

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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

**VERIFIED INITIAL COMMENTS
OF THE PEOPLE OF THE STATE OF ILLINOIS**

The People of the State of Illinois (“the People”), by and through Lisa Madigan, Attorney General of the State of Illinois, hereby file these initial comments pursuant to the schedule established by the Administrative Law Judge (“ALJ”) in this docket. The Comments pertain to North Shore Gas Company (“North Shore”) and the Peoples Gas Light and Coke Company (Peoples Gas”) (North Shore and Peoples Gas, together, “Petitioners”) petition for approval of its On-Bill Financing Program (“OBF Program” or “Program”).

BACKGROUND

In the summer of 2009, both houses of the Illinois General Assembly passed Senate Bill 1918. The Governor signed the bill into law on July 10, 2009, creating Public Act 96-0033 (“P.A. 96-0033”). Among its provisions, P.A. 96-0033 adds Sections 16-111.7 and 19-140 to the Public Utilities Act (“PUA” or “Act”), which require, respectively, electric and gas utilities to create programs that “will allow utility customers to purchase cost-effective energy efficiency measures with no required initial upfront payment, and to pay the cost of those products and services over time on their utility bill.” 220 ILCS 5/16-111.7(a) and

220 ILCS 5/19-140(a). Under the provisions of Section 19-140(c), each gas utility must submit a proposed On-Bill financing Program (“OBF Program” or “Program”) within 60 days of the completion of the workshop process. 220 ILCS 5/19-140(b-5) & (c).¹

Accordingly, on June 2, 2010 Petitioners filed its petition with the Illinois Commerce Commission (“Commission” or “ICC”) requesting approval of its Program pursuant to Section 19-140 of the PUA. 220 ILCS 5/19-140 (et seq.). In addition, Petitioners provided draft tariffs of Rider OBF.

On February 18, 2010, the Administrative Law Judge in the subject case adopted the following schedule in compliance with the statutory timelines stated in 220 ILCS 5/19-140 (et seq.):

March 2, 2010 - Staff/Intervenor Verified Comments

March 12, 2010 - Staff/Intervenor Reply Verified Comments to each other

March 22, 2010 - Utility Reply Verified Comments

April 16, 2010 - ALJ’s Proposed Order

April 28, 2010 - Briefs on Exceptions

May 3, 2010 - Reply Briefs on Exceptions

¹ Commission Staff convened a total of six workshops between August 4, 2009 and December 4, 2009. As suggested by subsection (b-5), participants discussed a variety of issues related to the Program, including “program design, eligible energy efficiency measures, vendor qualifications, and a methodology for ensuring ongoing compliance with such qualifications, financing, sample documents such as requests for proposals, contracts and agreements, dispute resolution, pre-installment and post-installment verification, and evaluation.” 220 ILCS 5/19-140(b-5).

INTRODUCTION

The People have several concerns with the OBF program and associated documents provided in the Petitioners petition. The People and other intervenors have been clear throughout the work shop process that the Program needs to be cost effective to the participants as well as the ratepayers. Notwithstanding these concerns, the Petitioners were the only utility that did not provide an estimation of program administrative costs. Nonetheless, the Commission should cap all program administrative costs at no greater than 10% of the program dollars available.

In addition, the Program Design Document is vague or lacking in sufficient detail to properly align incentives among the lender, vendor, and Petitioner in order to keep the program costs reasonable, avoid customer confusion, and provide enough customer benefits to make the Program worthwhile. Also, the Request For Proposal (“RFP”) reads more like a Request For Information (“RFI”) and does not provide enough specific detail for a lender to understand what the program will include or what the lenders obligations will be. The Commission should require the Petitioners to make the changes described below before approving the Petitioners Program.

COMMENTS

a. The Commission Should Cap Administrative Program Costs at 10% of the Program Dollars Available

In its proposal, the Petitioners provided no information regarding its program costs. Instead, the Petitioners stated:

Section 19-140(f) entitles Petitioners to recover prudently incurred costs. Petitioners plan to file a cost recovery mechanism pursuant to Section 8-104 of the Act to recover such costs. Pending filing approval

of such mechanism, Petitioners are tracking such costs for recovery upon Commission approval of the appropriate rider. Petitioner Petition at 5.

Additionally, Petitioner Witness Vincent Gaeto opines:

Peoples Gas and North shore have not yet filed that tariff. Section 8-104 pertains to EE [Energy Efficiency] programs that certain gas utilities must file by October 1, 2010. The utility expect to file the tariff when they file their plans...Program costs will include: incremental Utility staffing, Program development, marketing, vendor network development and management, evaluation and FI [financial institution or lender (“FI”)] fees paid by the Utility if, any. Program costs may include some fees paid by the Utility to the FI to cover certain FI costs for its services, including loan program set up, loan origination and administering the Program. This approach will reduce costs to the participating customers. The FI **RFP requests proposing FI’s to suggest a budget for Program costs** that would be reimbursed by the Utility directly...NS-PGL Ex. 1.0 at 12. (emphasis added).

The Petitioners proposed program budget raises grave concerns because there is no Program budget. The language described above by Petitioner Witness Vincent Gaeto along with the RFP (NS-PGL-Ex.1.1), suggests that no consideration has been given to keeping Program costs reasonable, especially those costs that will flow through to rate payers. In its 2008 rate case order approving North Shore Gas Company’s and Peoples Gas Light & Coke Company’s energy efficiency programs, the Commission capped the companies’ administrative costs at 5%. A similar cap for the Petitioners’ OBF Program would limit the Company’s administrative expenses to \$250,000. While the On-Bill statute, Section 19-140 of the Act, does not establish any fixed-dollar or percentage amount for administrative program expenses², the Commission should

² “A gas utility shall recover all of the prudently incurred costs of offering a program approved by the Commission pursuant to this Section, including, but not limited to, all start-up and administrative costs and the costs for program

certainly not permit any utility to spend more than 10%, or \$250,000 on such costs.

Therefore, the Commission must require the Petitioner to maintain a program budget to be no greater than 10% of the total Program amount available or \$250,000.

b. The Petitioners Failure to Describe How Disputes will be Handled Between Vendor and Customer Will Lead to Customer Confusion and Higher Program Costs

Although the Petitioner proposes that lender disputes will be resolved between participant, or customer and the lender.³ There is no specific language to describe how disputes will be handled between the customer and the vendor. For example, Petitioner Witness Vincent Gaeto states, “the utilities participating in the joint FI RFP process intend that the FI will make disbursements of loan proceeds to the vendors upon completion of installed measures and acceptance by customers.” NS-PGL Ex. 1.0. However, there is no language to describe what constitutes “acceptance by customers.” Is there a written or verbal requirement of the customer to demonstrate acceptance of the measure from the vendor? Also, how does the customer’s acceptance communication flow get to the Petitioner and the lender? In other words, how does the lender know of customer acceptance and whether or not to pay the vendor?

evaluation. All prudently incurred costs under this Section shall be recovered from the residential and small commercial retail customer classes eligible to participate in the program through the automatic adjustment clause tariff established pursuant to Section 8-104 of this Act.” ILCS 5/19-140(f).

³ “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.” ILCS 5/19-140(5), NS-PGL Ex. 1.0, and RFP, NS-PGL-Ex.1.1 Annex A to the Program Design Document at 7.

The Petitioner must make it clear how the customer will demonstrate acceptance of the measure by the vendor and how this information will be communicated to the lender before making its disbursements. Therefore, the Commission should require the Petitioner to state what form of customer acceptance is required and how acceptance will be communicated to the lender. This information needs to be stated clearly in the Program Design Document, as well as the Request for Proposal (“RFP”) NS-PGL-Ex.1.1 Annex A to the Program Design Document.

c. Petitioners Failure to Describe the Credit Check Methodology and Misaligned Incentives Could Lead to Unreasonable Costs to Rate Payers

In the Program Design document, the Petitioner stated the following regarding its loan approval process:

5.4. Loan Underwriting Guidelines. Loan underwriting guidelines will be jointly developed by the Utility and FI, subject to the approval of the Commission. The FI RFP requests FIs to propose underwriting guidelines that will be reasonable and prudent for credit risk management, easy to administer, and reflect the underlying support of the Utility. In Loan origination, the FI will perform the credit analysis of prospective borrowers using the agreed underwriting guidelines. The FI will be asked to report on its credit decisions, applications, rejections and approval rates. Loan underwriting guidelines can also be modified during Program operations, as experience dictates. A main goal of the Program is to establish a preferential and easy-to-use EE lending program, which must be balanced with the need to manage credit risk. Program Design Document, NS-PGL Ex. 1.1 at 10.

Nowhere does the Petitioner consider the cost associated with an extensive credit check. The workshop process provided an opportunity for Petitioner to consider what credit check information was necessary to balance customer credit

concerns, (the likelihood customers would pay back their loan) with the desire not to exclude interested customers who fail to meet stringent credit criteria. Also, if the credit check process was too costly the interest rate of the loan would be inflated, or such additional costs would be socialized to all rate payers.

In the workshops, the People recommended a tiered approach to credit checks. For example, if the measure was under \$1,000, the customer's bill payment history could be used. For measures greater than \$1,000, a specific formula or methodology could be implemented. The statute requires that the lender is paid dollar for dollar from the utility regardless of whether or not the customer pays the utility. The statute states,

The gas utility shall remit payment in full to the lender each month on behalf of the participant. In the event a participant defaults on payment of its gas utility bill, the gas utility shall continue to remit all payments due under the program to the lender... 220 ILCS 5/19-140(6).

Accordingly, the lender gets paid regardless of the credit check or whether or not the customer pays the utility. In fact, if the lender gets an additional fee through a higher interest rate or such costs are passed through to ratepayers as program costs, the lenders profit incentive is to require an extensive credit check. Therefore, it is important for the Petitioner to spell out in the RFP exactly what it expects the credit check methodology to look like in order to properly align incentives. If for example it costs rate payers \$200 in socialized costs for the lender to perform a credit check for a \$1,000 measure then it adds an additional 20% ($\$200/\$1,000=20\%$) to the real cost of the measure. If the default rate on the measure is 1.5%-3%, as one expert stated in the workshop, it would not be

reasonable to inflate the costs of the program through an increased interest rate to customers that may make the program unappealing or to pass the costs of an overly broad credit check with no demonstrated benefit on to ratepayers.

Therefore, the Petitioner must spell out its proposed credit check methodology and the Commission should require the Petitioner to apply a tiered credit check approach that: 1) limits the requirement to prior bill payment history for measures under a \$1,000; and 2) applies a specific formula or methodology that does not inflate the interest rate or cause additional costs to be socialized to rate payers for measures greater than \$1,000. The specific credit check methodology should be stated clearly in the Program Design Document, as well as the RFP, NS-PGL-Ex.1.1 Annex A to the Program Design Document.

d. Petitioners Failure to Describe the Methodology, or Perform a Cost Benefit analysis of Petitioner Obtaining a Security Interest in a Measure Could Lead to Unreasonable Costs Charged to RatePayers

The Petitioner proposes the following regarding its Retention of a Security Interest:

3 5.10 Loan Administration & Recoveries. Pursuant to Section 19-140, the Utility shall retain a security interest in equipment. Cost-effective methods to achieve this, (e.g., UCC filing), will be negotiated with the Lender. In the FI RFP, the utilities request that the Lender propose to take the agreed security filing action as part of its services. Costs associated with the security filing may be treated as Program costs, to be reimbursed to the Lender by the Utility.
Program Design Document, NS-PGL Ex. 1.1 at 11.

Petitioner has not provided any information as to what “cost-effective methods” to obtain a security interest means. *Id.* Even without Petitioner

having a security interest, a customer has a strong incentive to pay for the measure or risk potential electric service cut-off. As the statute states,

[a]mounts dues under the program shall be deemed amounts owed for residential...electric [gas]service” 220 ILCS 5/16-111.7(c)(5) and 220 ILCS 5/19-140(c)(5), and that “the utility retains its right to disconnect a participant that defaults on the payment of its utility bill” 220 ILCS 5/19-140(c)(6).

Therefore, Petitioner must spell out its reasoning clearly in the Program Design Document as to what exactly “cost-effective methods” to obtain a security interest means. In addition, any request by the Petitioner to the lender related to security interest filings through the RFP process must provide a cost breakdown by the lender. RFP, NS-PGL-Ex.1.1 Annex A to the Program Design Document. At this point the Commission should disallow any costs associated with obtaining a security interest as not “prudently incurred costs of offering a program approved by the Commission pursuant to this Section...” 220 ILCS 5/19-140(f).

e. Petitioners Failure to Describe the Methodology, or Provide Detail in the RFP Regarding the Effects of Early Customer Pay Off of the Loan Amount Could Confuse Customers and Raise Program Costs

The Petitioner proposes the following regarding customer pay offs of the OBF loan:

5.8. Utility Repayment. The Utility will repay all Loans to the FI, regardless of customer payment timing and performance. ...
Program Design Document, NS-PGL Ex. 1.1 at 11

However, there are three questions that have not been addressed in the Petitioners Program Design Document or the RFP: 1) Can the customer voluntarily pay off their loan early?; 2) Will Petitioner provide

timely payment in full to the lender if it receives an early pay off of the loan from the customer?; and 3) Will the lender charge or penalize the customer or the program if a loan is paid off early?

Prior to approval of the proposed program, the Commission should require the Petitioner to describe in the Program Design Document that the customer may voluntarily pay off the loan early with no penalty. Also, the Program Design Document must provide that Petitioner will timely make payment in full to the lender in the event of an early pay off by the customer. Lastly, the RFP should specifically state the above described pay off plan to the lender.

f. In the Event Petitioner Makes its Program Available to Small Commercial Retail Customers It Must Ensure all Program Costs Related to Such Programs Will not be Assessed to Residential Customers

Initially, Petitioner intends to include residential customers only in its Program. The Petitioners Program Design document states:

1.2.1. *Target Sectors & Customers.* The Utility's Program targets the residential sector: single family and multi-family up to four units, including duplexes and condominiums where service is being provided. Multi-family housing with greater than 4 units is not eligible. Customers/borrowers must be property owners. Renters are not eligible. Customers of alternative retail suppliers may participate in the Program under the same terms and conditions applicable to the Utility's supply customers.

Program Design Document, NS-PGL Ex. 1.1 at 11.

Petitioner, however, could choose to add small commercial customers to the program at a later date. The Commission should make it clear in its Order that any Program or Program related costs that arise from the inclusion of small

commercial customers will be assigned to that customer class and not residential customers.

WHEREFORE, for the above-stated reasons, the People respectfully request that Program Design Document, RFP and related documents be modified as described herein.

Respectfully submitted,

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By Lisa Madigan, Attorney General

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