STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	)	
	)	
	)	
Approval of the On-Bill Financing Program	)	Docket No. 10-0091
pursuant to Section 16-111.7	)	
of the Public Utilities Act	)	

REVISED 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 Commonwealth Edison Company's ("ComEd" or "Company") petition for approval of its On-Bill Financing Program ("OBF Program" or "Program") and associated tariff revisions ("Petition").

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). Under the provisions of Section 16-111.7(c), each electric utility subject to its provisions must submit a proposed On-Bill financing Program ("OBF

Program" or "Program") within 60 days of the completion of the workshop process. 220 ILCS 5/16-111.7(b-5) & (c).[1]

Accordingly, on June 2, 2010 Commonwealth Edison Company ("ComEd" or "Company") filed its petition with the Illinois Commerce Commission ("Commission" or "ICC") for approval of its Program pursuant to Section 16-111.7 of the PUA. 220 ILCS 5/16-111.7 (et seq.). In addition, Com Ed requested approval from the Commission of its proposed changes to the Company's: 1) General Terms and Conditions; 2) Rider EDA Energy Efficiency and Demand Response Adjustment ("Rider EDA"); and 3) uncollectibles rider, Uncollectible Factors ("Rider UF").

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 5/16-111.7 (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

INTRODUCTION

The People have several concerns with the OBF program and associated documents provided in the Company's Petition. The People and other intervenors have been clear throughout the workshop process that the Program needs to be cost effective to

[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 5/16-111.7(b-5).

the participants as well as ratepayers. Notwithstanding these concerns, ComEd's Petition proposes estimated program costs that exceed the excessive. The Commission should reject these proposed costs and instead cap all program administrative costs at no grater than 10% of the program dollars available. In addition, the Program Design Document is lacking in sufficient detail to properly align incentives among the lender, vendor, and ComEd 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 ComEd to make the changes described below before approving the Company's Program.

COMMENTS

a. ComEd's Estimated Program Costs are Excessive and Should Be Rejected by the Commission.

In its proposal, ComEd stated its estimated costs to implement the Program would:

> include, but are not limited to, third party administrative costs, internal management activities (*e.g.*, marketing, advertising, reporting, risk analysis), incremental fully-loaded labor costs, and IT. ComEd must implement changes to its IT systems because the statute requires both the addition of a separate line item charge on participants' utility bills and the ability to share information between the FI[2] and ComEd. The following tentative Program budget table provides best estimates at this time of key Program costs associated with implementation of the Program, but is subject to change:

[2] FI means financial institution or lender.

Category	**PY1**	**PY2**	**PY3**
Administrative Overheads	$597,800	$812,400	$836,800
Consulting & Legal Services	$250,000	$40,000	$40,000
IT Costs	$150,000	$850,000	$0
Marketing & Training	$100,000	$50,000	$50,000
Evaluation	$20,000	$20,000	$60,000
Loan Servicing	$100,000	$100,000	$100,000
Total Costs	**$1,217,800**	**$1,872,400**	**$1,086,800**

10-0091; ComEd Attachment A; Program Design Document at 19 (emphasis added).

In other words, ComEd estimated its three-year program costs at $4.177 million, or approximately 168% of the $2.5 million amount provided for the Program under Section 16-111.7(c)(7) of the Act. The Company's proposal to spend more on the administration of the program than the total pool of money available is absurd by any measure. For example, by comparison, 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 ComEd's OBF Programs would limit the Company's administrative expenses to $125,000. While the On-Bill statute, Section 16-111.7 of the Act, does not establish any fixed-dollar or percentage amount for administrative program expenses[3], the Commission should certainly not permit any utility to spend more than 10%, or $250,000 on such costs. (See Table A)

[3] "An electric 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 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 8-103 of this Act." ILCS 5/16-111.7(f) and ComEd Exhibit 1.0 at 27 and 28.

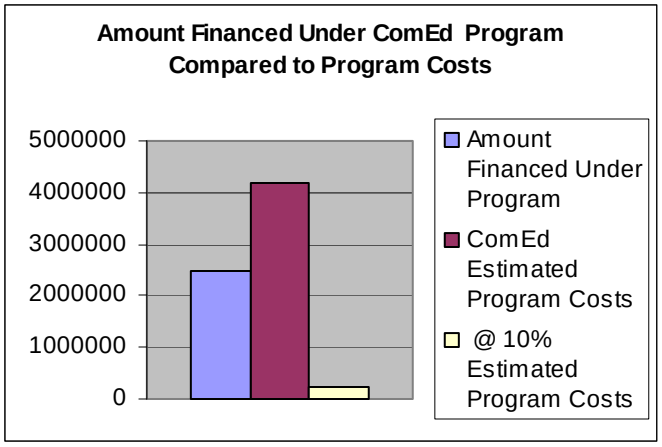

Table A

To emphasize, if ComEd sold only refrigerators under its Program as currently described, it is possible that $1,650 in Program Costs could be socialized or passed through to ratepayers to purchase a single refrigerator costing $1,000:

Assuming the average cost of a refrigerator is $1,000
2,500 refrigerators (potential refrigerators bought under the Program X $1,000 (assumed average cost of refrigerator) = $2.5 million (Program amount available)
$4.177 million (Estimated Program Costs/2,500 (potential refrigerators bought) = $1,670 (passed through to rate payers)

It is absurd to ask ratepayers to foot the bill for $1,650[4] in Program costs in order to finance a $1,000 refrigerator. ComEd must reduce its Estimated Program Costs to a reasonable or prudent level to be no greater than 10% of the Program amount available or $250,000.[5]

[4] ComEd implies the Estimated Program Costs would serve as a floor. ComEd states,"9.2 Loan Servicing Costs. ComEd also proposes to recover any loan program, administration, and service costs charged to it by the FI. These would include loan program set up, loan origination, and administrative charges…" ComEd Attachment A at 20.

[5] ComEd Witness Robert Garcia opines, "It is ComEd's legal interpretation that the Program costs are separate from those for the energy efficiency and demand response plan and should not be counted toward the budget set by subsection (d) of section 8-103 of the Act."ComEd Exhibit 2.0 at 10. However ComEd has provided no support for

b. ComEd's Failure to Describe How Disputes will be Handled Between Vendors and Customers Will Lead to Customer Confusion and Higher Program Costs.

Although ComEd proposes that lender disputes will be resolved between participant, or customer and the lender,[6] there is no such language to describe how disputes will be handled between the customer and the vendor. The Company states, "ComEd proposes that the lender make disbursements of loan proceeds directly to the vendor upon installation of the measure and acceptance by the customer." ComEd Petition at 9; ComEd Attachment A at 17; and ComEd Exhibit 1.0 at 23. Yet, there is no language to describe what constitutes "acceptance by the customer." 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 flow to ComEd and the lender?

ComEd 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 ComEd 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, ComEd Attachment A, as well as the Request for Proposal ("RFP") ComEd Ex. A.2.

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why program costs in the OBF Program should not be included in the energy efficiency demand response plan under Section 8-103 of the Act.

[6] "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 5/16-111.7(5) and RFP, ComEd Ex. A.2 at 7

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

In its Program Design Document, ComEd stated the following regarding its loan approval process:

> 5.1. **Loan Underwriting Guidelines**. The Program's goals to promote EE measures must be balanced with the need to manage credit risk. According to subsection (c)(4) of Section 16-111.7, the Lender shall conduct credit checks or undertake other appropriate measures to limit credit risk. ComEd will seek advice from the FI partner on loan underwriting guidelines, and although the details of the credit check process will ultimately be negotiated and finalized through the RFP process with the FI, it is presently anticipated that the following factors will be considered when evaluating loan applications:
>
> a) Lender will obtain confirmation from ComEd that applicant is eligible, including verification of residential customer class.
>
> b) Lender will confer with ComEd to determine whether applicant is current with respect to utility bill payment and ascertain any late payment history.
>
> c) Lender shall undertake a confirmation of applicant's income and property ownership.
>
> d) Lender shall calculate a debt ratio to disposable income, the result of which must not exceed 50%.
>
> e) Lender shall perform a disposable income calculation to include a prudent fraction (*e.g.*, 70% of estimated energy cost savings associated with the project).
>
> f) Lender shall obtain applicant's Fair Isaac Corporation ("FICO") score, with minimum score levels to be determined during negotiations with the FI.
>
> g) Lender may make a security interest filing on behalf of ComEd for the project equipment, depending on ComEd's decision on whether or not to exercise its security interest.
>
> 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 ComEd. (ComEd Ex. A.2, § 4.2.3.)
>
> ComEd Attachment A at 15 and 16; RFP ComEd Ex. A.2, Annex A at 14; and ComEd Ex. 1.0 at 21 and 22.

The workshop process provided an opportunity for ComEd to consider what credit-check information was necessary to balance customer credit concerns, (the likelihood customers would pay back their loan) with the desire to not 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 ratepayers.

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 be paid dollar for dollar from the utility regardless of whether or not the customer pays the utility:

> The electric 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 electric utility bill, the electric utility shall continue to remit all payments due under the program to the lender… 220 ILCS 5/16-111.7(6)

Accordingly, the lender gets paid regardless of whether the customer pays the utility. In fact, if the lender gets an additional fee through a higher interest rate or such cost are passed through to rate payers as program costs, the lenders profit incentive is to require an extensive credit check. Therefore, it is important for ComEd 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 refrigerator, then it adds an additional 20% ($200/$1,000=20%) to the 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 on to rate payers.

Therefore, ComEd must spell out its proposed credit check methodology, and the Commission should require ComEd to apply a tiered credit check approach that: 1) limits the requirement to prior bill payment history for measures under $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, ComEd Attachment A, as well as the RFP ComEd Ex. A.2.

d. ComEd's Failure to Describe the Methodology or Perform a Cost Benefit Analysis of the Company Obtaining a Security Interest in a Measure Could Lead to Unreasonable Costs Charged to Ratepayers

ComEd proposes the following regarding its Retention of a Security Interest:

> 7.4. **<u>Retention of Security Interests</u>**. Pursuant to subsection (c)(6) of Section 16-111.7, ComEd shall retain a security interest in the equipment. **ComEd will exercise its discretion regarding whether to**

> **take advantage of its security interest based on whether it is cost-effective to do so**. If appropriate, ComEd will negotiate cost-effective methods to achieve this, *e.g.*, UCC-1 filing, with the lender. In the FI RFP, ComEd requests that the lender be able to file the security interests as part of its services. (ComEd Ex. A.2, § 4.2.5.) **Costs associated with the security filing may be treated as Program costs, to be reimbursed to the lender by ComEd**. (ComEd Attachment A at 18) (emphasis added)

As described in the previous section of these Comments, ComEd has not provided any information as to when it would "exercise its discretion" to obtain a security interest and what it means by "cost effective." *Id.* Furthermore, ComEd witness Timothy Melloch states "the likelihood of recovering any significant monies by executing such a security interest on a refrigerator is remote, or sufficiently unlikely to cover the cost of fully executing such a security interest." ComEd Ex. 1.0 at 26. Even without ComEd having a security interest, a customer has a strong incentive to pay for the measure or risk potential electric service cut-off. As Mr. Melloch opines,

> The statute is clear that "[a]mounts due under the program shall be deemed amounts owed for residential…electric service" (220 ILCS 5/16-111.7(c)(5)), and that "the utility retains its right to disconnect a participant that defaults on the payment of its utility bill" (220 ILCS 5/16-111.7(c)(6)). *Id.*, ComEd Attachment A at 18.

Given this strong incentive for customers to pay, ComEd should be required to spell out its reasoning in the Program Design Document as to when it would "exercise its discretion" to obtain a security interest and what exactly it means by "cost- effective." In addition, any request by ComEd to the lender related to security interest filings through the RFP process must provide a cost breakdown by the lender. ComEd Ex. A.2. 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 5/16-111.7(f).

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

ComEd proposes the following regarding early customer pay offs of the OBF loan:

> In the event that a participant transfers title of the underlying property receiving utility services or terminates the utility service, the participant will be required to pay the utility bill in full. 220 ILCS 5/16-111.7(c)(5). In practice, when ComEd receives notification of the transfer or termination, it will issue a final bill to the participant for payment in full of all charges, including the amount financed under the Program. ComEd Attachment A at 3 and 18.

Three questions have not been addressed in ComEd's Program Design Document or the RFP: 1) Can the customer voluntarily pay off their loan early?; 2) Will ComEd 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 ComEd 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 ComEd will make payment in full to the lender in the event of any 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 ComEd 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, ComEd intends to include only refrigerators to residential customers in its Program. ComEd states the, "Program targets the residential sector – single family and multi-family buildings…" ComEd Attachment A at 3. Company witness Robert Garcia opines, "at least initially, the Program will be available only to residential customers." ComEd Ex. 2.0 at 8. Accordingly, ComEd plans to allocate costs associated with its Program only to residential customers. Company witness Garcia states, "The revisions to the 'EDA Computation and Application' section reflect that the cost to develop, implement administer, and evaluate the Program will be recovered only from residential customers" ComEd Ex. 2.0 at 8. Mr. Garcia goes on to add, "ComEd will recover uncollectable costs it incurs that are associated with the Program from residential customers because only residential customers will initially be eligible to participate in the Program." Id. at 12.

ComEd, 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-related costs that arise from the inclusion of small commercial customers will be assigned to that customer class, and not residential customers.

g. ComEd Must Establish and Clearly Define a Quick Loan Approval Process in Order to Make the Program Beneficial to Customers.

ComEd has not provided any information in its Program Design Document or RFP as to how it will provide quick approval or pre-approval of loans to participants. Since ComEd is initially offering refrigerators to residential customers only in its Program, the customer will likely purchase the measure or refrigerator at a retail business. One benefit of the program would be to obtain approval while visiting the store. Yet ComEd has not described anywhere how communication between the vendor, lender, and ComEd will occur, and how long it should reasonably take for a customer to obtain approval.

The Commission should require ComEd to describe in the Program Design Document how communication between the vendor, lender, and ComEd will expedite the customer loan approval process. Likewise, the RFP should specifically require short loan approval times or pre-approval.

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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