STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Northern Illinois Gas Company d/b/a	**:**	
Nicor Gas Company	**:**	
	:	
Application pursuant to Section 9-201	**:**	**10-0096**
and Section 19-140 of the Illinois Public	**:**	
Utilities Act for consent to and approval	**:**	
of Rider 31, On-Bill Financing Program	**:**	
and related changes to Nicor Gas' tariffs,	**:**	
and approval of the Energy Efficiency	**:**	
On-Bill Financing Program.	**:**	

PROPOSED ORDER

April 16, 2010

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Northern Illinois Gas Company d/b/a Nicor Gas Company	:	
	:	
Application pursuant to Section 9-201 and Section 19-140 of the Illinois Public Utilities Act for consent to and approval of Rider 31, On-Bill Financing Program and related changes to Nicor Gas' tariffs, and approval of the Energy Efficiency On-Bill Financing Program.	:	**10-0096**

PROPOSED ORDER

By order of the Commission:

On February 2, 2010, Northern Illinois Gas Company ("Nicor" or "Utility" or "Company") filed a Petition pursuant to Section 19-140 of the Public Utilities Act (the "Act") (220 ILCS 5/19-140), requesting that the Illinois Commerce Commission ("Commission") issue an order approving Nicor's proposed On-Bill Financing Program plan ("OBF Program" or "Program"). Nicor also requests that the Commission approve proposed Rider 31, On-Bill Financing Program - Rider OBF.

I. Background

On July 10, 2009, the Governor signed Senate Bill 1918 into law creating Public Act 96-0033 ("SB 1918"). SB 1918 added, among other additions, Sections 16-111.7 (the "Electric OBF Law") and 19-140 (the "Gas OBF Law") to the Act, requiring electric and gas utilities, respectively, serving more than 100,000 customers on January 1, 2009, 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); 220 ILCS 5/19-140(a).

The statute requires each utility subject to its provisions to submit a proposed OBF program no later than 60 days after the completion of workshops mandated by Subsection (b-5) of Sections 16-111.7 and 19-140 of the Act. 220 ILCS 5/16-111.7(b-5); 220 ILCS 5/19-140(b-5).

In compliance with Subsection (b-5) of the Electric OBF Law and the Gas OBF Law, six workshops were convened between August 4, 2009 and December 4, 2009. During the workshops, participants discussed issues related to the OBF program, as suggested by Subsection (b-5), including "program design, eligible energy efficiency measures, qualifications, financing, sample documents such as request for proposals,

contracts, and agreements, dispute resolution, pre-installment and post installment verification, and evaluation." 220 ILCS 5/16-111.7(b-5); 220 ILCS 19/140(b-5).

Both the Electric OBF Law and the Gas OBF Law require the affected utilities to submit proposals within 60 days of the completion of the workshop process, i.e., by February 2, 2010. The petition of North Shore Gas Company and The Peoples Gas Light and Coke Company established Docket 10-0090; the petition of Commonwealth Edison Company established Docket 10-0091; and the petition of AmerenCILCO/AmerenCIPS/AmerenIP established Docket 10-0095.

On February 2, 2010, Nicor filed its Petition, the Direct Testimony of Sharon B. Grove, General Manager of Customer Care (Nicor Ex. 1.0), proposed tariff revisions (Nicor Ex. 1.1), the Program Design Document ("PDD") (Nicor Ex. 1.2), the Request for Proposals ("RFP") (Nicor Ex. 1.3) (collectively, these filings are sometimes herein referred to as the "Proposal").

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission a status hearing was held in this matter before a duly authorized Administrative Law Judge ("ALJ") on February 18, 2010 at the offices of the Commission in Chicago, Illinois. The ALJ granted the Petitions to Intervene filed by the following parties: The Citizens Utility Board ("CUB"), the Illinois Competitive energy Association ("ICEA") and the People of the State of Illinois ("AG"). At the status hearing, the parties agreed to a schedule for a paper hearing. No other parties objected to the subsequent ALJ ruling on February 18, 2010, which identified the schedule and provided an opportunity for parties to object to it.

On March 2, 2010, Staff, CUB and the AG filed verified Initial Comments. On March 4, 2010, the AG filed verified Revised Initial Comments. On March 12, 2010, Staff, CUB and the AG filed verified Reply Comments. On March 18, 2010, the AG filed verified Corrected Reply Comments. On March 22, 2010, Nicor filed Reply Comments.

This order considers the Petition and the various attachments thereto as well as the verified initial and reply comments filed by the Company, Staff and Intervenors.

II. Applicable Law

The Company seeks approval of the Proposal, pursuant to the Gas OBF Law, Section 19-140, which provides that:

> (a) The Illinois General Assembly finds that Illinois homes and businesses have the potential to save energy through conservation and cost-effective energy efficiency measures. Programs 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.
>
> (b) Notwithstanding any other provision of this Act, a gas utility serving more than 100,000 customers on January 1, 2009 shall offer a Commission-approved on-bill financing program ("program") that allows its eligible retail customers who own a residential single family home, duplex, or other residential building with 4 or less units, or condominium at which

the gas service is being provided (i) to borrow funds from a third party lender in order to purchase gas energy efficiency measures approved under the program for installation in such home or condominium without any required upfront payment and (ii) to pay back such funds over time through the gas utility's bill. Based upon the process described in subsection (b-5) of this Section, small commercial retail customers, as that term is defined in Section 19-105 of this Act, who own the premises at which gas service is being provided may be included in such program. After receiving a request from a gas utility for approval of a proposed program and tariffs pursuant to this Section, the Commission shall render its decision within 120 days. If no decision is rendered within 120 days, then the request shall be deemed to be approved.

(b-5) Within 30 days after the effective date of this amendatory Act of the 96th General Assembly, the Commission shall convene a workshop process during which interested participants may discuss issues related to the program, including program design, eligible gas energy efficiency measures, vendor qualifications, and a methodology for ensuring ongoing compliance with such qualifications, financing, sample documents such as request for proposals, contracts and agreements, dispute resolution, pre-installment and post-installment verification, and evaluation. The workshop process shall be completed within 150 days after the effective date of this amendatory Act of the 96th General Assembly.

(c) Not later than 60 days following completion of the workshop process described in subsection (b-5) of this Section, each gas utility subject to subsection (b) of this Section shall submit a proposed program to the Commission that contains the following components:

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

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

(B) application of the measure to equipment and systems will have estimated gas 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 gas 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 gas energy efficiency measures and energy auditors (collectively "vendors").

(2) The gas 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 gas 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 gas utility, and the utility shall add as a separate line item on the participant's utility bill 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 gas service from the utility or the participant's request to terminate service at such premises, the participant shall pay in full its gas utility bill, including all amounts due under the program, provided that this obligation may be modified as provided in subsection (g) of this Section. Amounts due under the program shall be deemed amounts owed for residential and, as appropriate, small commercial gas service.

(6) The gas utility shall remit payment in full to the lender each month on behalf of the participant. In the event a participant defaults on payment of its gas utility bill, the gas utility shall continue to remit all payments due under the program to the lender, 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 19-145 of this Act. In addition, the gas 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 a gas utility or gas utilities under a single holding company, provided that the gas utility or gas utilities may petition the Commission for an increase in such amount.

(d) A program approved by the Commission shall also include the following criteria and guidelines for such program:

(1) guidelines for financing of measures installed under a program, including, but not limited to, RFP criteria and limits on both individual loan amounts and the duration of the loans;

(2) criteria and standards for identifying and approving measures;

(3) qualifications of vendors that will market or install measures, as well as a methodology for ensuring ongoing compliance with such qualifications;

(4) sample contracts and agreements necessary to implement the measures and program; and

(5) 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) of this Section.

(e) The proposed program submitted by each gas utility shall be consistent with the provisions of this Section that define operational, financial and billing arrangements between and among program participants, vendors, lenders, and the gas utility.

(f) A gas utility shall recover all of the prudently incurred costs of offering a program approved by the Commission pursuant to this Section, including, but not limited to, all start-up and administrative costs and the costs for program evaluation. All prudently incurred costs under this Section shall be recovered from the residential and small commercial retail customer classes eligible to participate in the program through the automatic adjustment clause tariff established pursuant to Section 8-104 of this Act.

(g) An independent evaluation of a program shall be conducted after 3 years of the program's operation. The gas utility shall retain an independent evaluator who shall evaluate the effects of the measures installed under the program and the overall operation of the program, including but not limited to customer eligibility criteria and whether the payment obligation for permanent gas energy efficiency measures that will continue to provide benefits of energy savings should attach to the meter location. As part of the evaluation process, the evaluator shall also solicit feedback from participants and interested stakeholders. The evaluator shall issue a report to the Commission on its findings no later than 4 years after the date on which the program commenced, and the Commission shall issue a report to the Governor and General Assembly including a summary of the information described in this Section as well as its

> recommendations as to whether the program should be discontinued, continued with modification or modifications or continued without modification, provided that any recommended modifications shall only apply prospectively and to measures not yet installed or financed.
>
> (h) A gas 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, provided that nothing in this Section is intended to limit the gas utility's obligation to comply with this Act and the Commission's orders, rules, and regulations, including Part 280 of Title 83 of the Illinois Administrative Code.
>
> (i) The source of a utility customer's gas supply shall not disqualify a customer from participation in the utility's on-bill financing program. Customers of alternative retail gas suppliers may participate in the program under the same terms and conditions applicable to the utility's supply customers.

220 ILCS 5/19-140.

III. Nicor's Proposed OBF Program

A. Overview

Nicor witness Grove testified that Nicor has reviewed the requirements of Section 19-140 and, in her opinion, put together an OBF Program that meets the statutory criteria. The newly enacted Section 19-140 of the Act allows a utility to seek Commission approval for an OBF Program that would allow certain customers to purchase specified energy efficiency products without any upfront payment and to finance the purchase over time with a third-party lender. Section 19-140 specifies certain criteria that must be met before such a program can be approved by the Commission. Section 19-140 essentially requires that such a program must specify the responsibilities of the parties involved: customers, venders, lenders and utilities. Ms. Grove states that proposed Rider OBF complies with all the requirements of Section 19-140 and Nicor requests that the Commission approve its Program.

B. Identification of Eligible Participants

Subsection (b) of Section 19-140 defines the eligibility criteria for the OBF Program. Specifically, the proposed Rider OBF would allow owners of single family residences as well as owners of condominiums, duplexes or residential buildings with 4 or less units to participate in the on-bill financing program. Nicor witness Grove states that in addition, small commercial customers may be included if they meet the definition of a small customer in Section 19-105 of the Act. Section 19-105 defines small commercial customers as those using less that 5,000 terms a year. Nicor Ex. 1.0 at 4.

Ms. Grove testifies that all customers served under Rate 1, Residential Service and those served under Rate 4, General Service and Rate 74, General Transportation Service customers with meter classification "A" would be eligible to participate in the on-bill financing program. Using the meter class "A" designation for eligibility allows

customers to know beforehand that they qualify for proposed Rider OBF and these customers generally use less than 5,000 therms a year. However, Nicor also notes that in order to make sure that every potential participate falls within the specified limits, Nicor will review each small commercial participant's annual use. Nicor Ex. 1.0 at 4.

According to Ms. Grove, Nicor will allow customers purchasing gas from third parties to participate in the on-bill financing program. Specifically, Nicor points out that Section 19-140(i) states that a customer's source of gas does not disqualify the customer from participating in proposed Rider OBF. Thus, proposed Rider OBF allows transportation customers to participate if they meet the other criteria. Nicor Ex. 1.0 at 4.

Ms. Grove further testifies that there are additional criteria that customers must meet in order to participate in the proposed Rider OBF. Requirements include, but are not limited to, being an active customer with at least twelve months of service and consenting to abide by Section 19-140 provisions. Nicor Ex. 1.0 at 5.

C. Details of Nicor's OBF Program

1. Recommended Eligible Gas Energy Efficiency Measure(s)

The PDD defines the cost effectiveness criterion. This criterion is key to the choice of measures to be financed by the Program. As per SB 1918, energy efficiency ("EE") measures financed by the Program must have energy cost savings greater than or equal to the customer's costs of implementing the measures, including finance charges. Consistent with this definition, the Utility will use the following formula to determine cost-effectiveness:

> (A) Energy cost savings will be calculated as follows. First, energy cost savings will be estimated for the package of EE measures to be installed for the customer. Energy cost savings will be calculated over the life cycle of the EE measures. Current energy tariffs will be used, without applying any estimated inflation factor to the value of the energy estimated savings. Cumulative cost savings will be used, without discounting.
>
> (B) Customer cost of implementing the measures, including finance charges will be calculated as follows. Total measure cost will be determined based on the vendor's turnkey cost proposal. Utility rebates, other applicable rebates or incentives and applicable federal income tax credit rebate which the customer will receive will be estimated. Total measure costs minus the applicable rebates and tax credits equals the Customer's net capital cost and the net amount financed via the loan. Then, total loan payments over the applicable loan term will be calculated given the lending facility terms, interest rate and fees. Cumulative loan payments will be used. Though not required, any capital contribution or downpayment chosen to be made by the customer will be added to the cumulative loan payments to determine the total customer cost of implementing the measures.
>
> (C) Cost-effectiveness and hence eligibility of the package of EE measures for Program financing will be determined by the following

formula: (A) must be greater than or equal to (B) for the proposed set of EE measures to qualify.

Ms. Grove testifies that Nicor has prepared a list of gas energy efficiency measures that will be eligible for on-bill financing. Rider OBF states that Nicor will be responsible for determining eligible efficiency measures and initially such measures will include gas furnaces, gas boilers and gas water heaters meeting the Energy Star rating. Nicor Ex. 1.0 at 5. Moreover, Nicor notes that the financing for such equipment shall be limited to between $500 and $50,000, and shall not have a term exceeding one-hundred and twenty (120) months. Nicor Ex. 1.0 at 4.

As for the issue of an "applied" measure, Ms. Grove testifies that Nicor interprets this wording to mean those measures that improve the efficiency of existing equipment but do not replace that equipment. Ms. Grove gives an example such as a water heater wrap to improve the efficiency of the water heater itself. Nicor Ex. 1.0 at 5.

Finally, Ms. Grove further explains Nicor's understanding of "equipment and systems" as used in Section 19-140(c)(1)(B). Nicor interprets this phrase to mean that such an energy efficiency measure may apply to either an individual piece of gas burning equipment or to part of the entire heating system. Such examples would be thermostats, flue dampeners, insulation, etc. Nicor Ex. 1.0 at 6.

Nicor states that it has prepared a generic financial analysis model which indicates that energy efficient gas furnaces, boilers and water heaters with Energy Star certification should meet the requirements of Section 19-140(c)(1)(B). Nicor will update its financial analysis based on any new information regarding finance charges and/or other fees.

2. Request for Proposals ("RFP") Process

Nicor notes that it has prepared a standard RFP for lenders to complete in order to participate in the on-bill financing program. The RFP provides for the potential lender to specify the interest rate, origination fees and credit terms, as well as any other criteria that the lender would use to determine if it would provide credit to a potential customer. Additionally, Section F of proposed Rider OBF specifies the responsibilities of the lender. Nicor Ex. 1.0 at 6. The PDD states that the Utility, coordinating through the Illinois Energy Association ("IEA") with the other utilities, will issue the financial institution ("FI") RFP following Commission approval of the PDD.

The PDD further states that the joint RFP process is designed to provide an FI partner for the Program that will offer the following services: (i) assist in final structuring of the Program; (ii) establish a lending facility of up to $12.5 million ($2.5 million per utility); (iii) originate and provide loans to eligible residential energy users; (iv) coordinate with vendors and utilities; (v) perform credit analysis of prospective borrowers and make loan credit decisions, applying underwriting guidelines as agreed upon with the utilities; (vi) notify each utility upon approval of a loan and disbursements of funds; using information exchange protocols to be established; (vii) administer the loans, with loan collections being performed by the utilities; and (viii) provide monthly reports on lending activity and the loan portfolio. Also, any additional services which will be determined through the RFP and negotiation process.

According to the PDD, the utilities propose to form an Evaluation Committee, to be coordinated by the IEA, which will evaluate each FI proposal qualitatively according to the Proposal Evaluation Worksheet. The Proposal Evaluation Worksheet will evaluate the proposals based on the following criteria, which are each given various weights: 1) loan pricing (interest rate pricing and fees); 2) loan tenors, prepayment, and other terms; 3) loan origination process; 4) FI experience and qualifications; 5) experience and qualification of specific staff proposed; 6) loan marketing and geographic coverage; 7) proposed additional services; 8) program fee proposal; and 9) potential to expand lending.

Ms. Grove explains that Nicor will evaluate each RFP it receives to determine which ones would be in the best interest of the customer. Specifically, Ms. Grove testifies that Nicor will select those lenders that provide the lowest overall financial cost to a customer based on the sum of origination fees, interest rate costs, and any other credit terms, over various time frames. Nicor Ex. 1.0 at 7.

3. Vendor Responsibilities

According to the PDD, the Utility will develop a network of EE project, equipment service contractors to provide marketing and turnkey development and implementation of EE projects as part of the Program. An additional service form the FI partner may include assistance in the further development and management of the vendor network, using vendor qualification standards agreed to with the utilities; these potential roles of the FI partner will be identified and negotiated through the procurement process.

Ms. Grove testifies that the Plan specifies the qualifications and training for participating vendors. She notes that vendors will be able to explain and offer approved financing packages and the customer in applying for financing. Additionally, Section G of proposed Rider OBF specifies the responsibilities of the vendor.

It is Nicor's position that any questions concerning equipment or installation of equipment should between the customer and the vendor. Consequently, Nicor has not provided any provision within Rider OBF to address vendor/participant disputes.

4. Lender Approval Process

Also, Ms. Grove testifies that Nicor will not do a credit check on potential customer participants. Nicor believes that it will be the lender's responsibility to conduct credit checks on potential participants and determine its methods for limiting credit risk. However, the criteria that the lender would use to determine credit worthiness will be included as part of the RFP response. Nicor Ex. 1.0 at 7.

5. Participant Rights and Obligations

According to Ms. Grove, subsection 19-140(c)(5) provides that the loan, once issued, is the sole responsibility of the participant and any dispute about the loan shall be resolved between the participant and the lender. Consequently, Nicor has not provided any provisions within proposed Rider OBF to address dispute resolutions between the participant and lender. Nicor is simply providing a financial conduit between the customer and the third-party lender. Nicor Ex. 1.0 at 7-8.

6. Nicor's Rights and Obligations

Next, Ms. Grove explains that in the event a participating customer does not fulfill its obligation to make full repayment of the loan, Nicor would be obliged to make payments to the lender, as provided by Section 19-140(c)(6). However, Ms. Grove further testifies that Nicor would be able to recover all costs related to the nonpayment through the automatic adjustment clause tariff filed pursuant to Section 19-145 of the Act. The Commission approved Nicor's proposed Rider 26, Uncollectible Expense Adjustment in Docket 09-0428. In practice, these costs would be included in ICC Account 904 and recovered through the application of Rider 26, as approved by the Commission. Nicor Ex. 1.0 at 8.

Furthermore, Ms. Grove explains that such a customer would be subject to having its service disconnected by Nicor for nonpayment of the loan. Nicor Ex. 1.0 at 8. Nicor also notes that, while Section 19-140(c)(6) does provide for the utility to retain an interest in the energy efficiency measure, Nicor only intends to reserve the right to retain a security interest in the installed measure, but does not propose to regularly enforce such a provision on a widespread basis. Nicor Ex. 1.0 at 9.

7. Lending Limit

Nicor is proposing a limit on the maximum amount outstanding for all loans under the Plan. Specifically, Proposed Rider OBF, Section C, provides that the initial total amount of loans outstanding will be $2.5 million as specified in Section 19-140(c)(7). According to Nicor witness Grove, when setting up a customer on the Plan, lenders should provide Nicor with the principal amount of the loan and monthly payment. Nicor will then track the amounts paid and outstanding so that the total amount outstanding does not exceed the $2.5 million limit. Nicor notes that it intends to evaluate this amount at the 3-year review period and to assess the demand for on-bill financing. Nicor Ex. 1.0 at 9.

D. Estimated Program Budget

As for the issue of the program costs and mechanisms to recover its costs, Nicor explains that the Plan does present estimates of some costs that would be recoverable under proposed Rider OBF, but does not attempt to itemize all potential cost items or place an estimate on them. Moreover, it is not possible to determine how much the Plan will cost over time because there are too many unknowns. However, Ms. Grove testifies that Nicor proposes to recover prudent costs through its energy efficiency plan rider filed pursuant to Section 8-104 of the Act. Nicor Ex. 1.0 at 10. Nicor intends to accumulate costs eligible with proposed Rider OBF, in a separate regulatory asset account until such time as they can be recovered through the energy efficiency rider. According to Section 8-104, Nicor needs to file its energy efficiency plan by October 2010.

E. Evaluation

Nicor, according to its PDD, will have an evaluation report prepared by an independent evaluator after three years of Program operations. Data will be collected on financial and loan payment performance and energy savings aspects of the

Program. As part of its services, the FI partner will be responsible to collect data regarding lending activity, including, for example: number of applications, approvals, and booked loans; reasons for rejection; customer service matters; approval times; and, loan amounts and tenors. Recommendations on Program improvement and expansion will also be requested.

Nicor further explains that it will have to obtain data from all three parties to make its evaluation. Specifically, Nicor would only have access to the number of customers in the Plan, the amount of monthly payments and outstanding balances. Vendors may have additional information on the number of applications, the number of accepted applications, products purchased, total cost of the products and the amount financed. Lenders may have additional customer information. Consequently, Nicor or the evaluator would have to obtain data from all three parties to make its evaluation. Further, Ms. Grove observes that the selected evaluator may also have its own request for information that it deems necessary to do the evaluation. Nicor Ex. 1.0 at 10.

According to Ms. Grove, Nicor intends to issue RFPs for this project, but it may also join with other utilities in the selection of an evaluator. Nicor Ex. 1.0 at 11.

IV. Staff's Comments

The Gas OBF Law provides eligibility criteria for utilities that are obligated to develop OBF programs under the law and eligibility criteria for customers that may participate in established and Commission approved OBF programs. 220 ILCS 5/19-140(b). Staff has reviewed these requirements and has determined that Nicor has appropriately submitted its Proposal. Staff has also determined that Nicor has identified those customers that are eligible for participation in its OBF program in accordance with the Gas OBF Law.

Because some statutory components of the OBF program involve obligations of participating customers, lenders and vendors not currently chosen or identified, Staff's position is 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 the program appears inconsistent with the statute.

A. Eligible Measures

Staff reviewed the cost effectiveness methodology that Nicor proposed to use to screen eligible measures. Staff points out that Nicor's method does not include loan origination fees as a cost of implementing the measure because Nicor maintains that these are program costs to be recovered through an automatic adjustment clause tariff established under 8-104 of the Act.

Staff disagrees. Staff argues that that loan origination fees should be paid by customers receiving the loans rather than collected from all customers through an automatic adjustment clause tariff. Staff reasons that Nicor's methodology is inconsistent with the law on this point. Staff refers to Subsection (c)(1)(B) of the Gas OBF Law, which states that the estimated gas savings must be sufficient to cover the cost to implement the measure. Staff's perspective, unlike Nicor's, is that loan origination fees are part of the loan costs and are not program fees.

Staff further explains that Nicor's approach, while solving one problem, creates a different problem, namely, it imposes the loan origination fees of individual customers participating in the OBF program onto all ratepayers. Staff reasons that if origination fees are included as incremental costs recoverable through an automatic adjustment clause tariff, the cost portion of the cost effectiveness analysis is lowered, potentially making more measures eligible. However, it does so by spreading the costs of loan origination fees across all customers within the eligible service classes instead of having the customer receiving the loan pay the cost of processing credit checks and other paper work in the loan application process. Also, Staff does not agree with Nicor's interpretation of Subsection (f); loan origination fees are not appropriately characterized as start-up, administration or program evaluation costs.

According to Staff, the origination fees should be paid by the customer receiving the loan and included in the cost of implementing the measure for purposes of cost effectiveness screening for measure eligibility. Staff recommends that the payment of origination fees by the customer receiving the loan be addressed by either having the lender incorporate its processing costs in the interest rate to successful borrowers or having the lender include the origination fee in the loan amount to be repaid and financed.

B. Vendor Qualifications

Nicor's Proposal includes a discussion of the criteria and guidelines for vendor qualifications. The Proposal states that the utility is responsible to develop a vendor network to provide marketing and turnkey development and implementation of energy efficiency projects as part of the OBF program. After reviewing Nicor's testimony and Proposal, Staff does not object to Nicor's plan to develop the vendor network the vendor qualifications and agreements.

C. Data Collection

Staff observes that in response to the related statutes, Nicor includes in its proposed Program the collection of key financial data including: (1) on applications: number of applications, number of approvals, approval times, approval date to funding, number of rejections, and reasons for rejections; (2) on booked loans: number of booked loans, loan amounts and tenors, types of energy efficiency projects, and total investment amount of energy efficiency projects; and (3) on collections performance: aging receivables, defaults and bad debts, service suspensions, recoveries, and actual final losses. In addition, Staff recommends data be collected on the types and characteristics of both measures replaced and installed.

D. RFP/Lenders

Staff has identified a potential issue with the RFP component of the OBF program: some financial institutions meet the definition of "affiliated interest" set forth in Section 7-101(2) of the Act. Consequently, if the winning bidder were an affiliated interest of one or more of the affected utilities, the affiliated Utilities would have to file a petition seeking Commission approval under Section 7-101 to enter into a contract with the winning bidder. Staff is of the view that such a petition would inevitably cause a

delay in the selected financial institution signing a contract with at least some, if not all the Utilities.

In Staff's opinion, a Section 7-101 proceeding can be avoided in either of two ways: the Utilities may (1) agree to exclude financial institutions that are "affiliated interests" from participating in the RFP; or (2) modify the RFP process such that it meets all the criteria for the competitive bidding waiver from Commission approval of contracts with affiliated interests.

E. Sample Loan Documents

The Proposal anticipates that lenders will provide standard loan documents as part of the RFP. Staff believes this satisfies the requirement for sample contracts and agreements necessary to implement the measures and program in Subsection (d)(4).

F. Cost Recovery

Staff recommends that the Commission approve the Company's cost recovery plans for the OBF program costs as presented at Nicor Ex. 1.1, Section E.7 with the exception that loan origination fees should be excluded. Staff also has no objection to the accounting procedures related to the cost recovery provisions and program costs of the OBF program as described by Nicor, with the exception that Staff recommends that Nicor indicate in its reply comments if there is an agreed cost sharing mechanism in place and, if so, provide evidence of the agreement.

Section 19-140 of the Act provides that a gas utility serving more than 100,000 customers on January 1, 2009 shall offer a Commission-approved on-bill financing program. Specifically, Section 19-140(f) addresses recovery of costs associated with such programs. Staff observes that in accordance with Section 19-140(f), Nicor proposes to recover prudently incurred costs through the automatic adjustment clause tariff. The tariff is part of the energy efficiency plan that the Company must file with the Commission no later than October 1, 2010. Staff recommends that Nicor provide a draft of the proposed Section 8-104 tariff for Staff's review no later than September 1, 2010. Staff notes that Nicor has agreed to this proposal.

Staff notes that Nicor intends to accumulate costs eligible with proposed Rider OBF in a separate regulatory asset account until such time as they can be recovered through the energy efficiency rider. Nicor agrees to maintain separate accounting records such that costs recovered pursuant to Section 19-140(f) are easily distinguishable from other costs that the Company will recover through the 8-104 tariff.

Also, in terms of retaining a security interest in the measure(s) purchased under this program, Nicor indicates that when it is financially prudent to exercise this right, it will recover the equipment (measure) from the participant and sell it, with the proceeds to reduce uncollectibles expense. It also indicates that it does not propose to regularly enforce this provision on a widespread basis.

G. Company Filings

Staff reviewed Nicor's proposed Rider 31 - On-Bill Financing Program tariff ("Rider OBF"). Rider OBF will offer customers the ability 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 as stated in Section 19-140 (a) and (b).

Nicor's proposed Rider OBF specifies that an active account on the premises for the last 12 months is a requirement to participate in the program. Staff does not find this requirement for the Program in Section 19-140 and, therefore, Staff recommends that this language be stricken from proposed Rider OBF. If this change is implemented, the Staff recommends approval of Rider OBF in this docket.

H. Consumer Information

Staff recommends that Nicor includes in its reply comments a commitment to develop consumer information covering the following points. Customers will need to know how moving to another location both within and outside the utility's service territory will affect their bill. It is also important for customers to understand that their utility service may be subject to disconnection for non-payment of on-bill financing charges. Furthermore, customers should be informed of conditions under which the balance of the amount borrowed would become due. Finally, customers whose service has been disconnected will need to know what options they may have to reconnect utility service. Finally, Staff recommends that Nicor also includes in its reply comments a description of how the information will be communicated to customers.

I. Staff's Reply Comments

1. Budget Cap

In response to the AG's proposed budgetary cap, Staff notes that the law does not establish a cap on expenses. Accordingly, in Staff's view, the Commission may request the Company to cap expenditures and the Company may voluntarily agree to such a cap, but the Commission may not impose a cap.

Subsection (f) of Section 111.7 allows the Company to recover all prudently incurred costs of offering the Program including, but not limited to, all start-up and administrative costs and the costs for program evaluation. From Staff's perspective, the proposed budget is informational only and the 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.

Also, Staff urges the Commission to clarify in its Order that any approval of the OBF Program in this docket shall not be deemed an approval of associated budgeted amounts.

2. Security Interests

Staff notes the AG's position that the Commission should disallow any costs associated with obtaining a security interest. Staff agrees generally with the utility, however, that the costs may well outweigh the benefits of perfecting and enforcing a security instrument in connection with the financing of the measures. In the event that a security interest is taken in an energy efficiency measure, Staff believes that these costs should be recovered from the customer and not recovered from ratepayers generally.

Staff quotes Section (c)(6) of the Electric OBF Law that states that the utility shall retain a security interest, but Staff suggests that it is the FI that would retain the security interest in the energy efficiency measure and not the utility. Staff points to Illinois law that only the entity that lends the funds and holds the note may hold the security interest. Staff also suggests that it is the lender that will fund the loan and resolve defaults and other disputes. Staff opines that in order to satisfy the statute, the lender may permit the utility to retain control over the security interest.

Staff recommends that the right to perfect and enforce any security interest be exercised only in instances where the financing market generally would similarly perfect and enforce such a security interest for loans of this size and type. Otherwise, Staff argues, the participating customer (or ratepayers generally) may be paying for security not deemed necessary or worth it by lenders in connection with similar loans. Staff also recommends that FI bidders should identify these costs.

V. AG's Comments

A. Budget Cap

In response to Nicor's estimated three-year program costs of $880,000, or approximately 35% of the $2.5 million amount provided for the Program, the AG asserts that this budget is unreasonable. The AG draws the comparison between Nicor's proposed budget and the budget cap imposed on North Shore Gas Company and Peoples Gas Light & Coke Company. In its 2008 rate case order approving North Shore Gas Company's and Peoples Gas Light & Coke Company's energy efficiency programs, the Commission capped the companies' administrative costs at 5%. The AG proposes a similar cap for the Nicor OBF Program, which would limit the Company's administrative expenses to $125,000. At most, the AG urges the Commission to limit any utility to spend no more than 10%, or $250,000 on such costs.

B. Acceptance

The AG is concerned that although Nicor proposes that lender disputes be resolved between the participant and the lender, there is no such language to describe how disputes will be handled between the customer and the vendor. Specifically, the AG complains that there is no language to describe what constitutes "acceptance by customers." The AG asserts that Nicor must clarify how the customer will demonstrate acceptance of the measure by the vendor and how this information will be communicated to the lender before making its disbursements.

C. Underwriting Criteria

In response to Nicor's failure to describe credit check methodology, the AG asserts that the Company does not consider the costs associated with extensive credit checks. Specifically, the AG proposes that the Commission require Nicor to apply a tiered credit check approach that: 1) limits the requirement to prior bill payment history for measures under a $1,000; and 2) applies a specific formula or methodology that does not inflate the interest rate or cause additional costs to be socialized to rate payers for measures greater than $1,000. The specific credit check methodology should be stated clearly in the Program Design Document, as well as the RFP.

D. Security Interest

The AG observes that Nicor failed address the issue of costs associated with obtaining a security interest in the first place and opines that the costs are likely to be substantial. Yet, the AG contends that even without the Company having a security interest, a customer has a strong incentive to pay for the measure or risk potential electric service cut-off.

Therefore, the AG proposes that Nicor spell out its reasoning clearly in the PDD as to what would constitute a reasonable cost to obtain a security interest as well as a cost benefit analysis. The AG further proposes that lenders break out costs related to security interest filings through the RFP process. The AG urges the Commission to disallow any costs associated with obtaining a security interest as not "prudently incurred costs of offering a program approved by the Commission pursuant to this Section." 220 ILCS 5/19-140(f).

E. Prepayment

The AG is proposing that the customer may voluntarily pay off the loan early with no penalty. The AG further proposes the Company shall make a timely payment in full to the lender in the event of an early pay off by the customer. Lastly, the AG proposes that the RFP should specifically state the above described pay off plan to the lender.

F. Extension to Small Commercial Retail Customers

The AG observes that initially, the Utility only includes residential customers in its Program. According to the AG, Nicor could choose to add small commercial customers to the program at a later date. Therefore, the AG argues that the Commission should make it clear in its Order that any Program or Program related costs that arise from the inclusion of small commercial customers will be assigned to that customer class and not residential customers.

G. AG Reply Comments

1. Continuation of Program During Evaluation

The AG believes it is premature to support the CUB/City recommendation that the program should continue during the pendency of the evaluation. The AG sees too many issues, including Program costs, that must be worked out regarding the Utility's Proposed Program.

2. FI Selection

The AG agrees with CUB/City's recommendation to include CUB/City, the AG and Staff as members of the RFP evaluation committee, but believe that in order to make a meaningful contribution to the evaluation process, the AG and CUB should be voting members of the committee and not just advisors.

3. Underwriting Criteria

Although the AG continues to recommend its tiered approach to determine what type of credit check methodology to utilize, the AG would accept CUB/City's recommendation to rely solely on bill payment history.

4. Reconnection

The AG supports the CUB/City recommendation regarding the amounts owed to the utility to enable reconnection and believes that it adds an important consumer protection element to the Program.

5. Program Administrator

The AG supports CUB's conclusion on this matter that using existing contractor networks as much as possible will lower overall program costs and lessen the burden of the FI to double-check vendor credentials. The AG agrees with CUB that before the Nicor program is approved, the Commission should ask for clarification on the role of any contractor hired to oversee the vendor network, along with information on associated costs.

6. Security Interest

The AG notes that, in a response to a Staff data request, Nicor recognized the costs associated with perfecting a security interest. The AG asserts, however, that Nicor should spell out when it intends to perfect its security interest, for example for measures with a value greater than $5,000. Further, the AG believes that Nicor and the other utilities should exclude the service and related costs associated with a security interest from the RFP. In essence, Nicor would be responsible for obtaining a security interest with the associated filings and not the lender. The AG expects to see Nicor address how it intends to keep costs reasonable for the Program and when it is financially prudent to exercise this right to perfect a security interest.

7. Consumer Information

The AG support Staff's recommendation as an important consumer protection issue. In addition, the AG believes that if the Nicor Program applies a gross receipts tax, this information needs to be timely communicated as well.

VI. CUB's Comments

CUB states in its Comments that it participated in the workshop process, and appreciates the chance to provide comments on the Petitioner's program draft. The Petitioner's proposed OBF Program is a welcome step forward in advancing the General Assembly's purpose of promoting conservation and cost-effective energy efficiency measures. 220 ILCS 5/19-140(a).

CUB would like to commend Nicor for including commercial customers served under Rates 4 and 74 with Meter Class A as eligible participants in the program. CUB asserts that Nicor is the only utility to do so, and the experience gained over the next three years will be beneficial to all Illinois utilities.

A. Selection of FI

CUB observes that Nicor is cooperating with other utilities to conduct a joint Request for Proposal ("RFP") to find the Financial Institution ("FI") that will serve as the lender. The Illinois Energy Association ("IEA"), 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. The IEA will constitute an evaluation committee with

representation from all participating utilities. CUB further notes that although proposals will be reviewed and evaluated by committee members and their consultants, the IEA reserves the right to accept or reject any proposal and to select one or more FIs, based on territorial or other considerations.

CUB is concerned that the IEA is provided with veto authority over the final FI selection. It is unclear what additional value the IEA brings to the process aside from having all four utilities participating in the RFP as members. It is also unclear how the Commission or other stakeholders will be informed of IEA's deliberations or decision.

CUB proposes that those stakeholders who participated in the OBF workshops conducted by Staff be invited to become members of the proposed Evaluation Committee. In particular, it proposes that the Commission name CUB, the AG, and Staff as members of the Evaluation Committee proposed by the utilities.

CUB further requests revision of the RFP evaluation matrix to place more emphasis on the first criteria, "Loan Pricing: interest rate pricing and fees." CUB reasons that having a low interest rate is possibly the most critical component of the RFP for consumers. Finally, CUB recommends taking points away from "Loan marketing & geographic coverage" and "additional services" and giving more points to "Loan Pricing."

B. Eligible Measures

CUB maintains that eligible measures should be determined after the financial institution has been selected. CUB notes that according to Nicor's proposal, final eligible measures will be published prior to the completion of the RFP for the Financial Institution. It is CUB's position that it is premature to prescribe a measure to the program prior to possessing the information, such as the interest rate of the loan, that can only be determined once the FI has been selected. Accordingly, 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 Staff and other stakeholders can review and understand the final OBF Program.

C. Furnace Verification

CUB learned during the workshop that many furnaces which are installed do not ever achieve their labeled efficiency because duct work in the home is not conducive to enabling the furnace to operate at the ideal efficiency. According to CUB, given the importance of proper duct alignment to the achievement of actual energy savings, CUB believes that installation of furnaces must include an examination and an improvement of the associated duct work. CUB proposes that a sampling of one-third of all furnaces installed have both pre and post-verification in order to ensure that the consumer realizes the full efficiency of their investment. CUB Comments 5-6.

D. Underwriting Criteria

In response to Nicor's proposal to use credit checks to screen customers for eligibility, CUB is concerned that this approach will add unnecessary costs and barriers to the program. Specifically, CUB observes that the utility is in possession of bill payment history for all of its customers and maintains that this bill payment history

represents a rich source of information about a consumer. CUB points out that individuals with poor credit scores still often pay their utility bills and it does not want to see people that could benefit from energy efficiency measures being denied access to this Program because they do not have an ideal credit score. Therefore, it is CUB's position that the use of utility bill payment history is a prudent way to determine credit worthiness of prospective borrowers.

E. Statewide Evaluator

According to the statute, an independent evaluation of the OBF Programs is required to be conducted after 3 years of program operation. 220 ILCS 5/19-140(g). CUB maintains that the Commission and all stakeholders will benefit from a coordinated evaluation process that enables comparison across the participating utilities. Therefore, CUB recommends that one statewide evaluator be retained to both facilitate consistent evaluation and comparison, and to lower overall evaluation costs.

F. Continuance of Program during Pendency of Evaluation

In addition, CUB notes that from Nicor's filing it is unclear what will happen to the OBF Program while the evaluation is conducted and the Commission presents its findings to the General Assembly as required by statute. CUB suggests that the programs should be continued during the pendency of the evaluation. Moreover, to ensure that Program participants and interested stakeholders can provide feedback, the evaluator should present its findings in a series of workshops held during the year provided for the evaluation.

G. Reconnection

In Nicor's proposed OBF Program, in the event of non-payment by a customer of loan amounts due, the utility may terminate service, under existing collection procedures. CUB notes that Nicor does not address how a customer who has had their service disconnected can have their service reconnected. For example, assume that a customer is disconnected in March and applies for reconnection in May. It is unclear from Petitioner's filing what amount a customer who participates in the OBF Program would have to pay for reconnection. CUB recommends the reconnection amount include only those loan payments missed since the disconnection and not the entire amount due under the loan.

H. Clarification of the Role of Program Administrators

CUB notes that Nicor intends to hire a separate contractor to develop and oversee a Vendor network, although it acknowledges that the existing Vendor network established for existing energy efficiency and demand response programs may be drawn upon and augmented for this Program. CUB agrees with Nicor that existing resources should be used as much as possible. CUB explains that these Vendors already may be familiar with the Petitioners' contracting and billing arrangements. Most importantly for the success of the OBF Program, Vendors already familiar with energy efficiency protocols and can be relied upon to properly install and maintain the high-efficiency equipment financed through the OBF Program. Furthermore, CUB explains that using existing contractor networks as much as possible will lower overall program

costs and lessen the burden of the Financial Institution to double-check Vendor credentials.

Therefore, CUB recommends that before the Petitioner's OBF Program is approved, the Commission should ask for and receive clarification on the role of any contractor hired to oversee the Vendor network, along with information on associated costs.

I. CUB Reply Comments

1. Loan Origination Fees

CUB disagrees with Staff's position that loan origination fees should be paid for by the customer receiving the loan - either by the lender incorporating its processing costs into the interest rate to successful borrowers or by the lender including the origination fee in the loan amount to be financed and repaid. CUB notes that while no clear or consistent definition of "program costs" or "administrative costs" has been put forth in this proceeding, CUB believe that loan origination fees are program costs.

Moreover, CUB disagrees with Staff's reasoning that the fees should be on the consumer because the consumer is the one that receive the benefits from the avoided costs associated with the measure. In CUB's view, there are societal, monetary and environmental benefits resulting from avoided gas costs as well.

Also, CUB notes that Staff's position would unnecessarily raise the cost of a eligible measure and thus limit either the number of measures which could be financed or the number of customers who could participate in the program. In CUB's opinion, documents prepared for the loan, checks on utility bill payment history and other functions are required for the program to operate efficiently and effectively and, as such, are program costs. These are administrative in nature and not different from any other program cost. Accordingly, CUB agrees with the Utility that loan origination fees can be properly classified as "administrative costs" as provided for by Section 19-140(f) of the Act.

2. Data Collection

Staff requests that Nicor collect data on the types and characteristics of both measures replaced and installed. CUB supports this request and states that the more data collected, the more thorough the evaluation of the OBF Program and, over time, the better the program will operate going forward.

3. Affiliated Interests

CUB states that it is not clear what affiliated interests would meet Staff's definition and comments only to note the lack of clarity. CUB has no objection to any of Staff's proposals to avoid a conflict of interest and recommends that the Commission direct the RFP Evaluation Committee to consider this issue.

4. Consumer Education

CUB notes that it is unclear from Staff's comments if they are intending to draft a type of "Universal Disclosure Statement" similar to what has been proposed with respect to electric retail competition or a general consumer education program. Either way, CUB supports recommendations to provide customers participating in the OBF Program with information about their rights and responsibilities and look forward to providing customers with information about the program.

5. Budget Cap

CUB notes that it is not clear what types of costs are considered "program costs" as opposed to "administrative costs". CUB recommends that Nicor address this issue in its Reply Comments because in many other contexts, these are two separate and distinct types of costs. CUB believes that without additional information, an arbitrary 10% cap as proposed by the AG, is premature.

6. Acceptance

CUB agrees with the AG that it is important to have a process in place for the lender to verify customer acceptance of the work, before disbursing the loan to the contractor. CUB notes, that at the same time, there needs to be checks in place to protect the contractor as well to ensure they receive their money in a timely fashion from the lender.

7. Underwriting Criteria

CUB continues to believe that the best evidence on whether a customer will default under the OBF Program is the customer's utility bill payment history. However, CUB understands that as the OBF Program may include more expensive measures, the tiered approach to credit checks suggested by the AG may be appropriate. CUB recommends that any final determination on when it might be appropriate to use credit checks be reserved pending a final list of eligible program measures from the Utility.

VII. Nicor's Reply Comments

A. Loan Origination Fees

Nicor states that it does not object to Staff's position and it would make this change to allow loan origination fees, if any, to be included in the costs paid by the participating customer. Additionally, Nicor would include an estimate of such fees in its final economic assessment of potential eligible energy efficiency measures. At this time, Nicor notes that it is proposing to offer a limited number of measures, mainly high-efficiency furnaces and boilers. The company believes that the economic benefit of installing these products will remain positive even after assigning loan origination fees to the responsible customer. Moreover, Nicor Gas anticipates the fees will be minimal and have a minor impact on the economic analysis.

Further, Nicor states that it will modify its RFP to lenders to specify that any loan origination fees should be reflected in the interest rate charged, or to include the fee in

the loan amount to be financed. Thus, an initial upfront payment would not be required to participate in the program as specified in Section 19-140(a) of the Act.

B. Data Collection

Nicor agrees with both Staff and CUB that obtaining additional data on measures is worthwhile. Acknowledging that the loan application would specify the measures being purchased, Nicor maintains that the participant may not have much, if any, information on the equipment being replaced. Nicor proposes to track the characteristics of both the installed and replaced measures, thus requiring the lender to include a section in the loan application to specify what equipment is being removed and what is being installed.

C. Furnace Verification

With respect to CUB's proposal to sample one-third of all furnaces installed, Nicor is of the view that such testing is costly and not necessary. Nicor further reasons that this is an on-bill financing program, not an energy efficiency program that contains specific energy efficiency requirements. Consequently, data collected should be related to items such as acceptance of the loan program, number of participants, amount financed, duration of loans, type of equipment financed, etc. Accordingly, Nicor recommends that the Commission accept Staff's and Nicor's position that information be collected on the type of measures removed and installed, as well as financing related data, and reject CUB's proposal to test old and new equipment as not being a function of the OBF Program.

D. Affiliated Interests

Nicor notes Staff's concern regarding affiliated interests. Nicor, however agrees with CUB and notes that CUB finds Staff's response confusing, but recommends that the Commission direct the lender Evaluation Committee to consider the issue.

Nicor agrees with CUB's position. Further, it is unaware of any affiliation it has with any potential lenders and, thus, believes that its draft RFP, as filed, is proper and should be approved.

E. Cost Recovery

Nicor agrees to Staff's recommendation that the Company provide a draft of its proposed cost recovery rider filed in response to Section 8-104 to Staff on or before September 1, 2010. Further, according to Staff's recommendation, Nicor has attached to these reply comments as Attachment A, a corrected three-year OBF Program proposed budget.

Lastly, in response to Staff's recommendation of the Company's indication of an agreed-to cost sharing mechanism with other utilities implementing OBF programs, Nicor states that the only shared cost among the utilities is for work in preparing the utilities' plans and the RFP. The utilities have an unwritten agreement to share these costs equally among five entities: 1) Nicor, 2) Commonwealth Edison Company, 3) The Peoples Gas Light and Coke Company and North Shore Gas Company, 4) the Ameren

Illinois gas companies, and 5) the Ameren electric companies, with each entity paying 20 percent of the cost.

F. Rider OBF

Nicor agrees with Staff that the requirement for a Program participant to be an active customer for last 12 months should be removed.

G. Consumer Information

Staff, the AG, and CUB all recommend that Nicor develop additional consumer information to be given to each participant. Nicor concurs on this issue. It will include a discussion of the above items in its marketing materials.

H. Budget Cap

The AG recommends a cap on the three-year expenses of the program at $250,000 or 10 percent of the $2,500,000 limit. CUB responds that without additional information, an arbitrary 10 percent cap proposed as by the AG is premature.

Nicor agrees with Staff that the AG's proposal is flawed for two main reasons. First, Section 19-140(f) provides that the utility shall recover all prudently incurred costs including start-up and administrative costs and program evaluation costs. 220 ILCS 5/19-140(f). Therefore, the Commission can not set a limit on costs. Second, the budget data provided by Nicor is hypothetical and the Commission will review actual costs incurred during the course of reconciliation proceedings.. Consequently, Nicor argues that the Commission should reject the AG's recommendation.

I. Acceptance

In response to the AG and CUB's recommendations, it is Nicor's position that disputes between the participant and vendor with respect to acceptance of the measure being purchased are best handled by those parties. Nicor maintains that it is not necessary for the Company to impose itself into such disputes. Additionally, Nicor states that the vendor and lender would work out the details of when payment will be made for the work provided by the vendor that is acceptable to the participant. Nicor observes that its role in the OBF Program is to be a financial conduit, receiving payments from the participants and giving them to the lender.

J. Underwriting Criteria

The AG recommends that the Company provide details of the lender's credit check methodology and be required to have one criterion for loans under $1,000 and another criterion for loans of $1,000 and above. CUB originally proposed that a participant's bill payment history be used as a credit check. CUB reiterates this position in its Reply Comments, but recommends the tiered approach.

Nicor maintains that the Commission should reject both the AG's and CUB's proposals, pointing to Section 19-140(c)(4): " The lender shall conduct credit checks or undertake other appropriate measures to limit credit risk..." Therefore, Nicor is of the view that it is the lender's responsibility to determine what methods it will use for credit checks and the criteria for credit checks.

K. Security Interest

With respect to security interest, the AG and Staff have different opinions. The AG recommends that Nicor determine a reasonable cost to obtain a security interest and conduct a cost-benefit analysis while Staff responds that the cost to implement a security interest may outweigh the benefits.

Nicor agrees with Staff and observes that these costs would be subject to a prudence review by the Commission during a reconciliation proceeding. Thus, Nicor supports Staff's recommendation that the security interest only be considered for measures having a value great enough that lenders would normally seek a security interest.

L. Prepayment

Nicor agrees with the AG's recommendation that Nicor be required to describe that the participant may prepay the loan early without penalty and make a timely payment to the lender for the early payment amount.

M. Commercial Customer Costs

In response to the AG, Nicor states that it is offering its OBF Program to small commercial customers. It further states that the cost to include a small commercial customer in the program is no different that that of a residential customers. Therefore, Nicor proposes to allocate the costs between residential and small commercial customers based on the number of participants in each group. Specifically, for the first year of the program, cost recovery under the Company's Section 8-104 rider would be based on the total number of residential and small commercial customers eligible for the Program. In subsequent years, the cost would be based on the actual number of residential and commercial customers participating in the program.

Nicor further notes that, based on the estimated three-year cost of $880,000 and the 2.2 million customers eligible for the Program, the average cost per month to a customer would be about a penny.

N. Selection of FI

1. Intervenors as Members of Evaluation Committee

CUB recommends that CUB, the AG, and Staff be added to the Evaluation Committee that would be responsible for selecting the financial institution(s) that would be the lender(s) in the OBF Program. Nicor objects to CUB's recommendation.

Referring to Section 19-140(c)(2), which specifically states that the utility shall select the winning bidders based on evaluation of criteria, Nicor reasons that while the IEA may play a role in assisting in the selection of a lender, it is ultimately the responsibility of the utilities to select the lender that best matches the criteria of the program. Therefore, Nicor is of the view that CUB's and AG's proposal to insert themselves into the selection process is not permitted under the Act and should be rejected. Nicor, however, does not object to updating interested stakeholders on the selection process as it proceeds.

2. Weighting

With respect to CUB's recommendation that the loan selection process give more weight to "Loan Pricing" and less weight to "Loan Marketing & Geographic Coverage" and "Additional Services," Nicor urges the Commission to reject it. Nicor notes that Section 19-140(c)(2) only lists interest rate, origination fees and credit terms as items that must be included in the list of criteria. Other criteria have been added, Nicor explains, to the valuation process in order to selcet a lender that best meets the overall goals of the OBF Program.

3. Workshop after FI RFP

Nicor objects to CUB's recommendation to have another workshop to discuss the final selection of eligible measures once the final lender(s) and loan provisions are determined.

Nicor reasons that it is the responsibility of the utility to determine the measures that meet the criteria specified in the Section 19-140. Nicor will apply the same methodology for selecting eligible measures as it did before this filing, updating for the final financial costs as determined through the lender selection process. Other than the need to update information included in the selection methodology, no party has objected to the methods used by Nicor to select eligible measures. Nicor concludes that another workshop is not necessary and, thus, urges the Commission to reject CUB's proposal for a workshop.

O. Continuation of Program During Evaluation

With respect to CUB's proposal to continue the program during the evaluation period, Nicor finds CUB's concern unfounded. Section 19-140(g) provides for an evaluation of the program after three years, with a report to the Commission within the fourth year. Nicor notes that no where within Section 19-140 is there a provision for the program to terminate after three years. The only provision in Section 19-140 that Nicor finds related to the termination of the program is sub-paragraph (g) which states, "…the Commission shall issue a report to the Governor and General Assembly including a summary of the information described in this Section as well as its recommendation as to whether the program should be discontinued, continued with modification or modifications or continued without modification…." Consequently, it is Nicor's position that the program will continue until the Commission recommends that they stop and the legislature agrees.

P. Reconnection Amounts

With respect to the issue of reconnection amounts, Nicor objects to CUB's and the AG's proposals. CUB and the AG propose that the payment made by a customer to be reconnected after being disconnected for non-payment include only the amount of the OBF Program payments missed and not the entire loan balance amount.

Nicor, however, maintains that all customers disconnected for non-payment should be treated in the same manner. Nicor notes that if the customer is reconnected within 60 days of being disconnected, only those OBF Program payments missed would be included in addition to other reconnection amounts. However, after 60 days the

account becomes “finaled” and all payments due the Company must be repaid before the customer is reconnected, including the outstanding amount of the loan.

Q. Role of Program Administrators

CUB and the AG propose that the Commission ask for and receive clarification on the role of contractors hired to oversee the vendor network and related costs before approving the OBF Program.

Nicor states that this proposal lacks specificity in that it does not state what items, if any, should be included in the consideration of the vendor overseer. Nicor acknowledges that experienced candidates with existing vendor networks would be given priority over inexperienced candidates. It is in the best interest of the Utility to select the best overseers and vendors. Nicor further reasons that the Commission’s role is to determine that all costs recovered were prudently incurred and it is not the Commission’s responsibility to select vendors. Therefore, Nicor recommends the Commission reject CUB’s proposal for the Commission to receive additional clarification on the role of contractors.

VIII. Commission Analysis and Conclusion

The Utility has proposed an OBF Program that complies with the statute and is approved with minimum modification. This approval recognizes that the Utility, in its reply comments have accepted many of the proposals of various parties. Only a few issues remain that require discussion and are addressed below.

A. Loan Origination Fees

Staff proposes that loan origination fees be paid by customers receiving the loans rather than collected from all customers through the Utility’s automatic adjustment clause rider. Nicor accepts Staff’s proposal.

Although Staff is undoubtedly correct that loan origination fees are generally paid by the individual applying for financing, this is not a typical financing situation. These loans do not just benefit the individual participants as suggested by Staff, but rather the Commission agrees with CUB’s view that lowering gas usage has monetary and environmental benefits that will accrue to not just the individual customer but to society at large and, as such, these costs are appropriately recovered from all ratepayers.

Also, Staff’s position would unnecessarily raise the cost of an eligible measure and thus could limit either the number of measures which could be financed or the number of customers who could participate in the program. Documents prepared for the loan, credit checks and other functions are required for the program to operate efficiently and effectively and as such are program costs. These are administrative in nature and not different from any other program cost. Accordingly, the Commission agrees with CUB that loan origination fees can be properly classified as “administrative costs” as provided for by Section 19-140(f) of the Act and recovered through Nicor’s automatic adjustment clause tariff.

For the same reasons, Staff's proposal that the costs for perfecting a security interest be recovered from individual participants is rejected. These costs are similarly administrative in nature and should be recovered from all ratepayers.

B. Data Collection

Nicor agrees with both Staff and CUB that obtaining additional data on measures is worthwhile. To the extent practicable, Nicor is directed to obtain the requested information.

C. Furnace Verification

The Commission agrees with the Utility that this proposal adds unnecessary costs to the program and concurs with Nicor's reasoning that this is an on-bill financing program, not an energy efficiency program that contains specific energy efficiency requirements.

D. Cost Recovery

Nicor agrees to Staff's recommendation that the Company provide a draft of its proposed cost recovery rider filed in response to Section 8-104 to Staff on or before September 1, 2010. The Commission agrees that this is reasonable.

E. Rider OBF

The Commission agrees with Staff that this program should not require that a participant be a customer of the utility for twelve months. We note that Nicor has agreed to remove this provision.

F. Consumer Information

The Utility has agreed to Staff's proposal.

G. Budget Cap

The AG's request to cap Program Fees at 10% of the program dollars is denied. It is contrary to the express statutory language that the utilities are allowed to recover all of their prudently incurred costs. All costs that the utilities seek to recover from ratepayers will be subject to a prudency review in the annual reconciliation proceeding for the utility's automatic adjustment clause rider.

Any estimates that the Utility has provided are merely informational. The Commission's approval of the OBF program does not include approval of the associated proposed budget amounts.

H. Acceptance

The Commission agrees with the Utility that disputes between the participant and vendor with respect to acceptance of the measure being purchased are best handled by those parties. Additionally, it is for the vendor and lender to work out the details of when payment will be made for the work provided by the vendor.

I. Underwriting Criteria

Several options have been proposed for determining the credit-worthiness of potential program participants. The Commission agrees with the Utility, however, that this is a matter best left to the FI. In fact, the statute itself recognizes that the FI will be conducting credit checks or other appropriate measures to limit credit risk. The FI should utilize its expertise to determine what measures should be taken to limit credit risk.

Ensuring that only credit-worthy customers participate in the program is in the best interest of ratepayers. The FI is guaranteed to recover its investment pursuant to the statutory scheme and it ratepayers that will be left footing the bill for bad loans.

J. Security Interest

The statute gives the utilities the right to retain a security interest in the financed energy efficiency measures. The fact that utilities are given this right, and not the FI, is consistent with the statutory scheme that utilities pay the FI whether or not the individual participant pays his or her utility bill. Accordingly, it is left to the utility to attempt to collect as much money from the individual participant or, if necessary, attempt to repossess the item. Nicor's proposal to work with the FI to determine when this would be financially necessary is a reasonable approach. As Staff points out, perfecting the security interest may cost more than would be recovered.

The AG's suggestion that the Utility should be barred from any costs related to filing a security interest is contrary to the statutory scheme and fails to protect ratepayers. If Nicor and the FI institution determine that it makes financial sense to perfect a security interest, this protects ratepayers because any unpaid loans and any money not recovered through repossession will be charged to ratepayers.

K. Prepayment

Nicor agrees with the AG's recommendation that Nicor be required to describe that the participant may prepay the loan early without penalty and make a timely payment to the lender for the early payment amount. The Commission agrees with AG that this is an important consumer protection and finds that the loans should have no penalty for early payoff.

L. Commercial Customer Costs

Having been presented with Nicor's position that the cost to serve residential customers and the cost to serve small commercial customers will be no different, the Commission finds it acceptable to allocate these costs based on the number of customers eligible for the program in each group.

This issue relates to program costs that will recovered pursuant to the Utility's Section 8-104 Rider. The Commission finds that these costs should properly be recovered from all customers eligible to participate in the program. The Utility, however, states that in "subsequent years, the cost would be based on the actual number of residential and commercial customers participating in the program." Nicor Reply Comments at 9. If Nicor intends that the program costs will only be recovered from

ratepayers actually participating the program, this is inconsistent with the Section 8-104 and is not approved.

M. Selection of FI

1. Affiliated Interests

Staff has raised a legitimate concern that some FIs that respond to the RFP may be affiliated interests of one or more of the utilities. The Commission finds the Utility's proposal to explore Staff's suggestions with the other utilities and the IEA to be appropriate and is adopted.

2. Intervenors as Members of Evaluation Committee

As with other issues in this proceeding, the Commission will turn to the plain language of the statute for guidance. It states that the utility shall issue an RFP and the "utility shall select the winning bidders based on its evaluation." 220 ILCS 5/19-140(c)(2); 220 ILCS 5/16-111.7 (c)(2) (emphasis added).

CUB proposes that it, the AG and Staff be named members of the RFP Evaluation Committee. The AG goes further and proposes that it, CUB and Staff be named voting members. CUB does not specify what role it intends to play as a member of the Evaluation Committee, but its reason for the request is that it wishes to stay informed of deliberations or actions.

The Commission agrees with the Utility that, pursuant to the statute, selecting the FI is the utility's responsibility and there is no basis for requiring the affected utilities to allow the workshop participants to participate in the selection process. The AG's proposal conflicts with the statutory right/directive that the utility shall make the selection. Not only that, it is not clear what additional value or expertise would be brought to the OBF Program to have these parties vote on the selection of the FI.

3. Workshop

The Commission notes that ComEd proposes to update interested stakeholders throughout the RFP process concerning, for example, the types of responses it is receiving from lenders, and that Staff reconvene the workshop participants after the RFP process is concluded. Although Nicor does not agree, the Commission finds this to be an adequate response to CUB/City's concerns regarding information sharing.

4. Weighting

As far as shifting the weighting in the evaluation process, the Commission finds that the affected utilities have proposed a balanced approach and we decline to adopt CUB's proposal. The Commission does take this opportunity to note that we have every expectation that these will be very low interest loans. Pursuant to the statutory scheme, these loans hold no risk for the FIs. For that matter, there is no risk for the Utility either because any unpaid loans will be recovered by the utilities from ratepayers through their uncollectible riders. Once the interest rate is known, the utility is directed to file that with the Commission.

N. Continuation of Program During Evaluation

CUB is concerned about what happens to the OBF Program during the pendency of the evaluation. Although both Nicor and CUB believe that the program should continue throughout, the AG believes it is premature to make such a determination. The Commission finds the AG's concerns to be unwarranted and agrees with Nicor's reading of the statute. These are revolving funds and presumably many customers will choose shorter terms that will then free up funds that can be loaned to other customers. One topic to consider in the evaluation is whether the amount financed should exceed the $2.5 million that all the utilities have requested. The Commission agrees with CUB that the evaluation process would benefit from stakeholder feedback. Thus, we adopt CUB's proposal for additional workshops.

O. Reconnection

With respect to the issue of reconnection amounts, Nicor objects to CUB's and the AG's proposals. CUB and the AG propose that the payment made by a customer to be reconnected after being disconnected for non-payment include only the amount of the OBF Program payments missed and not the entire loan balance amount.

The Commission agrees generally with Nicor, however, that all customers disconnected for non-payment should be treated in the same manner. Apparently it is Nicor's policy that if the customer is reconnected within 60 days of being disconnected, only those OBF Program payments missed would be included in addition to other reconnection amounts. However, after 60 days the account becomes "finaled" and all payments due the Company must be repaid before the customer is reconnected, including the outstanding amount of the loan. Nicor, however, does not discuss the option of the utility entering into deferred payment arrangements. Because customers that participate in this program will presumably have higher bills, especially if they are "finaled", it seems to be in the interest of all ratepayers to have utilities enter into deferred payment arrangements in an effort to collect as much from the OBF participant as possible.

Ideally, reconnection of program participants should be the same across all the affected utilities with the goal being to recover as much of the loaned amounts from the participants to avoid sending these amounts uncollectibles. Without doubt, all utilities must comply with Part 280 for both disconnections and reconnections.

P. Role of Program Administrator

CUB's request is not clear and to the extent that CUB wants clarification regarding the ability to leverage Nicor's existing vendor network, Nicor should provide that explanation. It is understood that cost estimates are most likely not available at this point.

IX. Taxes

A. Nicor

Nicor states that it will not apply the State Gross Receipts Tax to OBF Program charges shown on the customer's bill. Additionally, Nicor further requests that the

Commission also determine whether or not OBF Program revenues should be subject to the Public Utility Fund Tax. Nicor argues that a clear statement from the Commission is necessary to support the inclusion or exclusion of these revenues from the tax.

Nicor states that there are three distinct taxes that are at issue in this proceeding. First, the Gas Revenue Tax Act, 35 ILCS 615, provides that gas utilities pay to the state a tax based on the lesser of five percent of their gross receipts or 2.4 cents per therm. Second, the State Public Utility Fund Tax, Section 2-202 of the Act, provides that utilities pay to the Commission a tax of 0.1 percent of the utility's gross receipts. 220 ILCS 5/2-202. Section 9-222 of the Act allows utilities to pass through these taxes to their customers. 220 ILCS 5/9-222. Finally, as provided by Section 8-11-2 of the "Illinois Municipal Code", a municipality may enact an ordinance requiring a gas utility to pay taxes of up to five percent of its gross receipts derived from customers within the municipality's boundaries. Section 9-221 of the Act allows gas utilities to pass through these taxes to their customers, along with a three percent accounting cost recovery fee, i.e. 3% of 5%, for a 5.1% total tax rate. 220 ILCS 5/9-221

It is Nicor's position that the Commission only has jurisdiction over the State Public Utility Fund Tax. The other two taxes owe their creation through statutory provisions not found in the Act. The Commission's jurisdiction is derived from, and limited to, the Act. Thus, the Commission does not have jurisdiction to determine the applicability of state and municipal taxes to OBF Program revenues. Any determination that the Commission offers regarding the applicability of these taxes would have no binding effect on the Illinois Department of Revenue, any municipality or any utility customers.

Further, it is Nicor's position that the Commission has jurisdiction over the applicability of the PUF Tax, and that this proceeding is the proper forum for the Commission to determine whether the PUF Tax should apply to OBF Program revenues. Nicor observes that the amount of money at stake is de minimis, which is capped at $2,500. Consequently, the Company argues that it would be an unreasonable and inefficient use of administrative resources to initiate an entirely new proceeding to address an issue that has little financial impact on customers or the Commission.

It is Nicor's position that the determination of whether a particular tax applies must be based on the enabling legislation and the requirements of the Illinois State Constitution.

Further, absent controlling legal authority to the contrary, it may rely on the Department of Revenue's memorandum to determine that the State Gas Revenue Tax should not be applied to the OBF Program revenues. Nicor Gas has no objection to NS/PGL pursuing the option of obtaining additional assurances from the Illinois Department of Revenue. The OBF Programs are not proposed to go into effect until June 1, 2011, when the state-wide energy efficiency programs become effective under Section 19-145 of the Act. Consequently, there is some time for NS/PGL to seek such assurances. If NS/PGL proceeds with this option, the cost to obtain such assurances should be considered prudent and included in the OBF Program costs.

Nicor disagrees with CUB that the Illinois Department of Revenue's memorandum is sufficient for the Commission to determine the applicability of the Gas Revenue Tax to the OBF Program revenues.

It is Nicor's position that the Commission does not have jurisdiction over municipal taxes and the Commission should not be responsible for seeking any clarification as to their applicability. Additionally, Nicor maintains that each utility should seek any clarifications they deem necessary.

While Nicor, CUB, and Staff all agree that the Commission does have authority to determine if the PUF tax is applicable to OBF Program revenues, Nicor disagrees with CUB's recommendation to socialize these costs. Nicor reiterates that the tax is de minimis and has little impact on the customers. Nicor Gas is also concerned that CUB's proposal would impose additional costs on the Company and its customers in that the proposal would require significant programming changes to the Company's billing system. It would be unreasonable to require such changes while it only impacts a small number of customers.

B. Staff's Position

1. Jurisdiction

Subsection (c)(5) of the Gas OBF Law provides in pertinent part that: "Amounts due under the program shall be deemed amounts owed for residential and, as appropriate, small commercial gas service." 220 ILCS 5/19-140(c)(5). In Staff's view, this language triggers four different potential taxes. First, the Gas Revenue Tax Act (35 ILCS 615/et seq.) appears to be implicated because the funds financed under the OBF programs and paid on utility bills by their gas customers may be considered "gross receipts" under the Gas Revenue Tax Act. In addition, the Electricity Excise Tax Law (35 ILCS 640) is implicated but only to the extent a "self-assessing purchaser" pays tax in accordance with Sections 2-10 and 2-11 of the law, otherwise, this tax appears to be based upon kilowatt hours and not revenues. 35 ILCS 640/2-4, 2-10 and 2-11.

Also, the Public Utility Fund ("PUF") Tax (220 ILCS 5/2-202) appears to be implicated because the funds financed under the OBF programs and paid on utility bills by public utility customers may be considered "gross revenues" under the definition of such term set forth in Section 3-121 of the Act. It is important to note that for purposes of imposing the PUF tax, Section 2-202(c) specifically exempts from "gross revenue" those revenues derived "from the production, transmission, distribution, sale, delivery, or furnishing of electricity." 220 ILCS 5/2-202(c). Rather than paying PUF tax, electric utilities providing service to more than 12,500 customers in Illinois on January 1, 1995, contribute annually an aggregate sum, called a Public Utility Fund base maintenance contribution, which is based in part on the number of kilowatt hours delivered to retail customers for the prior year. 220 ILCS 5/2-203. Accordingly, the PUF tax is not applicable to ComEd or to the Ameren entities providing electric service.

In Staff's view, the Commission does not have jurisdiction to determine the applicability of the Gas Revenue Act, the Electricity Excise Tax Law or the various municipal tax laws. The PUF tax, however, is, in Staff's view, within the Commission's jurisdiction. The PUF tax funds the operations of the Commission in administering the

Act. 220 ILCS 5/2-202(a) and (b). The Commission is charged with administering and collecting the PUF funds. 220 ILCS 5/2-202(f)(1)and (2). The Commission has the power to review, audit and direct returns to be corrected. 220 ILCS 5/2-202(e). The authority to direct corrections on returns and order the payments of deficiencies (and to penalize for failure to pay deficiencies) in particular provides support for Staff's view that the Commission has jurisdiction to determine if the funds financed under the OBF programs are subject to PUF taxes. 220 ILCS 5/2-202(f) and (g).

From Staff's perspective, the only issue before the Commission in this proceeding in connection with the taxes assessed under the Gas Revenue Act, the Electricity Excise Tax Act, the PUF tax or municipal tax laws is whether such taxes, if assessed by the applicable tax authorities, should be considered program costs that may be passed through to ratepayers generally or if such taxes should be considered costs of implementing an eligible measure, to be taken into account in determining the cost effectiveness of the measure and paid by the participating customer. For many of the same reasons Staff cited in connection with loan origination fees, Staff argues that such taxes should be included in the costs of implementing a measure and paid by the participating customer.

In Staff's view, the question as to whether these taxes are appropriately assessed on the funds financed under the OBF programs does not have to be addressed in the expedited dockets authorized pursuant to the Gas OBF Law or the Electric OBF Law. Under Section (b-5) of these laws, the Commission is charged with rendering a decision regarding a request for approval of a proposed OBF program and related tariffs within 120 days after receipt of the request. If no decision is rendered within the 120 day period, then the request shall be deemed to be approved. A deemed approval of a proposed OBF plan should not be construed to diminish the Commission's authority under the PUF tax or diminish other agency's authority under other tax laws unless the General Assembly explicitly addressed the issue in the OBF laws. Nothing in either the Gas OBF Law or the Electric OBF Law could arguably lead to such a result by a failure of the Commission to approve the proposed plans.

Furthermore, pursuant to the Gas OBF Law and the Electric OBF Law, the proposed programs are to include the statutorily required components and be consistent with the provisions of the laws that define operational, financial and billing arrangements between and among program participants, vendors, lenders, and the utilities. (220 ILCS 5/16-111.7(c), (d) and (e)). Determining which taxes may be applicable to on-bill financing amounts, and whether the taxes are within the Commission's jurisdiction, is not required as part of the approval process. The Commission may give guidance on this issue but is not required to in order to approve the plans.

Moreover, Staff asserts that the PUF tax issue is more appropriately addressed in a docket that provides for additional time to review the issues involved. Since the plans will not be implemented immediately upon approval, there is no harm in taking additional time to consider these issues while the RFP process is ongoing. Consequently, it is Staff's recommendation that the Commission consider any tax issues within its jurisdiction in a separate docket to be convened upon approval of any of the proposed on-bill financing plans.

2. PUF Tax Applicability

In order to determine if the PUF tax applies to amounts financed under OBF programs, Staff needs to interpret the PUF Act, the Gas OBF Law and the Electric OBF Law. The interpretation or construction of statutes is a question of law, to be decided by the court or tribunal. *See, e.g.*, Matsuda v. Cook County Employees and Officers Annuity and Benefit Fund, 178 Ill. 2d 360, 364; 687 N.E. 2d 866 (1997); Bruso v. Alexian Brothers Hospital, 178 Ill. 2d 445, 452; 687 N.E. 2d 1014 (1997); Branson v. Dept. of Revenue, 168 Ill. 2d 247, 254; 659 N.E. 2d 961 (1995). The primary rule of statutory construction is to give effect to the legislature's intent in enacting the statute. Bruso, 178 Ill. 2d at 451. Legislative intent should be sought primarily from the language of the statute, People v. Beam, 55 Ill. App. 3d 943, 946; 370 N.E. 2d 857 (5th Dist. 1977), because the language of the statute is the best evidence of legislative intent, Bruso at 451, and provides the best means of deciphering it. Matsuda, 178 Ill. 2d at 365. Statutes must be construed as a whole, and the court or tribunal must consider each part or section in connection with the remainder of the statute. Bruso at 451-52. If the legislature's intent can be determined from the plain language of the statute, that intent must be given effect, without further resort to other aids to statutory construction. Bruso at 452. Thus, the threshold task for a court or tribunal in construing a statute is to examine the terms of the statute. Toys "R" Us v. Adelman, 215 Ill. App. 3d 561, 568; 574 N.E. 2d 1328 (3rd Dist. 1991).

In addition, it is clear that a court must construe a statute as it is, and may not supply omissions, remedy defects, or add exceptions and limitations to the statute's application, regardless of its opinion regarding the desirability of the results of the statute's operation. Adelman, 215 Ill. App. 3d at 568; *cf*. Thornton v. Mono Mfg. Co., 99 Ill. App. 3d 722, 425 N.E. 2d 522 (2nd Dist. 1981) (in determining that application of statute of limitations barring minor's products liability claim was proper, if perhaps harsh, the court observed that, where a statute is clear, the only legitimate role of court is to enforce the statute as enacted by legislature); People *ex rel*. Racing Bd. v. Blackhawk Racing, 78 Ill. App. 3d 260, 397 N.E. 2d 134 (1st Dist. 1979) (court observed that, though the General Assembly could have enacted a statute more effective in accomplishing its purpose than the one it did enact, the court was not permitted to rewrite the statute to remedy this defect).

But for the language in subsection (c)(5) of the Electric OBF Law and the Gas OBF Law, which deems the funds financed under the OBF programs to be amounts owed for electric or gas service, the PUF tax would not ordinarily apply to these funds. The utilities act as a conduit under these programs and do not obtain any revenues that Staff can ascertain in connection with this role. Nevertheless, the last sentence of Section (c)(5) is clear and unambiguous. It states: "Amounts due under the program shall be deemed amounts owed for residential and, as appropriate, small commercial [electric/gas] service." As stated above, the best evidence of the legislature's intent is the language of the statute. Bruso at 451.

This sentence in Section (c)(5) does not limit its reach to the Gas OBF Law or Electric OBF Law. Nor does it identify the purpose for considering OBF funds due under

the program "amounts owed" for gas or electric service. Parties may speculate as to the intent of the General Assembly in adding this language; for instance, that it was added for the purpose of making it easier for the utilities to require the loan to be paid in full when there is a transfer of title to the premises or to terminate service for non-payment. But the sentence is devoid of any qualifications or explanations that limit the interpretation of this language to these purposes or to any others so this remains speculation in light of the plain meaning of the language, which is clear on its face and is broad enough to cover tax issues. Further, even if the language were ambiguous, the legislative history provides no guidance on this issue. Under rules of statutory construction, the General Assembly is assumed to know existing law and legislation that might be impacted by its statutory language. State v. Mikusch, 562 N.E.2d 168 (Ill. 1990).

The PUF tax is imposed on the gross revenues of public utilities that are subject to the PUF Act. As stated above, revenues from electricity are excluded. 220 ILCS 5/2-202. Section 3-121 of the Act defines "gross revenue" in the following terms:

> As used in Section 2-202 of this Act, the term "gross revenue" includes all revenue which (1) is collected by a public utility subject to regulations under this Act (a) pursuant to the rates, other charges, and classifications which it is required to file under Section 9-102 of this Act and (b) pursuant to emergency rates as permitted by Section 9-104 of this Act, and (2) is derived from the intrastate public utility business of such a utility.

In addition, Section 3-121 provides certain additional exclusions, including exclusions for revenue derived from sales for resale and certain charges added to customers' bills pursuant to identified Sections of the Act.

Because Section (c)(5) of the Gas OBF Law and the Electric OBF Law deems amounts due under the OBF programs to be amounts owed for residential and, as appropriate, small commercial electric and gas service, it follows that these amounts would be deemed revenues. Under Section 3-121 of the Act, "gross revenues" for purposes of assessing the PUF tax, must fit into certain criteria, namely, 1) it must be collected pursuant to tariffs the company is required to file under section 9-102 (or as emergency rates), and 2) it must be derived from the company's intrastate public utility business. The Gas OBF Law and the Electric OBF Law each contemplate tariffing of the programs and the utility plans include tariffs of the OBF programs, therefore, the first criterion of the definition of "gross revenues" under the PUF Act appears to have been met. Further, by deeming the financed amounts under the OBF programs to be amounts owed for electric and gas service, the Gas OBF Law and the Electric OBF Law would appear to require that these amounts be considered derived from the company's intrastate public utility business. The operative term ("intrastate public utility business") in the second criterion of the definition of "gross revenues", is defined in Section 3-120 of the Act. That provision states:

> As used in Section 3-121 of this Act, the term "intrastate public utility business" includes all that portion of the business of the public utilities designated in Section 3-105 of this Act and over which this Commission has jurisdiction under the provisions of this Act.

Given the broad language of the preceding definition, coupled with the statutory characterization of these amounts as amounts owed for gas and/or electric service, the funds financed under the OBF program appear to constitute business revenue over which the Commission has jurisdiction under the provisions of the Act. In addition, Section 3-121 contains examples of exemptions for certain charges appearing on bills that the General Assembly excluded from the definition of "gross revenues." For example, Section 3-121 provides: "Gross revenue" shall not include any charges added to customers" bills pursuant to the provisions of Section 9-221, 9-221.1 and 9-222 of this Act…." 220 ILCS 5/3-121. If the General Assembly intended to exempt these funds due under the OBF programs from PUF taxes, it had only to add another exemption or alternatively, to forgo characterizing these amounts as amounts owed for gas or electricity service.

Staff anticipates that arguments against this interpretation will be made. The most important of which will likely be that these OBF amounts do not appear to be actual revenues that ought to be taxed. Reasonable enough, but the Legislature in Section (c)(5) of the Gas OBF Law and the Electric On OBF Law appear to have deemed them to be just that. In light of the language of the laws, it is difficult to argue anything else other than the law ought to have been written differently.

To the extent these potential counter arguments are persuasive, in Staff's view, a legislative change ought to be considered. While the PUF tax amounts applicable to the OBF programs may be relatively insignificant, they will be passed through to the participants of the OBF programs, and if they default, to ratepayers at large. In addition, Staff has not considered fully the possible application of the arguments of IDOR in connection with Gas Revenue Act to these PUF tax arguments nor has IDOR considered the application of the Gas OBF Law and the Electric OBF Law to the PUF Act. Preliminarily, Staff would note that the PUF tax does distinguish between electric utilities and other public utilities and treats such entities quite differently, presumably because of the restructuring of the electric industry. Therefore, it is not clear to Staff whether the General Assembly would be concerned about the continued differentiation created by the OBF programs, particularly in light of the fact that the PUF tax on amounts due under the OBF programs will not be significant.

Staff recognizes that there are costs in collecting and then refunding a tax that did not need to be paid. These costs need to be taken into consideration by the utilities in making their decisions. At the end of the day, all program costs will be evaluated based upon their reasonableness and prudence. In Staff's view, that prudency determination is not to be made in this proceeding but only when the utility seeks recovery under the automatic adjustment clause tariff and the Commission has before it actual expenditures. 220 ILCS 5/16-111.7(f) and 220 ILCS 5/19-140(f). Consequently, Staff does not agree with NS/PGL's request that the Commission find in this proceeding that costs incurred to receive a binding determination of the applicability of the Gas Revenue Tax Act and municipal utility tax are recoverable Program costs.

C. CUB's Position

While Nicor's Program Design Document does not directly address the application of the "gross receipts tax" to measures, in the response to CUB data request

2.02, Nicor stated it was intending to collect the gross receipts tax, citing Section 1 of the Gas Revenue Tax Act ("GRT Act"), which defines "gross receipts" and includes "cash, services and property of every kinds or nature." However, based on the Reply Comments filed by Staff and its own discussions with the Illinois Department of Revenue ("IDOR"), Nicor will no longer apply the GRT Act to its OBF Program charges shown on the customer's bill.

Staff solicited the opinion of the IDOR on its interpretation of whether the GRT Act applies to any OBF Program revenues. IDOR, at the request of the Office of General Counsel of the ICC, was asked to provide an opinion on whether loan payments included on utility bills, paid by consumers to public utilities and remitted by utilities to third-party lenders pursuant to the Gas OBF Law are included within "gross receipts" for purposes of the GRT Act. Staff Reply Comments, Attachment A at 1. Although IDOR noted it was a "close call," in IDOR's opinion constitutional issues weigh in favor of a conclusion that the loan payments are not included within "gross receipts" under the GRT Act. *Id.* IDOR supported their conclusion by reasoning that if OBF payments are included "gross receipts," a gas utility will pay a tax of 5% on the participant's loan payments. Attachment A at 5. Because the GRT can be passed through to customers, customers will pay a 5% tax on the loan payments as well. *Id.* However, since the tax base for loan payments made to electric utilities is established by kilowatt hours used, not a percentage of gross receipts, a decision to included OBF payments in "gross receipts" for purposes of the GRT Act will result in gas utilities and electric utilities not being taxed uniformly. *Id.*

For IDOR, this raises serious constitutional uniformity issues, and since it is not reasonable to conclude the Illinois General Assembly intended to discriminate against gas utilities, gas utility customers under the programs, and companies that manufacture and sell gasusing energy equipment, OBF payments should not be included in "gross receipts" and should not be subject to liability under the GRT Act. Attachment A at 5, 7. CUB agrees with IDOR's conclusion. CUB believes IDOR's memorandum should be sufficient to allow the Illinois Commerce Commission ("ICC" or the "Commission") to determine the applicability of the GRT Act to the OBF Program. However, if the Commission determines a binding opinion is necessary from IDOR, the costs associated with that opinion should be recoverable as program costs.

CUB believes that the GRT Act itself puts limitations on the meaning of "gross receipts" under the GRT Act. CUB explains that On-Bill Financing – the purchase of energy efficiency equipment designed to lower a customer's overall usage – is an inspection and servicing of equipment located on customer's premises. The late payment charge referred to in the draft Rider 31, Nicor Ex. 1.1 Part 4, would not be included in "gross receipts" as defined in the Gas Revenue Tax Act. CUB argues that the customer is the owner of the equipment, and the financial relationship is between the customer and the Financial Institution, which will service the loan. CUB is concerned that by subjecting measures funded through the OBF Program to the Gas Revenue Tax Act, Nicor raises the cost of the measure. CUB Comments 4. Taxing laws are to be strictly construed and not extended beyond the clear import of the language used; where there is any doubt in their application, they will be construed in favor of the

taxpayer. *Quad Cities Open, Inc. v. City of Silvis*, 208 Ill.2d 498, 508 (2004), citing *Getto v. City of Chicago*, 77 Ill. 2d 346, 359 (1979). The purchase of energy efficiency equipment designed to lower a customer's overall usage includes an inspection and servicing of equipment located on customer's premises. *Id.*

CUB agrees with Staff that the ICC should seek clarification with the applicable tax authorities to determine whether municipal utility taxes apply to OBF Program loan payments. However, as with the application of the GRT Act, CUB believes that the application of "gross receipts" within Article 11 of the Illinois Municipal Code to OBF Program loan amounts would present municipalities with the same concerns as expressed by IDOR, that is, the tax bases for natural gas and electric consumption are different. See, e.g. 65 ILCS 5/8-11-2(2a) and 2(3).

CUB believes the ICC has the authority to determine whether the PUF tax is applicable to OBF loan payments. Should the ICC determine that the PUF tax is applicable, CUB recommends the ICC clarify how the tax is to be treated for the purposes of the OBF Program. CUB believes that since the individual taking out the loan is not the only person to benefit from this program – there being societal benefits resulting from avoided natural gas costs – any applicable tax should be recovered by the utilities as a part of their program costs. Energy efficiency measures – such as those financed through an OBF Program – will reduce the overall amount of natural gas used, which has monetary and environmental benefits that will accrue to not just the individual customer but society at large.

D. AG's Position

The AG notes that Nicor applies the gross receipts tax to their Program. The AG agrees with CUB, however, that there is no basis in fact or law that supports Nicor's perspective on this issue. The AG agrees with CUB that the gross receipts tax should not be included in the Program or added to the cost of the measure.

E. Commission Analysis and Conclusion

At the outset, we note that this is an expedited proceeding to review the statutorily mandated OBF Program proposed by the utility. No determination of taxes is necessary under the relevant statute, but in the interest of administrative efficiency, we consider the issues raised.

We agree with Staff, and the various parties that filed comments on the tax issue, that the only tax over which the Commission has the jurisdiction to determine applicability, is the Public Utility Fund Tax, pursuant to Section 5/2-202 of the Act. To the extent a utility pursues a decision from another taxing authority on the applicability of another tax, the utility may petition for recovery of any prudently incurred expenses related to that pursuit through the utility's automatic adjustment clause tariff reconciliation.

Despite the ALJ's ruling requesting further comments on the tax issue, the arguments of the parties are not thoroughly vetted, i.e., ComEd does not respond to Staff's arguments regarding the applicability of taxes to the amounts financed under the OBF Program and Nicor states that it "takes no position on how the Commission should

decide whether the PUF tax is applicable." Nicor Reply to Additional Comments at 2. On the arguments actually made, however, we are not persuaded or convinced that the PUF tax is applicable. We turn now to the relevant statutory authority.

The Commission derives its authority for imposing the PUF tax from Section 5/2-202, which states in relevant part that:

> A tax is imposed upon each public utility subject to the provisions of this Act equal to .08% of its gross revenue . . . For purposes of this Section, "gross revenue" shall not include revenue from the production, transmission, distribution, sale delivery, or furnishing of electricity.

220 ILCS 5/2-202(c). Gross revenue is defined in Section 5/3-121, which states:

> As used in Section 2-202 of this Act, the term "gross revenue" includes all revenue which (1) is collected by a public utility subject to regulations under this Act (a) pursuant to the rates, other charges, and classifications which it is required to filed under Section 9-102 of this Act and (b) pursuant to emergency rates as permitted by Section 9-104 of this Act, and (2) is derived from the intrastate public utility business of such a utility.

220 ILCS 5/3-121. Public utility business is defined in Section 5/3-105, which states:

> (1) the production, storage, transmission, sale, delivery or furnishing of heat, cold, power, electricity, water, or light, except when used solely for communications purposes;
>
> (2) the disposal of sewerage; or
>
> (3) the conveyance of oil or gas by pipe line

220 ILCS 5/3-105 (a). In order for the PUF tax to apply to the amounts financed under the OBF or the Program Fees recovered, the two part definition of gross revenue would have to be satisfied.

First, the revenue at issue would have to be revenue collected pursuant to rates filed under Section 9-102 or 9-104. The OBF revenues are collected pursuant to either Section 5/19-140 or Section 5/16-111.7. For that reason alone, the OBF revenues are not subject to PUF. Further, in examining the definition of "gross revenues" under Section 3-121, we observe that it plainly speaks to "revenue which is collected . . . pursuant to the rates, other charges and classifications which it required to file under Section 9-102." 220 ILCS 5/3-121. This phrase, without either being enlarged or diminished, clearly refers to regulated rates and other forms of monetary consideration demanded in exchange for the provision of service. Nothing more is included in Section 3-121, and certainly it does not define "gross revenues" to include all revenues obtained from non-rate-related aspects over which the Commission may have jurisdiction. We have no authority to re-write a statute. It is the rule that a taxing statute is to be strictly construed and its language not extended nor enlarged beyond its clear import. Texaco-Cities Service Pipeline Company v. Sam McGaw, 182 Ill.2d 262, 275, 695 N.E.2d 481, 487 (1998).

To be entirely sure, however, our analysis requires consideration of the second part of the definition, which requires that the revenue be derived from the intrastate public utility business as defined in Section 3-105. We fail to see any connection between any part of the definition of public utility business with the statutory scheme laid out in the OBF laws wherein the utility acts as a conduit for the collection of money financed by an individual to purchase refrigerators, furnaces, etc.

Also, contrary to Staff's suggestion, there is no basis to expand the PUF tax law by construing language in the OBF law. We note that Staff relies on the sentence in the OBF laws which states that the amounts due under the program shall be deemed amounts owed for gas or electric service. When taken in context, as required by the rules of statutory construction, this sentence does not have anything to do with taxes. The entire paragraph from which it is taken states that:

> 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.

220 ILCS 5/19-140(c)(5). Simply stated, the language in this paragraph speaks to the customer's obligation. It explains, in relevant part, that if a customer were to move from the premises he or she must pay the utility bill in full and that bill includes "all amounts due" under the program. The characterization of these amounts due as "amounts owed" for utility service was clearly meant for purposes having no relationship to taxes. Indeed, the next following paragraph makes this clear where the General Assembly wrote that the utility retains its right to disconnect a participant that defaults on the payment of its utility bill. 220 ILCS 5/19-140(c)(6). At bottom, there is no express provision on taxes to be found in these paragraphs or in the whole of the statute. Thus, Staff's reliance on an isolated sentence and taken out of context provides no logical basis upon which to impose the PUF tax.

To the extent that Staff believes that there is a further basis upon which to explore the applicability of the PUF tax, it can propose the initiation of a new and separate proceeding.

Staff maintains that the only issue to be decided in this docket, or the related dockets, is that if any taxes were to apply, whether these taxes should be imposed on the individual participant or collected from all ratepayers. In reality, any energy efficiency measure that is purchased by a consumer will presumably be subject to a sales tax. It makes no sense that further taxes should be applied to that purchase. In the event that some other tax is applied, however, it is appropriate that these taxes be recovered from all ratepayers. It would be a great disincentive to a potential participant

in this program if they were told that they would be required to pay additional taxes because they chose to finance through their utility bill instead of just outright purchasing the item. This would diminish the purposes, intents, and goals of the OBF statutes.

X. Findings and Ordering Paragraphs

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

(1) Northern Illinois Gas Company d/b/a Nicor Gas Company is an Illinois corporation engaged in the transportation, purchase, storage, distribution and sale of natural gas to the public in Illinois and is a public utility as defined in Section 3-105 of the Public Utilities Act;

(2) the Commission has jurisdiction over the parties and the subject matter herein;

(3) the findings of fact and conclusions of law set forth in the prefatory portions of this Order are supported by the record herein and are hereby adopted as findings of fact and conclusions of law;

(4) the On Bill Financing Program proposed by Northern Illinois Gas Company as modified herein should be approved;

(5) the tariff proposed by Northern Illinois Gas Company, Rider OBF as modified herein, should be approved;

(6) Staff should reconvene the workshops after the completion of the FI RFP process;

(7) Northern Illinois Gas Company should file sample loan documents, the interest rate and the list of eligible measures prior to the initiation of the Program;

(8) Northern Illinois Gas Company should provide to Staff, for review and approval, the proposed consumer information that will be made available to potential participants;

(9) the Independent Evaluator should convene workshops to receive feedback from all interested stakeholders;

(10) any motions, objections or petitions in this proceeding that have not specifically been ruled on should be disposed of in a manner consistent with the findings and conclusions herein.

IT IS THEREFORE ORDERED that the On Bill Financing Program proposed by Northern Illinois Gas Company and modified herein, is approved.

IT IS FURTHER ORDERED that the proposed tariff, Rider OBF, as proposed by Northern Illinois Gas Company and modified herein, is approved.

IT IS FURTHER ORDERED that Staff of the Commission is directed to reconvene the workshops following completion of the FI RFP process.

IT IS FURTHER ORDERED that following completion of the RFP process, Northern Illinois Gas Company is directed to file the agreed to sample loan documents, the interest rate and its list of eligible measures prior to initiation of the OBF Program.

IT IS FURTHER ORDERED that prior to initiation of the OBF Program, Northern Illinois Gas Company is directed to provide to Staff, for review and approval, the proposed consumer information that will be made available to potential participants.

IT IS FURTHER ORDERED that workshops should be convened by the Independent Evaluator during the evaluation process in order to receive feedback from all interested stakeholders.

IT IS FURTHER ORDERED that any motions, objections or petitions in this proceeding that have not been specifically ruled on are disposed of in a manner consistent with the findings and conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED:	April 16, 2010
BRIEFS ON EXCEPTIONS DUE:	April 28, 2010
REPLY BRIEFS ON EXCEPTIONS DUE:	May 3, 2010

Leslie Haynes,
Administrative Law Judge