

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY,)	
)	
Approval of the On-Bill Financing Program Pursuant to)	Docket No. 10-0091
Section 16-111.7 of the Public Utilities Act.)	

VERIFIED REPLY COMMENTS OF COMMONWEALTH EDISON COMPANY

Mark R. Johnson
Eimer Stahl Klevorn & Solberg LLP
220 South Michigan Avenue, Suite 1100
Chicago, Illinois 60604
(312) 660-7628
mjohnson@eimerstahl.com

Michael S. Pabian
Attorney for Commonwealth Edison Company
10 South Dearborn Street, 49th Floor
Chicago, Illinois 60603
(312) 394-5831
michael.pabian@exeloncorp.com

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I. INTRODUCTION

On July 10, 2009, the Governor signed into law Public Act 96-0033 (“P.A. 96-0033”), which created new Sections 16-111.7 and 19-140 of the Illinois Public Utilities Act (the “Act”). These Sections require, respectively, electric and gas utilities subject to their provisions 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).

Over the next several months, Commonwealth Edison Company (“ComEd”) and numerous stakeholders participated in the six workshops convened by the Staff of the Illinois Commerce Commission (“Staff”), which included productive discussion and collaboration concerning a variety of program design components. Because the statute requires that each utility file its on-bill financing program (“OBF Program” or “Program”) within 60 days of the completion of the workshop process, ComEd devoted substantial resources in a very short period of time to design its “On-Bill Financing Program: Program Design Document” (“PDD”) and draft Request for Proposals (“RFP”) and to prepare testimony in support of its February 2, 2010 filing. ComEd’s Program meets the statutory requirements of Section 16-111.7.

With respect to the comments ComEd received from Staff and intervenors,¹ ComEd notes that many of the proposed components of its Program are uncontested, including (i) the identification of eligible participants, (ii) flexibility to add, delete or modify the list of recommended eligible measures pursuant to the eligibility methodology approved by the Illinois Commerce Commission (“Commission”), (iii) coordination among ComEd, the lender and

¹ On March 2, 2010, Staff, the Attorney General (“AG”) and the Citizens Utility Board/City of Chicago (filing jointly) (hereinafter “CUB/City”) each submitted Verified Initial Comments (“Init. Comments”). On March 12, 2010, Staff, the AG, CUB/City and BlueStar Energy Services Inc. (“BlueStar”) each filed Verified Reply Comments (“Reply Comments”).

vendors to establish the terms and processes of the Program, (iv) compliance with the lending limits, and (v) the changes to its General Terms and Conditions and Rider UF – Uncollectible Factors (“Rider UF”).

ComEd also appreciates the opportunity to clarify or confirm certain aspects of the Program, including (i) the role of the Illinois Energy Association (“IEA”) as only an agent of the utilities, (ii) that a cost-sharing agreement is in place among the utilities with respect to the RFP process and development of the PDD, and (iii) that ComEd is committed to providing participants with information about various contingencies under the Program.

The remaining recommendations made by Staff, AG, CUB/City and BlueStar, however, do not comport with the plain language of Section 16-111.7 and in many cases represent transparent attempts to rewrite the legislation either to take away rights explicitly and unequivocally granted to the utilities or to add new obligations and requirements. Examples of these types of claims include the following:

- Staff’s and BlueStar’s attempt to read into the statute a requirement that loan origination fees be included in the eligibility methodology when no such requirement exists.
- CUB/City’s, the AG’s and BlueStar’s claim that they should be added to the RFP evaluation process despite the plain language of the statute that the “utility shall issue” the RFP and “[t]he utility shall select the winning bidders”.
- CUB/City’s and the AG’s attempt to impose in this proceeding, without any input from lenders, an undefined and unsupported proposal to use an applicant’s utility bill payment history to determine credit worthiness, which a lender would be forced to accept if it responds to the RFP and which would require the utility to incur substantial expense in developing and administering.
- The AG’s legally unsupportable proposal to seemingly take away the utility’s statutorily granted security interest in the measures because the AG does not believe there will be any defaults on loan payments.
- CUB/City’s, the AG’s and BlueStar’s claims, which are arbitrary and also inconsistent with each other, that ComEd’s costs should be capped in this proceeding despite the fact that the statute contains no such cap, permits the utility to recover “all of the prudently incurred costs of offering a program”, and the fact that the prudence of all costs will be

reviewed in the annual reconciliation proceedings under Rider EDA – Energy Efficiency and Demand Response Adjustment (“Rider EDA”).

As explained in more detail in Section III *infra*, because these claims contradict the plain language of Section 16-111.7, are insufficiently developed, contradict each other, are legally unsupported or otherwise are without merit, each should be rejected. ComEd therefore requests that the Commission approve its Program and the proposed revisions to its General Terms and Conditions, Rider EDA and Rider UF.

II. OVERVIEW OF SECTION 16-111.7 OF THE ACT

Because many of the claims of Staff and intervenors either ignore or directly contradict the plain language of Section 16-111.7, ComEd has set forth the statutory scheme and requirements below, which include (i) the General Assembly’s intent in creating on-bill financing programs, (ii) the workshop process, (iii) the utility and alternative retail electric supplier (“ARES”) customers to whom the program will be offered, (iv) the filing requirements for Program approval, (v) cost recovery, and (vi) evaluation.

Intent Underlying Section 16-111.7. Finding that “Illinois homes and businesses have the potential to save energy through conservation and cost-effective energy efficiency measures,” the General Assembly stated its intent that “[p]rograms created pursuant to this Section 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).

Workshop Process. Pursuant to subsection (b-5) of Section 16-111.7, the Commission Staff was required to convene a workshop process within 30 days of the effective date of the statute during which stakeholders could discuss a variety of issues related to the Program’s

design. The statute required that the process be completed within 150 days of the statute's effective date.

Customers to Whom the Program Will Be Offered. Subsection (b) of Section 16-111.7 requires that the utility offer its Program to “eligible retail customers, as that term is defined in Section 16-111.5 of [the] Act, who own a residential single family home, duplex, or other residential building with 4 or less units, or condominium at which electric service is being provided.” 220 ILCS 5/16-111.7(b). Participants must be property owners and take electric service at the premises. The conditions under which an ARES customer can participate are the same as if the customer were taking bundled service from ComEd. Subsection (i) of Section 16-111.7 provides that “[c]ustomers of alternative retail electric suppliers may participate in the program under the same terms and conditions applicable to the utility’s supply customers.” 220 ILCS 5/16-111.7(i).

Filing Requirements for Commission Approval of the Plan. Subsection (c) of Section 16-111.7 sets forth the required components of the filing:

(1) A list of recommended electric energy efficiency measures that will be eligible for on-bill financing. An eligible electric energy efficiency measure ("measure") shall be defined by the following:

(A) the measure would be applied to or replace electric energy-using equipment; and

(B) application of the measure to equipment and systems will have estimated electricity savings (determined by rates in effect at the time of purchase), that are sufficient to cover the costs of implementing the measures, including finance charges and any program fees not recovered pursuant to subsection (f) of this Section. To assist the electric utility in identifying or approving measures, the utility may consult with the Department of Commerce and Economic Opportunity, as well as with retailers, technicians, and installers of electric energy efficiency measures and energy auditors (collectively "vendors").

(2) The electric utility shall issue a request for proposals ("RFP") to lenders for purposes of providing financing to participants to pay for approved measures. The RFP criteria shall include, but not be limited to, the interest rate, origination fees, and credit terms. The utility shall select the winning bidders based on its evaluation of these criteria, with a preference for those bids containing the rates, fees, and terms most favorable to participants;

(3) The utility shall work with the lenders selected pursuant to the RFP process, and with vendors, to establish the terms and processes pursuant to which a participant can purchase eligible electric energy efficiency measures using the financing obtained from the lender. The vendor shall explain and offer the approved financing packaging to those customers identified in subsection (b) of this Section and shall assist customers in applying for financing. As part of the process, vendors shall also provide to participants information about any other incentives that may be available for the measures.

(4) The lender shall conduct credit checks or undertake other appropriate measures to limit credit risk, and shall review and approve or deny financing applications submitted by customers identified in subsection (b) of this Section. Following the lender's approval of financing and the participant's purchase of the measure or measures, the lender shall forward payment information to the electric utility, and the utility shall add as a separate line item on the participant's utility bill to reflect a charge showing the amount due under the program each month.

(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 electric service from the utility or the participant's request to terminate service at such premises, the participant shall pay in full its electric 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 electric service.

(6) 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, and the utility shall be entitled to recover all costs related to a participant's nonpayment through the automatic adjustment clause tariff established pursuant to Section 16-111.8 of this Act. In addition, the electric utility shall retain a security interest in the measure or measures purchased under the program, and the utility retains its right to disconnect a participant that defaults on the payment of its utility bill.

(7) The total outstanding amount financed under the program shall not exceed \$2.5 million for an electric utility or electric utilities under a single holding company, provided that the electric utility or electric utilities may petition the Commission for an increase in such amount.

220 ILCS 5/16-111.7(c).

In addition, subsection (d) requires that the Program approved by the Commission include specific criteria and guidelines related to (i) the financing of measures (*e.g.*, RFP criteria and limitations on loan amounts and duration), (ii) identifying and approving the measures, (iii) qualifications of vendors, (iv) sample contracts and agreements, and (v) the types of data and information required for preparing the reports required by the statute. 220 ILCS 5/16-111.7(d). Subsection (e) further provides that the Program “be consistent with the provisions of this Section that define operational, financial and billing arrangements between and among program participants, vendors, lenders, and the electric utility.” 220 ILCS 5/16-111.7(e).

Cost Recovery. The statute entitles a utility that offers an OBF Program to “recover all of the prudently incurred costs of offering a program..., including, but not limited to, all start-up and administrative costs and the costs for program evaluation.” 220 ILCS 5/16-111.7(f). The statute directs that such costs “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 [the] Act.” *Id.*

Evaluation. Subsection (g) requires that an independent evaluation be conducted after three years of Program operation, which shall be conducted by an independent evaluator retained by the utility. Such evaluation shall culminate in a report issued to the Commission on its findings no later than four years after the date on which the Program commenced. 220 ILCS 5/16-111.7(g).

As explained in Section III *infra*, the evidence shows that ComEd has made the requisite showing under each of these criteria, and ComEd therefore requests that the Commission approve its Program.

III. COMED'S PROGRAM COMPLIES WITH THE FILING REQUIREMENTS OF SECTION 16-111.7, AND SHOULD BE APPROVED.

As described below, ComEd's Program meets each of the filing requirements of Section 16-111.7, and accordingly should be approved.

A. ComEd's Program Will Be Offered to the Eligible Customers Identified in Subsections (b) and (i) of Section 16-111.7.

Neither Staff nor intervenors disputes that ComEd's Program is designed to "allow[] its eligible retail customers, as that term is defined in Section 16-111.5 of th[e] Act, who own a residential single family home, duplex, or other residential building with 4 or less units, or condominium at which the electric service is being provided" to participate. 220 ILCS 5/16-111.7(b); ComEd Ex. 1.0 at 8-9. And, consistent with subsection (i) of Section 16-111.7, the conditions under which the customer of an ARES can participate are the same as if the customer were taking bundled service from ComEd. 220 ILCS 5/16-111.7(i); ComEd Ex. 1.0 at 9. Staff comments that "ComEd has identified those customers that are eligible for participation in its OBF program in accordance with the Electric On-Bill Financing Law." (Staff Init. Comments at 7.)

B. ComEd’s Program Presents a Proposed Eligible Energy Efficiency Measure and Methodology for Determining Eligibility of Measures.

1. ComEd’s program presents a “[r]ecommended electric energy efficiency measure[.]”

Subsection (c)(1) requires that each utility subject to Section 16-111.7 submit a proposed program to the Commission that contains, *inter alia*, “[a] list of recommended electric energy efficiency measures that will be eligible for on-bill financing.” 220 ILCS 5/16-111.7(c)(1). Consistent with this requirement, ComEd presented its proposed recommended eligible energy efficiency measure (energy efficient refrigerators) and the methodology used to calculate eligibility. Although CUB/City claim that “it is premature to prescribe a measure” and that ComEd should only “identif[y] measures that [it] will test using a formula to determine the eligible measures” (CUB/City Init. Comments at 2-3),² such a recommendation does not comport with the plain language of the statute, which requires each utility to identify in its initial filing “measures that *will* be eligible for on-bill financing” (220 ILCS 5/16-111.7(c)(1) (emphasis added); *see also* Staff Init. Comments at 10 (“The Electric On-Bill Financing Law requires that a list of recommended electric energy efficiency measures be identified in the OBF program....”).) ComEd has identified such a measure based on current inputs – energy efficient refrigerators – and therefore has fully complied with the law.

CUB/City’s overarching concern appears to be that the inputs to the eligibility formula may change both during the Commission’s review and following approval of ComEd’s Program (*e.g.*, interest rates, ComEd’s electric service rates). To address the fact that the inputs to the

² CUB/City also make a passing comment that the statute “contemplates ‘measures,’ and not a ‘measure,’ that will be eligible for the OBF Program.” (CUB/City Init. Comments at 2.) The statute, of course, does not set forth what these measures might be, and instead directs utilities to employ the eligibility methodology set forth in subsection (c)(1)(B), which determines whether none, one or more than one measure passes.

eligibility methodology may change both before Program launch and during the Program, ComEd requested in its Petition that the Commission grant it the flexibility to add, delete, or modify the measures, provided that the addition of any new measures to the Program would be subject to each passing the eligibility methodology. (Verified Petition of Commonwealth Edison Company for Approval of Its On-Bill Financing Program and Tariff Revisions (“Petition”), ¶ 13.) This request was unopposed, and CUB/City stated that they support this proposal. (CUB/City Init. Comments at 3.) Assuming the Commission grants ComEd the requested flexibility, ComEd will retest all measures originally tested prior to Program launch both to confirm the eligibility of energy efficient refrigerators and to determine whether any additional measures might be eligible. This should satisfactorily address CUB/City’s concerns.³

2. ComEd’s eligibility methodology is consistent with the statute, and Staff’s proposal to include loan origination fees should be rejected.

With respect to ComEd’s proposed eligibility methodology, only Staff recommends a modification.⁴ Specifically, Staff claims that “loan origination fees [should] be paid by customers receiving the loans rather than collected by all customers through Rider EDA,” and recommends that ComEd “modify its eligibility screening method to include origination fees as a customer cost.” (Staff Init. Comments at 12.) However, ComEd’s methodology does not include loan origination fees as a cost of implementing the measure because the plain language of the statute neither mandates nor mentions such inclusion. Instead, ComEd’s Program treats

³ CUB/City also propose that “[o]nce 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.” (CUB/City Init. Comments at 3.) ComEd notes that Mr. Melloch already proposed in his direct testimony “that Staff reconvene the workshop participants following completion of the RFP process so that ComEd can present the results of the RFP and provide an update on Program development.” (ComEd Ex. 1.0 at 7.)

⁴ BlueStar later joined Staff in its recommendation. (See BlueStar Reply Comments at 2-3.)

loan origination fees just like the other general Program and administrative costs recoverable under the proposed revisions to Rider EDA. As explained below, Staff’s argument is inconsistent with the statute’s prohibition on upfront payments, incompatible with a plain reading of the statute, and, if implemented, could jeopardize the launch of the Program.

As an initial matter, subsection (c)(1)(B) sets forth the criteria of the eligibility methodology, and provides that “application of the measure to equipment and systems will have estimated electricity savings (determined by rates in effect at the time of purchase), that are sufficient to cover the costs of implementing the measures, including finance charges and any program fees not recovered pursuant to subsection (f) of this Section.” 220 ILCS 5/16-111.7(c)(1)(B). Because Staff argues that “loan origination fees...are not program fees” under subsection (f) (Staff Init. Comments at 12), Staff is therefore precluded from arguing that these fees are “program fees not recovered pursuant to subsection (f) of [Section 16-111.7]” (220 ILCS 5/16-111.7(c)(1)(B)). Accordingly, in its Reply Comments Staff opines in a footnote, without any support, that these types of charges “are all ‘finance charges’”. (Staff Reply Comments at 6, fn. 2.)⁵

There are two flaws to this interpretation, however. First, the plain dictionary definition of “finance charges” makes no mention of loan origination and administration fees: a “finance charge” means “[a]n additional payment, usu[ally] in the form of interest, paid by a retail buyer for the privilege of purchasing goods or services in installments.” (Black’s Law Dictionary (7th ed.)) In other words, to calculate eligibility of a measure, each monthly finance charge is included to determine the cost of the measure.

⁵ In its Reply Comments, Staff argues that any costs incurred related to perfecting a security interest should also be charged directly to the borrower rather than recovered through Rider EDA. (See Staff Reply Comments at 6.)

Second, in making this interpretive claim, Staff observes that these types of costs are “paid at closing (sometimes out of the proceeds) as a prerequisite to the financing.” (Staff Reply Comments at 6, fn. 2.) However, as Staff admits in its Initial Comments, charging the customer upfront for loan origination fees would violate the statute’s requirement that customers be permitted “to purchase cost-effective energy efficiency measures *with no required initial upfront payment.*” 220 ILCS 5/16-111.7(a) (emphasis added); Staff Init. Comments at 12-13. In particular, Staff observes that “loan origination fees are often charged up front to all customers applying for certain types of loans.” (Staff Init. Comments at 12.) To “avoid an upfront fee that the law forbids”, Staff proposes that the loan origination fees be folded in to either the interest rate or amount financed. (*Id.* at 14.) This attempted end-run around the statute, however, does not change the nature of the fee – an upfront loan origination fee that the law forbids. Moreover, the Illinois Supreme Court has held that “courts should consider the statute in its entirety, keeping in mind the subject it addresses and the legislature’s apparent objective in enacting it.” *People v. Jones*, 223 Ill.2d 569, 580-81 (2006). To that end, courts “construe statutes as a whole, so that no part is rendered meaningless or superfluous.” *Id.* at 581. Adopting Staff’s interpretation would be inconsistent with the General Assembly’s intent that no upfront payment be required by the borrower. Loan origination fees are therefore properly included in the Program fees recoverable under subsection (f).

Staff also mischaracterizes the scope of subsection (f) when it claims it only “speaks to start-up and administrative and program evaluation costs....” (Staff Init. Comments at 13.) To the contrary, subsection (f) provides for recovery of “*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.” 220 ILCS

5/16-111.7(f) (emphasis added). In fact, Staff underscores the breadth of subsection (f) elsewhere in its Reply Comments. (See Staff Reply Comments at 3-4.) Consistent with the scope of subsection (f), loan origination fees are precisely the types of “prudently incurred costs of offering a program approved by the Commission.” 220 ILCS 5/16-111.7(f). Loan origination fees are fees that will be incurred by the Program for establishing an “account” between the lender and customer, performing a credit review, and miscellaneous paperwork associated with underwriting of the account. As such, these costs associated with loan origination are administrative in nature and not different from any other cost ComEd will incur to implement the Program (e.g., information technology upgrades, billing, and customer service).

Staff appears to argue that loan origination costs are somehow more direct costs than these other costs, but in fact all these costs are directly related to and incurred for the participant. In the end, Staff’s attempt to distinguish loan administration costs from the Program’s other administrative costs is a distinction without a difference.

And finally, it is important to consider the fact that burdening the eligibility methodology with additional costs and fees not set forth in the plain language of the statute may undermine the launch of the Program. With only one eligible measure currently offered under the Program (energy efficient refrigerators), it is possible that the addition of loan origination fees to the methodology would result in either no eligible measure to offer under the Program, limiting the models of energy efficient refrigerators offered under the Program, or foreclosing the eligibility of potential future measures. CUB/City share ComEd’s concern, and note in their Reply Comments “that recovery of such costs, if incurred, through Rider EDA will help keep the net capital costs to the participant as reasonable as possible and could allow more measures to qualify as eligible measures under the OBF program.” (CUB/City Reply Comments at 3.)

C. ComEd’s Program Includes a Proposed RFP and RFP Process.

In order to obtain financing for the Program, subsection (c)(2) requires that the utility issue an RFP to lenders and that the “RFP criteria [] include...the interest rate, origination fees, and credit terms.” 220 ILCS 5/16-111.7(c)(2). Moreover, “[t]he utility shall select the winning bidders based on its evaluation of these criteria, with a preference for those bids containing the rates, fees, and terms most favorable to participants.” *Id.* Accordingly, ComEd attached a draft RFP to its PDD, which included an Evaluation Worksheet setting forth the criteria required by statute. ComEd addresses below the suggestions and recommendations received by Staff and intervenors concerning the draft RFP and RFP process.

1. The utility Evaluation Committee should address the contingency of an affiliated interest responding to the RFP.

As an initial matter, Staff states that it “does not object to the process and content [ComEd] proposes for the RFP component of the OBF program....” (Staff Init. Comments at 15.) Staff does, however, raise the possibility that because “some financial institutions meet the definition of ‘affiliated interest’ set forth in Illinois Public Utilities Act Section 7-101(2)”, the utilities should consider such a contingency. (Staff Init. Comments at 15.) Without taking a position on the matter, Staff outlines three options to address the issue: “(1) seek Commission approval of a contract with an affiliated interest; (2) exclude affiliated interests from participating in the RFP; or (3) revise the RFP process to qualify for a competitive bidding waiver from Commission approval of the contract with an affiliated interest.” (*Id.* at 16-17.)⁶

ComEd appreciates Staff’s thoughtful identification of and approaches to this issue, and agrees

⁶ Because Staff states that it “takes no position on which of the [] three courses of action is preferred” (Staff Init. Comments at 16), BlueStar appears to mischaracterize Staff’s position when BlueStar states that it “agrees with the ICC Staff’s position that the Utilities should agree to exclude financial institutions that are ‘affiliated interests’ from participating in the RFP” (BlueStar Reply Comments at 4).

with CUB/City's recommendation that the utilities consider the issue during the RFP evaluation process. (CUB/City Reply Comments at 4-5.)

2. ComEd's Program includes sample documents.

Staff also briefly notes that "ComEd's proposed Program does not include sample contracts and agreements nor does it directly address the requirement. Staff recommends that ComEd address the requirement of Subsection (d)(4) in its reply comments." (Staff Init. Comments at 17.) Unlike subsection (c), which requires that the utility set forth and explicitly address each component thereof, subsection (d) simply requires that the Program approved by the Commission ultimately include several items, including sample contracts and agreements. 220 ILCS 5/16-111.7(d)(4). Subsection (b-5) of Section 16-111.7 further describes these "sample documents" "as request for proposals, contracts and agreements". 220 ILCS 5/16-111.7(b-5). To ensure ComEd's Program complied with this requirement, ComEd's initial filing on February 2, 2010 attached drafts of the RFP, the Preliminary Energy Efficiency Loan Term Sheet & Underwriting Guidelines and the Proposal Evaluation Worksheet. ComEd also notes that Staff found the requirement of subsection (d)(4) satisfied by other utilities, such as Nicor Gas, where their "Proposal anticipates that lenders will provide standard loan documents as part of the RFP." (*See, e.g.,* Verified Comments of the Staff of the Ill. Commerce Comm'n at 17 (Dkt. No. 10-0090, Mar. 2, 2010).) Because the utilities will be issuing a joint RFP, ComEd joins the other utilities in their anticipation that lenders will provide standard loan documents as part of the RFP, which Staff has found to "satisf[y] the requirement for sample contracts and agreements necessary to implement the measures and program in Subsection (d)(4)." (*Id.*)

3. **The RFP evaluation process is designed to reduce participant costs and overall Program costs.**

As explained in more detail below, CUB/City’s proposals with respect to the RFP process seem to be based on a misreading of the RFP and the statute, and therefore should be rejected. First, CUB/City express “concern[] that the Petitioner’s proposed process provides the IEA with veto authority over the final FI selection.” (CUB/City Init. Comments at 5.)⁷ This statement, however, ignores the language of Section 1.1 of the RFP, which unambiguously states that the IEA “is conducting this RFP process acting *on behalf of and coordinating with* the Utilities jointly.” (ComEd Ex. A.2 at 1 (emphasis added).) In other words, the IEA is an agent of the utilities that is subject to and works at the direction of the utilities. Although CUB/City do not point to any specific language in support of their claim, ComEd would not object to clarifying any language that appears to suggest that the IEA might have unilateral or unsupervised veto power.

Second, CUB/City claim they do not understand “what additional value IEA brings to the process aside from having all four [sic] utilities participating in the RFP as members.” (CUB/City Init. Comments at 5.) This purported confusion is surprising given that CUB/City later recommend that a single evaluator be shared by all utilities “to lower overall [] costs” and their concerns about ComEd’s costs in general. (*Id.* at 7.) Moreover, Mr. Melloch’s direct testimony underscored at length the benefits of a joint RFP process conducted by the IEA, including the cost savings and efficiencies of consolidating five RFP processes into one. This testimony is reproduced below:

⁷ CUB/City’s confusion is also reflected in their reference to the “IEA’s deliberations or decision.” (CUB/City Init. Comments at 5.) Rather, it is the deliberations and decision of the utilities that make up the Evaluation Committee.

Enhances Attractiveness of Program to Prospective FIs: Because subsection (c)(7) of Section 16-111.7 caps the total outstanding amount financed under each utility's Program at \$2.5 million, the Program size per utility is relatively small, thereby limiting the pool of potential FIs interested in participating in the Program. By joining together, the five utilities can aggregate their Program requirements and present a \$12.5 million total financing requirement to FIs. The utilities believe this larger amount will be more attractive to prospective FIs and aid in the recruitment and procurement of an effective FI partner. A joint RFP will also simplify the tasks and processes for FIs responding to the RFP, providing a centralized way of responding to all utilities.

Limits Potential for Customer Confusion: Having a single FI partner will simplify Program implementation and avoid confusion for those customers served by different electric and gas utilities.

Facilitates Commission Review and Promotes Consistency Across Utility Programs: The joint RFP process ensures consistency among the five utilities' RFP approach and simplifies the Commission's review and approval process. This approach also aligns with and fulfills the statutory requirement that "[t]he proposed program submitted by each electric utility shall be consistent with the provisions of this Section that define operation, financial and billing arrangements between and among program participants, vendors, lenders, and the electric utility." 220 ILCS 5/16-111.7(e).

Creates Implementation Efficiencies: A common financing program adopted by the utilities can yield implementation efficiencies in marketing and administration, including FI fees.

(ComEd Ex. 1.0 at 14-15; *see also* ComEd Attach. A at 7-8.)

Third, CUB/City claim it is "[un]clear how – or if – the Commission or other stakeholders will be informed of IEA's deliberations or decision," and therefore propose "that those stakeholders that participated in the OBF workshops conducted by ICC Staff be invited to become members of the proposed Evaluation Committee." (CUB/City Init. Comments at 5.) In the AG's Reply Comments, it similarly claims that "the AG and CUB should be voting members of the committee and not just advisors." (AG Reply Comments at 4.)

There is no confusion in the PDD, RFP, testimony or statute about which entities shall select the lender. Subsection (c)(2) is clear that the “*utility* shall issue a request for proposals” and “[*t*]he *utility* shall select the winning bidders based on *its* evaluation of the[] criteria....” 220 ILCS 5/16-111.7(c)(2) (emphasis added). CUB/City’s and the AG’s proposal to insert themselves in this process is not permitted by the statute and should be rejected. However, although the statute does not provide for stakeholder participation on the utilities’ Evaluation Committee, ComEd proposes to update interested stakeholders throughout the RFP process concerning, for example, the types of responses it is receiving from lenders, which would be in addition to ComEd’s earlier proposal that Staff reconvene the workshop participants after the RFP process is concluded. (See ComEd Ex. 1.0 at 7; footnote 3 *supra*.)

Finally, CUB/City opine that they “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.” (CUB/City Init. Comments at 6.) CUB/City recommend in turn that “[p]oints could be taken away from ‘Loan marketing & geographic coverage’ and ‘additional services’”. (*Id.*) It should be noted, however, that “Loan pricing: interest rate pricing and fees” already is the most heavily weighted criterion (25 point value). (See ComEd Ex. A.2 at 12.) Moreover, the next two criteria – Loan duration and Loan origination process – directly impact and relate to the loan pricing and fees. The former, for example, examines the attractiveness and suitability of the length of the loan to ensure payments are reasonable, and the latter emphasizes loan origination and underwriting criteria and any security interest filings, which also impact Program costs. (ComEd Ex. 1.0 at 17.) Thus, while ComEd appreciates CUB/City’s concern, the importance of the interest rate and fees has already been addressed to the extent practicable.

Further, with respect to the criteria for which CUB/City propose to take away points, they overlook the importance of “Loan marketing & geographic coverage” and “Additional services” in reducing Program costs (each of which only has a 10 point value). For example, Mr. Melloch explained that “Loan marketing and geographic coverage” examines the FI’s marketing plan, geographic coverage, the ability to serve state-wide, and the ability to market to its existing customers. (ComEd Ex. 1.0 at 18.) With respect to “Additional services”, considerations include the FI’s ability to provide additional services such as vendor network certification, training and coordination, marketing, and web and phone application support. (*Id.*) To the extent the FI is able to provide these services in lieu of the utilities, the utilities would experience substantial reductions in Program costs – a key concern of CUB/City and other intervenors. For these reasons, CUB/City’s recommendations should be rejected.

D. ComEd’s Program Coordinates among the Utilities, Vendors, and Lender to Set Terms and Processes of the Program.

Both the PDD and the direct testimony of Mr. Melloch describe in detail how ComEd proposes to “work with the lenders selected pursuant to the RFP process, and with vendors, to establish the terms and processes pursuant to which a participant can purchase eligible electric energy efficiency measures using the financing obtained from the lender.” 220 ILCS 5/16-111.7(c)(3). To take advantage of any existing efficiencies and keep costs down, Mr. Melloch explained that “ComEd currently partners with leading businesses to promote energy efficiency in the home and workplace, and will evaluate those relationships for opportunities to deliver the measure(s).” (ComEd Ex. 1.0 at 19.) Staff in particular concludes that “ComEd has addressed the relevant issues and Staff does not object to the Company’s plan to develop the vendor network and to develop the vendor qualifications and agreements.” (Staff Init. Comments at 14.) To the extent intervenors seek clarification regarding the ability to leverage ComEd’s existing

vendor network (*see* CUB/City Init. Comments at 4; AG Reply Comments at 3), ComEd responds that the OBF Program represents an entirely new offering for ComEd. Because ComEd currently does not contract with vendors regarding the sale of energy efficient refrigerators, ComEd is reviewing the extent to which its existing vendor network can be utilized, and will continue to review its existing network in the future when new measures are added.

E. ComEd’s Program Includes a Credit Check Process and Subsequent Billing and Payment Arrangements with the Lender.

1. The credit check process is a lender, not ComEd, obligation.

Consistent with subsection (c)(4), ComEd’s proposed Program provides that “[t]he lender shall conduct credit checks or undertake other appropriate measures to limit credit risk, and shall review and approve or deny financing applications submitted by customers....” 220 ILCS 5/16-111.7(c)(4). Although the details of the credit check process will be negotiated and finalized with the lender selected through the RFP process, ComEd prepared a list of suggested factors for consideration in its Preliminary Term Sheet & Underwriting Guidelines. (*See* ComEd Ex. A.3.) And, as Mr. Melloch stated in his direct testimony, the lender may consider using either, or some combination of both, the Fair Isaac Corporation (“FICO”) credit score or utility bill history as options for determining credit worthiness of applications. (ComEd Ex. 1.0 at 7.)

Staff also describes subsection (c)(4) as “*a lender obligation to conduct credit checks...*” (Staff Init. Comments at 8 (emphasis added)), and notes that “[b]ecause some of the statutory components of the OBF program involve obligations of participating customers, lenders and vendors not currently chosen or identified, Staff is of the view that the Commission can expect compliance with these statutory obligations at the time the obligations arise and, therefore, will only address those aspects of the OBF program if and to the extent the program appears

inconsistent with the statute” (*id.* at 9). Staff accordingly takes no issue with the proposed Program’s compliance with subsection (c)(4).

CUB/City and the AG, however, attempt to transform this lender obligation into a ComEd obligation. (*See* AG Init. Comments at 9 (“*ComEd* must spell out *its* proposed credit check methodology, and the Commission should require *ComEd* to apply a tiered credit check approach....”) (emphasis added).) Ignoring the statutory language, these intervenors propose that ComEd develop an undefined and unsupported “bill payment history” approach to determining a participant’s credit worthiness. Neither intervenor offers any details about how this approach would be implemented and administered. For example, CUB/City and the AG fail to propose any criteria for determining what types of “bill payment history” would be accepted or rejected under the Program. Further, despite the concerns expressed by CUB/City and the AG about ComEd’s Program cost estimates, there is no acknowledgement of the additional expense ComEd would incur to develop a wholly undefined approach from scratch, including necessary information technology changes and additional staffing needed to set up a call center where retailers and lenders could obtain information during store hours. Indeed, it is ironic that CUB/City and the AG argue against an opportunity to reduce costs by leveraging existing and well established credit check processes that have been in place for decades.

Although the statute places the credit check function squarely on the lender, CUB/City’s and the AG’s proposal would effectively exclude the lender and its expertise from the credit check process. Specifically, these intervenors’ proposals would foreclose the opportunity to solicit and rely on the lender’s experience and expertise, including the wholesale preclusion of the use of standard industry practices to determine credit worthiness. In other words, the lender would be forced to forego established credit risk measures such as FICO scores and instead

accept some undefined review of each applicant’s utility bill payment history. It is unclear how the uncertainty surrounding this proposal would impact the willingness of lenders to respond to the RFP, and could result in a higher interest rate to reflect the increased uncertainty and any perceived risk. Neither CUB/City nor the AG purports to have any experience or expertise in the area of consumer lending, which ComEd confirmed through data requests.⁸ ComEd therefore requests that the Commission reject CUB/City’s and AG’s proposal.

2. The PDD and RFP already contemplate a fast approval process.

Relatedly, the AG attempts to impose yet another extra-statutory requirement when it demands a “quick loan approval process.” (AG Init. Comments at 12-13.) Although there is no requirement in Section 16-111.7 for such process, the AG ignores that ComEd’s Program and RFP are already designed to take into account the value of an expedited approval process. For example, in the draft RFP, the utilities have highlighted internet and phone application support during the loan origination process, which is intended to expedite the approval process at the point-of-sale. (ComEd Ex. A.2 at 9.) Further, in the PDD, ComEd emphasized that “the Program has several inherent advantages that will market themselves, including (a) speed (fast approvals)....” (ComEd Attach. A at 14.)

3. The PDD sets forth the billing and payment arrangements with the lender.

Subsection (c)(4) further provides that “the lender shall forward payment information to the electric utility, and the utility shall add as a separate line item on the participant’s utility bill a

⁸ In response to a data request submitted to CUB/City and the AG to explain what experience, if any, they have in administering a consumer lending program and any methods employed to limit risk of borrower default, the AG responded “[n]one”, CUB responded that it “does not have experience in administering a consumer lending program” and City stated it “is not aware of a consumer lending program similar to the On-Bill Financing Program at issue here which the City administers.” (AG Response to ComEd Data Request No. 1.08; CUB/City Response to ComEd Data Request No. 1.09 (collectively attached hereto as Exhibit A).)

charge showing⁰ the amount due under the program each month.” 220 ILCS 5/16-111.7(c)(4). Although no party disputes that ComEd’s Program sufficiently addresses these requirements, including the proposed changes to ComEd’s General Terms and Conditions, the AG requests further clarification on “ComEd’s prop[osal] that the lender make disbursement of loan proceeds directly to the vendor upon installation of the measure and acceptance by the customer.” (AG Init. Comments at 6 (quoting the Petition, ¶ 20).) In response, ComEd notes that customer acceptance will occur when the customer signs for the delivery or installation of the measure.

To the extent the AG claims “there is no [] language to describe how disputes will be handled between the customer and the vendor” (AG Init. Comments at 6), ComEd responds that there is no such statutory requirement that would insert ComEd into that process. Moreover, ComEd anticipates a straightforward delivery and installation process and very few disputes. However, in the event there is a dispute (*e.g.*, unit does not function properly, dented door, damaged home surfaces, wrong product), ComEd expects that such dispute will be resolved between the retailer (or manufacturer, if applicable) and participant in the same way the retailer (or manufacturer) resolves disputes with respect to its other customers.

F. ComEd’s Program Addresses the Participant’s Rights and Obligations.

The provisions of subsection (c)(5) clarify how the Program should address various contingencies related to the participant. Consistent with this subsection, ComEd’s Program provides that “any dispute that may arise concerning the loan’s terms, conditions, or charges shall be resolved between the participant and lender.” (ComEd Attach. A at 17.) Further, the Program provides that in the event of a transfer of the underlying property’s title or the participant’s termination of service at the premises, “the participant shall pay in full its electric utility bill, including all amounts due under the program”. 220 ILCS 5/16-111.7(c)(5).

Relatedly, subsection (c)(6) provides that the utility retains its right to disconnect a participant for nonpayment. Although no party disputes that ComEd has addressed and incorporated these provisions into its Program or objects to the related proposed changes to ComEd's General Terms and Conditions, some parties request that ComEd provide further clarification in certain instances. These requests and ComEd's responses are set forth below.

1. ComEd is committed to consumer education.

Staff notes that “[c]ustomers who take advantage of the proposed OBF program should be informed about how their participation may affect their bill when changes in utility service occur.” (Staff Init. Comments at 23.) Staff then identifies several such contingencies, including (i) effect of moving to another location whether within or outside the utility's service territory, (ii) disconnection for non-payment of on-bill financing charges, (iii) conditions under which the balance of the amount borrowed would become due, and (iv) options that disconnected customers may have for reconnecting service. (*Id.*) Staff accordingly recommends that ComEd “include[] in its reply comments a commitment to develop consumer information covering the above points and to provide a description of how the information will be communicated to customers.” (*Id.* at 24.)⁹ In response, ComEd agrees to include in the Program materials consumer information concerning the points raised by Staff.

2. RFP process already contemplates prepayment without penalty.

The AG claims that ComEd's Program does not address whether a participant can pay off the loan early and, if so, without penalty. However, the Preliminary Term Sheet & Underwriting Criteria attached as Annex A to the draft RFP specifically addresses this issue in the section entitled “Prepayment Option”, and provides that the “[o]ption to prepay the outstanding loans in

⁹ In their Reply Comments, CUB/City joined Staff in this recommendation. (CUB/City Reply Comments at 5-6.)

whole without penalty is expected; partial prepayment options to be investigated.” (ComEd Ex. A.3 at 2.) In response to the AG’s question of whether ComEd will provide timely payment in full to the lender if it receives payment in full from the participant, ComEd confirms that it will.

3. Terms of reconnection require, at a minimum, payment of any arrearage and payments missed since disconnection.

With respect to a participant whose service has been disconnected for nonpayment, CUB/City request that ComEd clarify what amount such participant must pay for reconnection. CUB/City recommend that “the reconnection amount include only those loan payments missed since the disconnection and not the entire amount due under the loan.” (CUB/City Init. Comments at 8.) In response, ComEd notes that CUB/City’s concern appears to be related to whether the terms of the loan will include an “acceleration clause” whereby the full amount of the loan becomes due after the borrower misses a certain number of payments, including any arrearages. ComEd believes that CUB/City’s suggestion is reasonable, and notes that neither ComEd’s draft RFP nor Preliminary Term Sheet & Underwriting Criteria addresses or requests an acceleration clause. Although ComEd will take CUB/City’s suggestion into consideration in negotiating with lenders, ComEd cannot now predict whether the lender(s) that respond(s) to the RFP will include such a clause or whether the inclusion of the clause will be negotiable. At a minimum, however, ComEd would require payment of any arrearage and any payments missed since disconnection before reconnection.

G. ComEd’s Program Addresses the Obligations and Rights of the Utility.

No party disputes that ComEd’s Program provides that “[t]he electric utility shall remit payment in full to the lender each month on behalf of the participant”, and that “[i]n 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(c)(6).

Similarly, no party takes issue with ComEd's proposed changes to Rider UF, which conform to the statute's provision that "the utility shall be entitled to recover all costs related to a participant's non-payment through the automatic adjustment clause tariff established pursuant to Section 16-111.8 of [the] Act." *Id.*

Section 16-111.7 also grants utilities subject to its provisions "a security interest in the measure or measures purchased under the program." 220 ILCS 5/16-111.7(c)(6). In other words, by law ComEd retains a security interest in the measures financed under the Program. With respect to whether ComEd would seek to perfect the interest and repossess the measure in each instance of a participant's default, ComEd witness Mr. Melloch testified that ComEd was taking a cautious and measured approach to the matter given the expense related to perfection and repossession. In particular, he testified:

ComEd intends to evaluate its option concerning the security interest on a case-by-case basis. For example, concerning ComEd's proposed initial measure – energy efficient refrigerators – it would likely be cost-prohibitive for ComEd to repossess and physically retain the ownership over such refrigerators. Additionally, the likelihood of recovering any significant monies by executing such a security interest on a refrigerator is remote, or at least sufficiently unlikely to cover the costs of fully executing such a security interest. With respect to future measures, ComEd will determine whether to take advantage of such security interest at that time based on whether the circumstances surrounding the measure(s) may justify the execution of the security interest.

(ComEd Ex. 1.0 at 25-26.) In its Reply Comments, Staff states that it generally agrees with the utilities' position that the costs to perfect and enforce a security interest may outweigh the benefits.¹⁰ (Staff Reply Comments at 5.)

¹⁰ Notwithstanding Staff's general agreement with ComEd's approach to security interests, ComEd disagrees with two specific comments made by Staff in its Reply Comments regarding security interests. First, Staff claims that fees related to perfecting a security interest should be paid by the borrower (Staff Reply Comments at 6), and characterizes these costs as costs typically paid up front at closing (*id.* at 6, fn. 2). However, like loan origination fees, fees related to the filing of a security interest are administrative in nature and properly recovered under

Only the AG takes issue with ComEd’s security interest proposal. The AG claims that “[e]ven without ComEd having a security interest, a customer has a strong incentive to pay for the measure or risk potential electric service cut-off.” (AG Init. Comments at 10.) Because of this “strong incentive for customers to pay,” the AG argues that “[a]t 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.’” (*Id.* at 10-11 (quoting 220 ILCS 5/16-111.7(f)).)

This argument is tantamount to asking the Commission not to follow the law. Although the AG claims to believe there will be no defaults due to the incentive to pay, the General Assembly did not share this belief when it enacted Section 16-111.7, and accordingly provided for both (i) the recovery of all costs related to a participant’s non-payment through the uncollectible rider and (ii) retention by the utility of a security interest in the measure. That the AG suggests ComEd must provide a rationale or cost-benefit analysis to justify a right already granted by statute strains credulity. The statute requires no such analyses or justifications, and the additional costs ComEd would incur to perform such analyses would only increase the costs the AG already seeks to arbitrarily cap. Staff agrees, noting in its Reply Comments that it “does not believe substantiation of these costs at this time is necessary for approval of the OBF program and may increase costs to ratepayers generally to perform the analysis requested by the

subsection (f). And, for the reasons described in Section III.B.2 *supra*, costs that represent upfront payments should not be charged directly to the borrower because they violate the statute’s prohibition on upfront payments.

Second, Staff claims that “under Illinois law, only the entity that lends the funds (or took an assignment for value) and holds the note and other loan documents evidencing the debt, may hold the security interest.” (Staff Reply Comments at 6, fn. 3.) Staff ignores, however, that Section 16-111.7 creates a highly unusual consumer lending program where the utility remits payment to the lender regardless of participant default, which is why the utility, not the lender, is granted the security interest by law. To make this clear, the General Assembly included subsection (h), which provides that “[a]n electric utility offering a Commission-approved program pursuant to this Section shall not be required to comply with any other statute, order, rule, or regulation of this State that may relate to the offering of such program....” 220 ILCS 5/16-111.7(h).

AG.” (Staff Reply Comments at 5-6.) Of course, should ComEd decide to perfect its security interest in a measure, the reasonableness of any costs incurred by ComEd related to such perfection and recovered through Rider EDA would be subject to review during the annual reconciliation proceedings required pursuant to the terms of Rider EDA.

H. ComEd’s Program Complies with the Statutory Lending Limits.

No party disputes ComEd’s proposal to request through the RFP process a lending facility of \$2.5 million, which is consistent with subsection (c)(7) of Section 16-111.7.

I. ComEd’s Proposed Changes to Rider EDA Are Just and Reasonable, and There Is No Basis in Law or Fact to Disallow Any Costs at This Time.

1. The changes to Rider EDA are just and reasonable and should be approved.

Subsection (f) of Section 16-111.7 provides for the utility’s full and complete cost recovery:

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 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.

220 ILCS 5/16-111.7(f). As discussed in the direct testimony of Mr. Garcia, the tariff ComEd proposed under Section 8-103 is Rider EDA, which was approved by the Commission in Docket No. 07-0540. (See ComEd Ex. 2.0 at 7.) With the exception of Staff’s argument concerning loan origination fees, which, for the reasons set forth in Section I.B *supra* should be rejected, no

party raises any other issue concerning the changes to Rider EDA. Accordingly, the proposed changes to Rider EDA should be approved.¹¹

2. Intervenors’ proposed arbitrary caps on ComEd’s costs are untimely, unsupported and contrary to the statute.

Without having served a single data request concerning ComEd’s preliminary cost estimates, both the AG (later joined by BlueStar) and CUB/City make baseless claims that these estimates are “absurd by any measure” and “simply unacceptable.” (AG Init. Comments at 4; CUB/City Init. Comments at 3; *see also* Blue Star Init. Comments at 2.) Each then proposes what is a wholly arbitrary cap on ComEd’s costs, as evidenced by their conflicting proposals – CUB/City claim that ComEd should not be permitted to recover more than half of its estimated costs (*i.e.*, roughly \$2 million) (CUB/City Init. Comments at 3), while the AG claims that ComEd’s costs should be capped at 10 percent of the total amount financed under the Program (*i.e.*, \$250,000) (AG Init. Comments at 4). In their Reply Comments, however, CUB/City admit that “the PUA does not establish any fixed-dollar or percentage amount for administrative or program expenses associated with OBF,” and ultimately conclude that “an arbitrary cap

¹¹ For purposes of clarification, ComEd addresses two statements made by Staff and the AG. First, Staff incorrectly summarizes ComEd’s amortization proposal when it states that “ComEd is seeking authority to amortize over three years *any* incremental costs associated with the development of its On-Bill Financing Program.” (Staff Init. Comments at 19 (emphasis added).) Rather, the proposed changes to Rider EDA reflect a narrower amortization proposal consistent with the current Rider EDA language: “Incremental Costs, such as legal and consultative fees associated with the development of ICC approved on-bill financing programs, may be amortized over a three (3) year period.” (ComEd Ex. 2.2.)

Second, the AG correctly observes that ComEd’s initial Program only targets residential customers, and, “[a]ccordingly, ComEd plans to allocate costs associated with its Program only to residential customers.” (AG Init. Comments at 12.) Because the statute grants the utility the discretion of whether to add small commercial customers, the AG requests that “[t]he 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.” (*Id.*) ComEd concurs, as it was ComEd’s intent to do so should the Program be expanded to non-residential customers.

proposed by the People on program and administrative costs is premature.” (CUB/City Reply Comments at 6.)¹² Indeed, Staff’s succinct summary of the law bears repeating here:

First, Staff agrees with the AG that the laws do not establish a cap on expenses. Moreover, the only statutory limitation on the recovery of expenses is set forth in Subsection (f) of each of the laws, which states in pertinent part that:

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.

Consequently, in Staff’s view, the Commission does not have the statutory authority to impose a cap on administrative expenses as urged by the AG... Staff cautions against any attempt to *impose* a cap in light of the statutory language.

(Staff Reply Comments at 3-4.)

In addition to the argument that a cap violates the statute, intervenors mischaracterize ComEd’s Petition and PDD as seeking approval of the preliminary cost estimates set forth in the PDD. However, as Staff correctly notes in its Reply Comments, the statute “does not require that a proposed budget be submitted as part of the OBF program”, and “the proposed budgets are informational only and any approval by the Commission of the OBF plan does not preclude a subsequent determination by the Commission that such costs are not prudent....” (Staff Reply Comments at 4.) Accordingly, ComEd did not petition the Commission for approval of the initial cost estimates, and does not seek their approval at this time.

¹² CUB/City ask ComEd to clarify what it considers to be “program costs” as opposed to “administrative costs.” However, no costs can be subject to a cap because the statute provides that the utility “shall recover *all* of the prudently incurred costs of offering a program..., *including, but not limited to*, all start-up and administrative costs and the costs of program evaluation.” 220 ILCS 5/16-111.7(f) (emphasis added). Administrative costs are merely a subset of the overall Program costs ComEd is entitled to recover.

ComEd further notes that it is unclear, based on CUB/City’s opposition to the AG’s proposed arbitrary cap, whether CUB/City still propose the cap suggested in their Initial Comments.

Rather, subsection (f) directs that costs be recovered through Rider EDA, which provides that costs are to be reviewed during the annual proceeding required by the tariff. Indeed, Mr. Garcia highlighted in his direct testimony that “the revisions to the ‘Annual Reporting’ section [of Rider EDA] expand the scope of the required internal audit examination to include Program costs.” (ComEd Ex. 2.0 at 8.) These proceedings require a thorough and complete review of the costs flowing through the rider. (See Staff Reply Comments at 4-5 (“[T]he Commission should determine whether actual expenditures are reasonable and prudent in a reconciliation, after detailed review of actual expenditures, costs, and expenses with the benefit of adequate discovery.”).)

Further underscoring the untimeliness and inappropriateness of the proposed caps is that the statute calls for a review of the prudence of the costs, most of which have not been incurred and therefore cannot now be reviewed for prudence by definition. As Staff explains in its Reply Comments, “[t]he prudence of expenses cannot be determined based on a hypothetical budget proposed in advance of any expenditure. Rather, the costs must be examined based on the existing market at the time the costs are incurred.” (Staff Reply Comments at 4.) Accordingly, CUB/City’s and the AG’s attempts to rewrite the legislation by requiring either a preapproval of costs or a cap on costs in this proceeding is untimely and unsupported by the statute.

Moreover, intervenors provide no foundation upon which their opinions are based. As an initial matter, the reference to *In re North Shore Gas Co. and Peoples Gas Light & Coke Co.* Dkt. No. 07-0241 & 07-0242 (Consol.), (Feb. 5, 2008) (“*North Shore Gas*”), in which the utilities and Staff agreed to a 5 percent cap on administrative expenses related to an energy efficiency rebate/incentive program, is wholly inapposite. In *North Shore Gas*, the utilities were required to propose an energy efficiency program as a condition of a 2006 merger. (*Id.* at 163 (citing Order, Dkt. No. 06-0540).) In compliance, the utilities presented their proposal for a rebate/incentive

program in their 2008 rate case. Here, on the other hand, a statute requires that ComEd develop an OBF Program, and in turn guarantees recovery of all of the prudently incurred costs related to the Program. Moreover, unlike the relatively straightforward rebate program at issue in *North Shore Gas*, Section 16-111.7 requires the creation of a new and complicated consumer lending program that involves coordination with vendors and lenders and ongoing administration and evaluation. Finally, in *North Shore Gas* Staff proposed, and the utilities consented to, a 5 percent cap on administrative expenses. The Commission therefore approved what was an uncontested issue. (*In re North Shore Gas*, at 163-83; Surrebuttal Testimony of I. Rukis, North Shore/Peoples Gas Ex. IR 3.0 at 5 (September 5, 2007).) Here, consistent with the statute, there is no utility consent to such a cap.

Neither does either party demonstrate that any particular cost incurred or to be incurred is imprudent. Interestingly, during the month Staff and intervenors had to review ComEd's filing and serve data requests prior to submitting their Initial Comments, only Staff submitted a data request to ComEd about its costs, and Staff took no issue with ComEd's costs.¹³ CUB/City's untimely invitation to the Commission to undertake discovery on behalf of CUB/City is inappropriate, not germane to the statutorily defined scope of this docket, and should be rejected.

What ComEd's filing does demonstrate is that ComEd will incur certain fixed Program start-up and administrative costs regardless of whether the amount financed under the Program is \$2.5 million or \$25 million. ComEd is building this Program from scratch, and expects, like CUB/City, that the Program would continue after the initial three year period. As part of a continuing effort to be transparent with its budget estimates, ComEd has included as Exhibit B to its Reply Comments the Estimated Program Budget from page 19 of the PDD, which has been

¹³ Staff recommends "that the Company present and confirm in its reply comments that an agreed cost sharing mechanism is in place with the other utilities implementing OBF programs for the shared financial institution RFP and PDD costs...." (Staff Init. Comments at 17-18.) In response, ComEd confirms that such a cost sharing mechanism is in place.

updated to reflect the revenue requirement equivalent of its proposed budget as well as the related bill impacts to residential customers if 100 percent of the costs were to be incurred.

Intervenors also ignore the ways in which ComEd has built-in to the Program components strategies and opportunities for lowering costs, which include the following:

- Joint RFP process that consolidates five separate RFP processes into one.
- Lender evaluation criteria that emphasizes both low interest rates for participants and opportunities to lower overall Program costs by relying on, for example, the lender's ability to market the Program to its existing base or work with vendors regarding certification.
- Relying on the lender to conduct credit checks rather than developing an undefined and unsupported "bill payment history" approach to credit worthiness, which would require substantial resources from the utility to staff and implement.
- A commitment to evaluate the existing vendor network established for its energy efficiency programs to determine if it may be leveraged in any way for the Program.

ComEd's preliminary estimates are conservative and subject to change, and do not currently take into account savings that could be realized if a lender were able to perform certain marketing or vendor functions. Moreover, these preliminary budget estimates are contingent on the successfulness of the Program. For example, the cost categories "Administrative Overhead" and "Loan Servicing" reflected in Exhibit B were estimated based on the Program fully utilizing the \$2.5 million of funds available, and therefore is subject to change based on actual Program participation. Assuming participation ramps up over time, ComEd is committed to utilizing existing resources for as long as practicable. Concerning CUB/City's comparison of ComEd's

budget to that of other utilities (*see* CUB/City Init. Comments at 3), ComEd can speak only to its budget, and notes that it reflects a commitment to the long-term success of the Program.

3. The costs incurred and energy savings realized under Section 16-111.7 bear no relation to nor are subject to Section 8-103.

Both CUB/City and the AG ask ComEd to clarify whether ComEd considers the additional, incremental costs associated with the Program to be subject to the spending screens set forth in Section 8-103 and whether any savings achieved under the Program will be counted toward the achievement of the statutory energy savings goals of Section 8-103. In response, ComEd notes that Mr. Garcia already explained in his direct testimony that ComEd does not consider the costs incurred under Section 16-111.7 to be subject to the spending screens set forth in Section 8-103. (ComEd Ex. 2.0 at 12.) Indeed, Section 8-103 is clear that the spending screens apply only to “energy efficiency and demand-response measures implemented pursuant to this Section [8-103].” 220 ILCS 5/8-103(d). Moreover, Section 16-111.7 and Section 8-103 appear in entirely different articles of the Public Utilities Act (Article XVI and VIII, respectively) and do not cross-reference each other with respect to any cost limitations or energy savings. Each Section was enacted for a different purpose (*i.e.*, developing an energy efficiency and demand response plan for all of the utility’s customers (Section 8-103) and designing an on-bill financing program (Section 16-111.7)), employs a different methodology for determining the eligibility of a measure, and Section 8-103 sets forth annual energy savings goals whereas Section 16-111.7 does not. Indeed, the only way in which the two relate is that Section 16-111.7, in lieu of directing that a separate rider be created for cost recovery of Program costs, directs that utilities instead take advantage of the rider already established under Section 8-103 for such cost recovery.

With respect to whether any energy savings achieved under the Program will be counted toward the achievement of the statutory energy savings goals set forth in Section 8-103, ComEd responds that, consistent with its approach to the costs described above, energy savings realized by a measure financed under the Program will not, for that reason alone, be counted toward the Section 8-103 goals. ComEd recognizes, however, that a Program participant may take advantage of other incentives or programs offered under ComEd's separate Energy Efficiency and Demand Response Plan ("EEDR Plan")¹⁴ in conjunction with the purchase of a measure under the OBF Program. Under that scenario, the independent evaluator for the EEDR Plan would determine what amount of energy savings, if any, should be counted for the EEDR Plan incentive(s) or program(s).

J. ComEd's Program Provides for the Data Collection Needed to Conduct the Independent Evaluation.

Although Section 16-111.7 does not require an independent evaluation until the Program has been operating for three years (220 ILCS 5/16-111.7(g)), subsection (d)(5) requires that the Program identify "the types of data and information that utilities and vendors participating in the program shall collect for purposes of preparing the reports required under subsection (g)" 220 ILCS 5/16-111.7(d)(5). In response, ComEd's PDD sets forth an extensive list and description of the types of data ComEd proposes to collect. ComEd addresses Staff's and CUB/City's recommendations with respect to evaluation below.

Staff. Staff, joined by CUB/City in their Reply Comments, recommends that "data be collected on the types and characteristics of both measures replaced and installed" (Staff Init. Comments at 15), and ComEd has no objection to Staff's proposal.

¹⁴ ComEd's 2008-2010 Energy Efficiency and Demand Response Plan was approved by the Commission on February 6, 2008 in Docket No. 07-0540.

CUB/City. First, CUB/City claim that ComEd’s “PDD does not provide for the required feedback from participants and interested stakeholders.” (CUB/City Init. Comments at 7.)

However, the PDD does set forth a lengthy discussion of the types of data to be collected and analysis to be conducted concerning participants, vendors, the lender and other key stakeholders:

1.1 Evaluation of Financial Aspects of the Program and Data to Be Collected. Key financial data to be collected will include the following:

a) On applications: number of applications; number of approvals; approval times; approval date to funding; number of rejections; and reason for rejections;

b) On booked loans: number of booked loans; loan amounts and tenors; types of EE projects; and total investment amount of EE projects;

c) On collections performance: aging receivables; defaults and bad debts; service suspensions; recoveries; and actual final losses.

Financial data will be collected by both ComEd and the lender. As part of its services, the lender will be responsible to collect data regarding lending activity for which it is responsible, primarily during the origination of EE loans.

Qualitative analysis will be conducted on the Program experience of customers, vendors, and lender, assessing the experience and satisfaction of each key stakeholder with the Program financing methods. Customer service matters include experience in the sales process, ease of use of the finance Program, marketing approach, technical or product problems, vendor experience and problems, and resolution of problems versus unresolved cases. Vendor experience includes ease of use of the finance Program, roles in loan origination, and timeliness of disbursements. Recommendations for improvement will be considered and assessed, including assessment of underwriting guidelines. Recommendations will be considered and made regarding Program expansion, both in scale and in additional customer sectors, as well as concerning whether the payment obligation for permanent measures that will continue to provide benefits of energy savings should attach to the meter location. Recommendations on the Program’s interaction and synergies with ComEd’s energy efficiency and demand response programs will also be considered and assessed.

(ComEd Attach. A at 20-21.)

Second, CUB/City address certain issues related to the evaluation itself, which are not at issue in the docket. Without conceding their relevance, ComEd provides the following comments. With respect to the proposal that “one statewide evaluator be retained to both facilitate consistent evaluation and comparison, and to lower overall costs,” ComEd does not necessarily disagree. (CUB/City Init. Comments at 7.) The statute is clear that it is “[t]he electric utility [that] shall retain an independent evaluator” (220 ILCS 5/16-111.7(g)), and ComEd proposed in its PDD that it “may seek to cooperate with the other utilities subject to Sections 16-111.7 and 19-140 of the Act in order to conduct a joint RFP process to select an independent evaluator.” (ComEd Attach. A at 20.) In other words, ComEd is open to using an approach similar to that being used to conduct the joint RFP process for selection of a lender, and believes that lower costs and efficiencies can be realized under both joint RFP processes.

Concerning CUB/City’s comment that ComEd did not address “what will happen to the OBF Program while the evaluation is conducted and the ICC presents its finding to the General Assembly as required by statute” (CUB/City Init. Comments at 7), ComEd notes that Section 16-111.7 does not address this issue. Although ComEd does not object to CUB/ City’s suggestion that “the programs should be continued during the pendency of the evaluation” (*id.*), whether the Program continues will be based, in part, on whether the lending facility has been exhausted.

IV. CONCLUSION

WHEREFORE, Commonwealth Edison Company respectfully requests that the Commission issue an order on or before June 2, 2010 approving ComEd's On-Bill Financing Program and the proposed revisions to its General Terms and Conditions, Rider EDA, and Rider UF.

Date: March 22, 2010

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By: 

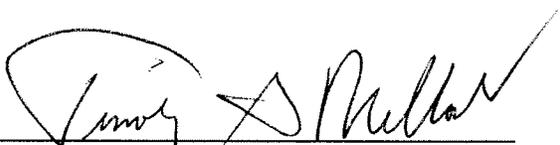
Michael S. Pabian
Attorney for Commonwealth Edison Company
10 South Dearborn Street, 49th Floor
Chicago, Illinois 60603
(312) 394-5831
michael.pabian@exeloncorp.com

Mark R. Johnson
Eimer Stahl Klevorn & Solberg LLP
220 South Michigan Avenue, Suite 1100
Chicago, Illinois 60604
(312) 660-7628
mjohnson@eimerstahl.com

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

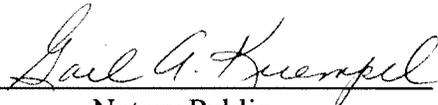
VERIFICATION

I, Timothy G. Melloch, first being duly sworn, state that I have read the foregoing “Verified Reply Comments of Commonwealth Edison Company”, and that the facts stated therein are true and correct to the best of my knowledge and belief.

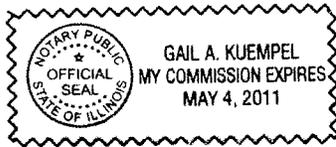


Timothy G. Melloch

Subscribed and Sworn to
Before me this 19TH day
of March, 2010.



Notary Public



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

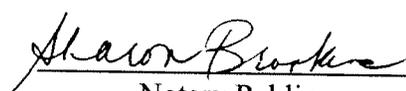
VERIFICATION

I, Robert Garcia, first being duly sworn, state that I have read the foregoing “Verified Reply Comments of Commonwealth Edison Company”, and that the facts stated therein are true and correct to the best of my knowledge and belief.



Robert Garcia

Subscribed and Sworn to
Before me this 22nd day
of March, 2010.



Notary Public



Exhibit A

**Responses of the People of the State of Illinois to the
First Set of Data Requests of Commonwealth Edison
ICC Dockets No. 10-0091
March 19, 2010**

AG 1.08 Please explain the AG's experience, if any, in administering a consumer lending program and any methods employed to limit risk of borrower default, and provide any related studies, analyses, reports, data or documents

A. None.

ICC Doc. No. 10-0091

**Response to ComEd
First Set of Data Requests to CUB/City of Chicago**

- 1.09 Please explain CUB's and the City of Chicago's experience, if any, in administering a consumer lending program and any methods employed to limit a consumer lending program and any methods employed to limit risk of borrower default, and provide any related studies, analyses, reports, data or documents.

Response: CUB does not have experience in administering a consumer lending program. At this time the City of Chicago is not aware of a consumer lending program similar to the On-Bill Financing Program at issue here which the City administers.

Exhibit B

COMMONWEALTH EDISON COMPANY

ON-BILL FINANCING PROGRAM

**ESTIMATED PROGRAM COSTS TO BE
RECOVERED THROUGH RIDER EDA**

Category	PY1¹	PY2	PY3
Administrative Overheads ²	\$597,800	\$812,400	\$836,800
Consulting & Legal Services	\$140,000	\$113,333	\$76,667
IT Costs ³	\$505,560	\$199,622	\$183,004
Marketing & Training	\$100,000	\$50,000	\$50,000
Evaluation	\$20,000	\$20,000	\$60,000
Loan Servicing ⁴	\$100,000	\$100,000	\$100,000
Total Costs	\$1,463,360	\$1,295,355	\$1,306,471
Estimated Monthly Bill Impact on Residential Customers ⁵	\$0.035	\$0.031	\$0.032

¹ Includes costs incurred since Public Act 96-0033 became law.

² Costs reflect a ramp up of new personnel dedicated to the program. The ramp up is based on the Program evenly utilizing the \$2.5 million of funds available over the three year Program and, therefore, is subject to change based on actual Program participation.

³ Includes capital expenditures that will be amortized and recovered from residential customers over five years.

⁴ Costs are based on the Program evenly utilizing the \$2.5 million of funds available over the three year Program and, therefore, are subject to change based on actual program participation.

⁵ Estimated monthly bill impact on residential customers reflects the incremental charges associated with Program implementation, above the charges associated with the energy efficiency and demand response program.