

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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

BRIEF ON EXCEPTIONS OF THE PEOPLE OF THE STATE OF ILLINOIS

Pursuant to the Illinois Commerce Commission (“Commission” or “ICC”) rules of practice, 83 Ill. Admin. Code § 200.830, and the Administrative Law Judges (“ALJs”) Schedule of February 18, 2010, the People of the State of Illinois (“the People”), through Attorney General Lisa Madigan (“AG”), submit their Brief on Exceptions in this proceeding. This brief takes exception to certain conclusions in the ALJs Proposed Order (“PO”) of April 16, 2010 regarding Commonwealth Edison Company (“ComEd” or “Company”) and its petition for approval of an On-Bill Financing Program (“OBF Program” or “Program”). The People respectfully request that the Commission adopt the modifications to the Proposed Order set forth below in its Final Order in this proceeding.

The People also request, pursuant to Section 9-201(c) of the Public Utilities Act (“PUA or “Act”), 220 ILCS 5/101 *et seq.* that they be given the opportunity to present oral argument on the issues of a Budget Cap (to estimated Program costs), Underwriting Criteria (credit checks), and Security Interest.

INTRODUCTION

The People and other intervenors have been clear throughout the On-Bill Financing workshop process that in order for the Commission to approve any On-Bill Financing Program proposal, such a proposal needs to be cost effective for ratepayers as

well as for the Program's participants. This threshold condition stems from the General Assembly's core requirement that all rates or charges demanded for any service rendered or to be rendered by a public utility shall be just and reasonable, that unjust or unreasonable charges are unlawful, and that all rules and regulations made by a public utility affecting or pertaining to its charges to the public shall be just and reasonable. 220 ILCS 5/9-101.

As the Commission reviews the proposed programs, it is important to keep in mind that Section 16-111.7 of the Act permits utilities to 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." 220 ILCS 5/16-111.7(f). This means that *all* of ComEd's residential ratepayers, whether they take advantage of the program or not, will have their rates adjusted to cover the costs of an on-bill program through Rider EEP. *Id.* The changes in customer rates associated with the recovery of on-bill program costs are "rates" just like other charges on a customer's bill. As such, those rates must be "just and reasonable."

That the most fundamental principle underlying the Commission's ratemaking responsibilities applies to its jurisdiction over the On-Bill Financing programs cannot be in dispute. Notwithstanding this essential tenet of utility regulation, ComEd's Petition proposes estimated program costs that at \$4.177 million, or approximately 168% of the \$2.5 million amount provided for the Program under Section 16-111.7(c)(7) of the Act. The Company's proposal to spend more on the administration of the program than the total pool of money available to benefit program participants is absurd by any measure and the Commission should reject these proposed costs.

Not only is the People's position that program costs should not exceed program benefits consistent with Section 9-101's "just and reasonable" standard, it is further supported by rules of statutory construction.

Although the legislative intent is sought primarily from the language employed in the statute, the judiciary may look also to the statutory objective and the evils sought to be remedied and then arrive at a common-sense construction. [citation omitted] Where several constructions may be placed upon a statute, the court should select that interpretation that leads to a logical result and avoid that which would be absurd, for the presumption exists that the legislature in passing a statute did not intend absurdity, inconvenience, or injustice. *People v. Mullinex*, 125 Ill.App.3d 87, 89 (2nd Dist. 1984).

The Proposed Order's interpretation of the Commission's duty under the Public Utilities Act ("PUA" or "Act") is, in contrast, wholly at odds with the "just and reasonable" standard that governs all Commission decisions. The Order's repeated deference to the judgment of the sponsoring utilities and the program's yet-to-be-determined lenders to determine the operating parameters of the program abdicates the Commission's ultimate responsibility to ensure that the program's rates are lawful and that the program itself comports with the Act. Furthermore, the Order's failure to scrutinize specific critical components of ComEd's proposed program is tantamount to interpreting the General Assembly's reference to "Commission-approved" on-bill programs as a task on a checklist rather than a directive to ensure that ratepayer dollars are spent wisely. *See* 220 ILCS 5/16-111.7(b) and 220 ILCS 5/19(b).

Instead of adopting the Proposed Order's recommendations regarding administrative costs, the Commission should: 1) cap all program administrative costs at no greater than 10% of the program dollars available; or 2) deny ComEd's approval of its

Program and direct them to re-submit their proposed Program including reasonable program administrative costs.

In addition to its excessive proposed program costs, ComEd's program was deficient in other areas. As discussed further below, the utility: 1) did not include sample contracts and agreements as required under 220 ILCS 5/16-111.7 (d)(4); 2) submitted a Program Design Document lacking in sufficient detail to properly align incentives among the Lender ("FI" or "Lender"), vendor, and ComEd in order to keep the program costs reasonable, avoid customer confusion, and provide enough customer benefits to make the Program worthwhile; and 3) provided a Request For Proposal ("RFP") that reads more like a Request For Information ("RFI") and lacks sufficient specific detail for a Lender to understand what the program will include or what the Lender's obligations will be. The lack of detail is particularly troublesome in regard to the proposed excessive program costs and the alignment of incentives associated with a security interest and underwriting criteria (credit checks). Accordingly, the Commission should require ComEd to make the changes described below before approving the Company's Program.

EXCEPTION #1: The Commission should: 1) cap all program administrative costs at no greater than 10% of the program dollars available; 2) deny approval of ComEd's Proposed Program; and 3) direct the utility to re-submit their proposed Program including reasonable program administrative costs.

I. EXCEPTIONS

A. Budget Cap

The Proposed Order states, "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." PO at 34. This narrow view

of Section 16-111.7 should be rejected. It is both inconsistent with prior Commission rulings that capped administrative expenses in energy efficiency programs, as well as principles of statutory interpretation.

As previously noted in the People's Initial Comments:

ComEd estimated its three-year program costs at \$4.177 million, or approximately 168% of the \$2.5 million amount provided for the Program under Section 16-111.7(c)(7) of the Act. The Company's proposal to spend more on the administration of the program than the total pool of money available is absurd by any measure.

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

AG Corrected Initial Comments at 5.

It is absurd to ask ratepayers to foot the bill for \$1,650 in program costs to enable them to buy a \$1,000 refrigerator. In construing a statute, courts presume that the legislation did not intend absurdity, inconvenience or injustice. *DeLuna v. Burciaga*, 223 Ill.2d 49, 60, 857 N.E.2d 229 (2006). Requiring ratepayers to pay more in administrative costs for a program than the energy efficiency investment dollars to be provided through the program can only be characterized as absurd in every respect.

As noted above in the Introduction of these Exceptions, the Commission has an obligation to ensure that the charges assessed ratepayers are just and reasonable. 220 ILCS 5/9-201. Both Section 16-111.7 and the Public Utilities Act as a whole demand

¹ Assuming the average cost of a refrigerator is \$1,000
2,500 refrigerators (potential refrigerators bought under the Program X \$1,000 (assumed average cost of refrigerator) = \$2.5 million (Program amount available)
\$4.177 million (Estimated Program Costs/2,500 (potential refrigerators bought) = \$1,670 (passed through to rate payers) AG Revised Initial comments at 5.

that the Commission approve only cost-effective on-bill financing programs proposed by Illinois utilities. As the Commission reviews the proposed programs, it is important to keep in mind that Section 16-111.7 of the Act permits utilities to 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.” 220 ILCS 5/16-111.7(f). This means that *all* of ComEd’s residential ratepayers, whether they take advantage of the program or not, will have their rates adjusted to cover the costs of an on-bill program through Rider EEP. *Id.* The changes in customer rates associated with the recovery of on-bill program costs are “rates” just like other charges on a customer’s bill. As such, those rates must be “just and reasonable.” This position is supported by Section 9-101 of the PUA, which states:

All rates or other charges made, demanded or received by any product or commodity furnished or to be furnished or for any service rendered **or to be rendered shall be just and reasonable**. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful. All rules and regulations made by a public utility affecting or pertaining to its charges to the public shall be just and reasonable. (emphasis added)

220 ILCS 5/9-101.

Only prudently incurred expenses are recoverable from ratepayers. While not *specifically* provided in Section 16-111.7, it is the Commission’s duty to establish limits *up front* some sort of guidance on permissible spending for administrative costs of the program so that a utility has some idea as to what amount can and should be spent on a proposed on-bill program. Neither ratepayers nor the utilities benefit if the Commission gives the green-light on excessive spending. Unfortunately, the Proposed Order’s refusal to provide such guidance in numerous areas of the proposed program jeopardize both

ratepayers as a whole, and the individuals who take advantage of OBF Programs.

Acceptance of anything less than cost-effective on-bill-financing programs jeopardizes the OBF Program as a whole, and the future evaluation of energy efficiency spending by the General Assembly.²

Simply because Section 16-111.7 provides no *explicit* cap on the administrative costs of an on-bill-financing program does not mean the Commission should wait until the reconciliation stage of a rider proceeding, as the Proposed Order recommends, to provide direction and guidance to a utility offering the programs as to what constitutes reasonable spending. There is plenty of Commission precedent for doing just that. For example, in the 2007 Peoples Gas Light & Coke Company/North Shore Gas Company consolidated rate case, the Commission capped administrative costs of the proposed utilities' program at 5 percent, despite the fact that there was no statutory cap, let alone a gas energy efficiency statute at the time, prescribing appropriate cost caps. ICC Docket Nos. 07-0241, 07-0242, Order of February 5, 2008 at 138. Similarly, in the most recent Northern Illinois Gas Company ("Nicor") rate case, the Commission approved a 5% cap on administrative costs in Nicor's proposed program, again, despite the fact that at the time there was no statutory cap, let alone a gas energy efficiency statute at the time. ICC Docket Nos. 08-0363, Order of March 25, 2009 at 151, 156-159. The Commission also concluded that a rulemaking should commence to establish specific guidelines for gas energy efficiency programs. In

² Section 16-111.7 requires an independent evaluation of on-bill programs after 3 years of a program's operation. The evaluator's report must be supplied to the Commission no later than 4 years after the date on which the program commenced, to be followed by a Commission report to the General Assembly. 220 ILCS 5/16-111.7(g).

doing so, the Commission noted that “utilities need to know that what they spend will not be subject to an arbitrary prudence review.” *Id.* at 159.

This docket is the opportunity for the Commission to establish some sort of boundaries or guidance on permissible program costs of on-bill financing programs. The Commission’s final Order should: 1) cap all program administrative costs at no greater than 10% of the program dollars available; and 2) direct ComEd to re-submit their proposed Program including reasonable program administrative costs.

For all the forgoing reasons, The Proposed Order should be revised to provide for just and reasonable program costs associated with ComEd’s Program. Therefore, the People propose that Section X. F. at page 34 be modified as shown below.

The AG’s request to cap Program Fees at 10% of the program dollars is necessary to insure costs associated with the Program in the form of rates passed through to ratepayers as Program costs are just and reasonable. is denied. It is contrary to the express statutory language that the utilities are allowed to recover all of their prudently incurred costs. Furthermore, All costs that the utilities seek to recover from ratepayers will be subject to a prudence review in the annual reconciliation proceeding for the utility’s automatic adjustment clause rider.

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

EXCEPTION #2: The Company did not provide any sample contracts as was required under 220 ILCS 5/16-111.7 (d)(4) of the On-Bill Financing Law.

B. Filing requirements – Sample Contracts

Section 16-111.7 of the Act requires the Company to provide “sample contracts and agreements necessary to implement the measures and [P]rogram”

220 ILCS 5/16-111.7 (d)(4); Proposed Order at 17. Instead of providing this required and vital information, however, the Proposed Order notes that “ComEd’s proposed Program does not include sample contracts and agreements nor does it directly address the requirement. *Id.* Instead ComEd opines, “it joins the other utilities in their anticipation that lenders will provide standard loan documents as part of the RFP.” *Id.*

The OBF Law does not allow for ComEd to delegate its responsibility to provide sample contracts and agreements to another entity, such as the lender/bank, at some unspecified point in time. In fact, the People believe the purpose of the workshop process and this docketed proceeding was to give Staff, the Parties and ultimately the Commission a chance to review the agreements or contracts that would spell out the statutory rights and obligations of the players affected under the Program, and to assure the proper alignment of incentives among the utility, the lender and the customer taking advantage of the program. It is absurd to treat this important OBF Law requirement as a discussion check list item, rather than a required program element. In essence, the agreement or contract needed to be produced prior to Commission approval not after. A general non-descriptive discussion in the RFP, Program Design Document (“PDD”), and Company testimony of what might be in a contract is not nearly enough information to allow the Commission to approve ComEd’s Program under the OBF Law.

For all the forgoing reasons, The Proposed Order should be revised and modified with respect to ComEd’s failure to provide the necessary and statutorily required

information in their OBF Program. Therefore, the People propose that Section IV. H. at page 17 be modified as shown below:

The Commission finds ComEd not only failed to meet their statutory requirement to timely provide this information, but by excluding this vital information it barred Staff, the parties and the Commission from reviewing and weighing in on whether or not statutory obligations and rights as well as the proper alignment of incentives complied with the OBF Law. ComEd simply failed to provide “sample contracts and agreements necessary to implement the measures and program” as required under 220 ILCS 5/16-111.7(d)(4). ~~to have answered Staff’s concern and further orders the Utility to file standard loan documents once they are finalized with the FI.~~

EXCEPTION #3: The Underwriting Criteria (Credit Checks) section of the Proposed Order fails to take into account the best interest of participants and ratepayers and does not ensure the proper alignment of incentives.

C. Underwriting Criteria

Company witness Tim Melloch testified that:

although the details of the credit check process will be negotiated and finalized through the RFP process with the FI (financial institution), it is anticipated that the following criteria will be applied to loan applicants: 1) lender will obtain confirmation from ComEd that applicant is currently a ComEd customer; 2) lender will confer with ComEd to determine whether applicant is current with respect to utility bill payment and ascertain any late payment history; 3) lender shall undertake a confirmation of applicant’s income and property ownership; 4) lender shall calculate a debt ratio to disposable income, the result of which must not exceed 50%; 5) lender shall perform a disposable income calculation to include a prudent fraction (e.g. 70% of estimated energy cost savings associated with the project); 6) lender shall obtain applicant’s FICO score, with minimum score levels to be determined during negotiations with the FI; and 7) lender may make a security interest filing on behalf of ComEd for the project equipment at ComEd’s discretion. Proposed Order at 11; ComEd Ex. 1.0 at 22-23.

The Proposed Order states that “the statute itself recognizes that the FI will be conducting credit checks or other appropriate measures to limit credit risk.” PO at 33.

This statement implies that the Commission has no control or can offer no guidance over what terms are appropriate given the statute. The People respectfully disagree. The People believe there is a great benefit in establishing credit check guidelines for the utility-issued RFP's in an effort to ensure that the interest of limiting ratepayer risk for default loans is balanced with the desire to enable as many ratepayers as possible to qualify for the on-bill loans. Otherwise the FI would likely have a financial incentive to increase their profits through cost intensive credit checks that inflate program cost fees passed through to rate payers without a corresponding benefit to reducing bad debt exposure.³

CUB, too, is concerned that the credit check practice “will add unnecessary costs to the Program.” CUB/City Initial Comments at 6. Additionally, CUB is concerned that people who might benefit from energy efficiency measures could be denied access to the program because they have less than ideal credit scores, even though it was demonstrated at the workshop process that individuals with poor credit scores still often pay their utility bills. *Id.*

The Proposed Order states, “The FI is guaranteed to recover its investment pursuant to the statutory scheme and it [is the] ratepayers that will be left footing the bill for bad loans.” Proposed Order at 33. The Proposed Order, however, misses the bigger risk here. If the FI receives substantial profit in the form of credit check fees, otherwise credit-worthy participants may be excluded from the Program. In addition, it is the rate

³ ComEd witness Tim Melloch stated, “the utilities have prepared a Proposal Evaluation Worksheet...which demonstrates the preference for bids containing the most favorable rates, fees and terms” ComEd Ex. 1.0 at 16 and 17. The Proposal Evaluation Worksheet values Program fees to be paid by utilities at just 5%. *Id.* at 17.

payers who will be left footing the bill for expensive credit checks that provide minimal value.

The People recommended in their Reply comments that the Commission should require the Petitioner utility to apply a tiered-credit-check approach that: 1) limits the requirement to prior bill payment history for measures under a \$1,000; and 2) applies a specific formula or methodology that does not inflate the interest rate or cause additional costs to be socialized to rate payers for measures greater than \$1,000. The specific credit check methodology should be stated clearly in the Program Design Document, ComEd Attachment A, as well as the RFP (ComEd Ex. A.2). AG Revised Initial Comments at 9.

The PO should be revised to take into account the best interest of participants and ratepayers, and ensure the proper alignment of incentives among all parties affected. Therefore, the People propose that Section X. C. at page 33 of the Proposed Order be revised as shown below:

~~Several options have been proposed for determining the credit-worthiness of potential program participants. The Commission agrees with ComEd the People's proposal, and ComEd is directed 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 passed through as program costs for measures greater than \$1,000. 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.~~

EXCEPTION #4: The Commission should direct ComEd to reflect in its RFP and contracts or agreements when it would exercise its right to obtain a security interest.

D. Security Interest

The PO states, "[t]he 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." PO at 34. The Proposed Order, however, misinterprets the People's position regarding the utilities' statutory right to obtain a security interest. As described in the On-Bill Law, "the electric utility shall retain a security interest in the measure or measures purchased under the program" 220 ILCS 5/16-111.7(c)(6). No party or Staff ever disputed ComEd's statutory right to obtain a security interest. Instead the People stated:

The People believe ComEd's recognition of the cost associated with perfecting a security interest, for example that it "may be cost-prohibitive with respect to certain measures", is reasonable. ComEd, however, should spell out when it intends to perfect its security interest...

AG Reply Comments at 7.

Additionally the People stated:

There is no requirement that the utility has to file or perfect a security interest or that the lender needs to be responsible for the filing of the security interest. Therefore, the People expect to see ComEd address in its Reply Comments, how it intends to keep costs reasonable for the Program when "**perfecting a security interest may be cost-prohibitive with respect to certain measures.**"

Id. at 8.

The Proposed Order states that, "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." Proposed Order at 34. The People, however, believe that this

is true only to the extent that the cost associated with filing, perfecting, repossessing, storing and selling a measure is reasonable compared to the amount a utility may potentially recover. In fact ComEd witness Tim Melloch recognizes this fact, when he stated:

... it would likely be cost-prohibitive for ComEd to repossess and physically retain ownership over such refrigerators. Additionally, the likelihood of recovering any significant monies by executing such a security interest on a refrigerator is remote, or at least unlikely to cover the costs of fully executing such a security interest...^[4]

ComEd Ex. 1.0 at 26.

It is up to ComEd to spell out their methodology to the FI through the RFP and associated contracts agreements as to when ComEd will require the FI to perfect a security interest, and not the other way around. Incentives are misaligned if the FI receives substantial fees associated with security interest filings, but a clear methodology as to when it would exercise its right to perfect such interests is not provided.

The AG never disputed ComEd's statutory right to a security interest under the OBF Law. Instead the People, believe ComEd needs to reflect in their RFP, contracts or agreements *filed with the Commission and prior to approval of their Program* when it would exercise its discretion to obtain a security interest.

The PO should be corrected to maintain accuracy and not misstate the position of a party. Additionally, the PO should be revised to take into account the best interests of participants and ratepayers allowed for under the OBF Law and assure the proper alignment of incentives. Therefore, the People propose that Section X. E. at page 34 be corrected as shown below.

⁴ ComEd currently pays \$25 for a used refrigerator under their smart ideas refrigerator recycling program.

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 as owed from the individual participant or, if necessary, attempt to repossess the item, but only to the extent such associated costs are reasonable compared the amount ComEd could potentially collect. ~~ComEd.~~ The Commission directs ComEd to reflect in their RFP, contracts or agreements filed with the Commission prior to approval of their Program when it would exercise its discretion to obtain a security interest. ~~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 ComEd 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.~~

EXCEPTION #5: A focused level of customer education with reasonable program costs could provide important consumer protections even though there is no statutory requirement for such education to be a part of the Company's OBF Program.

E. Customer Education

This section of the Proposed Order highlights the inconsistent interpretation of the OBF statute within the four corners of the document. As noted above, the Proposed Order rejects providing guidance to the utilities regarding permissible program costs, arguing that no such language exists in Section 16-111.7. On the other hand, the Proposed Order adopts Staff's recommendation to require utilities to work with Staff to develop specific information that will be provided to residential customers, despite the absence of any such requirement in the statute. *See* PO at 19; 220 ILCS 5/16-111.7 (electric) and 220 ILCS 5/19-140 (gas). The People supported Staff's recommendation that "[c]ustomers who take advantage of the proposed OBF [P]rogram should be

informed about how their participation may affect their bill when changes in utility service occur.” Staff Comments at 23; PO at 19; AG Verified Reply Comments at 8; PO at 19.

The Proposed Order needs to be revised and modified regarding the non-statutory requirement directing ComEd to develop with Staff, customer education regarding the On-bill Program. Furthermore, in accordance with the AG’s recommendation regarding program costs described in their Comments and in this BOE, the PO should be modified to ensure that any program costs related to customer education must be just and reasonable. Therefore, the People propose that Section IV. K. at page 19 be modified as shown below:

Commission Analysis and Conclusion

The Commission finds Staff’s customer education concerns to be valid. The On-Bill Financing Statute has no provision for requiring ComEd to develop customer education or to provide such information to its customers. ~~and~~ The Commission, however, directs the Company to work with Staff to develop the information that will be provided to customers. The reasonable costs of associated with providing this information is a program cost recoverable through the utility’s automatic adjustment clause tariff.

EXCEPTION #6: The Proposed Order misinterprets the People’s position regarding being a named member or voting member of the RFP Evaluation Committee.

F. Selection

1. Intervenors as Members of Evaluation Committee

The Proposed Order again misinterprets the People’s position in this docket in its conclusion that “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.” Proposed Order at 33.

CUB in their Comments proposed “that it, the AG and Staff be named members of the RFP Evaluation Committee...” CUB/City Initial Comments at 7. The People in their Reply Comments were merely responding to CUB’s recommendation. The People, CUB, and other entities have been involved with countless meetings, committees, and collaboratives ranging from UCB/POR to Smart Grid and the time commitment for such participation is significant. Again in response to CUB’s recommendation, the People stated, “The People would be willing to join the RFP evaluation Committee, but believe that in order to make a meaningful contribution [t]o the evaluation process, the AG and CUB should be voting members of the committee and not just advisors.” AG Reply Comments at 4.

To be sure, the People are not clear what the Proposed Order means in stating “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[lender].” Proposed Order at 33. On the contrary, the People believe their and other stakeholders participation has brought significant value to the process time and time again.

The PO should be corrected to maintain accuracy and not misstate the position of a party. Therefore, the People propose that Section X. B. 1. at page 32 and 33 be corrected as shown below.

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.~~

ComEd proposes to update interested stakeholders throughout the RFP process concerning, for example, the types of responses it is receiving from lenders, which would be in addition to ComEd's earlier proposal that Staff reconvene the workshop participants after the RFP process is concluded. The Commission finds this to be an adequate response to CUB/City's concerns regarding information sharing.

G. Non-Substantive Changes

The ALJ's Proposed Order contains a non-substantive error and the People propose that the second to last paragraph for Section I. at page 1 be corrected as shown below:

220 ILCS 5/16-111.7(b-5); 220 ILCS 5/19-140(b-5).

Also, the Proposed Order is incomplete in describing the AG's filing of their Initial Comments and Reply Comments and the People propose that the second to last paragraph for Section I at page 2 be corrected as shown below.

On March 2, 2010, Staff and the AG filed Initial Comments. On March 3, 2010, CUB/City filed Initial Comments. On March 4, 2010, the AG filed Revised Initial Comments. On March 12, 2010, BlueStar, Staff and CUB/City filed Reply Comments. On March 15, 2010, the AG filed Reply Comments⁵ ComEd filed Reply Comments on March 22, 2010.

CONCLUSION

For the reasons discussed herein, the People respectfully request that the Commission modify the Proposed Order in accordance with the arguments and exceptions language provided herein.

⁵ The AG's filing on March 15, 2010 was made to correct a filing error.

Respectfully submitted,

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

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

Date: April 28, 2010