

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

CENTRAL ILLINOIS LIGHT COMPANY)
d/b/a AmerenCILCO)
) Docket No. 08-0619
CENTRAL ILLINOIS PUBLIC SERVICE)
COMPANY d/b/a AmerenCIPS)
) Docket No. 08-0620
ILLINOIS POWER COMPANY d/b/a)
AmerenIP)
) Docket No. 08-0621
Proposal to implement a combined Utility)
Consolidated Billing (UCB) and Purchase of)
Receivables (POR) service)

**INITIAL BRIEF OF
THE CITIZENS UTILITY BOARD**

CITIZENS UTILITY BOARD
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I. PROCEDURAL BACKGROUND

Pursuant to Section 200.800 of the Rules of Practice¹ of the Illinois Commerce Commission (“Commission” or “ICC”) and the Administrative Law Judge’s (“ALJ”) at the December 9, 2008 Status Hearing, the CITIZENS UTILITY BOARD (“CUB”) submits its Initial Brief in this proceeding. This brief addresses the factual, legal, and policy issues raised by the evidence of record and by the application of the controlling provisions of the Public Utilities Act (the “Act” or “PUA”) to the proposed tariffs. The sections of this brief are organized in accordance with the outline of issues submitted to the ALJ on April 13, 2009.

A. INTRODUCTION AND STATEMENT OF THE CASE

This proceeding was initiated by the electric utilities of the Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS and

¹ 83 Ill. Adm. Code Part 200.

Illinois Power Company d/b/a AmerenIP (collectively “the Ameren Illinois Utilities”, “Ameren”, “AIU”, or “the Companies”) as part of their obligation under the law to foster retail electric competition and facilitate residential and small commercial customers’ ability to switch to an alternative retail electric supplier (“RES”). In November 2007, the General Assembly passed, and the Governor signed, Senate Bill 1299 (“SB 1299”) into law as Public Act 95-0700. The purpose of SB 1299 is stated as follows: “It is in the best interest of Illinois energy consumers to promote fair and open competition in the provision of electric power and energy and to prevent anticompetitive practices in the provision of electric power and energy.”

Public Act 95-0700 resulted in an amendment to Section 16-118 of the Public Utilities Act which delineates certain services to be provided by electric utilities to RES. 220 ILCS 5/16-118. Certain components of Public Act 95-0700 provide RES with the ability to leverage the existing infrastructure of the incumbent utility, including billing, credit and collection practices. Those components are the subject of the tariff filing in this proceeding. The Commission established the Office of Retail Market Development (“ORMD”) to address retail electric competition issues and is dedicated to the task of seeking out ways to promote retail competition in Illinois. The ORMD was directed to “monitor existing competitive conditions in Illinois, identify barriers to retail competition for all customer classes and actively explore and propose to the Commission and to the General Assembly solutions to overcome identified barriers.” A workshop process was initiated by the ORMD early in 2008 to discuss the requirements of Public Act 95-0700 with the purpose of exploring alternatives to encourage retail electric competition for residential and small commercial customers.

The tariffs filed by AIU in this proceeding are designed to implement a combined UCB/POR service offering. Under Utility Consolidated Billing (“UCB”), the electric utility

would produce and provide a single bill to the retail customers for the electric power and energy services provided by the RES, along with its own delivery service charges. Under Purchase of Receivables (“POR”), (collectively, “UCB/POR”), a RES would sell its accounts receivables (“AR”) for electric power and energy service provided to residential and small commercial retail customers to the utility at a discount. Under the combined UCB/POR Program proposed by Ameren, if a RES chooses to enroll a customer under UCB/POR, the RES then must also sell the corresponding receivables for electric power and energy service for that customer to the utility at a discount.

The Commission’s main concern, however, should not be getting the UCB/POR Program in place as soon as possible. Rather, the Commission must ensure that the proper consumer protections are in place to ensure that all customers benefit from competition and continue to receive safe, reliable, affordable, and environmentally safe electric service. 220 ILCS 5/16-110A(d). As such, the paramount concern is to design a Program that can effectively carry out the goals of not only the Companies and RES, but at the same time provide adequate protection to consumers. As the Program currently stands, the goal of bringing competition to market will only be fully realized when consumer interests are at the forefront, costs are minimized to encourage RES participation, and the goals of SB 1299 are maximized.

However, Ameren’s proposed tariffs fail to adequately address important consumer protections. Not only should the Commission take into account the cost of market entry, but equally important, the implications of this Program on consumer protections. The most important consumer protections fall in areas such as: developing a fair and clear dispute mechanism; limitations on cancellation fees, and uniform pricing to facilitate an apples-to-apples

comparison of RES product offerings. Because these protections have not been addressed in the proposed UCB/POR Program, Ameren's proposed tariff should be rejected.

If the Commission decides to implement Ameren's UCB/POR Program, even though full consumer protections are not yet in place, it should do so using the Fair Cost Allocation Adjustment ("FCAA") mechanism proposed by CUB witness Mr. Thomas. The FCAA ensures that both RES and RES customers are paying a fair allocation of costs, considering the uncertainties of the future of electric choice in AIU's service territory. The only way to adequately ensure that the true cost of retail choice is born by those who utilize the program is through the FCAA mechanism.

III. UNRESOLVED ISSUES

A. Discount Rate

2. CUB's FCAA Proposal

If the Commission determines that, despite the lack of consumer protections in the present market, Ameren's UCB/POR tariff filing should be approved, the Commission should adopt the FCAA proposed by CUB witness Mr. Thomas. This is the only mechanism in the record that recovers costs by charging RES and RES customers (if the RES chooses to pass this cost along to its customers) for the full cost of the services they use. Furthermore, the FCAA is the only way to adequately ensure that the true cost of retail choice is born by those who utilize the program. CUB Ex. 2.0 at 5, LL. 107-108.

The FCAA is a tariff mechanism that will allow AIU the opportunity to recover the full cost of implementing the mandated UCB/POR Program in a timely manner, while still sending accurate price signals to RES and potentially their customers. Essentially, the FCAA allows Ameren to charge eligible customers for 75% of the initial UCB Start-Up Costs. CUB Ex. 2.0 at

6, LL. 131-132. However, customers would receive reimbursements for these charges as suppliers actually use the service, because the FCAA also includes a mechanism to include the full cost of the UCB/POR Program in the discount rate and return the monies that suppliers pay directly to customers. CUB Ex. 2.0 at 6, LL. 134-135.

Under the FCAA, RES and their customers would bear the costs of the UCB and POR Programs as they use them. This is a fair and accurate mechanism that allows RES access to utility billing and collection systems, sends an accurate price signal for these services, allows AIU to recover its costs in a timely manner, and does not impose undue costs on eligible retail consumers. This system is also fair to RES and their customers, as RES are able to avoid the costs of creating their own billing and collection systems. The FCAA ensures that both RES and RES customers are paying a fair allocation of costs, considering the uncertainties of the future of electric choice in AIU's service territory. CUB Ex. 2.0 at 8, LL. 213-216.

The FCAA mechanism requires that Ameren hold the monies, plus interest, it receives for UCB Start-Up Costs from suppliers and then refunds them, with interest, to eligible customers after the initial rate period. This mechanism was designed to ensure that Ameren recovers its costs to provide the UCB service, while also ensuring that customers are not subsidizing supplier entry into the market. CUB Ex. 4.0 at 2-3, LL. 51-53.

Under SB 1299, AIU is entitled to recover the prudently incurred costs associated with the provision of UCB and POR. However, it is difficult to charge the RES and their customers for use of UCB and POR directly, because the market has not developed and thus there is no one to charge. In addition, the current turmoil in the financial markets makes it difficult to predict what might happen in the Illinois electricity market. The credit crunch could limit suppliers' access to capital, and keep them from entering the market. The FCAA will reduce these entry

barriers for RES, allow Ameren full and fair cost recovery, and send an accurate price signal to the RES community.

In rebuttal, Mr. Thomas proposed that the FCAA be combined with Staff witness Clausen's proposed Balance Factor. According to Mr. Clausen, the Balance Factor was proposed to both keep the discount rate unchanged for the duration of the initial rate period and to keep the contributions from retail electric suppliers towards UCB/POR cost recovery meaningful if AIU's uncollectible expense changes during this period. Staff Ex. 3.0 at 10, LL. 207-212. To accomplish this, Mr. Clausen proposed a Balance Factor that fixes the discount rate at 1.5% during the initial rate period. Staff Ex. 3.0 at 11, L. 233. Combining the FCAA with the Balance Factor accomplishes Mr. Clausen's goals, but increases the discount rate to ensure that eligible retail customers are not subsidizing RES operations. This approach will ensure stability in the discount rate while ensuring that subsidies are minimized because all excess revenue collected from suppliers would ultimately be refunded to eligible retail customers. CUB Ex. 4.0 at 4, LL. 81-83.

The Commission should set the discount rate as Mr. Thomas proposed through the FCAA, as modified in his rebuttal testimony. Ms. Pearson has calculated that this would result in a discount rate of 1.63%. Ameren Ex. 4.0 at 17, LL. 381-385. Of course, if Staff witness Phipps' proposal regarding the cost of capital for UCB/POR investments, which CUB supports, are adopted then this factor will decrease based on the cost of capital selected. CUB Ex. 4.0 at 5, LL. 127-129.

The Commission should ensure that eligible retail customers are not subsidizing RES entry

The discount rates advocated by AIU, Staff, and the RES community all presume that eligible retail customers should subsidize RES entry into AIU's service territory. Ameren witness Ms. Pearson has summarized this position most succinctly, "A discount rate that is set too high would present a barrier to entry for the RES. AIU's approach in developing the rates, terms and conditions for UCB/POR service is to promote RES entry into the residential and small commercial market rather than discourage it." Ameren Ex. 1.0. at 20, LL. 530-532. However, there is no support in the record for the contention that a discount rate set to recover the full cost of the UCB and POR services would, in fact, present a barrier to RES entry. Furthermore, there is no evidence that inflicting on eligible retail customers will actually produce sufficient benefits for those customers. CUB Ex. 2.0 at 4, LL. 90-91. Accordingly, subsidization of RES entry only masks the true cost of market entry, and thereby encourages inefficient entry into the market.

Inefficient entry is particularly problematic for residential and small commercial electric service, because of the necessary nature of these services to health, welfare, and economic prosperity. This is only further complicated in circumstances where insufficient consumer protections exist. It is unfair to ask customers to take on the burden of subsidizing the RES community, especially when there are no established benefits from the subsidization. As Mr. Thomas testified, subsidizing RES entry into the retail market is poor public policy. There is simply no evidence that charging RES the full costs of UCB start-up will create a barrier to market entry. RES, and ultimately their customers, should bear the full cost of the UCB/POR Program. CUB Ex. 4.0 at 7, LL. 189-193.

B. Rate of Return in FCR

CUB witness Thomas initially proposed that the FCAA should include interest at AIU's weighted average cost of capital. CUB Ex. 2.0 at 7, L. 174. The purpose of this proposal was to ensure that eligible customers are reimbursed for the costs imposed on them at the same cost of capital proposed by AIU. Ameren Ex. 2.0 at 4, LL. 75-79. In direct testimony, Staff witness Rochelle Phipps argued that the recovery of the UCB/POR Program costs are much less risky than the recovery of other delivery service assets and as such should receive a lower cost of capital. Staff Ex. 2.0 at 2, LL. 29-33. Mr. Thomas agrees with Ms. Phipps that there is virtually no risk that AIU will recover less than 100% of the costs it incurs to implement the UCB/POR Program. Staff Ex. 6.0 at 8, LL. 153-154, CUB Ex. 4.0 at 8, LL. 224-226. Accordingly, AIU should receive a lower return on program costs than it receives for other delivery service assets, and the cost of capital used in the FCAA should be modified accordingly.

F. CUB's Consumer Protections

In order to achieve the stated purpose of SB 1299 to promote fair and open competition (220 ILCS 5/16-118), and the Commission's mandate to ensure all customers benefit from competition (220 ILCS 5/16-110A(d)), the Commission should reject Ameren's tariff until it has adopted the consumer protections outlined by CUB witness McDaniel at a minimum. As discussed above, the Commission is currently conducting a workshop process (through the ORMD) to address consumer protections on UCB/POR in the retail electric market, and that workshop has not concluded. While Staff witness Pound does not agree that the tariff filing is premature, she does agree with Mr. McDaniel that additional and more specific requirements for retail electric suppliers marketing to residential and small commercial customers may be needed. Staff Ex. 9.0 at 4, LL. 60-62.

Although many different consumer protection issues are being discussed in the ORMD workshop process, some of the most critical are: developing a fair and clear dispute mechanism; limitations on cancellation fees, and uniform pricing to facilitate an apples-to-apples comparison of RES product offerings. Even Ameren acknowledges that the dispute resolution process is still under discussion at the ORMD workshops, that the issue of disputed charges and billing inquiries continue to be discussed, and that Ameren is still developing the dispute resolution process for the UCB/POR Program (RESA Data Request Response 2.05). The results from this workshop will guide the parties and the Commission in developing the necessary consumer protections, whether through the legislative process and/or a rulemaking at the Commission. CUB Ex.1.0 at 2, LL. 28-32. Importantly, Staff witness Pound agrees with Mr. McDaniel that “the results of the ICC-led workshop process will aid in the creation of potential legislation or help to guide a rulemaking at the Commission. It may be appropriate for the Commission to promulgate rules applicable to all RES in order to implement more specific customer protections as discussed in the workshop process.” Staff Ex. 9.0 at 7, LL. 116-119. These rules must be in place to guide the process of opening the market to competition before the UCB/POR Program is approved. By approving Ameren’s UCB/POR tariff as it stands now, the Commission will undermine the goals set forth by General Assembly in SB 1299 to promote fair and open competition and the Retail Competition Act of 2006.

The Retail Electric Competition Act of 2006 directs the ICC to promote the development of an effectively competitive retail electricity market that operates efficiently and benefits all Illinois consumers. 220 ILCS 5/20-102. To stand true to the General Assembly’s vision, to maximize the benefits to the Companies, RES and consumers, it is imperative that proper consumer protections be in place prior to approving this tariff. Specifically, a clear dispute

resolution process must be formulated before the UCB/POR Program can be offered. Consumer protections must also include notification of RES pricing, termination fees and rights, complaint procedures, consumer education that addresses potential customer confusion, and acceptable marketing practices.

Mr. McDaniel clearly outlines the consumer protection mechanisms that must be in place in order for this Program to succeed. First, there must be consumer education regarding electric choice provided on the ICC's website, as well as other media, to inform consumers about choice and compare ARES product offerings. CUB Ex. 1.0 at 8, LL. 188-189. Mr. McDaniel also recommends the following: that the RES be required to provide a disclosure form to customers at the time of enrollment; that the utility maintain a "Do Not Contact" list; that longer cancellation periods be mandated; that rules be developed governing the marketing of "green" products, that prohibitions on automatic contract renewals be established; and that the RES be required to provide disclosures if they have filed for force majeure within the last 10 years. CUB Ex. 1.0 at 8, LL. 188-194.

It is noteworthy that Staff witness Pound agrees with Mr. McDaniel that additional consumer education on the ICC's website is necessary and comments that Ameren intends to implement a shopping website for consumers to compare electric supply offerings similar to New York's "Power to Choose" website. Staff Ex. 9.0 at 8, LL. 135-138. Ms. Pound further supports Mr. McDaniel's proposal that the RES provide a disclosure form to customers at the time of enrollment that the utility maintain a "Do Not Contact" list, and that longer cancellation periods should be mandated. *Id.* at 8, LL. 139-142. However, the Company's agreement with Mr. McDaniel's points in principal, and having these protections in practice and effect are two very different things.

Further, Ameren witness Pontifex agrees with including a “Do Not Market List,” but does not address the more important consumer protections. Ameren Ex. 7.0 at 17, LL. 408-409. Mr. Pontifex also erroneously argues that there is a clear dispute resolution mechanism already in place. Mr. McDaniel disagrees and points out that the Companies’ current dispute mechanism “requires four calls by a consumer in order to dispute a charge, assuming the customer calls the utility first, and then is told to call their supplier, then calls the utility back if they are unhappy with the supplier’s handling of their complaint, and then ultimately is told to call the ICC. It is evident that four calls, at a minimum, to dispute a complaint is not an efficient process.” CUB Ex. 3.0 at 3-4, LL. 87-91. Ameren’s dispute resolution process does not address CUB’s concerns and in fact highlights the very problem Mr. McDaniel suggests must be dealt with before customer choice is initiated. Staff witness Pound agrees with Mr. McDaniel regarding the need for a dispute resolution process, and recommends that such process be codified in the AIU tariffs when they are re-filed, in order to ensure transparency and accountability. Staff Ex. 9.0 at 12, LL. 220-230.

Ameren witness Lynn Pearson argues that “consumer protections measures are in place currently, and [I] do not believe it is appropriate to delay UCB/POR implementation while the issue of more stringent protections is addressed.” Ms. Pearson’s desire to push forward with the UCB/POR Program before the protections discussed above are adequately addressed is a cause for concern. Unless and until appropriate consumer protections are in place, any UCB/POR tariff must be rejected, in order to properly promote fair competition as directed by SB 1299 and comply with the Commission’s mandate to protect public health, safety and welfare, 220 ILCS 5/1-102, and to promote the development of an effectively competitive retail electricity market that operates efficiently and benefits all Illinois consumers (220 ILCS 5/20-102). Any delay that

may result from putting these protections in place is well worth the wait, and will aid in the Commission's goal of promoting fair and open competition.

IV. CONCLUSION

For the reasons discussed herein, CUB respectfully requests that the Commission reject Ameren's UCB/POR tariff, as it does not have the requisite consumer protections in place. If the tariff is accepted notwithstanding the lack of consumer protections, CUB requests that the FCAA mechanism be implemented into the Program.

Respectfully submitted,

CITIZENS UTILITY BOARD

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