

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

North Shore Gas Company)	
)	
The Peoples Gas Light and Coke Company)	
)	
)	Docket No. 10-0090
Petition Pursuant to Section 19-140 of the Public Utilities Act to Submit an On-Bill Financing Program.)	
)	
)	

**VERIFIED INITIAL COMMENTS OF THE CITIZENS UTILITY BOARD
AND THE CITY OF CHICAGO**

I. Introduction

On February 8, 2010, the Illinois Commerce Commission (“ICC” or “the Commission”) commenced this docket to review the Petition of the North Shore Gas Company (“NS”) and the Peoples Gas Light and Coke Company (“PGL”), collectively the Petitioners, to implement an On-Bill Financing (“OBF”) Program pursuant to Section 19-140 of the Public Utilities Act (“PUA” or “the Act”). 220 ILCS 5/19-140. Over the past year, the Commission has held a series of workshops during which interested parties discussed many issues related to the OBF Program, including, but not limited to, program design, eligible energy efficiency measures, vendor qualifications, contracts, and pre- and post-installment verification. See 220 ILCS 5/19-140(b-5). In this process, Staff of the Illinois Commerce Commission (“ICC Staff”), the Citizens Utility Board (“CUB”) and other stakeholders heard from experts on lending practices and energy efficiency programs.

CUB participated in the workshop process, and appreciates the chance to provide comments on the Petitioners’ program draft. The Petitioners’ proposed OBF Program is a

welcome step forward advancing the General Assembly’s purpose of promoting conservation and cost-effective energy efficiency measures. 220 ILCS 5/19-140(a). NS-PGL were valuable participants in the workshop process, and CUB looks forward to working with them to make its On-Bill Financing Program one of the best in the nation.

The timing of when the Petitioners’ plan was to be filed means that the plan precedes the selection of the financial lending institution and final program measures. As such, CUB – and the other parties in this Docket – cannot know what crucial loan terms like the program’s interest rate, which will drive decisions such as eligible measures, will be. Moreover, there are gaps in the Program Design Document (“PDD”) offered by the Petitioners that must be completed prior to Commission approval: NS-PGL do not propose a list of measures for the ICC’s approval, nor do they provide even an estimated program budget. The PDD includes several proposals that will limit program transparency and increase program cost, among them the use of the Illinois Energy Association (“IEA”) to select a financial lending institution, credit checks to determine eligible participants, the potential for multiple, separate evaluations of Illinois OBF Programs, and lack of consistent loan amounts. CUB addresses these concerns in detail below.

II. Detailed Comments

A. The Gross Receipts Tax Should Not Apply to On-Bill Financing Programs¹

The Petitioners propose that the cost of implementing the measures includes Gross Receipts Tax on the financing payment as applicable. NS-PGL Ex. 1.1 at 5, Section 2.1(B). In the response to CUB data request 2.01, NS-PGL defines “Gross Receipt Tax” to include both the

¹ Please note, the City of Chicago does not join this section of these comments and takes no position with respect to Petitioners’ assertion regarding the applicability of the Gross Receipts Tax to on-bill financing programs.

Illinois Gas Revenue Tax and the Municipal Utility Tax. The Petitioners cite the OBF section of the PUA :

19-140(c)(5): A loan issued to a participant pursuant to the program shall be the sole responsibility of the participant, and any dispute that may arise concerning the loan's terms, conditions, or charges shall be resolved between the participant and lender. Upon transfer of the property title for the premises at which the participant receives gas service from the utility or the participants request to terminate service at such premises, the participant shall pay in full its gas utility bill, including all amounts due under the program, provided that this obligation may be modified as provided in subsection (g) of this Section. Amounts due under the program shall be deemed amounts owed for residential and, as appropriate, small commercial gas service.

220 ILCS 5/19-140(c)(5). Petitioners then refer to Section 1 of the Gas Revenue Tax Act, which defines "gross receipts" and includes "cash, services and property of every kinds or nature." However, Petitioners do not include the limitation on this definition provided in the same section:

However, "gross receipts" shall not include receipts from:

- (i) any minimum or other charge for gas or gas service where the customer has taken no therms of gas
- (iii) any finance or credit charge, penalty or charge for delayed payment, or discount for prompt payment
- (iv) any charge for reconnection of service or for replacement or relocation of facilities
- (v) any advance or contribution in aid of construction
- (vi) repair, inspection or servicing of equipment located on customer premises
- (vii) leasing or rental of equipment, the leasing or rental of which is not necessary to distributing, furnishing, supplying, selling, transporting or storing gas

35 ILCS 615/1. Petitioners overlook the limitations provided by the statute itself on the meaning of "gross receipts." On-Bill Financing – the purchase of energy efficiency equipment designed to lower a customer's overall usage – is an inspection and servicing of equipment located on customer's premises. Petitioners themselves described the program as "retrofits" of existing

equipment. NS-PGL Ex. 1.0 at 5. The late payment charge referred to in NS-PGL Ex. 1.2, Section I, would not be included in “gross receipts” as defined in the Gas Revenue Tax Act. The customer is the owner of the equipment, and the financial relationship is between the customer and the Financial Institution (“FI”), which will service the loan. By subjecting measures funded through the OBF Program to the Gas Revenue Tax Act, Petitioners inappropriately raise the cost of the measure. CUB recommends the Petitioners exclude any “gross receipts” tax from the cost of the measure.

B. Eligible Measures Should Be Determined After the Financial Institution Has Been Selected

Petitioners state that they will publish the final eligible measure(s) prior to the Program’s start up. NS-PGL Ex. 1.1 at 5, Section 2.3. As noted above, the request for proposals (“RFP”) for the Financial Institution has not yet been completed, so it is premature to include or exclude any measures from the Program prior to possessing the information, such as the interest rate of the loan, that can only be determined once the FI has been selected. Once the interest rate and loan terms have been clarified, all the utilities should provide the results of the formula testing, including all measures considered, and the final list of OBF Program measures. CUB recommends the Commission order that a workshop be held once the FI has been selected and a final list of measures proposed so that ICC Staff and other stakeholders can review and understand the final OBF Program.

C. Pre- and Post-Installation Verification of Furnace Installation Savings Should Be Required

The Petitioners will be responsible for confirming that energy efficiency measures meet the eligibility requirements of the PUA, and will publish a list of approved Program measures

prior to the start of the OBF Program. NS-PGL Ex. 1.1 at 5. Eligible measures may be applied to the replacement of equipment or the retrofit of existing systems. *Id.* Petitioners intend to include water heaters, boilers, and furnaces. *Id.*

CUB interprets the meaning of “applied to” more broadly than NS-PGL, who seem to limit the phrase strictly to “retrofit of existing systems.” NS-PGL Ex. 1.0 at 5². “Applied to” does not simply limit the Petitioners to retrofits, but also can include services related to the installation of an eligible energy efficiency measure. During the workshops, CUB and other participants learned that many furnaces which are installed do not achieve their labeled efficiency because duct work in the home is not conducive to enabling the furnace to operate at the ideal efficiency. Given the importance of proper duct alignment to the achievement of actual energy savings, CUB believes that installation of furnaces must include an examination – and where necessary, an improvement – of the associated duct work. Consumers can improve their duct work if their current ducts are not sufficient to enable their furnace to operate at the maximum efficiency. For this reason CUB proposes that a sampling of 1/3 of all furnaces installed have both pre- and post-verification in order to ensure that the consumer is realizing the full efficiency of their investment.

D. Loan Amounts Should Be Consistent Across All Utility Programs

The Petitioners’ filing includes two different minimum and maximum loan amounts. NS-PGL witness Vincent Gaeto references a minimum of \$1,000 and a maximum of \$15,000. NS-PGL Ex. 1.0 at 10-11; see also NS-PGL Ex. 1.1 at 11 (Section 5.9). In the Preliminary Term

² Petitioners acknowledge the limitations they impose upon themselves by noting that “none of the measures that the Petitioners have currently identified meet their own definition of “applied to.” NS-PGL Ex. 1.1 at 5.

Sheet/Underwriting Criteria, NS-PGL Ex. 1.1 Annex B, the range is from \$500 to \$20,000.

CUB would like to see consistent loan caps among the utilities with residential only programs, since a lower minimum loan amount would enable a larger number of customers to participate. To make it as easy as possible for the Financial Institution, and for program consistency, CUB recommends the same funding levels be used throughout the state: \$500 as a minimum and \$20,000 as maximum.

E. The Role of Program Administrators Should Be Clarified

The Petitioners intend to hire a separate contractor to develop and oversee a Vendor network, though NS-PGL note that the existing Vendor network established for existing energy efficiency and demand response programs may be drawn upon and augmented for this program. NS-PGL Ex. 1.1 at 8-9, Section 4.1. CUB agrees with Petitioners that existing resources should be used as much as possible, which will take advantage of these Vendors familiarity with the Petitioners' contracting and billing arrangements. Most importantly for the success of the OBF Program, Vendors are already familiar with energy efficiency protocols and can reasonably be relied upon to properly install and to maintain the high-efficiency equipment financed through the OBF Program. While still under development, contractors already participating in the Chicagoland Natural Gas Savings Program approved in ICC Dockets 07-0241/07-0242 (consol.) will have completed utility trainings, provided proof of insurance and agreed to third-party verification of their work. See NS-PGL Ex. 1.1 at 9, Section 4.3. Using existing contractor networks as much as possible will lower overall program costs and lessen the burden of the Financial Institution to double-check Vendor credentials. Before the Petitioners OBF Program is

approved, the Commission should ask for and receive clarification on the role of any contractor hired to oversee the Vendor network, along with information on associated costs.

F. The Financial Institution Should Be Selected With Stakeholder Input Based on Clearly Defined Criteria

Petitioners are cooperating with other utilities to conduct a joint RFP to find the Financial Institution that will serve as lender, provide financing to customers and serve as partner in several roles to implement the Program. NS-PGL Ex. 1.0 at 7. The Illinois Energy Association, of which all utilities are members, is facilitating this cooperation and will issue the FI RFP and coordinate the FI RFP process on behalf of the utilities. NS-PGL Ex. 1.0 at 7-8. The IEA will constitute an evaluation committee with representation from all participating utilities. NS-PGL Ex. 1.0 at 8. Proposals will be reviewed and evaluated by committee members and their consultants, though IEA reserves the right to accept or reject any proposal that, in the sole opinion of IEA, does not fully reflect the objectives of this Program. *Id.* IEA also reserves the right to select one or more FIs, based on territorial or other considerations, although a single FI partner is contemplated presently as the best approach. *Id.*

CUB is concerned that the Petitioners' proposed process provides the IEA with veto authority over the final FI selection. It is unclear what additional value IEA brings to the process aside from having all four utilities participating in the RFP as members. Nor is it clear how the Commission or other stakeholders will be informed of IEA's deliberations or decision. The Petitioners' proposed PDD provides less detail than the testimony of NS-PGL witness Gaeto.

CUB proposes that those stakeholders who participated in the OBF workshops conducted by Staff be invited to become members of the proposed Evaluation Committee. In particular,

CUB proposes that the Commission name CUB, the Illinois Attorney General's office and ICC Staff be included as members of the RFP Evaluation Committee. CUB would also like to see the RFP evaluation matrix revised to place more emphasis on the first criteria, which is "Loan Pricing; interest rate pricing and fees" as having a low interest rate is possibly the most critical component of the RFP for consumers. See NS-PGL Ex. 1.1, Annex B, Proposal Evaluation Worksheet. Points could be taken away from "Loan marketing & geographic coverage" and "additional services" and given to "Loan Pricing" in order to make that criteria more heavily weighted vis-à-vis the others.

G. Instead of Credit Checks, Customer Bill Payment History Should Be Used in Determining Eligibility

The Petitioners intend to finalize underwriting criteria for residential customers with the selected Financial Institution. NS-PGL Ex. 1.1, Annex B, at 15. Examples of potential underwriting criteria are confirmation of property ownership, minimum Fair Isaac Corporation scores (to be determined), and debt-to-income ratio. *Id.* Though it is unclear at this time to what degree, if any, Petitioners propose to use credit checks, CUB is concerned that use of credit checks to screen customers for eligibility is heavy-handed and will add unnecessary costs to the Program. The utility is in possession of bill payment history for all of its customers. This bill payment history, which represents a rich source of information about a consumer, should be the principal measure of person's worthiness to obtain a loan under the Program. As discussed at the workshops, individuals with poor credit scores still often pay their utility bills. CUB does not want to see people that could benefit from energy efficiency measures being denied access to this Program because they do not have an ideal credit score. While CUB certainly does not want to

see imprudent loans, CUB believes the Commission should rule that the use of utility bill payment history is a prudent way to determine credit worthiness of prospective borrowers.

H. The Program Should Continue During Pendency of Evaluation

The PUA requires that an independent evaluation of the OBF Programs be conducted after 3 years of program operation. 220 ILCS 5/19-140(g). As the Petitioners' PDD correctly notes, this evaluation will "assess the effects of the measures installed under the Program and the overall operation of the Program." NS-PGL Ex. 1.1 at 4, Section 1.2.7. The Financial Institution will collect data regarding lending activity, as required by the PUA. NS-PGL Ex. 1.0 at 11-12. After the evaluation is completed, the evaluator shall issue a report to the Commission on its findings no later than four (4) years after the date on which the program commenced, and the Commission shall issue a report to the Governor and General Assembly which summarizes the evaluation and makes a recommendation on whether the OBF Program should continue. 220 ILCS 5/19-140(g). The ICC's report will include a recommendation on whether any modifications should be made to the Program or measures, provided that recommended modifications shall only apply prospectively and to measures not yet installed or financed. *Id.*

CUB supports the use of an independent evaluator for the OBF Programs. The ICC, and all stakeholders, will benefit from a coordinated evaluation process that enables comparison across the participating utilities. For that reason, CUB recommends that one statewide evaluator be retained to both facilitate consistent evaluation and comparison, and to lower overall evaluation costs. This evaluation process should be begun as soon as possible under the terms of the statute so that any gap between the evaluation of the OBF Program, the ICC review of that evaluation, and a decision on any necessary program modifications is as short as possible.

From the Petitioners' filing it is unclear what will happen to the OBF Program while the evaluation is conducted and the ICC presents its findings to the General Assembly as required by statute. Moreover, the Petitioners' PDD does not provide for the required feedback from participants and interested stakeholders. 220 ILCS 5/19-140(g). CUB believes the programs should be continued during the pendency of the evaluation. To ensure that Program participants and interested stakeholders can provide feedback, the evaluator should present its findings in a series of workshops held during the year provided for the evaluation.

I. Reconnection Amounts Should Include Only Those Loan Payments Missed Since Disconnection and Not the Entire Loan Balance

The Petitioners note that in the event of non-payment by a customer of loan amounts due, the utility may terminate service, under existing collection procedures. NS-PGL Ex. 1.1 at d, Section 1.2.3. The Petitioners do not address how a customer who has had their service disconnected can have their service reconnected. For example, assume a customer is disconnected in March and applies for reconnection in May. It is unclear from Petitioners filing what amount that a customer participating in the OBF Program would have to pay for reconnection. CUB recommends the reconnection amount include only those loan payments missed since the disconnection and not the entire amount due under the loan.

III. Conclusion

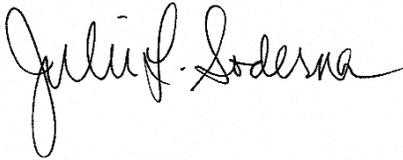
For the reasons discussed above, the Commission should require additional information from Petitioners before approving the Program, including estimated program costs. CUB recommends that upon the selection of the Financial Institution, and once the Petitioners have a

list of proposed measures and terms, that another workshop be held so stakeholders can ask questions and receive clarification on the final Program design.

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Respectfully Submitted,

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