

**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)	

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

The People of the State of Illinois (“the People” or “AG”), by and through Lisa Madigan, Attorney General of the State of Illinois, hereby file these Reply Comments pursuant to the schedule established by the Administrative Law Judge (“ALJ”) in this docket. These Reply Comments pertain to the Initial Comments filed by the Citizens Utility Board (“CUB”) and the City of Chicago (“the City”) (CUB and the City, together, “CUB/City”) and the Initial Comments filed by the Staff of the Illinois Commerce Commission (“ICC Staff” or “Staff”) regarding Commonwealth Edison (“ComEd” or Company) and its petition for approval of an On-Bill Financing Program (“OBF Program” or “Program”).¹

INTRODUCTION

These Reply Comments will not address all issues raised by the CUB/City and Staff but this does not indicate agreement with all of their conclusions.² The People rely

¹ Other utilities in Illinois filing on-bill financing programs include: NorthShore/Peoples Gas No. 10-0090; AmerenCILCO/AmerenCIPS/AmerenIP Docket No. 10-0095, and Northern Illinois Gas Company Docket No. 10-0096.

² CUB/City and Staff filed their Initial Comments in this proceeding on March 2, 2010 in compliance with the ALJ’s schedule.

on the comments and arguments made in the Peoples Revised Initial Comments³ unless specifically stated otherwise herein. Generally, the People agree or have no objection to the Initial Comments made by CUB/City and Staff in their effort to have a meaningful Program that complies with the law.

REPLY COMMENTS

I. Reply to CUB/City's Initial Comments

CUB has worked hard throughout the workshop process to advance the General Assembly's purpose "to save energy through cost-effective energy efficiency measures" 220 ILCS 5/19-140(a) and 220 ILCS 5/16-111.7(a). In CUB/City's Initial Comments it is evident that its part in promoting conservation and energy efficiency through a meaningful Program is a consistent theme. Generally, the People believe that CUB/City's Initial Comments and recommendations would improve the ComEd Program. In fact, the People share many of the concerns raised by CUB/City including the following proposed program defects: 1) an unacceptable Program budget; 2) credit check methodology that limits participation and raises program costs or loan rates; and 3) gaps or lack of detail in the Program Design Document ("PDD"). Ultimately, however, the People at this time believe it is premature to support the CUB/City recommendation that the Program should continue during the pendency of evaluation. CUB/City Initial comments at 7-8. The People believe there are many issues, including Program costs, that must be worked out regarding the ComEd Program.

A. The Role of Program Administrator Should Be Clarified

³ The People filed its Initial Comments on March 2, 2010 and Revised Initial Comments on March 4, 2010.

ComEd witness Timothy Melloch describes the start-up and administrative costs the utility expects to incur include: third-party administrative costs, internal management activity costs (such as marketing, advertising, and risk analysis), information technology costs and incremental “fully-loaded” labor costs. ComEd Ex. 1.0 at 27; CUB/City Initial Comments at 4. Furthermore, ComEd’s Estimated Program Budget totals \$4.177 million for the three year Program. ComEd Attachment A at 19; CUB/City Initial Comments at 4.

CUB/City Opine, “[t]he Program Budget presented by the Petitioner is **simply unacceptable** and should be halved at a minimum. *Id.* (emphasis added). CUB/City recommends:

Before the Petitioner’s OBF Program should be 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. The Commission should also request detailed program cost information, and consider whether it would be appropriate to cap administrative expenses as it did for the Chicagoland Natural Gas Savings Program. See *In re North Shore Gas and Peoples Gas*, ICC Docket Nos. 07-0241 and 07-0242 (consol.), Final Order at 183 (February 5, 2008).

The People believe the CUB/City recommendations are reasonable, but a Program cap is a must element that must be implemented. As the People stated in its Initial Comments, “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. The People’s Revised Initial Comments at 5 (citation omitted).

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

In their Comments, CUB/City expresses concern about the Request for Proposal (“RFP”) financial institution (“FI”) selection process. CUB/City Comments at 7.

CUB/City described the FI selection process in its Initial Comments where ComEd is:

cooperating with other utilities⁴ to conduct a joint RFP to find the FI that will serve as lender, provide financing to customers and serve as partner in several roles to implement the Program. ComEd Attachment A at 2. 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. *Id.* The IEA will constitute an evaluation committee with representation from all participating utilities.

Additionally, CUB notes that in regards to the FI RFP process:

The Illinois Energy Association [“IEA”], of which all utilities are members [or associate members] is facilitating this cooperation and will issue the FI RFP and coordinate the FI RFP process on behalf of the utilities.⁵

Of particular concern to CUB/City is the issue of the veto power of the IEA in the lender selection process. CUB/City Initial Comments at 5. Therefore, “CUB proposes that the stakeholders who participated in the OBF workshops conducted by Staff become members of the proposed Evaluation committee.” *Id.* at 5-6. In particular, CUB proposes the Commission name CUB, the People and ICC Staff to be included as members of the RFP evaluation committee. *Id.* The Peoples would be willing to join the RFP evaluation Committee, but believe that in order to make a meaningful contribution o the evaluation process, the AG and CUB should be voting members of the committee and not just advisors.

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

ComEd intends to finalize underwriting criteria for residential customers with the selected FI. ComEd Attachment A at 15; CUB/City Initial Comments at 6. Examples of

⁴ Other utilities in Illinois filing on-bill financing programs means: NorthShore/Peoples Gas No. 10-0090; AmerenCILCO/AmerenCIPS/AmerenIP Docket No. 10-0095, and Northern Illinois Gas Company Docket No. 10-0096.

⁵ See IEA website at: <http://www.ilenergyassn.org/mbrcompanies/index.asp>

potential underwriting criteria include confirmation of property ownership, minimum fair Isaac Corporation scores, and debt-to-income ratio. *Id.* Although there is a lack of detail in exactly how credit checks will be implemented by the FI, CUB is concerned that the credit check practice “will add unnecessary costs to the Program.” CUB/City Initial Comments at 6. Additionally, CUB is concerned that people that could benefit from energy efficiency measures could be denied access to the program because they have less than ideal credit scores, even though it was demonstrated at the workshop process that individuals with poor credit scores still often pay their utility bills. *Id.* Thus CUB recommends that the Commission should rule that the use of utility bill payment history is a prudent way to evaluate credit worthiness of prospective borrowers. *Id.*

In their Revised Initial Comments, the People, raised many of the same concerns that CUB/City articulated regarding the ComEd credit check methodology described in its Program. The People recommended that:

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, ComEd Attachment A, as well as the RFP ComEd Ex. A.2. AG Revised Initial Comments at 9.

However, if the Commission chose the CUB/City recommendation to use only bill payment history as a means of doing a customer credit check, the People would not object.

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

In their Comments, CUB/City highlight the fact that ComEd states that “[i]n the event of non-payment, [by a customer] ComEd may terminate the participant’s electric service, according to existing collection procedures. ComEd Attachment A at 3; 220ILCS 5/16-111.7(c)(6). CUB/City is concerned that ComEd, “does not address how a customer who has had their service disconnected can have their service reconnected.” CUB/City Initial Comments at 8. To resolve this issue, “CUB recommends the reconnection amount include only those loan payments missed since the disconnection and not the entire amount due under the loan.” *Id.* The People believe that CUB’s addition regarding amounts owed to the utility to enable reconnection is reasonable and adds an important consumer protection element to the Program. Therefore, the People support this recommendation.

II. Reply to Staff’s Initial Comments

Staff’s lead in the workshop process and its Initial Comments seek to insure the Program is legally compliant in advancing the General Assembly’s purpose “to save energy through cost-effective energy efficiency measures” 220 ILCS 5/19-140(a) and 220 ILCS 5/16-111.7(a). The People respond to some of the points raised in Staff’s Initial Comments below.

A. Staff Data Reveals that ComEd’s Program Has Not Adequately Described a Process to Assure its Methods to Obtain a Security Interest is Not Cost-Prohibitive With Respect to Certain Measures

Staff’s data request answer BAP 1.06 provided a response from ComEd regarding “ComEd’s proposed accounting treatment related to the Company’s right to retain a security interest in program measures” Staff Initial Comments at 20. ComEd responded

as follows, to the question, “related to ComEd’s right to retain a security interest in the measures assuming future execution of a security interest pursuant to Section 16-111.7.”

As an initial matter, ComEd assumes this Request is referring to ComEd Ex. 1.0, lines 571 – 583. As discussed by Mr. Melloch in ComEd Ex. 1.0, **perfecting a security interest may be cost-prohibitive with respect to certain measures**, and ComEd therefore may not exercise its option to perfect its security interest in the underlying asset in every instance.

If ComEd exercises its right to perfect a security interest in a measure pursuant to Section 16-111.7, ComEd expects to incur various costs to perfect the interest and repossess the underlying asset. These costs will be recovered through Rider EDA as an incremental cost associated with the on-bill financing program.

In the event that a customer defaults in the program and ComEd successfully takes possession of the asset through its security interest, ComEd would sell the repossessed asset. Proceeds from the sale of the asset would be used to relieve the associated customer’s account receivable and pay the financial institution its monthly amounts due, which would reduce the amount that would need to be recovered through the automatic adjustment clause tariff (ComEd’s Rider UF). ComEd response to Staff data Request BAP 1.06. (emphasis added)

The People believe ComEd’s recognition of the cost associated with perfecting a security interest, for example that it “may be cost-prohibitive with respect to certain measures” is reasonable. ComEd, however, should spell out when it intends to perfect its security interest, for example for measures with a value greater than \$5,000. Furthermore, the Peoples believe that ComEd and the other utilities should exclude the service and related costs associated with a security interest from the RFP.⁶ In essence, ComEd would be responsible for obtaining a security interest with the associated filings and not the lender. The statute states, “In addition, the electric utility shall retain a security interest in

⁶ Com Ed stated, “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)

the measure or measures purchased under the program...” Section ILCS 5/16-111.7(c)(6). There is no requirement that the utility has to file or perfect a security interest or that the lender needs to be responsible for the filing of the security interest. Therefore the People expect to see ComEd address in its Reply Comments, how it intends to keep costs reasonable for the Program when “**perfecting a security interest may be cost-prohibitive with respect to certain measures.**”

B. The People Support Staff’s Call for the Dissemination of Consumer Information

In their Initial Comments Staff proposed that certain consumer information needs to be disseminated to customers who take advantage of the OBF Program. Staff states in its Initial Comments:

Customers who take advantage of the proposed OBF [P]rogram should be informed about how their participation may affect their bill when changes in utility service occur. In particular, customers will need to know how moving to another location both within and outside the utility’s service territory will affect their bill. In addition, it is important that customers understand that their utility service may be subject to disconnection for non-payment of on-bill financing charges. Staff Initial Comments at 23.

Additionally, Staff recommends ComEd develop such consumer information and describe how such information will be communicated to customers. *Id.* at 24. The People support Staff’s recommendation as an important consumer protection issue. In fact, Staff believes such information should be included in materials used to market the Program.

WHEREFORE, the People submit these Reply Comments for consideration in this docket.

Respectfully submitted,

People of the State of Illinois
By Lisa Madigan, Attorney General

By: _____
Janice Dale
Chief, Public Utilities Bureau
Karen Lusson
Senior Assistant Attorney General
Michael R. Borovik
Assistant Attorney General
Public Utilities Bureau
Illinois Attorney General's Office
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601
Telephone: (312) 814-7203
Facsimile: (312) 814-3212
jdale@atg.state.il.us
klusson@atg.state.il.us
mborovik@atg.state.il.us

Date: March 12, 2010