

## **STIPULATED AGREEMENT FOR EXTENSION OF TIME**

This Stipulated Agreement for Extension of Time (“Stipulation”) is entered into by and among Staff Witnesses (“Staff”) of the Illinois Commerce Commission (“Commission”), Citizens Utility Board (“CUB”), Citizen Action/Illinois and AARP (collectively, “AARP”), and Illinois Energy Savings Corp. d/b/a U.S. Energy Savings Corp. (“USESC”). Staff, CUB, AARP and USESC are sometimes individually referred to herein as a “Party” and collectively referred to herein as the “Parties.”

### **RECITALS**

WHEREAS, on March 3, 2008, CUB and AARP filed their Verified Original Complaint (“Complaint”) initiating ICC Docket 08-0175, and on April 24, 2008, USESC filed an Answer (“Answer”) and a Motion to Dismiss the Claims in Sections V, VI and VII of the Complaint (“Motion to Dismiss”).

WHEREAS, the Parties acknowledge and agree that USESC is an alternative gas supplier as defined under 220 ILCS 5/19 (the “Alternative Gas Supplier Law”) of the Public Utilities Act (“PUA”) and that the Complaint raises claims under the Alternative Gas Supplier Law. (Complaint at 5, Answer at 5).

WHEREAS, the Commission has jurisdiction in accordance with the provisions of Article 10 of the PUA to entertain and dispose of complaints brought under the Alternative Gas Supplier Law. 220 ILCS 5/19-120(b).

WHEREAS, Article 10 of the PUA sets forth procedural requirements for proceedings before the Commission and in particular, Section 10-108 specifies

requirements for the filing of complaints and notice to the parties, among other things.

220 ILCS 5/10-108.

WHEREAS, one of the provisions in Section 10-108 imposes a one year statutory deadline for the disposition of certain complaints:

Whenever there shall be filed a complaint under Article IX of this Act regarding the rates, charges, classifications or services of a public utility, the Commission shall make and render findings concerning the subject matter and facts complained of and enter its order based thereon not later than one year after the filing of such complaint unless all parties to the complaint proceeding under Article IX agree to a period of greater than one year, provided that any agreement to extend the one year period must be in writing and must be for a specified period of time not exceeding 60 days. The parties may enter into more than one agreement to extend time. *Id.*

WHEREAS, the Parties have different legal positions with regard to the interpretation of the language above and its application to the Complaint, which are set forth in Attachment A attached hereto, but have agreed, notwithstanding such positions, to enter into this Stipulation to extend the one year period to May 1, 2009, in accordance with Section 10-108 of the PUA in order to provide all Parties with the benefit of an extended schedule that will permit each Party to more effectively pursue their individual interests in Docket 08-0175.

#### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth in this Stipulation, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. **Recitals**. The foregoing Recitals are incorporated in this Stipulation as if fully set forth herein.

2. **Authority.** Each Party hereto represents to the other Parties that such Party has the full power and authority to enter into this Stipulation and that this Stipulation constitutes a valid and binding obligation of such Party and all persons or entities represented by such Party, enforceable in accordance with its terms.

3. **Positions of Parties.** With respect to the application of the one year time frame set forth in Section 10-108 of the PUA, each Party sets forth its position in Attachment A (attached hereto).

4. **Extension of Time.** In order to facilitate the proceeding in Docket 08-0175, the Parties, whether or not they agree an extension is necessary under the PUA, nevertheless hereby agree, in accordance with the provisions of Section 10-108 of the PUA, to the extent applicable, to extend the one year period of time set forth in Section 10-108 of the PUA for the Commission to make and render findings concerning the subject matter and facts complained of in the Complaint for an additional period of sixty (60) days from March 2, 2009 to May 1, 2009, and to establish an initial case schedule in accordance with such extension of time. By establishing an initial case schedule, the Parties do not waive any right to seek modifications to that schedule as needed as the case progresses. The Parties acknowledge and agree that by entering into this Stipulation, they each waive any right to challenge the extension of time set forth in this Section 4 but retain and do not waive any right to challenge any proposed additional extensions of time, unless such additional extensions of time are agreed to by all Parties in writing.

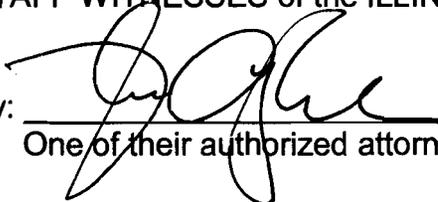
5. **Entire Agreement.** This Stipulation constitutes the entire agreement of the Parties.

6. **Construction.** The Parties acknowledge and agree that each Party has been represented by counsel that has reviewed and revised this Stipulation and that no rule of construction that would resolve ambiguities against the drafting Party shall apply in connection with the interpretation of this Stipulation.

7. **Counterparts.** This Stipulation may be executed in counterparts and shall constitute one agreement binding upon each Party as soon as its counterpart is executed notwithstanding the fact that signatures of all Parties do not appear on the same page.

**In Witness Whereof**, for the consideration set forth herein and other good and valuable consideration, the Parties have executed this Stipulation effective as of this 19th day of June, 2008.

STAFF WITNESSES of the ILLINOIS COMMERCE COMMISSION

By:  \_\_\_\_\_  
One of their authorized attorneys

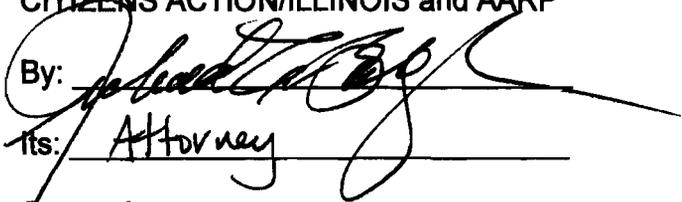
Nora A. Naughton  
Jennifer L. Lin  
Michael R. Borovik  
Office of General Counsel  
Illinois Commerce Commission  
160 N. LaSalle, Ste. C-800  
Chicago IL 60601  
312-793-2877

CITIZENS UTILITY BOARD

By: Julie L. Soderna  
Its: Director of Litigation

Counsel:  
Julie L. Soderna  
Director of Litigation  
Citizens Utility Board  
309 W. Washington, Ste. 800  
Chicago IL 60606  
312-263-4282

CITIZENS ACTION/ILLINOIS and AARP

By: 

Its: Attorney

Counsel:

Richard C. Balough

Attorney for Citizen Action/Illinois and AARP

53 W. Jackson, Ste. 936

Chicago IL 60604

312-834-0400

ILLINOIS ENERGY SAVINGS CORP. d/b/a  
U.S. ENERGY SAVINGS CORP.

By: Kevin J. Clancy  
Its: Counsel

Counsel:  
Martin W. McManaman  
Kevin J. Clancy  
Ethan F. Hayward  
Lowis & Gellen LLP  
200 W. Adams, Ste. 1900  
Chicago IL 60606  
312-364-2500

## Attachment A

### Staff Position

Staff's position is that the one year limitation of Section 10-108 of the PUA does not apply to this Complaint. Staff points out that the Complaint alleges violations or nonconformances with provisions of Sections 19-110 and 19-115 of the Alternative Gas Supplier Law and seeks remedies in accordance with that law. (Complaint at 10). Pursuant to Section 19-120(b)(1) of the Alternative Gas Supplier Law, the Commission has jurisdiction to entertain and dispose of any complaint against any alternative gas supplier alleging violations or nonconformances with Sections 19-110 and 19-115 of the Alternative Gas Supplier Law "in accordance with the provisions of Article X of this Act." 220 ILCS 5/19-120(b)(1). In Staff's view, the clause "in accordance with the provisions of Article X of this Act" means that the Complaint must be heard under the terms and conditions of Article X, and specifically Section 10-108, which addresses complaints generally, to the extent that such provisions apply to this Complaint.

Section 10-108 imposes a one year time frame on complaints filed under Article IX of the PUA, which governs rates imposed by public utilities:

Whenever there shall be filed a ***complaint under Article IX of this Act regarding the rates, charges, classifications or services of a public utility***, the Commission shall make and render findings concerning the subject matter and facts complained of and enter its order based thereon not later than one year after the filing of such complaint unless ***all parties to the complaint proceeding under Article IX*** agree to a period of greater than one year, provided that any agreement to extend the one year period must be in writing and must be for a specified period of time not exceeding 60 days. The parties may enter into more than one agreement to extend time.  
220 ILCS 5/10-108. (emphasis added).

“Whenever there shall be filed a complaint under Article IX of this Act regarding the rates, charges, classifications or services of a public utility...” is a limiting phrase that specifically binds complaints filed under Article IX to be completed within one year. The reference to Article IX is specific and must be given meaning. “The primary rule of statutory construction is to give effect to the intent of the legislature. The best evidence of legislative intent is the statutory language itself, which must be given its plain and ordinary meaning.” Ultsch v. Ill. Mun. Ret. Fund, 226 Ill.2d 169, 181 (2007). “The statute should be construed as a whole and, if possible, in a manner such that no term is rendered meaningless or superfluous.” Stroger v. Reg'l Transp. Auth., 201 Ill.2d 508, 524 (2002).

Moreover, the language describing the complaints subject to the one year time frame as those “regarding the rates, charges, classifications or services of a public utility” is limiting and must be given meaning even if one were to assume that the General Assembly may have intended “alternative gas supplier” to be substituted for the term “public utility.” Further, it is not at all clear that such a substitution was intended. For example, Section 10-108 also provides that “Any public utility shall have a right to complain on any of the grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall be adopted and followed as in other cases.” 220 ILCS 5/10-108. If such a substitution were to be made in this case, Article 19’s delineation of complaint allegations would be expanded in a manner inconsistent with its provisions. (See 220 ILCS 5/19-120(b)).

In addition, the plain meaning of the requirements set forth in the penultimate paragraph and the related last paragraph of Section 10-108, which set forth the one

year time frame and the consequences of failure to adhere to it, clearly do not apply to each and every Section 10-108 complaint. Otherwise, the General Assembly would have not added the limiting reference to Article IX, both in referring to the kind of complaints brought and to the parties who are required to agree to an extension of time.

Indeed, the legislative history suggests that the General Assembly, after adding the one year time frame in 1989, pursuant to Public Act 85-1437, amended these paragraphs again in 1991, pursuant to Public Act 87-164, to provide for extensions of time, identifying the required parties to the extensions by the phrase "all parties to the complaint proceeding under Article IX." Through transcripts of the adoption of Public Act 87-1437, the legislative history clearly evidences that complaints, bound by the one year time frame, are ones which are brought by consumers against utilities with respect to rates. The legislative history specifically points out that rate cases must be decided within 11 months and that consumer complaints should have a similar time frame of 12 months. This clearly indicates that the General Assembly was aware of the limitation to Article IX complaints and reinforced it by the use of the above limiting phrase.

Furthermore, Article 19 complaints are not referenced in connection with this one year time limitation and if the General Assembly intended such a limitation, it would have added a reference to Article 19 when it enacted the Alternative Gas Supplier Law. "Where an amendment is concerned, a court will note the statutory language before the change and the defect to be corrected before weighing the entire statute in light of these considerations." In re Logston, 103 Ill.2d 266, 279 (1984).

For these reasons, Staff believes that the Complaint, filed under Article 19, is not bound by the one year statutory deadline imposed by Section 10-108. Notwithstanding

Staff's position and without waiver of any rights regarding its position with respect to future extensions of time, Staff agrees to the extension of time set forth herein. Staff notes that the Illinois Administrative Procedure Act specifically allows parties in contested cases to waive compliance with provisions of the Act by written stipulation. 5 ILCS 100/10-70.

### **CUB Position**

CUB takes the position that the limitation in Section 10-108 regarding the statutory limitation of complaint proceedings to one year does not apply to the instant complaint because neither the issues raised in the complaint, nor the relief sought, relate to rates of a public utility. Section 10-108 refers specifically to Article IX regarding the rates, charges, classifications, or services of a public utility, and thus does not apply to CUB's complaint against USESC, which is an alternative gas supplier and not a utility. Nonetheless, CUB does not oppose the proposed process of seeking 60 day extensions of the one year time limit, in order to protect all Parties' interests and ensure the complaint is properly adjudicated.

### **AARP Position**

AARP and Citizens Action/Illinois assert that this proceeding is governed by 220 ILCS 5/10-108 that requires a complaint involving services or other charges to be completed within one year of filing. 220 ILCS 5/19-120(b) gives the Commission jurisdiction over complaint cases "in accordance with the provisions of Article X of this Act to entertain and dispose of any complaint against any alternative gas supplier" for any of the reasons enumerated in 220 ILCS 5/19-120(b)(1)-(4). The reference to Article X thereby incorporates the one-year time provision for any complaint involving rates or

other charges made, demanded, received by or any commodity purchased or any service rendered by an alternative gas supplier. Without waiving their position on this issue, except with respect to the extension set forth herein and any future extensions AARP and Citizens Action/Illinois agree to in writing, AARP and Citizens Action/Illinois would agree to a procedure whereby the Parties to this proceeding would agree to two 60-day written extensions of the one year deadline as authorized by 220 ILCS 5/10-108.

**USESC Position**

It is the position of USESC that CUB and AARP have brought their Complaint for violations of and seek remedies only available under the Alternative Gas Supplier Law, 220 ILCS 5/19-101 *et. seq.*, as opposed to any action seeking relief for excessive or unjust charges by a public utility pursuant to Article IX of the PUA, 220 ILCS 5/9-252. USESC notes that actions brought under Article IX are to be resolved within one year of filing pursuant to Section 10-108 of the PUA, 220 ILCS 5/10-108, with allowances for multiple extensions of 60 days where the Parties agree in writing to any such extensions. USESC further notes that no such time limitation exists in the provisions governing complaints brought under the Alternative Gas Supplier Law, 220 ILCS 5/19-120(b) and (c), which also contain no reference to Article IX.

Accordingly, it is USESC's position that the time limitations prescribed in Section 10-108 have no application to the instant proceedings and that the Commission is not bound by those limitations in its adjudication of this case. Furthermore, because of the amount of discovery and anticipated motion practice necessary for a just and equitable resolution of this matter render, completion within one year of March 3, 2008 is highly unlikely and would be prejudicial to USESC. Subject to and without waiver of this stated

position, USESC nevertheless stipulates to an agreement to extend the dates in this matter up through and including May 1, 2009, and will agree to stipulate to further extensions as needed.