI.” 220 ILCS 5/16-108.5(c)(4).

CUB/City’s Position

CUB believes that “smart grid” investments, such as Advanced Metering Infrastructure ("AMI"), distribution automation and other improvements, hold great potential for delivering improved service and lower customer bills. With the investments contemplated by the Act which addresses the performance metrics at issue in this case, customers could see new opportunities for savings through demand response and energy efficiency programs as well as improvements in reliability and billing accuracy. CUB Ex. 1.0 at 3. Most importantly, this legislation for the first time recognizes that a utility’s performance in delivering improved customer service to its customers should be measured and evaluated over time. Id. This means the Commission is now placed in the position of strategically evaluating how these new investments and new performance expectations can be used to best serve ComEd’s customers. However, the Act could potentially result in an overemphasis on the investment dollars as compared to the investment outcomes. Id. at 4. Given the breadth and length of investment planning required, the Commission needs to make sure it has appropriate benchmarks for monitoring ComEd’s performance and ensuring that these investments – and this new performance-based formula rate structure – are focused on delivering a better quality of service at a lower cost with greater flexibility in managing energy usage.

The Act requires specific performance metrics to be included in ComEd’s Plan, which ComEd outlined in its testimony. 220 ILCS 5/16-108.5(f); ComEd Ex. 2.0 at 4-6. These
metrics focus on improvements in customer reliability, billing accuracy and collection as well as on improved opportunities for minority-owned and women-owned businesses.

By themselves, however, these metrics do not deliver a better customer experience since performance is defined not just by competently keeping lights on, but also by innovation and creativity. Id. 9. It is certainly true that improvements in reliability and billing accuracy will benefit customers. Id. at 6. As CUB witness Chris Thomas pointed out, reducing the amount of uncollectible expense and lost energy (CIM and UFE) will benefit customers, perhaps even more directly than improvements in reliability since these improvements have a direct dollar value associated with them. Id. However, there are additional benefits that the Commission should track over time to maximize the consumer and environmental value of the smart grid:

- Operational benefits through improvements in ComEd’s operational efficiency and system reliability, including reduced metering costs through automated metering and improved asset life through improved information on maintenance issues in wires or in substations, before the equipment failures or outages even occur.
- Consumer benefits through improved usage information and ability to manage energy usage through energy efficiency, demand response and distributed generation investments, not only through expanded rate options that will give additional potential money saving opportunities from energy conservation and load shifting but through new technologies made practicable by smart grid investments.
- Environmental benefits through smarter long-term generation and transmission investments and more efficient resource utilization, avoided greenhouse gas (“GHG”) emissions associated with peak energy usage and meter reading, and improved renewable resource interconnection.

Id. at 7-8. To meet the requirements of the Act and maintain its participation in a formula rate structure, ComEd is about to undertake a ten-year investment program that positions the Commission, the utility and stakeholders to examine how these investments can be used to identify new technologies, new service offerings and new providers that empower customers to make efficient decisions. Id. at 9. No infrastructure investment program, much less one on the scale required by the Act, can be successful unless customers see material benefits to them. Id. at 7. These are benefits that the Commission can measure, and in measuring, ensure that ComEd’s investments are focused directly on returning value to the customers who are funding the investments. For example, with respect to the customers’ ability to understand and manage energy usage, the Commission can look at whether ComEd has introduced any new pricing rates which will induce efficient consumption. Id. at 7. The Commission can ask ComEd to survey the best practices in the design of customer rates and set forth a schedule for piloting and assessing those practices in Illinois. Id. Since customer education is the first step to customer adoption of any rate, the Commission should also include a metric to measure how ComEd is doing teaching customers about how their energy usage affects their bills and the environment, such as
using surveys to measure customer comprehension before and after ComEd undertakes a customer education campaign. *Id.*

While the Act lays out goals related to improved reliability and reduced system energy consumption the Act fails to specify how those goals can be achieved. *Id.* at 8. For example, higher power quality will result in money saved from outages, because smart grid investments can – and should – create and provide more stable and reliable power to reduce down time. *Id.* at 8. The Commission can address this issue by requiring ComEd to perform a voltage optimization study of their distribution system and implement a voltage optimization plan. *Id.* Another example would be how ComEd’s investment in AMI will also allow ComEd to better identify issues of meter tampering. *Id.* Similar to the requirement in the statute that ComEd demonstrate an improvement in line loss unaccounted for energy, ComEd should develop new standards to utilize the new capabilities of AMI to reduce incidents of the improper assessment of “revenue protection” fees.[4] *Id.* AMI can help eliminate these errors and the Commission can create a metric that will ensure this benefit to customers is realized. *Id.*

The bottom line, as Mr. Thomas explained, is that the Commission should add metrics that can make sure customers see material benefits and the easiest way to do that is to make sure customers are being empowered to control their energy usage – and by extension their relationship with the utility; increase the potential for viable alternatives to the utility to emerge and compete to provide new services, such as promoting distributed generation. CUB Ex. 1.0 at 8. The Commission should establish metrics for determining whether consumers have increased their understanding of (a) ways to lower their bills; (b) ways to consume more efficiently; (c) how bills are computed (so that they understand their responsibility to pay off sunk costs even as they reduce future costs); and (d) ways in which third parties, who are not the utility, can enter the marketplace to provide enhanced services to customers. *Id.* at 9.

Whether or not third parties enter the marketplace depends upon the design of the smart grid. A smart grid should create an open marketplace where alternative energy sources from geographically distant locations can easily be sold to customers wherever they are located. *Id.* at 9. Intelligence in distribution grids should enable small producers to generate and sell electricity at the local level using alternative sources such as rooftop-mounted photo voltaic panels, small-scale wind turbines, and micro hydro generators. *Id.* The Commission should set as its goal that ComEd’s investments must enable maximum access by third parties to the grid, creating a welcoming platform for deployment of a wide range of clean energy technologies and energy management services. *Id.* at 10. Potential metrics would include whether or not the utility – in this case ComEd – has established a platform for maximum access by 3rd parties to data such that they can participate competitively in energy markets by, or by how long it takes ComEd to demonstrate full compliance with NIST interoperability standards. *Id.*

With respect to the distributed generation program, the Commission should adopt the goal that ComEd’s investments must accommodate all generation and storage options. *Id.*
at 10. ComEd’s investments must then reduce traditional power loads, and also seamlessly interconnect with renewable energy, micro-turbines, and other distributed generation technologies at local and regional levels. Id. The Commission can require ComEd to measure and report how long it takes its customers to be able to interconnect a distributed generation system and by requiring ComEd to put into place a program for the promotion of energy storage, including possible rebates, incentives and/or tariffs. Id. at 10-11. A plan like this could also address how ComEd will enable integration of intermittent power sources, including energy storage, energy efficiency, distributed generation and utility scale renewable energy. Id. at 11. As climate change and environmental concerns increase, the demand for renewable energy resources will also increase; since these are for the most part intermittent in nature, a smart grid system should enable power systems to operate with larger amounts of such energy resources. Id.

The Commission should also consider what the broader implications of ComEd’s long-term investments will be. The types of investments required by the Act will allow ComEd to develop the infrastructure and policies necessary to enable and support the sale of demand response, energy efficiency, distributed generation, and storage into wholesale energy markets as a resource. Id. at 11. The Commission should require ComEd to take advantage of these opportunities, for example, by requiring ComEd to have a certain percentage of their total capacity in demand response by a certain time, including requiring ComEd to have a certain percentage in automated demand response.[5] Id.

These investments will also enable new options for customers to lower their bills and manage their energy usage. A smarter grid will enable consumers to change their behavior around dynamic prices or to pay vastly increased rates for the privilege of reliable electrical service during high-demand conditions. Id. at 11-12. The Commission can encourage customers to manage energy more efficiently by requiring ComEd to make available to all customers access to their energy info through a web portal, by requiring that AMI investments are done with an eye towards supporting the use and adoption of Home Area Networks (“HANs”) to manage energy usage, and by requiring ComEd to establish an ongoing energy meter calibration program. Id. at 12.

These types of metrics are being used in other jurisdictions, that have considered which metrics would be necessary in evaluating smart grid investments. For example, the California Public Utilities Commission led a planning process that included the discussion of smart grid metrics. Id. at 12. The investor-owned utilities in California, along with the Environmental Defense Fund, presented the CPUC with a report outlining ideas for metrics that can guide the first smart grid deployment plans filed by the utilities. Id. The following metrics were adopted by consensus, meaning the Commission will measure changes in:

• Load impact from smart grid-enabled, utility administered demand response;

• Demand response program size, both in total megawatts and customer class enrollment, to the extent available;

• Number of customers that are on a time-variant or dynamic pricing tariff (by
customer class, CARE, and climate zone, to the extent available);

• Number and percentage of customers with advanced meters to access energy usage information or to enroll in utility energy information programs;

• Number of customers enrolled in time-variant electric vehicles tariffs;

• MW and MWh of grid connected energy storage interconnected at the transmission or distribution system level;

• System load factor and load factor by customer class;

• Number of and total nameplate capacity of customer-owned or operated, grid- connected distributed generation facilities; and

• Total annual electricity deliveries from customer-owned or operated, grid connected distributed generation facilities.

Id. at 12-13. California also addressed how the total environmental footprint of the current electric generation and delivery system can be evaluated, and created specific metrics to track cost savings and avoided GHG emission associated with smart-grid enabled improvements. Id. at 13. The metrics measured:

• Intermittent renewable integration that reduce the need for spinning reserves and other ancillary services;

• Line loss reductions in the transmission and distribution system;

• Residential automated demand response programs and energy efficiency programs; and

• Energy storage.

Id.

CUB witness Mr. Thomas provided many suggestions of additional metrics that would help ensure that customer see the maximum potential benefit from upcoming smart grid investments. See Id. at 9-12. The Commission should consider the metrics proposed by Mr. Thomas and should, in its final order, direct ComEd to:

• Convene stakeholders to discuss and recommend specific metrics based on the objectives Mr. Thomas identified;

• Collect data regarding past performance of those metrics;

• Publish a report detailing the Company’s methodology and results for measuring past performance and for measuring new activities;
• Hold a workshop to review the report; and

• Propose a plan to measure and improve performance going forward.

_Id. at 14. The Commission can use the resulting plan as a baseline for its review of ComEd’s performance in the annual proceedings laid out by the Act, and by doing so, have a means to monitor and evaluate ComEd’s improvement every year.

The Commission has a vital role—to effectively and comprehensively regulate public utilities—with a responsibility to ensure that ComEd’s customers receive adequate, efficient, reliable, environmentally safe and least-cost public utility services. 220 ILCS 5/1-102. The Commission was statutorily created to exercise general supervision over all Illinois public utilities in accordance with the provisions of the Act. _Sheffler v. Commonwealth Edison Co._ 399 Ill.App.3d 51, 60 (1 Dist.,2010), citing 220 ILCS 5/4–101 and _Alhambra–Grantfork Telephone Co. v. Illinois Commerce Comm’n_, 358 Ill.App.3d 818, 823 (2005) (Illinois Commerce Commission is a creation of the Illinois legislature and possesses the authority and power necessary to supervise all Illinois public utilities and to administer the regulatory laws under the Act).

The General Assembly intended protections for consumers during the course of this ten-year, multi-billion dollar investment, as evidenced by the inclusion of multi-year performance metrics in the statute. 220 ILCS 5/16-108.5(f). The General Assembly’s stated intent in enacting Section 16-108.5 is to modernize and upgrade Illinois’ electric grid, ensuring that the State’s electric utility infrastructure will promote future economic development in the state and will enhance customer experience with innovative technological offerings. 220 ILCS 5/16-108.5(a). The General Assembly further stated, “The introduction of performance metrics will further ensure that reliability and other indicators are not just maintained but improved over the next decade.” _Id._

It is a well established rule that the express grant of authority to an administrative agency also includes the authority to do what is reasonably necessary to accomplish the legislature’s objective. _Abbott Laboratories, Inc. v. Illinois Commerce Com’n_, 289 Ill.App.3d 705, 712 (1 Dist.,1997), citing _Lake County Board of Review v. Property Tax Appeal Board_, 119 Ill.2d 419, 427 (1988). For example, courts have held that the Commission was not limited to any set of methods to achieve the legislative objective of securing meter accuracy and upheld a rule imposing a so-called penalty against a gas company for meter failure:

“While the legislature provided many explicit sanctions which may be employed by the Commission, the legislature expressed no intent to limit the Commission to the enumerated methods of enforcement. We do not find the legislature implied in the Act any intent to limit the Commission to any set of specific procedures. Rather, we believe the legislature implicitly authorized the Commission to formulate rules necessary to secure meter accuracy, a goal specifically mentioned by the legislature.” _Peoples Gas, Light & Coke Co. v. ICC_, 175 Ill.App.3d at 52, 124 Ill.Dec. 690, 529 N.E.2d 671.
Courts have also upheld the authority of the ICC to enact a non-cost based penalty, noting the “broad ratemaking authority and that the Commission appropriately exercised its discretion to formulate reasonable methods of achieving stated legislative objectives.” *Abbott Laboratories, Inc.*, 289 Ill. App. 3d at 712.

The Act specifically provides that the Commission “shall have general supervision of all public utilities” including

the manner in which their plants, equipment and other property * * * are managed, conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service but also with respect to their compliance with this Act and any other law, with the orders of the Commission and with the charter and franchise requirements.

*Sheffler*, 399 Ill. App. 3d at 60. Further, authority to order improvements to a public utility’s facilities is vested with the Commission in section 8–503 of the Act. *Id.*, citing 220 ILCS 5/8–503. Nothing in the Act limits the Commission’s general oversight powers or indicates that the metrics listed in the Act are the only standards to which the Commission may hold a participating utility. Other metrics that also ensure smart grid investments result in maximum customer benefits are also appropriate. The Commission should adopt the CUB’s recommendations and in its final order, direct ComEd to:

• Convene stakeholders to discuss and recommend specific metrics based on the objectives Mr. Thomas identified;

• Collect data regarding past performance of those metrics;

• Publish a report detailing the Company’s methodology and results for measuring past performance and for measuring new activities;

• Hold a workshop to review the report; and

• Propose a plan to measure and improve performance going forward.

On Exceptions, CUB/City, argued that the Commission does have the authority to order a work shop to develop additional metrics arising out of Section 16-108.5(f). According to CUB/City, The Commission does have the ability to order additional requirements under its continued authority to ensure adequate, efficient, reliable and least-cost public utility services at just and reasonable rates. See, *e.g.*, 220 ILCS 5/1-102, 5/9-101. CUB/City state that Illinois consumers should not be deprived of the benefits and protections they could receive from additional performance metrics that would help ensure the most efficient utility spending simply because the time period set forth in the statute does not allow a great deal of time to develop a record on those metrics. CUB/City recommend that the Commission adopts CUB proposal and require a workshop to develop additional metrics addressed in Mr.
Thomas’s testimony and in its brief on exceptions.
Commission Analysis and Conclusion

Section 16-108.5(f) unambiguously sets forth the 10 metrics that a participating utility must develop and file with the Commission and specifies penalty provisions related to nine of those metrics. Moreover, after notice and hearing, the Commission must enter an order within 120 days after these metrics are filed. The subject of that order is limited to “approving, or approving with modification, a participating utility’s tariff or mechanism to satisfy the metrics set forth in subsection (f) of this Section.” 220 ILCS 5/16-108.5(f-5)

Public Acts 97-0616 and 97-0646 set forth a series of separate expedited proceedings for the Commission to consider and adopt a variety of substantially new regulatory frameworks related to grid modernization and smart grid deployment. For ComEd, this includes establishing a formula rate setting mechanism (see Docket No. 11-0721), this current proceeding to approve statutory multi-year performance metrics, the upcoming proceeding to consider an AMI deployment plan, and a peak time rebate tariff. While some of the CUB/City proposed metrics clearly relate to AMI deployment, others appear to tie together the disparate potential benefits of grid modernization into a broader policy goal of maximizing consumer benefits from the multi-billion dollar investments that ComEd has proposed. The Commission believes that while the CUB/City proposal contains good ideas concerning important additional metrics, the statute’s narrow scope and limited time period makes the inclusion of additional requirements not feasible. And while the Commission is concerned that there is no natural home for the overlapping big-picture issues that CUB/City has raised, the current proceeding is not the appropriate docket for addressing these issues.

The Commission does, however, strongly encourage all parties to work together to find ways to ensure that customers receive the maximum benefits of the proposed investments. Specifically, the Commission suggests that to the extent CUB/City’s proposed metrics relate to the deployment of AMI meters, that parties consider those metrics in the forthcoming proceeding on ComEd’s AMI deployment plan. At the conclusion of the AMI docket the Commission will request a Staff Report to review the metrics approved in both this docket and in the AMI deployment docket. Based upon that Report the Commission may initiate an investigation to consider any appropriate actions to take in order to ensure the full realization of the consumer, environmental and societal benefits of the aforementioned grid modernization programs.

FINDINGS AND ORDERING PARAGRAPHS
The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

(1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, sale and distribution of electricity to the public in Illinois, and is a public utility as defined in Section 3-105 of the Public Utilities Act;

(2) the Commission has jurisdiction over the Company and the subject matter herein, the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;

(3) on December 8, 2011, Commonwealth Edison Company filed its Multi-Year Performance Metrics Plan which sets forth the baseline values and annual performance goals for each of the 10 metrics, as well as its proposed tariff mechanism, Rider DSPM – Delivery Service Performance Metrics (“Rider DSPM”);

(4) this Plan, with the modifications adopted in the prefatory portion of this Order, is consistent with the requirements of Section 16-108.5(f) and (f-5) of the Act and should be approved, Rider DSPM, as modified by the changes adopted in the prefatory portion of this order, is consistent with Section 16-108.5(f) and (f-5) of the Act and should be approved;

(5) Commonwealth Edison Company should be directed to make a compliance filing in this proceeding which incorporates the conclusions in this Order, such amended Multi-Year Performance Metrics Plan should be filed within three business days after the entry of this Order;

(6) Commonwealth Edison Company should be directed to file a revised Rider DSPM, consistent with the conclusions in this Order, such revised Rider DSPM should be filed within three business days after the entry of this Order with an effective date no earlier than five business days after such filing is made; and

(7) all motions, petitions, objections, and other matters in this proceeding which remain unresolved should be disposed of consistent with the conclusions herein.
IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Multi-Year Performance Metrics Plan and its proposed tariff mechanism, Rider DSPM – Delivery Service Performance Metrics (“Rider DSPM”) outlined in this order are hereby approved consistent with the conclusions contained herein.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are to be disposed of in a manner consistent with the conclusions herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 4th day of April, 2012.

(SIGNED) DOUGLAS P. SCOTT

CHAIRMAN

[1] The ten year period for items 1, 2, 3, 3.5, 4, and 9 starts no later than 14 months following when ComEd begins its investments. The ten year period of items 5, 6, 7 and 8 starts no later than 14 months following when the Commission approves the Company’s advanced metering infrastructure deployment plan, pursuant to 16-108.6 of the PUA.

[2] Metric 3.5 was added to the prior existing nine improvement metrics with the passage of Public Act 097-0646.

[3] ComEd set as its ten year goal a fifteen percent improvement in the amount of expenditures paid to minority-owned and female-owned enterprises. ComEd Ex. 2.0, p. 5.

[4] “Revenue protection” fees are assessed automatically to accounts on which ComEd suspects meter tampering; those fees are sometimes later reversed when ComEd discovers that its system mistook a meter reading or other error for tampering.

[5] Automated demand response that is enabled through a variety of technologies that are automatically activated upon receiving a demand response event notification or price trigger. The Commission should also measure the cost savings these investments produce for customers using them.