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194 FERC ¶ 61,109
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Laura V. Swett, Chairman;
David Rosner, Lindsay S. See,
Judy W. Chang, and David LaCerte.

Commonwealth Edison Company   Docket No. ER26-838-000

ORDER ACCEPTING TRANSMISSION SECURITY AGREEMENT

(Issued February 17, 2026)

1. On December 19, 2025, pursuant to section 205 of the Federal Power Act (FPA)[1] and part 35 of the Commission's regulations,[2] Commonwealth Edison Company (ComEd) submitted an executed Transmission Security Agreement by and between ComEd and Aligned Data Centers (Acquisition) PropCo, LLC (Aligned) (Transmission Security Agreement).[3] As discussed below, we accept the Transmission Security Agreement, effective February 18, 2026, as requested.

I. **Filing**

2. ComEd states that the Transmission Security Agreement is a bilateral agreement between ComEd and Aligned that ensures that a contribution to the transmission revenue requirement is made by Aligned commensurate with its requested end-use load relating to the construction of, and service to, a new data center campus that Aligned is constructing in Coal City, Illinois (Data Center).[4] ComEd states that it intends to provide retail electric delivery services, including by constructing, maintaining, and operating transmission facilities, to the Data Center pursuant to the applicable rate schedule in ComEd's electric retail service tariff on file with the Illinois Commerce Commission (Illinois Commission) and that providing that service will require the use of Network Integration Transmission Service (NITS) by the responsible Load Serving Entity (LSE).[5]

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[1] 16 U.S.C. § 824d.

[2] 18 C.F.R. pt. 35 (2025).

[3] *See* Appendix for tariff records accepted in this order.

[4] Transmittal at 1.

[5] *Id.* at 1, 3.

ComEd explains that Aligned will be a ComEd retail customer that will not take transmission service under the PJM Open Access Transmission Tariff (PJM Tariff) but will be served exclusively under ComEd's state jurisdictional retail tariff.[6] However, ComEd states that it is filing the Transmission Security Agreement under FPA section 205 because its provisions "may be construed as affecting rates and practices for FERC jurisdictional transmission service."[7] ComEd also notes that the arrangements addressed in the Transmission Security Agreement do not involve co-location of the Data Center with any generating facilities.[8]

3. ComEd states that the Transmission Security Agreement establishes protections in the event of Aligned's failure to timely construct the Data Center and related facilities, failure of such facilities to reach commercial operation by the commercial operation date, failure to remain in operation throughout the term of the Transmission Security Agreement, or failure to operate in conformance with the agreed upon load phasing schedule (Load and Phasing Schedule)[9] for a given year.[10] ComEd states that the Transmission Security Agreement's terms and conditions include a defined ramp, a customer facility readiness obligation, credit obligations, committed revenue contributions, shortfall payments if the Data Center's usage and resulting transmission revenues miss commitments, and a published termination-fee schedule.

4. ComEd states that it anticipates that the provision of service to the Data Center will require the use of new, existing, and modified transmission facilities, including

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[6] *Id.* at 1 n.5.

[7] *Id.*

[8] *Id.* ComEd states that retail customers in Illinois are permitted to obtain electric energy from qualified competitive retail energy providers. ComEd states that the Transmission Security Agreement does not alter or limit Aligned's rights under ComEd's retail service tariffs, nor alter or limit its option to purchase its electric supply from an authorized competitive retail energy provider. ComEd states that, under such retail tariff, ComEd passes through to its customers the transmission charges incurred for service to those retail customers for which it is the LSE under the PJM Tariff pursuant to its Transmission Cost Recovery Rider. ComEd states that if Aligned selects another retail energy supplier that functions as its LSE, that entity will take and pay for the necessary transmission service. However, ComEd states that in either case, the transmission revenue associated with the Aligned load serves to satisfy a portion of ComEd's transmission revenue requirement. *Id.* at 3.

[9] *See* Transmission Security Agreement, Ex. B.

[10] Transmittal at 2.

Commission-jurisdictional facilities.[11] ComEd states that it will provide the metering of customer's use in accordance with its retail tariff. With respect to the costs of transmission facilities used to provide delivery services to the Data Center, ComEd states that it agrees to take positions favoring cost recovery through ComEd's transmission formula rates before any applicable state or federal regulatory agency having jurisdiction over the project, to the extent consistent with the law, and so long as the load associated with the Data Center conforms to the Load and Phasing Schedule.[12] ComEd notes that the right to seek recovery of the costs of the transmission facilities is not determined by the Transmission Security Agreement but will be subject to subsequent proceedings before the appropriate jurisdictional state and/or federal regulatory agencies.

5. ComEd states that the Transmission Security Agreement contains a preliminary load ramp reflected in the Load and Phasing Schedule.[13] ComEd states that, prior to ComEd commencing project development, the Transmission Security Agreement requires Aligned to request any material change or modification to the Load and Phasing Schedule within a certain amount of time of the effective date.[14] ComEd also states that the Transmission Security Agreement requires that any such change or modification request may not seek to connect load prior to the first date listed on the Load and Phasing Schedule, increase the MW value associated with each tranche of the Load and Phasing Schedule, or decrease the MW value associated with each tranche of the Load and Phasing Schedule.[15] ComEd states that if no such change or modification is requested, the Load and Phasing Schedule set forth in the Transmission Security Agreement shall govern.[16]

6. ComEd states that, to secure Aligned's obligations under the Transmission Security Agreement, the agreement requires Aligned to maintain certain credit support for the term of the Transmission Security Agreement and for so long as Aligned has outstanding payment obligations to ComEd.[17] ComEd states that the Transmission Security Agreement requires Aligned to issue or cause to be issued and maintain, by

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[11] *Id.* at 3.

[12] *Id.* at 4 (citing Transmission Security Agreement § 6(A)).

[13] *Id.* at 4, 9 (citing Transmission Security Agreement, Ex. B).

[14] *Id.* at 4 (citing Transmission Security Agreement § 3).

[15] *Id.* (citing Transmission Security Agreement § 3(A)).

[16] *Id.* (citing Transmission Security Agreement § 3(B)).

[17] *Id.* at 5.

renewal, extension, or replacement, an irrevocable, unconditional, transferable letter of credit that guarantees the payment and performance obligations of Aligned in favor of ComEd and that meets the requirements of the Transmission Security Agreement and in substantially the same form and substance as Exhibit D thereto (Credit Support).[18] ComEd states that the Credit Support shall have a term equal to the term of the Transmission Security Agreement and that, during that term, the face amount of the Credit Support may not be reduced except as expressly provided in the Transmission Security Agreement; provided, however, that Aligned shall not have any obligation to replenish the Credit Support following any draw thereon.[19] ComEd states that all fees and charges, including issuing, commitment, renewal, and operation fees and charges, relating to the Credit Support shall be borne by Aligned, and ComEd is entitled to access and draw upon the Credit Support in accordance with the terms of the Transmission Security Agreement and the Credit Support.

7. In addition, ComEd states that if the bank issuing the letter of credit notifies Aligned that it is not extending or renewing a letter of credit or if Aligned fails to otherwise maintain such letter of credit by renewal, extension, or replacement, ComEd may draw down the full amount of the letter of credit, less any amounts previously drawn, and such amount shall be held by ComEd as cash security for Aligned's obligations under the Transmission Security Agreement.[20]

8. ComEd states that its agreement to seek recovery of the costs of the transmission facilities used to provide delivery services to Aligned through ComEd's formula rate is based on the understanding that the Data Center will achieve commercial operation, remain in operation throughout the term of the Transmission Security Agreement, and operate in conformance with the agreed upon Load and Phasing Schedule for a given year, which will allow ComEd to receive from Aligned incremental revenues that equal or exceed the expected NITS revenue associated with the requested load.[21] In order to protect ComEd and its other customers from having to incur substantial costs if Aligned does not achieve commercial operation, fails to remain in operation throughout the term of the Transmission Security Agreement, or fails to operate in conformance with the agreed upon Load and Phasing Schedule for a given year, the Transmission Security Agreement requires Aligned to make a payment to ComEd reflecting a minimum contribution to ComEd's transmission revenue requirement (Committed Revenue

[18] *Id.* (citing Transmission Security Agreement § 9(A)).

[19] *Id.* (citing Transmission Security Agreement § 9(A)(b)).

[20] *Id.* at 6 (citing Transmission Security Agreement § 9(A)(e)).

[21] *Id.*

Contribution).[22] Pursuant to the Transmission Security Agreement, the Committed Revenue Contribution is calculated as follows:

> The "Committed Revenue Contribution" in each year is calculated using 80% of the sum that would be paid by a Load Serving Entity (as such term is defined in the [PJM Tariff)] serving an end-use customer with 80% of the monthly loads and billing determinants shown for each power on the Load and Phasing Schedule using the [PJM Tariff] or any successor tariff and the transmission rates therein in force for service rendered during that year.[23]

9. ComEd states that on an annual basis following the Data Center's commercial operation date and continuing each calendar year thereafter until the expiration of the Transmission Security Agreement's term, ComEd shall determine whether the sums required to be paid by Aligned or the LSE serving Aligned (Actual Revenue Contribution) equals or exceeds the Committed Revenue Contribution for that calendar year.[24] If it does not, ComEd states that the Transmission Security Agreement provides that a "Customer Shortfall Event" is deemed to have occurred for that calendar year and, in addition to the transmission charges billed to Aligned or its LSE for its actual usage, Aligned shall pay ComEd an amount equal to the difference between Actual Revenue Contribution and the Committed Revenue Contribution, subject to a customer shortfall event liability cap.[25]

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[22] *Id.* (citing Transmission Security Agreement § 9(B)(a)). ComEd also explains that Aligned will be responsible for timely payment associated with its actual usage of electric service in accordance with ComEd's retail tariff.

[23] Transmission Security Agreement § 9(B)(a).

[24] Transmittal at 6.

[25] *Id.* at 6-7 (citing Transmission Security Agreement § 9(B)(b)). ComEd states that in order to avoid the potential for double recovery of the costs of transmission facilities used to provide delivery services to Aligned, ComEd agrees that, if these costs are rolled into its transmission rates under Attachment H-13 of the PJM Tariff and if Aligned subsequently makes a payment to ComEd as a result of a Customer Shortfall Event, ComEd will appropriately reflect Aligned's payment in its transmission cost of service under Attachment H-13. *Id.* at 11 n.51.

10. Finally, ComEd explains that the Transmission Security Agreement contains an early termination fee schedule.[26] Specifically, if the Transmission Security Agreement is terminated for certain specified reasons, including for Aligned's convenience or because Aligned reasonably anticipates ceasing operations of the Data Center prior to the expiration of the Transmission Security Agreement's term, Aligned agrees to pay the early termination fee or the partial termination fee, as applicable.[27] If the Transmission Security Agreement is terminated and Aligned is obligated to pay an early termination fee, it will be calculated based on the year in which the effective date of termination occurs.[28] If after energization, Aligned reduces (and thereby terminates) a specified portion of the capacity set forth in the Load and Phasing Schedule, Aligned will pay a partial termination fee equal to a proportionate percentage of the applicable early termination fee to reflect the reduced portion of capacity that is the subject of the partial termination for the remainder of the Transmission Security Agreement's term.[29] ComEd explains that such termination fees would be credited in ComEd's transmission cost of service under Attachment H-13 of the PJM Tariff for the benefit of other customers and provide backstops to protect other customers if the Data Center does not achieve or maintain the committed load.[30]

11. ComEd states that the Transmission Security Agreement contains a *Mobile-Sierra* clause stating that the agreement can only be changed by the parties through a written agreement and that any change to the agreement, whether proposed by a party, a non-party, or the Commission acting *sua sponte*, shall be subject to the *Mobile-Sierra* public interest standard of review.[31] ComEd states that the Transmission Security Agreement establishes terms and conditions that are not generally applicable but are only applicable bilaterally to ComEd and Aligned, and that the Transmission Security Agreement is an arm's length, bilateral agreement that was freely negotiated and executed by two sophisticated parties with considerable relevant experience.[32] ComEd argues that, under applicable precedent regarding the *Mobile-Sierra* doctrine, the Commission should presume that the terms and conditions contained in the Transmission

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[26] *Id.* at 7 (citing Transmission Security Agreement, Ex. E).

[27] *Id.* (citing Transmission Security Agreement § 14(F)).

[28] *Id.* (citing Transmission Security Agreement § 14(F)(b) & Ex. E).

[29] *Id.* (citing Transmission Security Agreement § 14(F)(c)).

[30] *Id.* at 11.

[31] *Id.* at 5 (citing Transmission Security Agreement § 7(C)(b)).

[32] *Id.* at 9.

Security Agreement are just and reasonable unless it finds that any rates, terms, or conditions therein are contrary to the public interest.[33] ComEd states that the Commission recently found the *Mobile-Sierra* presumption applied to other freely negotiated and executed agreements related to other data center developments, and the Commission should do the same here.[34] ComEd requests that the Commission accept the Transmission Security Agreement, as filed and without suspension or hearing, with an effective date of February 18, 2026.[35]

II. Notice of Filing and Responsive Pleadings

12. Notice of ComEd's filing was published in the *Federal Register*, 90 Fed. Reg. 61136 (Dec. 30, 2025), with interventions and protests due on or before January 9, 2026. Timely motions to intervene were filed by the Office of the Illinois Attorney General; the Environmental Law and Policy Center (ELPC); and Constellation Energy Generation, LLC (Constellation). A timely notice of intervention was filed by the Illinois Commission. Timely comments were filed by ELPC and Constellation. On January 16, 2026, Starwood Digital Ventures, L.L.C. (Starwood) filed a motion to intervene out-of-time. On January 26, 2026, ComEd filed a motion for leave to answer and answer to the comments.

A. Comments

13. ELPC does not take a position on the Transmission Security Agreement, but notes that the Illinois Commission is presently considering retail tariff provisions to establish consumer protections related to ComEd's large demand customers.[36] ELPC encourages the Commission to affirm that: (1) any decision in this case does not limit or interfere with state jurisdiction over related matters, and (2) notwithstanding approval or denial of the Transmission Security Agreement, the Illinois Commission retains authority to adopt additional consumer protection provisions related to the Transmission Security

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[33] *Id.*

[34] *Id.* (citing *PECO Energy Co.,* 193 FERC ¶ 61,148, at P 29 (2025); *The Dayton Power & Light Co.*, 192 FERC ¶ 61,103, at P 12 (2025); *The Dayton Power & Light Co.*, 189 FERC ¶ 61,220, at P 22 (2024)).

[35] *Id.* at 11.

[36] ELPC Comments at 1.

Agreement, including provisions allocating the costs of large load interconnection facilities to specific retail customers or customer classes.[37]

14. Constellation notes that the Transmission Security Agreement is a bespoke agreement that has been negotiated and executed only as between ComEd and Aligned, and the application of the Transmission Security Agreement potentially extends to matters covered by both state and federal jurisdiction.[38] Constellation urges the Commission to find that any acceptance or approval of the Transmission Security Agreement in this proceeding is limited to this particular agreement and should not be viewed as a broader ruling that such rates, terms, and conditions would be found to be just and reasonable under other facts or circumstances.[39]

B. ComEd's Answer

15. In response to ELPC, ComEd agrees that nothing in the Transmission Security Agreement divests the Illinois Commission of jurisdiction over the retail service under which ComEd will serve the Data Center.[40] In response to Constellation's comments, ComEd states that it does not object to the Commission making clear that any findings in this docket apply to this Transmission Security Agreement, which establishes terms and conditions that are applicable bilaterally only to ComEd and Aligned, and are not generally applicable.[41]

III. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2025), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

17. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant Starwood's late-filed motion to intervene given its

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[37] *Id.* at 1-2.

[38] Constellation Comments at 2.

[39] *Id.* at 3.

[40] ComEd Answer at 2 (citing ELPC Comments at 1-2).

[41] *Id.* at 3 (citing Constellation Comments at 1; Transmittal at 9).

interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2025), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept ComEd's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

19. We accept the proposed Transmission Security Agreement, effective February 18, 2026, as requested.

20. As noted above, ComEd requests that the Commission accept the Transmission Security Agreement, finding that the *Mobile-Sierra* presumption is applicable here. Under *Mobile-Sierra*, the Commission must presume that certain agreements meet the statutory just and reasonable standard of review.[42] This presumption of justness and reasonableness may be overcome only if the Commission concludes that the agreement "seriously harms the public interest."[43]

21. The *Mobile-Sierra* presumption applies to an agreement if the agreement exhibits certain characteristics that justify the presumption. In assessing whether these characteristics are present, the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm's length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm's-length negotiations. Unlike the latter, the former constitutes contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption.[44] Applying this test, we find that the *Mobile-Sierra* presumption applies to the Transmission Security Agreement.

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[42] *See Devon Power LLC*, 134 FERC ¶ 61,208, at P 10 (2011) (citing *Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527, 530 (2008)).

[43] *Morgan Stanley*, 554 U.S. at 530.

[44] *See, e.g.*, *ITC Midwest LLC,* 144 FERC ¶ 61,241, at P 3 (2013); *La. Pub. Serv. Comm'n v. Entergy Corp.*, 144 FERC ¶ 61,242, at P 4 (2013); *Sw. Power Pool, Inc.*, 145 FERC ¶ 61,137, at P 8 (2013). In *New Eng. Power Generators Ass'n v. FERC*, 707 F.3d 364, 370-71 (D.C. Cir. 2013), however, the D.C. Circuit determined that the Commission is legally authorized to impose a more rigorous application of the "just and

22. Regarding Constellation's request that the Commission clarify that any acceptance of the Transmission Security Agreement be limited to the facts and circumstances presented here, we note that our acceptance of the Transmission Security Agreement is based solely on the record before us and that the Transmission Security Agreement applies only to ComEd and Aligned rather than embodying generally applicable rates, terms, and conditions. Accordingly, our finding here does not prejudge any generally applicable rates, terms, and conditions that may come before the Commission in the future.

23. While not prejudging any pending or future filing, we note that ComEd represents that the Transmission Security Agreement includes "safeguards to protect customers"[45] that otherwise would not exist by providing that Aligned pays ComEd a sum reflecting Aligned's minimum contribution to the transmission revenue requirement, regardless of whether the Data Center operates as anticipated or is ever built.[46] Regarding ELPC's request that the Commission affirm that this decision does not limit or interfere with state jurisdiction over related matters and that the Illinois Commission retains authority to adopt additional consumer protection provisions, the Illinois Commission retains authority to establish terms of retail service between ComEd and Aligned, including the retail consumer protection provisions.

24. We note ComEd's attestations in the transmittal letter that any revenues at or beyond the Committed Revenue Contribution, inclusive of any Customer Shortfall Event payment or any early or partial termination fees, will be credited against ComEd's transmission revenue requirement.[47] We also recognize ComEd's statement that it will reflect those revenues and fees in its transmission cost of service under Attachment H-13 and appropriately address rate treatment of such proceeds in a future ComEd filing.

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reasonable" standard of review on future changes to agreements that fall within the second category described above.

[45] Transmittal at 2.

[46] *Id.* at 10-11.

[47] *Id.* at 6-7, 10-11 & n.51.

The Commission orders:

The Transmission Security Agreement is hereby accepted, effective February 18, 2026, as discussed in the body of this order.

By the Commission. Chairman Swett and Commissioner LaCerte are concurring with a separate joint statement attached.
Commissioner Chang is concurring with a separate statement attached.

(S E A L)

Carlos D. Clay,
Deputy Secretary.

Appendix – Tariff Records

Commonwealth Edison Company
FERC Power Sales and Reassignment of Transmission

TSA 1, Transmission Security Agreement with Aligned (0.0.0)

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Commonwealth Edison Company	Docket No.	ER26-838-000

(Issued February 17, 2026)

SWETT, Chairman, and LACERTE, Commissioner, *concurring*:

1. We write separately to clarify the *Mobile-Sierra* presumption and the Commission's transmission pricing policy, upon which today's order rests. The order accepts a Transmission Security Agreement (Agreement) between Commonwealth Edison Company (ComEd) and Aligned Data Centers PropCo, LLC based on the Commission's determination that the Agreement qualifies for the *Mobile-Sierra* presumption.[1]

2. As an initial matter, today's order echoes decades of precedent formulating the *Mobile-Sierra presumption*, which is exactly that—a presumption.[2] A "presumption of justness and reasonableness" that may be overcome by a showing that an agreement "seriously harms the public interest."[3] The *Mobile-Sierra* presumption is not a straw man behind which the Commission hides to evade its statutory duty of ensuring that the American consumer pays just and reasonable rates.[4] As the Supreme Court clearly stated, "there is only one statutory standard for assessing wholesale-electricity rates, whether set by contract or tariff—the just-and-reasonable standard."[5] The *Mobile-Sierra* presumption is an application of the just-and-reasonable standard that the Commission applies to contracts which, like the ones unanimously voted on today, embody certain characteristics. If the circumstances demonstrate serious harm to the public interest, and especially harm to third parties such as ultimate ratepayers, the Commission has a

[1] 194 FERC ¶ 61,109 at P 21 (2026).

[2] *Id. See Devon Power LLC*, 134 FERC ¶ 61,208, at P 10 (2011) (citing *Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527, 530 (2008)).

[3] *Morgan Stanley*, 554 U.S. at 530.

[4] 16 U.S.C. § 824d(a).

[5] *Morgan Stanley*, 554 U.S. at 530.

statutory responsibility to take action.[6] Nothing precludes such future examination and action should evidence sufficient to overcome the *presumption* occur in the future.

3. Second, as we head down the road where it appears that agreements similar to those approved today may become more common, we also would like to clarify that the Commission's existing transmission policy "endorses transmission pricing flexibility,"[7] not a linear analysis. In the 1994 Transmission Pricing Policy Statement, the Commission explained that "[i]n order to provide new or expanded transmission service, a utility may be required to add expensive transmission assets, which can result in an increase in rolled-in embedded cost rates."[8] To protect existing customers, the Commission allows a transmission provider to charge a rate for transmission service that is the "higher of" either the rolled-in embedded cost of the system (as expanded), or the incremental cost[9] of the system expansion, but not the sum of the two.[10] The Commission re-affirmed this policy in Order Nos. 888 and 890.[11]

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[6] *NRG Power Mktg., LLC v. Me. Pub. Util. Comm'n*, 558 U.S. 165, 174 (2010) ("The *Mobile-Sierra* doctrine does not overlook third-party interests; it is framed with a view to their protection. The doctrine directs the Commission to reject a contract rate that 'seriously harms the consuming public.'").

[7] 18 C.F.R. § 2.22 (2025).

[8] *Inquiry Concerning the Commission's Pricing Policy for Transmission Servs. Provided by Pub. Utils. Under the Fed. Power Act*, 59 FR 55031 (Nov. 3, 1994), FERC Stats. and Regs. ¶ 31,005, 31,137-38 (1994) (Transmission Pricing Policy Statement).

[9] *Id.* at 31,137 n.6 ("The Commission defined the term 'incremental cost' as the 'cost of increasing the level of service provided. In practice, it typically refers to the cost of additional facilities needed to provide the requested service.'").

[10] *Id.* at 31,137-38. The Commission has also referred to this type of pricing as "or" pricing. *Id.* at 31,138.

[11] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,741; Order No. 888-A, FERC Stats. & Regs.¶ 31,048 at 30,268 (noting that under the Commission's transmission pricing policy, "a utility is still permitted to charge the higher of incremental expansion costs 'or' a rolled-in embedded cost rate"). *See also Preventing Undue Discrimination and Preference in Transmission Serv.,* Order No. 890, 118 FERC ¶ 61,119, at PP 883-885 (declining to revise the "higher of" pricing policy), *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

4. To be clear, the Commission allows a transmission provider to charge *either* the rolled-in embedded costs *or* incremental expansion costs.[12] It does not restrict the transmission provider to charging only the higher of those two rate structures. Today's order conforms to this line of precedent by acknowledging ComEd's intention to seek rolled-in rate treatment to recover the costs of serving these new customers. The Commission will always reject a rate that seriously harms the consuming public.

For these reasons, we respectfully concur.

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Laura V. Swett
Chairman

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David LaCerte
Commissioner

[12] *See, e.g.*, *Pac. Gas & Elec. Co.*, 179 FERC ¶ 61,199, at P 55 (June 16, 2022); *Pub. Serv. Co. of N.M.*, 177 FERC ¶ 61,094, at P 3 (Nov. 15, 2021).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Commonwealth Edison Company	Docket No.	ER26-838-000

(Issued February 17, 2026)

CHANG, Commissioner, *concurring*:

1. Today's order accepts the Transmission Security Agreement (Agreement) between Commonwealth Edison Company (ComEd) and Aligned Data Centers (Acquisition) PropCo, LLC based on the Commission's determination that the Agreement qualifies for the *Mobile-Sierra* presumption and is therefore just and reasonable.[1] I want to be clear that in reaching this determination, the Commission has not independently assessed the terms of the Agreement to determine whether they are, in fact, just and reasonable. Instead, the Commission has, using the *Mobile-Sierra* framework, assessed only whether the Agreement reflects "individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm's length."[2] Having concluded that it does, the Commission accepts the Agreement without further scrutiny. I write separately to reinforce my concern[3] that reliance on bilaterally-negotiated agreements, particularly ones shielded from meaningful Commission review by the *Mobile-Sierra* presumption, may not be sufficient to ensure that customers are protected against unjust cost shifts from new large loads.

2. The Agreement is one of a series of contracts executed by ComEd with individual data center customers that codify commitments from new large loads to pay a load-ratio share of ComEd's transmission revenue requirement. These commitments increase over time pursuant to a "ramp schedule" designed to track the growth of power usage at the relevant data center, and the Agreement requires that the data center customer pays those transmission charges even if the facility is delayed or canceled. Otherwise, the customer would pay a termination fee.

3. As the order notes, these transmission revenue contribution commitments would not exist without the Agreement; in that sense, they are better than *not* having the

[1] *Commonwealth Edison Co.* 194 FERC ¶ 61,109 at P 21 (2026)

[2] *Id.*

[3] *PECO Energy Co.*, 193 FERC ¶ 61,148 (2025) (Comm'r Chang, *concurring*).

Agreement and they reflect a meaningful revenue contribution towards transmission costs that other customers otherwise would need to pay. However, there is a need to protect other customers from potential unjustified cost shifts, and neither the terms of the Agreement nor ComEd demonstrate how these commitments achieve that higher and more essential standard. So, while the Commission properly accepts the Agreement under the *Mobile-Sierra* framework, that acceptance does not necessarily protect other customers.[4]

4. In my *PECO* concurrence, I suggested that one customer protection approach might be to require that new loads pay the higher of either their incremental costs or rolled-in rates. Such an assessment would first require that those incremental costs be known and quantified, an exercise that notably has *not* been conducted and reflected in the Agreement.[5] In fact, the Agreement does not identify any specific upgrades needed to interconnect the data center. Instead, it contemplates that, if the large load that materializes through this Agreement triggers transmission upgrades on ComEd's system, the costs of those system upgrades would be added to ComEd's transmission revenue requirements and thereby rolled into transmission rates that all customers pay. The Agreement specifically spells this out, with ComEd stating that it shall "take positions in favor of recovering the costs of transmission facilities used to provide delivery services [to the data center] *through [ComEd's] formula rates*…."[6] This means that all of ComEd's transmission customers would share the cost responsibility for those transmission upgrades.

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[4] If the Illinois Commerce Commission does ultimately adopt ComEd's proposal to require execution of a transmission service agreement as a condition of retail service, the Commission may need to assess whether future agreements – which would no longer be purely voluntary – still qualify for the *Mobile-Sierra* presumption.

[5] I am sympathetic to the concerns raised by the Illinois Attorney General in protests to other Agreements that ComEd does not demonstrate that the Agreement will cover the costs incurred by ComEd to build the transmission facilities needed to serve the data center. *See Commonwealth Edison Co*., 194 FERC ¶ 61,106 at P 15 (2026) . Nonetheless, given the limitations of our analysis under *Mobile-Sierra*, I concur in our acceptance of the Agreement.

[6] Agreement at § 6(A) (emphasis added); *see also* Transmittal at 4 ("With respect to the costs of the transmission facilities used to provide delivery services to the Data Center, and consistent with established precedent and industry standards, ComEd agrees to take positions favoring cost recovery through ComEd's transmission formula rates before any applicable state or federal regulatory agency having jurisdiction over the project…").

5. If those system upgrade costs are small relative to the size of the added load and corresponding load commitments in the Agreement, then transmission rates for all other ComEd customers will not increase. However, if those system upgrade costs are substantially large, the overall rolled-in transmission rates borne by all of ComEd's customers will increase.

6. Some basic math demonstrates the potential shortfall of the transmission revenue commitments in the Agreement. In this simplified hypothetical example, a transmission service agreement requires a "committed revenue contribution" through which the new customer will pay for transmission service at minimum for 75% of its anticipated size.

7. If the customer was 600 MW, under the Agreement it would pay for at least 450 MW of transmission service for a defined period (e.g., 8-10 years). In isolation, this approach would reduce rates for all customers by spreading the utility's revenue requirement over more load (e.g. the incremental 450 MW data center transmission service load). However, in this hypothetical example, if the new load takes service at or below 450 MW while triggering more than ~$200 million in transmission upgrades, then the embedded transmission rate paid by other customers will increase.[7] As a result, this Agreement, on which the new data center customer's obligation to pay for a minimum level of transmission service is based, works well for other customers if transmission upgrade costs are sufficiently low; but it could leave other customers paying more if transmission upgrade costs are high. Moreover, the costs of the transmission upgrades, including depreciation expenses, return on capital (both equity and debt), and income tax allowance, will be borne by customers for the entire useful life of the transmission assets (e.g., 40 years) while the obligations in Agreements are much shorter (e.g., 8-10 years). Thus, if the large load customer ends its service after 10 years, other customers may face increased costs over the long term.[8]

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[7] The cost of transmission upgrades that are rolled into overall transmission rates increase the return, depreciation, and income tax allowance portion of rates. Such facilities may also require additional operations and maintenance expenses.

[8] ComEd, in its answer, argues that, with 6,700 MW of new load at a cost of $950 million of network upgrades, the new large loads subject to the agreements will reduce the transmission rates for other customers. As an initial matter, ComEd's analysis does not specify how it determined the total system upgrade cost (the numerator in the rate calculation), which may not include more than $20 million of annual depreciation expenses as well as substantial incremental operations and maintenance expenses associated with the new facilities. Critically, it also assumes that the new customers will pay for their maximum amount of transmission service, when the Agreement only requires the new customers to take the minimum required amounts (e.g., 75% of the 6,700 MW of load). Additionally, ComEd's transmission upgrade cost estimates are

8. These bilateral arrangements between companies are not specifically designed to represent the interests of other customers. Furthermore, the Commission and our state counterparts must not let the Commission's acceptance of the Agreement and others like it dissuade us from taking additional action to protect customers where we think it is necessary. Instead, absent some demonstration that the Agreement and similar arrangements provide the necessary level of consumer protection, they should be treated simply as one piece of a broader package of federal and state measures to protect customers, rather than the primary or exclusive means to do so.

9. So, the question then is how best to ensure that customers are, in fact, adequately protected against cost shifts. For our state colleagues, ensuring sufficient customer protection might mean requiring additional revenue contributions from end-use loads as part of their retail rate oversight.[9] For the Commission, we should assess how to develop customer protection frameworks that can complement and supplement ongoing efforts at the state level. To its credit, the Commission has acted where transmission terms fail to adequately protect customers.[10] The Commission is also actively considering how to ensure customer protection is incorporated into new rate designs.[11]

10. Affordability and fairness are the Commission's priorities, and rightfully so. However, achieving those priorities will require more than passive reaction to filings like the Agreement. The Commission, industry, and stakeholders should proactively explore potential reforms and standards to protect customers against unjustified transmission cost shifts. I welcome suggestions about solutions the Commission should consider, and

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preliminary and subject to substantial changes based on actual transmission upgrade costs, such that, if they are dramatically higher than $950 million, other customers could face increased rates.

[9] ComEd's witness in the pending Illinois Commerce Commission proceedings recognized that the Illinois Commission "could decide to adopt additional conditions for retail service" beyond a requirement to execute a transmission service agreement. (Testimony of Bradley Perkins in Docket No. 25-0677 at the Illinois Commerce Commission at P 7.) I strongly encourage the Illinois Commerce Commission to establish appropriate customer protections beyond simply relying on the execution and FERC approval of this and other transmission service agreements under the *Mobile-Sierra* framework.

[10] *Duke Energy Carolinas, LLC*, 193 FERC ¶ 61,237 (2025).

[11] *PJM Interconnection, L.L.C.*, 193 FERC ¶ 61,217, at P 219, questions 3 and 4 (2025).

opportunities to receive broad input from states, customers, and other interested parties about productive next steps.

For these reasons, I respectfully concur.

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Judy W. Chang
Commissioner

Document Content(s)