STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company d/b/a	**:**	
AmerenCILCO, Central Illinois Public	**:**	
Service Company d/b/a AmerenCIPS and	**:**	**10-0095**
Illinois Power Company d/b/a AmerenIP	**:**	
	:	
Petition for Approval of On-Bill	**:**	
Financing Program.	**:**	

ORDER

June 2, 2010

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Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS and Illinois Power Company d/b/a AmerenIP	:	**10-0095**
Petition for Approval of On-Bill Financing Program.	:	

ORDER

By order of the Commission:

On February 2, 2010, Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS and Illinois Power Company d/b/a AmerenIP (collectively "Ameren" or "the Utilities" or "AIU") filed a Petition, pursuant to Section 16-111.7 of the Public Utilities Act (the "Act") (220 ILCS 5/16-111.7) and Section 19-140 of the Act (220 ILCS 5/19-140), requesting that the Illinois Commerce Commission ("Commission") issue an order, on or before June 2, 2010, approving Ameren's On-Bill Financing Program ("OBF Program" or "Program"). Ameren also requests that the Commission approve the proposed tariff changes to its Rider EDR and GER and its electric and gas Customer Terms and Conditions, which are required to implement the Program.

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). The petition for Northern Illinois Gas Company established Docket 10-0096; the petition of Commonwealth Edison Company established Docket 10-0091; and the petition of North Shore/Peoples Gas established Docket 10-0090.

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 5/19-140(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. On February 2, 2010, Ameren filed its Petition, Direct Testimony, Program Design Document ("PDD"), and tariff revisions (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 People of the State of Illinois ("AG"), BlueStar Energy Services, Inc. ("BlueStar"), and the Illinois Competitive Energy Association ("ICEA"). 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.

With Ameren's Petition, it included: Attachment A, Rider EDR (electric) and Rider GER (gas); Exhibit 1.0, Direct Testimony of Kenneth Woolcutt, Managing Supervisor of Illinois Energy Efficiency; Exhibit 1.1, the Program Design Document ("PDD"); Exhibit 1.2, Ameren's OBF Financial Institution ("FI") Request for Proposal ("RFP"); Exhibit 1.3, List of Available Program Measures; Exhibit 1.4, Sample Measure Methodology; Exhibit 1.5a, Ameren's Energy Efficiency-Demand Response Plan as approved in Docket 07-0539; Exhibit 1.5b, Ameren's Gas Energy Efficiency Plan as approved in Docket 08-0104; Exhibit 1.6, Conservation Services Group Memo; Exhibit 1.7 Conservation Services Group Biography; Exhibit 1.8, Construction Journal Article; Exhibit 1.9, Evaluation Management and Verification Program; Exhibit 1.10, Morgan Measure Library, DS More™ Tool; and Exhibit 2.0 Direct Testimony of Leonard M. Jones, Manager of Rates and Analysis.

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

The ALJ's Proposed Order was served on April 16, 2010. Briefs on Exceptions were filed on April 28, 2010 by Staff, the Company, CUB and the AG. Replies to Exceptions were filed by Staff, the Company and the AG on May 3, 2010.

II. Applicable Law

The Company seeks approval of the Proposal, pursuant to the Electric OBF Law and the Gas OBF Law. These laws are virtually identical except that references to the

word “gas” in the Gas OBF Law are references to the words “electric” or “electricity” in the Electric OBF Law. The OBF Laws provide 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, an electric [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, as that term is defined in Section 16-111.5 of this Act, who own a residential single family home, duplex, or other residential building with 4 or less units, or condominium at which the electric [gas] service is being provided (i) to borrow funds from a third party lender in order to purchase electric [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 electric [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 16-102 of this Act, who own the premises at which electric [gas] service is being provided may be included in such program. After receiving a request from an electric [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 electric [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 electric [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 electric [gas] energy efficiency measures that will be eligible for on-bill financing. An eligible electric [gas] energy efficiency measure ("measure") shall be defined by the following:

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

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

(2) The electric [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 electric [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 electric [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 electric [gas] service from the utility or the participant's request to terminate service at such premises, the participant shall pay in full its electric [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 electric [gas] service.

(6) The electric [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 electric [gas] utility bill, the electric [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 16-111.8 of this Act. In addition, the electric [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 an electric [gas] utility or electric [gas] utilities under a single holding company, provided that the electric [gas] utility or electric [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 electric [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 electric [gas] utility.

> (f) An electric [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 8-103 of this Act.
>
> (g) An independent evaluation of a program shall be conducted after 3 years of the program's operation. The electric [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 electric [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) An electric [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 electric [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 electric [gas] supply shall not disqualify a customer from participation in the utility's on-bill financing program. Customers of alternative retail electric [gas] suppliers may participate in the program under the same terms and conditions applicable to the utility's supply customers.

220 ILCS 5/16-111.7 and 220 ILCS 5/19-140.

III. Ameren's Proposed OBF Program

A. Overview

Ameren witness Woolcutt provided testimony in support of Ameren's filing in compliance with Section 16-111.7 and 19-140 of the Act. The filing details the

implementation of those requirements and compliance with the statute. He states that Ameren welcomes this opportunity to implement an OBF Program for energy efficiency measures, which have the potential to provide benefits to distribution companies and all retail electric customers.

B. Identification of Eligible Participants

Ameren's Program targets the residential sector: single family and multi-family up to four units, or condominium at which the electric service is being provided. Multi-family housing with greater than four units are not eligible. Customers/borrowers must be property owners and account holders. Renters are not eligible. Rental property is eligible only where the property owner is the account holder and borrower.

According to Ameren witness Woolcutt, Ameren does not have a commercial rate class in its current tariff structure that isolates or defines the "small commercial customer". Ameren's electric Delivery Service ("DS") rates have threshold kilowatt levels, and gas DS rates have threshold use/day levels. It could be very well be the case that a "small commercial customer" is a DS-2 or GDS-2 customer, but such definition could also include other rate classes, further complicating administration of the Program. Further, he states that the Utilities interpret from the statute that offering the Program to this group of customers is not mandated. In addition, this Program is limited to being a three year pilot which does not warrant the comprehensive changes required to re-structure our rate classes consistent with specifically defined small commercial customer as referenced in the Act.

A. Details of Ameren's OBF Program

1. Recommended Eligible Energy Efficiency Measure(s)

Mr. Woolcutt testifies that Ameren interprets "cost effective energy efficiency measures" to include those measures that pass the total resource costs test as described in the Act (220 ILCS 5/8-104, Section 8-104(b)), and which are part of Ameren's EE portfolio. "No required initial up front payment" is interpreted to mean customers are not required to make a down payment in order to participate in the Program. However, up front or down payments by the customer are voluntary, are not prohibited and may be encouraged. The phrase "to pay the cost of those products and services over time on their Ameren bill" is interpreted to mean customers are allowed to pay the Loan associated with the products and services in the same manner as they pay other charges on their Ameren bill. The phrase "over time" is defined as the duration of the loan. The reduced usage and reduced charges associated with an energy efficiency measure is assumed to occur over the period of time in which the measure is in service or in effect. In other words, it is assumed customers receive the benefits of the measure over the useful life of the measure.

Further he testifies that a list of available program measures is attached as Ameren Exhibit 1.3. The phrase "measure would be applied to or replace electric (or gas) energy using equipment" in subsection (c)(1)(A) is interpreted to mean an energy efficiency measure that is physically connected to, or makes an impact on, or replaces equipment thereby resulting in improved energy efficiency. One example of an "applied to" measure is the proper sizing of new energy efficient HVAC equipment. Application of

"Manual J" methods is a measure that utilizes training, software and/or third-party services to assist HVAC contractors appropriately size HVAC equipment for meeting the heating and cooling demand of a building or home. The Manual J standards are endorsed by the Air Conditioning Contractors of America ("ACCA") and Refrigeration Institute ("ARI").

Subsection (c)(1)(B) is interpreted to mean:

A) Energy cost savings will be calculated as follows. First, energy cost savings will be estimated for the EE measure(s) to be installed for the customer. The Net Present Value of the energy cost savings will be calculated over the useful life of the EE measure(s), using current energy prices without applying any estimated inflation factor to the value of the energy estimated savings. This becomes the maximum loan amount (including interest). 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. The AIU rebates, other applicable rebates or incentives and applicable federal income tax credit rebate which the customer will receive will be estimated. Total measure cost(s) 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.

C) Cost-effectiveness and hence eligibility of the EE measure(s) for Program financing will be determined by the following formula: Net present value of (A) must be greater than or equal to the net present value of (B) for the proposed EE measure(s) to qualify.

D) The AIU further proposes that the net present value of (A) will determine the maximum loan amount that can be provided under the Program and the customer may voluntarily choose to pay a portion of the capital costs of the measures directly, as a capital contribution, in order to proceed with implementing the EE measure(s). Customers may choose to do this to reduce the loan amount or length, and because of other values which the EE measure(s) provide, including meeting energy system replacement needs and improving home comfort and energy services. Because this would be voluntary on the part of the customer, meet customer demand, help open the important replacement market, and keep the AIU responsibility for the subject loan proportional to energy savings, the AIU recommends that this approach to determining eligibility be approved as part of the Program.

Ameren believes the net present value costs of the loan principal and interest cost is reasonable and is the appropriate measure by which to compare savings, and is reasonable and consistent with other sections of the Act which suggest the net present

value of long-term energy savings and related reduced energy charges should be offset by the increase to the bill resulting from the loan.

2. Request for Proposals Process

According to Mr. Woolcutt, Ameren is cooperating with the other utilities to conduct a joint FI RFP process. The Illinois Energy Association ("IEA"), of which all the utilities are members, is facilitating this cooperation and will issue the FI RFP and coordinate the FI RFP process on behalf of all the utilities. The rationale for conducting a single FI RFP for all subject utilities is as follows:

> *FI Recruitment*. The Act caps the size of each program loan fund size at $2.5 million in total financing principal. The $2.5 million program size per utility is relatively small, thereby limiting the number of potential FIs interested in participating in the Program. By joining together, the utilities can aggregate their OBF program requirements and present a $12.5 million total financing requirement to interested FIs. This larger size will be more attractive for prospective FIs and aid in recruitment and procurement of an effective FI partner. Further, a joint FI RFP will simplify the tasks and process for FIs to respond to the several utilities.
>
> *Customer Perspective, Making the Program User-Friendly for Customers and Contractors*. Having a single FI partner will make the Program easier to 391 implement and understand for those customers and contractors served by, or working with, different utilities. Instead of multiple loan programs, a single FI could offer loans for EE projects promoted by the respective utilities.
>
> *Commission Process*. The joint FI RFP supports the harmonization of the various Ameren program designs and FI RFP processes and simplifies the Commission's review and approval process.
>
> *Implementation Efficiencies*. A common financing program adopted by the utilities can yield implementation efficiencies in marketing and administration, including FI fees.

Mr. Woolcutt testifies that Ameren, through the joint FI RFP process, will procure a Lender for the Program to provide the following services: 1) assist in final financial structuring of the Program, in collaboration with the utilities; 2) establish a lending facility (the "Facility") of up to $12.5 million ($2.5 million per utility) and originate and provide EE loans ("Loans") to eligible residential energy users; 3) perform credit analysis of prospective borrowers and make Loan credit decisions, applying underwriting guidelines as agreed upon with the utilities; 4) notify each AIU upon approval of a Loan and disbursement of funds, using information exchange protocols to be established; 5) administer the Loans, with Loan collections being performed by the utilities; 6) provide quarterly reports from the FI to the AIU regarding lending activity and the Loan portfolio; and 7) collecting data as needed for the completion of the Program evaluation.

Additional potential FI roles and services, Mr. Woolcutt states are to be determined through the RFP and negotiation process and may include: 1) marketing EE loans; 2) assistance to the Utilities to develop and manage the Vendor network; and 3)

potentially, on terms to be developed, provide additional lending over and above the amount guaranteed by the Utilities.

Mr. Woolcutt explains that Ameren, coordinating through the IEA with the other utilities, will issue the FI RFP following Commission approval of this Program Design Document. The FI RFP provides: Program background; structure and terms of the proposed lending Facility and Loans; a prescribed format and content for the FI proposals; and, a description of the RFP process, including evaluation criteria, and a timeline that will lead to selection of the FI partner and negotiation and execution of implementing agreements for the facility. He observes that selection of an FI will be a subject for negotiation. The utilities will proceed to negotiate an implementing Lending Facility Agreement with the selected FI, and will proceed to a second candidate if negotiations fail with the first.

Further, he informs the Commission that an Evaluation Committee will be formed and coordinated by the IEA to evaluate FI proposals qualitatively. Ameren will be represented on the Evaluation Committee. Evaluation criteria are as follows: 1) Loan interest rates & pricing - Attractiveness of the proposed Loan pricing, including fees charged to borrowers; 2) Loan Terms - Attractiveness and suitability of proposed Loan tenors, prepayment options and other terms; 3) Loan origination processes - Thoroughness and ease of administration of Loan origination procedures and coordination with Program partners. Clarity and suitability of proposed Loan underwriting criteria and ability to meet the Program goals. Plan for obtaining AIU security interest; 4) FI Experience & Qualifications - FI experience and qualifications in similar programs such as retail lending, home improvement lending, vendor finance and EE lending, demonstrated commitment to the Program and the results of the reference checks; 5) Experience & Qualifications of specific staff proposed - Skills of specific staff proposed; 6) Loan Marketing & Geographic Coverage - FI's marketing plan, geographic coverage, ability to serve State-wide and ability to market to FI's existing customers. Note that OBF is available to residential customers without regard to their electric or gas supply provider; 7) Proposed Additional Services - Ability to provide additional services; 8) Program Fee Proposal - Amount and reasonableness of proposed Program fees to be paid by the Utilities; 9) Potential to expand lending - While this service is not requested presently, the ability to expand lending and willingness to consider doing so on a limited recourse basis, will be considered; 10) Stability - Demonstrated FI organization stability.

According to Mr. Woolcutt, the structure and terms of the proposed OBF Program Lending Facility and EE Loans to be established with the FI partner will be consistent with the Ameren Program design and the prescriptions of the Act. This financing structure is subject to modification and negotiation with the selected FI partner. In the RFP process, FIs are asked to propose and recommend modifications as needed to meet Program goals and the FI's business interests. The proposals will be the basis for negotiating the Lending Facility Agreement and final Loan terms.

3. Vendor Network

Ameren witness Woolcutt testifies that Ameren has an established and growing network of EE project, equipment and service contractors as part of its Energy Efficiency and demand-side management ("DSM") portfolio to provide marketing and implementation of EE projects for the Program. The AIU will draw from this existing and future network in addition to seeking qualified vendors specifically for the Program. An additional service from the FI partner may include assistance in the further development and management of the Vendor network, using Vendor qualification standards as agreed to with the Utilities.

In terms of marketing the Program, Mr. Woolcutt states that the Loan Program will be marketed by Vendors, Ameren and the Lender. Vendors will market the EE Loans at the point of sale with customers. Vendors are interested to sell their EE products and services and are effective agents to drive the marketing. Loan product information, approved by the utilities and the Lender, will be provided to the Vendors. Ameren will also market the Program through its DSM/EE programs, billing information and other channels. The Lender can also market the Loan product to its existing customers and make referrals to Ameren and qualified Vendors; the FI RFP requests FIs to propose marketing activities they can undertake.

4. Lender Approval Process

Further, Mr. Woolcutt states that Ameren will seek to arrange a Lending Facility with loan terms up to 10 years for residential customers, a loan payment schedule of level monthly payments of principal and interest, in arrears, and prepayment options. The loan interest rates will be determined through the competitive FI RFP process and will be a major factor in the FI proposal evaluation. Fixed interest rates will be sought, with the rate fixed at the time of Loan commitment based on a published index agreed with the selected FI. No borrower down payment will be required.

With respect to loan underwriting guidelines, the utilities will seek advice from the FI partner on loan underwriting guidelines. The underwriting guidelines are subject to review, modification and negotiation with the selected Lender. The FI RFP requests FIs to propose underwriting guidelines that will be reasonable and prudent for credit risk management and easy to administer. Customer bill payment performance history is proposed to be used as one means of credit analysis and decision, subject to negotiation with the FI.

Also, Mr. Woolcutt notes that in Loan origination, the Lender will do the credit analysis of prospective borrowers using the agreed underwriting guidelines. The Lender will be asked to report on its credit decisions, applications, rejections and approval rates. Loan underwriting guidelines can also be modified during Program operations, as experience dictates.

According to Mr. Woolcutt, a main goal of the Program is to establish a preferential and easy-to-use EE lending program; a secondary goal is to broaden access to finance for residential customers to make EE investments. These goals must be balanced with the need to manage credit risk.

Mr. Woolcutt explains the Loan Origination Procedures. The Lender will be responsible for loan origination, coordinating with Ameren and Vendors. Vendors will distribute loan application materials and provide referrals to the Lender's offices for origination. Ameren will confirm eligibility of the project and provide the customer's account number to the Lender. If agreed with the Lender for credit analysis purposes, the AIU bill payment information may also be provided, if/as agreed with the customer. Standard loan application and Loan agreement materials will be provided by the Lender, to be approved by the AIU. Once the borrower credit is approved by the Lender, the Loan agreement can be executed. Following Loan agreement execution, the Vendor will proceed to install the EE measures.

5. Participant Rights and Obligations

Subsection (c)(5) of the OBF statutes states that the loan is the sole responsibility of the participant and any dispute that may arise concerning the loan shall be resolved between the participant and the lender. Accordingly, Mr. Woolcutt testifies that, as regards Loan dispute resolutions, the dispute resolution process will include the FI's abidance of prevailing customer protection laws.

Further, collections of loan payments will be performed by Ameren as part of the customers' bill. The customers' obligations to pay Loan payments will be treated commensurate with the obligation to pay the AIU energy bill. The AIU may suspend AIU service in the event of non-payment. The payment obligation will not, however, transfer with the property. The AIU will aggregate all Loan payments from customers and make aggregated payment monthly payments to the FI partner, the frequency of which will be determined by the FI. The timing of Loan disbursements and Loan payments relative to the AIU billing cycles for the various customers will be coordinated with the FI to reflect all interest accruals due to the Lender. The flow of funds will be further detailed in negotiations with the selected FI.

6. Utility Rights and Obligation

Mr. Woolcutt testifies that Ameren will repay all loans to the FI, regardless of customer payment timing and performance. This is a provision of the Act and effectively means that each Ameren guarantees repayment of the loans to the lender. The utilities expect the loan pricing offered by and agreed with the FI to be commensurate with this arrangement and credit structure.

In the event of non-payment, he states that Ameren may suspend service, under existing established collections procedures. Further, Ameren can recover any ultimate losses at the point of a write off due to default or non-payment through the Ameren uncollectible tariff. Thus, Ameren will be responsible for recovery actions in default events.

7. Lending Limits

The aggregate amount of all loans financed with Ameren customer will be $5.0 million.

B. Estimated Program Budget

The Act allows that the AIU's costs for operating the Program to be recoverable via tariffs. Mr. Woolcutt explains that Program costs will include: Ameren's Program staffing, marketing, Vendor network development and management, evaluation and FI fees paid by the Ameren. Program costs may include some fees paid by Ameren to the FI to cover certain FI costs for its services, including Loan program set up, Loan origination and administering the Program. The FI RFP requests proposing FIs to suggest such a budget for Program costs that would be reimbursed by the AIU directly; these amounts will be determined through the FI procurement and negotiation process.

Mr. Woolcutt provided estimated budget figures, but notes that they are an estimate only and based on knowledge at this time. Further, the figures will change according the results of negotiations with the selected FI, IT requirements for electronic data transfer of funds and billing changes, and program dynamics and growth, among other factors.

C. Independent Evaluation Planning

As prescribed in the Act, Mr. Woolcutt testifies that Ameren will have an evaluation report prepared by an independent evaluator after three years of Program operations. Ameren will follow an RFP process for evaluator selection whereby experienced and qualified contractors will be vetted to participate. The selected vendor will be chosen based on rigorous criteria to include the demonstrated ability to abide by the evaluation requirements of the Act, experience, positive references, industry reputation, and reasonable fees. 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 requested.

D. Proposed Tariff Changes

Ameren recommends that the following tariff changes be made to facilitate the OBF Program and recovery of start-up, administrative and evaluation costs.

1. General Terms and Conditions

Ameren witness Jones testifies in support of the Companies' proposed changes to the Customer Terms and Conditions for the Companies' electric and gas utilities. The proposed language is identical for each individual utility. Specifically, he states that a new subsection under the "Billing and Payments" section of the Customer Terms and Conditions has been added and labeled "On-Bill Financing Program Billing Provisions." If a customer participates in the OBF Program, this provision requires the Companies to include any applicable OBF Program charges on the customer's bill as a separate line item. The proposed language also provides for the Companies to disconnect utility service for non-payment of any applicable OBF Program charges, subject to the Commission's disconnection rules.

2. Rider EDR

Mr. Jones states that the proposed language to Rider EDR is identical for each individual utility. The proposed language modify the definition of "Incremental Cost" to include any applicable start-up, administrative, and program evaluation costs incurred after the effective date of the OBF Law. Further, Mr. Jones testifies that the incremental Costs associated with the OBF Program are recovered solely from the classes eligible to participate in the program, and in this instance the residential class. Accordingly, only the Rider EDR Charge applicable to DS-1 (residential customers) will include OBF Incremental Costs.

Further, Mr. Jones testifies that the OBF Program Incremental Costs do not count toward the annual spending limit associated with electric energy efficiency measures and are intended to be in addition to any spending beyond those expenditures for electric energy efficiency measures. Also, the Rider EDR audit requirements have been modified to incorporate a review of the OBF Program Incremental Costs. Ameren Ex. 2.0 at 4.

Ameren also proposes language changes to Rider EDR to allocate joint costs common to both gas and electric OBF Programs. According to Mr. Jones, joint OBF Program Incremental Costs will be split 50/50 based on the potential loan amount listed in Sections 16-111.7 and 19-140 for electric and gas programs, respectively. The proposed language also clarifies that joint costs common to both gas and electric energy efficiency programs may be allocated between respective gas and electric programs based on the proportion of electric program expense to total gas and electric program expenses. Mr. Jones states that comparable language is already contained in Rider GER.

3. Rider GER

Ameren proposes language to Rider GER for its gas utilities. The proposed language is identical for each individual utility. Mr. Jones notes that the changes to Rider GER substantially mirror those for Rider EDR. Specifically, the definition of "Incremental Costs" has been modified to include expenses incurred for start-up, administrative and program evaluation accumulated after the effective date of the OBF Law, similar to those changes proposed for Rider EDR.

In addition, Mr. Jones states that a provision has been added to create a separate residential class for recovery of gas energy efficiency costs. OBF Programs are proposed to be available to residential customers only, thus only residential customers are to pay for OBF Incremental Costs. Presently, Rider GER contains a single charge applicable to both residential and small general service. According to Mr. Jones, however, only the residential class will have OBF Program Incremental Costs included in their Rider GER charge. Ameren Ex. 2.0 at 5.

Mr. Jones states that further changes to Rider GER will be necessary in order to be in full compliance with Section 8-104 of the Act. Mr. Jones notes, however, that Rider GER today recovers the costs of gas energy efficiency programs from residential and small general service customers. Further changes to Rider GER will add customer classes and leave the residential class as a separate identifiable class. Approval of the

proposed changes to Rider GER will facilitate recovery of Incremental Costs, many of which are joint gas and electric costs on a timeline consistent with Rider EDR. Ameren Ex. 2.0 at 6.

IV. Staff's Position

Staff's Initial Comments recognize that, because some of the statutory components of the OBF Program involve obligations of participating customers, lenders and vendors not currently chosen or identified, compliance with these statutory components will be addressed at the time the obligations arise. Staff's Initial Comments, therefore, only address those aspects of the OBF Program if, and to the extent, the program appears inconsistent with the statute.

A. Identification of Eligible Participants

Staff has determined that Ameren has identified those customers that are eligible for participation in its OBF Program in accordance with the Electric and Gas OBF Laws.

B. Details of the OBF Program

1. Eligible Energy Efficiency Measures

a) Loan Origination Fees

Staff notes that Ameren's method does not include loan origination fees as a cost of implementing the measure because it is the position of the Companies that these are program costs to be recovered through Rider EDR or Rider GER, pursuant to subsection (f), rather than a cost of implementing the measure to be incurred by the customer. Staff, however, recommends that loan origination fees be paid by customers receiving the loans rather than collected from all customers through Riders EDR and GER. Also, Staff recommends that Ameren modify its eligibility screening method to include origination fees as a customer cost.

In support of this recommendation, Staff suggests that Ameren's methodology is inconsistent with subsection (c)(1)(B), which states that the estimated gas or electric savings must be sufficient to cover the cost to implement the measure, including finance charges and any program fees not recovered pursuant to subsection (f). From Staff's perspective, loan origination fees are part of the loan costs and are not program fees. Staff notes that, while loan origination fees are often charged up front to all customers applying for certain types of loans, subsection (a) of Section 16-111.7 provides that customers are not required to make initial upfront payments. Staff views Ameren's proposal as addressing this issue by including the origination fee in the costs for recovery through Rider EDR or GER. Staff, however, states that subsection (f) speaks to start-up and administrative costs and should not be interpreted so broadly to include loan costs of individual customers. Staff opines that Ameren's proposal creates a different problem in that it imposes the loan origination fees of individual customers participating in the OBF program onto all ratepayers.

According to Staff, if origination fees are included as incremental costs recoverable through Rider EDR or GER, 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. Staff explains that, because loan origination fees are specific to each individual loan and the customer receiving the loan receives the benefits from the avoided costs associated with the measure, Staff believes that origination fees should be included in the customer cost of implementing the loan rather than be socialized across all customers and collected through Rider EDR or GER. 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. Staff asserts that either approach would avoid an upfront fee that the OBF Law forbids, while making the borrower responsible for this cost.

b) Combined $5 Million Fund

Staff in its Initial Comments has expressed its view on the AIU Companies' proposal of a single aggregated fund of $5 million. Staff argues that the proposal is inconsistent with either the Electric On-Bill Financing Law or the Gas On-Bill Financing Law. The Gas On-Bill Financing Law and The Electric On-Bill Financing Law respectively require that the total outstanding amount financed under each program shall not exceed $2.5 million for gas utilities or electric utilities under a single holding company. (220 ILCS 5/19-140(b) and (c)(7); 220 ILCS 5/16-111.7(b) and (c)(7)). Thus, it is Staff's position that the total amount financed should be accounted for separately for gas utilities and for electric utilities.

Staff relies on the statutory language of both statutes and argues that Ameren's aggregation of both funds into a single pool is inconsistent with each law. Staff observes that separate funding pools ensure that both gas and electric customers receive loans for energy efficiency means commensurate with the funding levels prescribed in the law. Staff is concerned that under Ameren's proposed approach, there is no guarantee that either electric or gas customers are receiving their half of the funding pool. Therefore, Staff recommends that Commission order the AIUs to maintain separate pools of $2.5 million each for gas and electric energy efficiency loans.

c) Combined Gas and Electric Savings

In Staff's opinion, Ameren's methodology of calculating both gas and electric savings together is problematic because each law requires its respective savings to be sufficient to cover the cost of implementing that respective measure. (220 ILCS 5/19-140(c)(1)(B); (220 ILCS 5/16-111.7(c)(1)(B)). Staff observes that there is no provision in either law that allows savings from other energy sources to be considered in eligibility screening.

In conclusion, Staff recommends that the Ameren Companies develop two screening criteria for measuring eligibility and therefore two lists of eligible measures. Additionally, Staff urges the Commission should make it clear that loan origination fees are not a cost that is recoverable through subsection (f) of either the Gas On-Bill Financing Law or Electric On-Bill Financing Law and order the AIUs to recover these costs from customers receiving these loans. Both the gas screening measure and the electric screening measure should include loan origination fees in their respective

calculation of the net present value of costs. Additionally, the AIUs need to maintain separate funding pools for gas and electric loans.

2. Lender RFP

Staff does not object to the process and content the Companies propose for the RFP component of the OBF program. Nevertheless, Staff has identified a potential issue: some financial institutions meet the definition of "affiliated interest" set forth in Section 7-101(2) of the Act. Consequently, Staff opines, 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. Such a petition, Staff notes, 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 for Commission approval of contracts with affiliated interest. See 83 Ill. Adm. Code 310.70.

3. Vendors

Staff has reviewed the Company's testimony and proposal related to vendors and vendor qualifications. Ameren has addressed the relevant issues and Staff does not object to the Companies' plan to develop the vendor network and to develop the vendor qualifications and agreements.

C. Filing requirements

1. Sample Contracts

The Companies' 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) of the Gas and Electric OBF Laws.

2. Data Collection

Staff notes that Ameren proposes the collection of key financial data and also a qualitative analysis of the program experience of customers, vendors and the lender. In addition, Staff recommends data be collected on the types and characteristics of both measures replaced and installed.

D. Proposed Tariff Changes

Staff recommends that the Commission approve the Ameren cost recovery plans for the OBF Program costs as well as the proposed changes to Rider EDR and Rider GER which set forth the mechanics of that recovery. Further, Staff has no objection to the accounting procedures related to the cost recovery provisions and program costs of the OBF program as described by Ameren, with the exception that Staff recommends that loan origination fees be excluded, measures should be separately determined based on separate gas and electric methodologies and confirmation should be given

that an agreed cost sharing mechanism is in place with the other utilities implementing OBF Programs for the shared financial institution RFP process costs. In addition, related to shared costs, Staff states that Ameren should address in its reply comments how costs might be allocated for combination gas/electric customers.

Staff notes that Ameren has stated that additional changes to Rider GER will be necessary for full compliance with Section 8-104 of the Act. Ameren has agreed to provide draft changes to Staff at least 30 days prior to filing with the Commission for Staff input. Staff recommends that the final order in this proceeding include language that requires Ameren to provide those draft changes within the 30 day time period.

Staff has reviewed the proposed changes to the Companies' General Terms and Conditions and recommends approval of the changes.

E. Customer Education

Staff states that customers who take advantage of the proposed OBF program should be informed about how their participation may affect their bill when changes in utility service occur. In particular, customers will need to know how moving to another location both within and outside the utility's service territory will affect their bill. In addition, it is important that customers understand that their utility service may be subject to disconnection for non-payment of on-bill financing charges. 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. Accordingly, Staff recommends that the Companies include, in their reply comments, a commitment to develop consumer information covering the above points and to provide a description of how the information will be communicated to customers.

F. Staff Reply Comments to the AG

1. Proposed Budget

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 that 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 discover.

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. Also, Staff agrees generally with the utility

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, however, 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 and Gas OBF Laws that both state 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 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. CUB's Position

CUB state in their Initial Comments that they participated in the workshop process, and appreciate the chance to provide comments on the Company's program draft. Moreover, the Company's proposed OBF Program is a step forward in advancing the General Assembly's purpose of promoting conservation and cost-effective energy efficiency measures. 220 ILCS 5/16-111.7(a). CUB, however, have several specific concerns with Ameren's proposed OBF Program which are addressed below.

A. Selection of Measures

CUB asserts that the eligible measures should be determined after the financial institution has been selected. CUB notes that Ameren will publish its final eligible measure(s) prior to the OBF Program's start up. The RFP for the FI has not yet been completed, so it is premature to prescribe a measure to - or proscribe other measures from - the program prior to possessing the information, such as the interest rate of the loan, which can only be determined once the FI has been selected. Once the interest rate and loan terms have been clarified, CUB opines, all the utilities should provide the results of the formula testing, including all measures considered, and the final list of OBF Program measures. CUB recommends that the Commission order that a workshop be held once the FI has been selected and a final list of measures proposed so Staff and other stakeholders can review and understand the final OBF Program.

B. Role of Program Administrators

CUB notes that the Companies intend to possibly hire a separate contractor to develop and oversee the Vendor network, though they note 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 the Companies that existing resources should be used as much as possible, which will take advantage of

these Vendors' familiarity with the Companies' contracting and billing arrangements. Most importantly for the success of the OBF Program, Vendors already familiar with energy efficiency protocols can be reasonably relied upon to properly install and maintain the high-efficiency equipment financed through the OBF Program. While still under development, contractors already participating in the Act On Energy Electricity and Natural Gas Savings Program will have completed utility trainings, provided proof of insurance and agreed to third-party verification of their work. See *In re Nicor Gas*, Docket 10-0090, Ex. 1.1 at 7. 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. Before the Petitioners' OBF Program is approved, CUB recommends that the Commission ask for, and receive, clarification on the role of any contractor hired to oversee the Vendor network, along with information on associated costs.

C. FI Selection Process

CUB notes that the affected utilities intend conduct a joint RFP to find the FI and that the IEA is facilitating cooperation and coordination between the utilities. Further, the IEA will constitute an evaluation committee with representation from all participating utilities. Proposals will be reviewed and evaluated by committee members and their consultants, though IEA reserves the right accept or reject any proposal that, in the sole opinion of IEA, does not fully reflect the objectives of this Program. IEA also reserves the right to select one or more FIs, based on territorial or other considerations, although a single FI partner is contemplated presently as the best approach. CUB is concerned that the Petitioner's proposed process provides the IEA with veto authority over the final FI selection. It is unclear to CUB what additional value IEA brings to the process aside from having all four utilities participating in the RFP as members. Nor is it clear how - or if - the Commission or other stakeholders will be informed of IEA's deliberations or decision. CUB proposes that the Commission name those stakeholders who participated in the OBF workshops be invited to become members of the proposed Evaluation Committee.

Also, CUB recommends that the RFP evaluation matrix be revised to place more emphasis on the first criteria, which is "Loan Pricing; interest rate pricing and fees" because having a low interest rate is possibly the most critical component of the RFP for consumers. CUB opines that points could be taken away from "Loan marketing & geographic coverage" and "additional services" and given to "Loan Pricing" in order to make that criteria more heavily weighted compared to the other.

D. Continuation of Program during Evaluation

CUB supports the use of an independent evaluator for the OBF Program. Also, CUB recommends that one statewide evaluator be retained to both facilitate consistent evaluation and comparison and to lower overall evaluation costs. This evaluation, in CUB's opinion, should be begun as soon as possible under the terms of the statute so that any gap between the evaluation of the OBF Program, the Commission review of that evaluation and a decision on any necessary program modifications is as short as possible.

CUB notes that Ameren requests that the evaluation take place whereby results are concluded by the beginning of the third program year. This request is based upon

concerns that should a recommendation and decision be made to continue the OBF Program after the three year period has expired, Program momentum will be lost, consumer and vendor confusion may ensue and additional costs could be incurred to re-start the Program. CUB sees the benefits of early course correction if necessary; however, CUB does not have an opinion at this time as to whether an evaluation based upon only two program years would be sufficient to inform the Commission's decision.

Further, CUB states that 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. Moreover, Ameren's PDD does not provide for the required feedback from participants and interested stakeholders as required by subsection (g) of Section 16-111.7. Accordingly, CUB recommends that the program should be continued during the pendency of the evaluation and to ensure that Program participants and interested stakeholders can provide feedback, the evaluator should present its findings as part of workshops held during the year provided for the evaluation.

E. Underwriting Criteria

CUB notes that the Company intends to finalize underwriting criteria with the selected FI. Also, it is not clear yet to what degree Ameren intends to use credit checks, CUB is concerned that the use of credit checks to screen customers will add unnecessary costs to the Program. Further, CUB points out that the utility is in possession of bill payment history for all its customers. This bill payment history, which represents a rich source of information about a consumer, should be the principal measure of a person's worthiness to obtain a loan under the Program. CUB opines that individuals with poor credit scores still often pay their utility bills and that people that could benefit from energy efficiency measure should not be denied access to the Program because of a less than ideal credit score. CUB recommends that the Commission find that the use of utility bill payment history is a prudent way to determine credit worthiness of prospective borrowers.

F. Reconnection

In Ameren'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 Ameren 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.

G. Applicability of the Section 8-103 Cost Cap

Ameren proposes to recover the costs associated with their electric energy efficiency measures through Rider EDR, which recovers costs associated with the implementation of Section 8-103 of the Act. CUB notes that Section 8-103 limits the estimated average increase in the amounts paid by retail customers in connection with

electric service due to the cost of those measures to, in 2011, 2% of the amount paid per kilowatt hour by those customers during the year ending May, 2007 or an additional .5% of the amount paid per kilowatt hour by those customers during the year ending May, 2010. 220 ILCS 5/8-103(d). CUB asserts that Ameren should clarify whether the additional, incremental costs associated with the OBF Program are considered subject to this cost limitation, and whether any savings achieved by OBF Program participants will be counted towards achievement of its statutory energy efficiency goals.

H. CUB Reply Comments to Staff

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 the 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 believes 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 receives the benefits from the avoided costs associated with the measure. In CUB's view, there are societal benefits resulting from avoided natural gas and electricity costs as well. Electricity generation sources and natural gas are, for the most part, not renewable resources and energy efficiency measures - such as those financed through an OBF Program - will reduce the overall amount of electricity and natural gas used. CUB further states that lowering electricity and natural gas usage has monetary and environmental benefits that will accrue to not just the individual customer but to society at large.

Also, CUB notes that Staff's position would unnecessarily raise the cost of an 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 Ameren that loan origination fees can be properly classified as "administrative costs" as provided for by subsection (f) of the Act and recovered through Ameren's Rider EDR and Rider GER.

2. Combined $5 Million Fund

CUB disagrees with Staff's position that combining the amounts authorized for the Ameren electric and natural gas customers is inconsistent with the Act, so long as there is an accounting of the loan amounts to determine what percentage should be allocated to gas operations and what percentage to electric operation. CUB contends that Staff ignores the economies of scale of performing some energy efficiency measures can provide. For example, a whole home retrofit is more efficient both in terms of program cost and efficiency savings than separate site visits by an electric utility and a gas utility. By instituting a single combined fund of $5 million, CUB maintains that Ameren is simply taking advantage of economies of scale behind

combined programs. CUB believes this is a good thing for the OBF Program and ratepayers as a whole.

Further, CUB states that Ameren's approach to the OBF Program makes it attractive to homeowners who receive both gas and electric delivery services from Ameren. The natural gas energy efficiency programs authorized by the Act permits the counting of avoided electricity costs as well as avoided natural gas costs in calculating the "total resource cost" of an eligible measure. 2201 ILCS 5/8-104. Because Ameren plans to use Rider EDR and Rider GER to collect OBF Program costs, CUB believes it would be acceptable for Ameren to be able to count both electric and gas savings in their eligible measure analysis. CUB asserts, however, that Ameren should clarify how the savings achieved from any combined measure or OBF Program will be allocated under the existing electric and natural gas energy efficiency portfolio standards. See 220 ILCS 5/8-103, 220 ILCS 5/8-104.

3. Data Collection

CUB supports Staff's recommendation that Ameren collect data on the types and characteristics of both measures replaced and installed. The more data collected, the more thorough the evaluation of the OBF Program and, over time, the better the program's operation going forward.

4. Affiliate 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.

5. 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 looks forward to providing customers with information about the program.

I. CUB Reply Comments to the AG

1. 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 Ameren address this issue in its Reply Comments because in many other contexts, these are two separate and distinct types of costs. In response to the AG's recommendation to cap the costs, CUB states that it believes that without additional information, which should certainly be provided, an arbitrary 10% cap is premature.

2. Underwriting Criteria

CUB believes 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 includes 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 Utilities.

3. Extension of Program to Commercial Customers

CUB agrees with the AG that if Ameren does extend the availability of the Program to commercial customers, then the costs that arise from the inclusion of small commercial customers should be assigned to that customer class and not to residential customers.

VI. AG's Comments

A. Program Costs

The AG notes that Ameren estimates its three-year program costs at 41% of the total program dollars. The AG believes that the Company's proposal is excessive and unreasonable. The AG proposes that a cap be implemented for the OBF Program, similar to the cap for North Shore/Peoples Gas Light & Coke Company's energy efficiency program, which capped the administrative costs at 5%. *Peoples 2008.* At the most, the AG believes the cap should be 10%.

B. Acceptance

The AG observes that Ameren proposes that the lender make disbursements of loan proceeds directly to the vendor upon installation of the measure and acceptance by the customer. Yet, there is no language to describe what constitutes acceptance by the customer. The AG states that Ameren must make it clear how the customer will demonstrate acceptance of the measure by the vendor and how this information will be communicated to the lender before making its disbursements. According to the AG, this information needs to stated clearly in the Program Design Document and the Request for Proposals.

C. Underwriting Criteria

The AG recommends a tiered approach to credit checks. For example, if the measure was under $1,000, the customer's bill payment history could be used. For measures greater than $1,000, a specific formula or methodology could be implemented that does not inflate the interest rate or cause additional costs to be socialized to ratepayers. The AG points out that the lender gets paid regardless of whether the customer pays the utility. Thus, the AG asserts that the lender will profit from extensive credit checks because the costs are passed through to ratepayers as program costs. The specific credit check methodology should be stated clearly in the Program Design Document, as well as the RFP.

D. Security Interest Methodology

The AG notes that Ameren intends to exercise it discretion, based on whether it is cost effective, when deciding whether to obtain a security interest. The AG states that Ameren has not provided sufficient information to explain when it would exercise its discretion. Also, the AG opines that a customer has a strong incentive to pay for the measure because of the potential for electric service cut-off.

Accordingly, the AG recommends that, through the RFP process, the lender should provide a cost breakdown related to security interest filings. The AG also recommends that the Commission disallow any costs associated with obtaining a security interest as not prudently incurred costs of offering the OBF Program.

E. Prepayment

The AG recommends that prior to approval of the Program, the Commission should require Ameren to provide in the PDD that the customer may voluntarily pay off the loan early with no penalty. Also, the PDD must provide that Ameren will make payment in full to the lender in the event of any early pay off by the customer. Lastly, the RFP should specifically state the pay off plan to the lender.

F. Extension to Commercial Customers

The AG notes that, although the Company only intends to offer the Program to residential customers initially, Ameren could, at a later date, choose to add small commercial customers to the program. The AG recommends that the Commission make it clear that any Program-related costs that arise from the inclusion of small commercial customers will be assigned to that customer class, and not residential customers.

G. AG Reply Comments to CUB

1. Role of Program Administrator

The AG supports effort to seek qualified vendors to install measures at a reasonable fee and agrees with CUB's recommendation that 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.

2. FI Selection Process

The AG agrees with CUB's recommendation to include CUB, the AG and Staff as members of the RFP evaluation committee, but believes 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's recommendation to rely solely on bill payment history.

4. Reconnections

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

H. AG Reply Comments to Staff

1. Combined $5 Million Fund

The AG agrees with Staff that the statute allocating $2.5 million to electric customers and $2.5 million to gas customers reads as accounting separately for gas

utilities and electric utilities. Therefore, the AG supports Staff's recommendation to maintain separate pools of $2.5 million each for gas and electric energy efficiency loans.

2. Consumer Education

The AG supports Staff's recommendation as an important consumer protection issue.

VII. BlueStar's Position

BlueStar is a retail electricity supplier, currently operating in Illinois, Maryland, Michigan, the Commonwealth of Pennsylvania and the District of Columbia. BlueStar also offers energy efficiency services through its subsidiary BlueStar Energy Solutions LLC. BlueStar did not file Initial Comments. The following is a summary of its Reply Comments.

A. Estimated Program Costs

BlueStar agrees with the AG that Ameren's proposal to spend 41% of the total program budget on administrative and other program costs is excessive and should be denied. BlueStar concurs with the AG that a cap similar to that imposed on North Shore Gas and The Peoples Gas Light and Coke Company for its energy efficiency program would limit the Company's administrative expenses to $250,000.

B. Loan Origination Fees

BlueStar agrees with Staff that loan origination fees are part of the loan costs and are not program fees. According to BlueStar, Subsection (f) speaks to start-up and administrative and program evaluation costs and should not be interpreted so broadly as to include loan costs of individual customers. As such, BlueStar argues that 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. BlueStar agrees with Staff's recommendation 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.

C. Combined $5 Million Fund

BlueStar notes that Ameren is proposing a single aggregated fund of $ million, which BlueStar argues is inconsistent with both the Electric OBF Law and the Gas OBF Law. BlueStar asserts that the total amount financed should be accounted for separately for gas utilities and for electric utilities. BlueStar notes that separate funding pools ensure that both gas and electric customers receive loans for energy efficiency measures commensurate with the funding levels prescribed in the law. Under Ameren's approach, there is no guarantee that either electric or gas customers are receiving their half of the funding pool. Thus, BlueStar concurs with Staff's recommendation that the Commission order Ameren to maintain separate pools of $2.5 million each for gas and electric energy efficiency loans.

D. Customer Acceptance and Communication

BlueStar agrees with the AG that Ameren must make it clear how the customer will demonstrate acceptance of the measure and how this information will be communicated to the lender before making its disbursement.

E. Role of Program Administrators Should be Clarified

BlueStar notes Ameren's intent to possibly hire a separate contractor to develop and oversee a Vendor network, though they note that the existing Vendor network established for existing energy efficiency and demand response programs may be drawn upon and augmented for this program. BlueStar agrees with both Ameren and CUB that existing resources should be used as much as possible, which will take advantage of these Vendors' familiarity with the Ameren's contracting and billing arrangements. BlueStar agrees with CUB that by using existing contractor networks as much as possible will lower overall program costs and lessen the burden on the FI to double-check Vendor credentials. Before Ameren's OBF Program is approved, BlueStar recommends that the Commission ask for and receive clarification on the role of any contractor hired to oversee the Vendor network, along with information on associated costs.

F. Stakeholder Input in FI Selection

BlueStar agrees with CUB's concern that Ameren's proposed process provides the IEA with veto authority over the final FI selection. It is unclear to BlueStar what additional value IEA brings to the process aside from having all four utilities participating in the RFP as members. Similar to CUB, BlueStar proposes that those stakeholders that participated in the OBF workshops conducted by Staff be invited to become members of the proposed Evaluation Committee.

G. Affiliated Interests as FIs

BlueStar agrees with Staff that some financial institutions meet the definition of affiliated interest set forth in Section 7-102 of the Act. BlueStar notes that, consequently, if the winning bidder were an affiliated interest of one or more of the utilities, the affiliated utility or utilities would have to file a petition seeking Commission approval under Section 7-101 to enter into a contract with the winning bidder. 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. BlueStar agrees with Staff's proposal that the Utilities should agree to exclude financial institutions that are affiliated interests from participating in the RFP.

H. Evaluation

BlueStar supports the use of an independent evaluator for the OBF Programs. The Commission, and all stakeholders, will benefit from a coordinated evaluation process that enables comparison across the participating utilities. Thus, BlueStar agrees with CUB's recommendation that one statewide evaluator be retained to both facilitate consistent evaluation and comparison, and to lower overall evaluation costs. This evaluation process should begin as soon as possible under the terms of the statute so that any gap between the evaluation of the OBF Program, the Commission review of that evaluation and a decision on any necessary program modifications is as short as

possible. BlueStar agrees with CUB's assertion that the program should be continued during the pendency of the evaluation. 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.

VIII. Ameren's Reply Comments

Before responding to the parties' comments, Ameren notes at the outset that it believes much of the OBF Law is specific to lenders and that neither the Commission, the utilities or stakeholders have the expertise and knowledge in managing the consumer loans that are the heart of this statute.

A. Loan Origination Fees

In response to Staff's position that loan origination fees are not program costs, Ameren states that program costs to implement the measure are not specifically identified or categorized. Nor are the costs limited by the statute. That being the case, Ameren asserts that it is not unreasonable to conclude loan origination fees that will be paid by all program participants would be included as a cost to implement the measure when the totality of the program is being considered. Ameren also points out that this program is not generated by market conditions, but comes about by legislative mandate. Ameren argues that the end purpose is to have consumers install energy efficient measures and that logic dictates this goal is more readily reachable absent these fees being paid by the individual consumer.

Ameren sees Staff's suggestion that these costs be included in the loan amount as reducing the amount of eligible loan dollars for consumers. Due to the energy savings payback provision of the law, the additional loan cost would also reduce the loan amount available to the consumer.

Ameren also notes that Staff's examples of the many instances where loan origination fees are charged apply in the open market. In this instance, however, the program is mandated by law, not the market and where the goal is not just consumer welfare, but societal benefits. If fees are heaped on to the consumer as part of its obligation to repay the loan, it stands to reason that fewer programs will pass muster with a cost effectiveness analysis. This is turn will cause consumer interest to wane and Ameren believes, makes the program's success less likely.

B. $5 Million Fund/ Combined Energy Savings

In response to Staff's comments, Ameren acknowledges the existence of two different sets of rules pertaining to the gas and electric programs. However, Ameren also observes that there is no prohibition in the law that would prevent a combination utility to combine the funds. Ameren emphasizes that the AIU does not operate or act as two separate energy utility companies. It operates as one virtual utility providing two forms of energy services. Ameren argues that the legislature is well aware of this manner in which the AIU does business and had it decided that the funds could not be commingled, it would have said so.

Moreover, Ameren points out some practical problems with fund segregation. The AIU serves approximately 1.3 million electric customers and 822,000 gas customers and currently has a vendor network of nearly 500 participants. At least 50%

of the AIU customers are combination service customers and whose bills are consolidated for both energy services. Ameren is concerned that Staff's proposed approach to develop two screening criteria for gas and electric measures will cause an undue burden of having to duplicate the program in two separate programs adding unnecessary costs, systems and operations. There will also be an undue burden to monitor funding levels separately and make program adjustments separately. In addition, by forcing the allocation of a measure into one energy savings category, the customer will not receive the benefit of the allowed loan amount resulting from the other energy savings. Ameren concludes that though the gas and electric OBF statutes are separate, they both exist in tandem and cannot be ignored.

Ameren illustrates the problem with an example of insulation measures which incurs both kWh and therm savings. The standard total cost for installing 2,500 square feet of insulation is $4,436. As per the energy savings payback provision, to insulate 2,500 square feet, the available loan amount would be $3,761. If categorized as an electric only savings measure, the electric savings loan amount would be reduced to $2,672 when only acknowledging kWh savings. (Only $2,417 would be available if the cost had to include origination fees.) If categorized as a gas only energy savings measure, the gas energy savings loan amount would be reduced to $1,089 when only allowing for therm savings. (Only $834 when including origination fees.) However, if the both types of energy savings are allowed to be considered (due to combined loan funds and non-segregation of measures by energy type), the available loan amount would be $3,761 (as compared to only $2,672 or only $1,089 when funds and measures are designated by energy savings type) which more adequately covers the $4,436 cost of installing the measure, and which more appropriately reflects the total energy savings value.

While the AIU recognizes the importance of allocating costs appropriately to each energy type for the purposes of rider reconciliation (for bad debt) and will do so. The Company is still convinced that it should consolidate the $5 million outstanding loan pool as available funds for the proposed energy savings measures at all times. The AIU also states that it can, and will, keep track of loan funds as they relate to each energy source which, in itself is consistent with the statute as it relates to the amount being financed.

C. Data Collection

With respect to the matter of data collection, Staff seemingly supports the AIU's proposal and then recommends data be collected based on the types and characteristics of both gas and electric measures replaced and installed. The AIU has no objection to complying with this request.

D. Affiliate Lenders

Staff suggests there might be a potential issue with respect to any transactions as governed by Section 7-101(2) of the Public Utilities Act ("PUA"). 220 ILCS 5/1-101(2) Staff correctly acknowledges should the utility petition the Commission for relief under Section 7-101, that the entire OBF process would be delayed. Staff Comments at 23-25.

The AIU currently has no expectation to use an affiliate lender with regard to its OBF Program; none exist. However, given the time constraints imposed by the General Assembly, and the General Assembly being cognizant of the various provisions in the PUA regarding affiliate transactions, it is reasonable to assume the General Assembly had no objection to the utilities using an affiliate selected as part of the prescriptive RFP process. This is particularly so, since the RFP process is open and transparent, and the concerns regarding the affiliate abuse would be eliminated.

With respect to the RFP process where Staff outlines a number of additional steps necessary in order to permit an affiliate to participate in the program, the AIU have no objection to any of these steps with respect to the RFP process, if affiliates are to be included.

E. Tariff Language

Staff asserts the final order in this docket should include language that requires the utility to provide Rider GER draft changes necessary for compliance with Section 8-104 to the Staff 30 days prior to filing with the Commission. The AIU has no objection to this request. The Staff also, while not taking a firm position, seeks confirmation from the Company that an agreed cost sharing mechanism is in place with other utilities for the shared financial institution RFP process. The AIU acknowledges there is in place an agreed cost sharing mechanism as provided for in response to Staff data request TEE 1.11, which is Attachment A hereto.

F. Cost Allocation

The Staff asks the AIU, that program costs be allocated to each of the individual utilities based on the relative number of total customers at the AIU. Staff Comments at 28. In response, the AIU intend to handle the allocation of program costs in the same manner that it treats energy efficiency portfolio costs, which is consistent with the Staff's request.

G. Budget Cap

The AG recommends the Commission reject the proposed program administrative cost levels as being excessive and recommends a cap. AG Comments at 4-6. The AG asserts the $5 million dollar loan amount represents "total program dollars" when comparing those amounts with the estimated administrative costs reflected on page 4 of the AG Comments. This is an erroneous assumption leading to an erroneous calculation.

The $5 million dollar loan amount represents a *revolving* loan amount. This means, in each year of the program, there may be some amount nearing $5 million dollars being made available to customers. This is so, because from time to time, there will be loan payments replenishing the fund. The revolving loan fund is not static. Funds are loaned and funds are repaid. Instead, it is more accurate to compare the annual estimated administrative costs with the $5 million dollar revolving loan amount. For example, in 2011-2012, the estimated administrative costs represent roughly 12% of the overall cost. Overall, the annual administrative costs over the three year period are estimated to be approximately 13.6%, not 41%.

Perhaps, due to the AG's misunderstanding of the appropriate measurement of administrative costs to the revolving loan amount, the AG recommends a cap. Not only is the cap unnecessary, the AG recommendation is contrary to law. Section 16-111.7(f) is plain on its face, and states an electric utility shall recover *all of the prudently incurred costs of* offering a program approved by the Commission pursuant to this Section, including but not limited to, all startup and administrative costs and the cost of program evaluation. No cap is required by statute. Any cap that would cause the utility to not recover its prudently incurred costs, is unlawful. Indeed, even the AG acknowledges the statute does not establish a fixed dollar or percentage cap on administrative program expenses. AG Comments at 4-5. The AG recommendation is completely at odds with its own understanding of the law.

The AIU understands, as should the AG, the costs incurred in offering the program will be subject to a reconciliation. In the event a utility incurs costs that are not prudently incurred, the Commission has the opportunity to disallow the recovery of those costs. That is the remedy intended by the General Assembly.

H. Acceptance

The AG recommends that the Commission require AIU to state what form of customer acceptance is required and how that acceptance will be communicated to the lender. AG Comments at 6. We agree this information is important, however, the AIU is not the correct entity to make these assessments. The lender is in the far better position to make this assessment.

The AG even cites to the statute that makes it abundantly clear this issue "…shall be resolved between the participant and lender." 220 ILCS 5/16-111.7(c)(5). Again, as common with other standard lending practices, the success of the program must rely on the FI to determine the form of customer acceptance as well as how that acceptance will be communicated to the lender.

I. Underwriting Criteria

Ameren maintains that the FI is in a better position than the utility to assess the customer's credit history as it relates to a consumer loan. It could very well be the lender will look at measures such as those recommended by the AG, but certainly there are others in the industry that best serve the purpose of assessing a borrower's credit history.

J. Security Interest

The AG recommends that the Commission disallow any costs associated with obtaining a security interest as not being prudently incurred as a program cost approved by the Commission. The AIU states it may retain a security interest using a cost effective method. The AG complains the AIU have not explained what is the cost effective method. In response, the cost effective method is self defining. Should the AIU decide to retain a security interest, it will look to a host of factors including the cost of the measure, the cost of obtaining a security interest, the cost associated with taking the action to take possession of the measure and disposition, and so forth. Of course none of this can be accurately predicted at this time as costs will vary by circumstance.

Nonetheless, as a practical matter, the AIU do not intend to obtain a security interest with respect to these loans. The reason being, the loans are likely to be too small to warrant the additional time, effort, and in securing a security interest.

K. Loan Payoff

The AG also requests that the Commission require the AIU to describe in its Program Design Document, the opportunity for the customer to voluntarily pay off a loan early with no penalty, and that the RFP should also state the above-described payout plan to the lender. The ability for a prepayment without penalty is explicit within the Program Design Document at page 32, as well as the RFP at page 29. Thus, the Commission need not make any findings in this respect.

L. Extension to Commercial Customers

Finally, the AG recommends that the Commission find any program or program related costs that arise from the inclusion of small commercial customers cannot be recovered from residential customers. In response, as currently designed, the On-Bill Financing riders will not recover costs related to small commercial customers from residential customers.

M. Program Administrator Role

CUB requests that the Commission ask for and receive clarification on the role of any contractor hired to oversee the vendor work, along with information on associated costs. CUB Comments at 4. To this, the AIU has no objection.

N. FI Selection

1. Intervenors as Members of the Evaluation Committee

CUB proposes that stakeholders be included as members of the RFP Evaluation Committee. CUB Comments at 5. The AIU opposes this recommendation. CUB, and for that matter the other stakeholders it identifies, do not have the requisite qualifications to participate as part of an RFP Evaluation Committee. While stakeholder input can be valuable at times, at the end of the day, it is the utility that is responsible for managing the program. The utility will need to rely on subject matter experts. The utility's discretion in managing the program should not be affected by others.

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

CUB's concerns are not valid and over reaching. The IEA is acting for the purposes of providing consolidated invoicing and payment. In this respect IEA brings much value. Additionally, it will be the AIU that has veto power on the FI selection.

2. Weighting

CUB would also like to see the RFP evaluation matrix revised to place more emphasis on the first criteria, which is "Loan Pricing; interest rate pricing and fees" as having a low interest rate is possibly the most critical component of the RFP for

consumers. See Ameren Ex. 1.1, Annex B, Proposal Evaluation Worksheet. Points could be taken away from "Loan marketing & geographic coverage" and "additional services" and given to "Loan Pricing" in order to make that criteria more heavily weighted vis-à-vis the others.

Loan Pricing already has the highest categorical scoring value with a weight of 25 points (25%) out of 100 points. The reduction of value for the other suggested categories would result in a value less than 10 points (10%) per category. Therefore increasing the scoring value for Loan Pricing would inappropriately severely diminish the value of other categories.

As if the CUB recommendation was not already overreaching and unnecessarily intrusive, the AG in its Reply Comments suggests that it and CUB be voting members of the Evaluation Committee. AG Reply Comments at 4. This is not acceptable for the reasons stated above. Notably silent from its recommendation, is any discussion of cost recovery. The AG seeks to have voting power but willingly passes along the cost recovery consequences to the utility, which is simply wrong.

3. Workshop

It is requested that the Commission order a workshop once the FI has been selected and a final list of measures proposed for review. CUB Comments at 4. The AIU are not opposed to such a workshop, and in fact, provided for such in our planning document.

O. Evaluation

1. Statewide Evaluator

CUB recommends one statewide evaluator be retained to both facilitate consistent evaluation and comparison, and to lower overall evaluation costs. CUB Comments at 6. In response, the AIU require flexibility on the selection of evaluators. The AIU experienced an exhaustive bidding and selection process for evaluators of its current energy efficiency programs which made it evident that the evaluator selection pool is small and evaluation contractors are small firms with limited resources. Frequently a single firm does not have the resources to perform a statewide assessment. Even in Illinois, for the two current energy efficiency programs, there are two prime contractors, but there are at least six subcontractors. Using a single contractor potentially dilutes the attention and quality of the evaluation due to the subsequent larger volume of subcontractors.

In addition, the Illinois experience has shown that the use of multiple contractors preserves the integrity of the evaluation process whereby no one evaluator possesses the "monopoly" on the evaluation process, and therefore must conversely continue to prove their value and expertise. However, since this evaluation is for a specialty program there may be a rationale for the use of a single evaluator that can not be fully determined until a bidding process is completed. Therefore the AIU would prefer to have flexibility to determine the most effective and prudent use of evaluation funds at the time of the evaluation selection.

2. Continuance of Program during Evaluation

We acknowledge that CUB sees the benefits of Ameren's requested early evaluation process. Even though CUB has no opinion as to whether the evaluation should be based on two program years, it does see the benefits of an early course correction if necessary. CUB then asserts it is unclear as to what would happen to the OBF Program while the evaluation is conducted. In response, pursuant to the statute, the program continues. There is, of course, the third year of the program and the subsequent report to the General Assembly. However, there is nothing in the statute that suggests or infers that the program has a termination date. We contend it is the General Assembly's prerogative to decide when the OBF Program should be terminated.

In response to CUB's alleged concern that the PDD does not provide for the required feedback from participants and interested stake holders, Ameren contends that this is not required per the legislation. However the AIU will naturally receive feedback from its energy efficiency program implementers, program allies and customers as it does during its natural course of business for its energy efficiency programs and the OBF Program will be considered an integral part of its energy efficiency program.

P. Reconnection

CUB recommends that the reconnection amount include only those loan payments missed since the disconnection and not the entire amount due on the loan. CUB Comments at 8. The CUB proposal is not clear in application. The On-Bill Financing statute requires that the loan payment be treated as a bill for utility services without question. In this respect, the AIU intend to follow existing disconnect and reconnect policies/rules as provided for in Part 280. 83 ILAC Part 280.

Q. Section 8-103/104 Cap

CUB requests that the AIU clarify whether the additional, incremental costs associated with the OBF Program are subject to the cost limitations under the statute and whether any of the savings achieved by the program participants will be counted towards achievement of the statutory energy efficiency goals. CUB Comments at 9.

First, the costs are in fact "incremental" as defined in the proposed changes to Rider EDR and Rider GER. (See Ameren Ex. 2.3 (Redlined), page 2 and Ameren Ex. 2.4 (Redlined), page 2 for proposed tariff language, respectively.) Second, the AIU intend to use the same measures that are contained in the energy efficiency portfolio which has already been screened for cost effectiveness, and will be counted towards the savings under the energy efficiency goals.

IX. Commission Analysis and Conclusion

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

A. Eligible Retail Customers - Extension to Commercial Customers

The Company only intends to offer the Program to residential customers initially, but Ameren could, at a later date, choose to add small commercial customers to the program. The AG recommends that the Commission make it clear that any Program-related costs that arise from the inclusion of small commercial customers will be assigned to that customer class, and not residential customers.

The Commission finds the AG's proposal to be reasonable and notes that Ameren has agreed to it.

B. Eligible Energy Efficiency Measures

1. Loan Origination Fees

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 electricity and natural 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 through Rider EDA.

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 and ComEd that loan origination fees can be properly classified as "administrative costs" as provided for by Section 16-111.7(f) of the Act and recovered through ComEd's Rider EDA.

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 through Rider EDA.

2. $5 Million Fund/Combined Energy Savings

This is an issue of statutory interpretation. The relevant part provides that "the total outstanding amount financed under the program shall not exceed $2.5 million for a gas/electric utility or gas/electric utilities…" 220 ILCS 5/19-140(b) and (c)(7); 220 ILCS 5/16-111.7(b) and (c)(7). The two statutes apply perfectly when a company serves only as a gas company or only as an electric company. However, these two statutes failed to address the situation where a utility has combined services and that is where Staff and Ameren differ in their opinions. Ameren correctly points out that there is no prohibition in the law that would prevent a utility from combining the funds.

Additionally, we note that the statute provides that "…the gas/electric utility…may petition the Commission for an increase in such amount." 220 ILCS 5/19-140(c)(7); 220 ILCS 5/16-111.7(c)(7). The plain reading of this language implies that the legislature has conferred discretion on the Commission to decide the appropriate amount of these

funds. Accordingly, Ameren's proposal of a single combine $5 million fund is taken as a request to utilize our discretion. Because of the nature of the Ameren utilities, we find the proposal to be consistent with the statue and it is approved.

With respect to the combined gas and electric savings, once again, the statutes fail to address the situation where a combined utility has two types of savings and intends to combine them. Absent clear instructions on this issue, we begin to look at legislative intent. The fundamental goal of the on-bill financing program was to increase cost-effective energy efficiency, reduce costs, and make better use of available resources, as evidenced by the statutes themselves. (220 ILCS 5/19-140(a); 220 ILCS 5/16-111.7(a)). We find that the rigid application of either statute would give rise to practical problems and not recognize the economies of scale, as demonstrated by Ameren, which would significantly defeat the purposes of these statutes.

We find Ameren's concerns with the fund segregation convincing. Developing two screening criteria for measuring eligibility and two lists of eligible measures will cause an undue burden of having to duplicate the program and to monitor funding levels separately. This process will inevitably incur significant costs and unnecessary manpower while the customers are not able to receive the benefit of the allowed loan amount resulting from the other energy savings. Unquestionably these costs will eventually be transferred to ratepayers as well. Under Ameren's proposed approach, however, as illustrated in the specific example of insulation measures, the available loan more adequately covers the total cost of installing the measure, which more appropriately reflects the total energy savings value. This is in compliance with the legislative intent of the on-bill financing programs. Additionally, Staff failed to point out any downside of combining two savings except that Staff alleged that it is inconsistent with the law. Therefore, Ameren's proposal of combining gas and electric utility savings is approved.

While we agree with the AIU that it should combine the two savings, we also note the importance of allocating costs appropriately to each energy type for the purpose of rider reconciliation. While the AIU recognized this issue in its reply and promised to handle it, the Company was not clear on the details. We urge the AIU to propose a detailed plan as to how to track loan funds as they relate to each energy source.

3. Ameren's Method for Identifying Eligible Measures

Although not contested by Staff or Intervenors, Ameren's proposal to not include a customer's down payment in the calculation to determine the eligibility of a measure appears to conflict with the plain language of the statute. Specifically, subsection (c)(1)(B) states that:

> 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 <u>sufficient to cover the costs of implementing the measures</u>, including finance charges and any program fees not recovered pursuant to subsection (f) of this section.

220 ILCS 5/19 – 140(c)(1)(B); 220 ILCS 5/16 – 111.9(c)(1)(B) (emphasis added). By excluding a customer's down payment, the customer's total cost of implementing the

measure is not considered. Rather Ameren is just considering the amount financed. This conflicts with the plain language of the statute.

In addition to conflicting with the plain language, it could result in measures being financed that were not intended to be covered by the statute. For instance, by not including a customer's down payment in the cost of implementing measures, more measures will qualify. These additional measures, however, won't necessarily be the most energy efficient. This is contrary to the overall goal that the efficiencies realized by the customer outweigh, or at least equal, the customer's cost of installation.

4. Miscellaneous

Once the final list of eligible measures is known, it should be filed with the Commission. This filing should also include (i) the acceptable specifications or configurations for each eligible measure from which customers may select, (ii) the utility's proposal for updating such specifications or configurations, (iii) whether participants can take advantage of other energy efficiency programs in conjunction with the OBF Program (*e.g.*, appliance recycling), and if so, (iv) whether any rebate or incentive received from the energy efficiency program will be used to reduce the cost of the measure when evaluating the eligibility of the measure.

C. FI Selection

1. Intervenors as Members of the 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 Ameren that, pursuant to the statute, selecting the FI is the utility's responsibility and the affected utilities are not required to include the workshop participants as members of the RFP Evaluation committee. The Commission recognizes that these stakeholders were instrumental in the development of the on-bill financing statute and encourages collaboration between Utilities and stakeholders to the extent possible, but the AG's proposal to the Commission conflicts with the clear statutory directive that the FI selection be made by the utility.

The Commission notes that ComEd, in Docket 10-0091, proposes to update interested stakeholders throughout the RFP process concerning, for example, the types of responses it is receiving from lenders. For the Smart Meter pilot ordered by the Commission in Docket 07-0566, ComEd successfully used a similar process during the selection of vendors. The Commission believes this type of process helps address CUB's concern that it will not be informed of the deliberations or actions and directs Ameren to provide the intervenors with similar updates. Also, Staff is directed to reconvene the workshop participants after the RFP process is concluded to provide the

utilities an opportunity to provide the results of the RFP process and the list of eligible measures.

2. 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.

3. Affiliate Lenders

The Commission notes that Ameren does not object to the RFP process where Staff outlines a number of additional steps necessary in order to permit an affiliate to participate in the program, if affiliates are to be included. The Commission agrees that this is a reasonable approach.

4. Workshop

Ameren has agreed to the workshop as proposed by CUB. The Commission agrees that reconvening workshop participants would be helpful after completion of the FI RFP, before program start up.

D. Vendor/FI/Utility Coordination

1. 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.

2. Program Administrator Role

The Commission notes that CUB is not clear in what sort of clarification it seeks from the Utility, but sees that Ameren does not object. Apparently the parties have reached an understanding, but it is not clear what the resolution is.

3. Customer Education

Pursuant to Section 19-140(c)(3), the Commission finds Staff's customer education concerns to be valid and directs the Company to work with Staff and workshop participants to develop the information that will be provided to customers. The cost of providing this information is a program cost recoverable through the utility's automatic adjustment clause tariff.

E. Underwriting criteria

Several options have been proposed to determine the credit-worthiness of potential program participants. The statute recognizes that the FI will be conducting credit checks or other appropriate measures to limit credit risk and make credit-

worthiness determinations. The Commission agrees that the credit check process is an FI or lender obligation; therefore, the FI should use its expertise to determine what measures should be taken to limit credit risk.

That said, the Commission recognizes that one goal of an on-bill financing program is to enable a new pool of consumers – many of whom may not otherwise have access to financing – to take advantage of energy efficient products and technologies. Consistent with this goal, the Commission does not want the program to exclude customers who could benefit from energy efficiency measures because they do not meet traditional credit standards. For example, persons such as students or recent graduates often have not had the opportunity to develop optimal credit histories, and thus may be denied access to these programs. As CUB noted in its Initial Comments, individuals with lower credit scores still often pay their utility bills. Some of these customers still have a sound bill payment history and pose no additional risk for utility bill nonpayment, but would be deemed ineligible under traditional criteria. Using traditional credit standards to determine program eligibility may unnecessarily limit program participation. Therefore, while recognizing that credit-worthiness determinations lie with the FI or lender, the Commission nevertheless urges the Utilities to work with the FI to develop more inclusive credit-worthiness standards that take into account our concerns with relying only on traditional credit evaluation criteria in determining on-bill financing program eligibility.

F. Reconnection

Because the amounts due under the program are deemed amounts owed for electric service, the Commission's rules apply, specifically Part 280. Similarly, because these amounts are amounts due for electric service, the Commission's rules for reconnection would apply. It would appear that Section 280.110 of our rules, which governs Deferred Payment Agreements, also applies to this situation. Our reading of this section supports not only CUB's proposal but also that the utility could agree to enter into a deferred payment agreement with the participant for the missed payments. In other words, because it is in the utility's discretion as to whether it will enter into a deferred payment program, there is nothing prohibiting the utility from adopting CUB's recommendation for OBF Program participants.

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

G. 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. Ameren'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 Ameren and the FI 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.

H. Program Costs

1. Tariff Language

Ameren agrees to Rider GER draft changes necessary for compliance with Section 8-104 to the Staff 30 days prior to filing with the Commission.

2. 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 utilities' automatic adjustment clause rider. In our prudency reviews for this program the Commission will pay close attention to the reasonableness of all administrative costs. The Commission cautions against administrative costs that may limit or adversely affect whether to continue with the program in future years.

The Commission agrees that any estimates that the Utilities' have provided are merely informational, and the Commission's approval of the OBF program does not include approval of the associated proposed budget amounts.

I. Evaluation

1. Statewide Evaluator

CUB proposes that a statewide evaluator be utilized, however, the Utilities object noting that each utility will have issues unique to its program that can not be properly addressed by a single evaluator. While the Commission agrees that utilizing a statewide evaluator may be more efficient and could reduce administrative costs, the statutory language is clear that "the gas utility shall retain an independent evaluator," leaving the decision to choose a single statewide evaluator for all utility programs at the discretion of the individual utilities.

Under Sections 16-111.7 and 19-140, the Commission is tasked with reviewing the evaluators' reports, drafting its own report summarizing on-bill financing program performance, and making a recommendation on the propriety of continuing with these programs. Fulfilling these obligations requires the Commission have a uniform system to compare each utility program, taking into consideration each utility's unique characteristics. Should the utilities select separate evaluators, inconsistency in evaluation methodology could hinder the Commission's ability to function effectively in this respect. For instance, if a service territory difference such as population density is not weighted consistently across each evaluation, the Commission would be left in the unenviable position of choosing between competing methodologies or splitting the difference on the impact of the variable.

The Commission believes that a standard evaluation methodology and standard evaluation criteria must be developed and imposed to provide the Commission with consistent and meaningfully comparable data necessary for evaluation of the programs. The Commission envisions this process as a collaborative effort amongst all interested parties. Staff is directed to provide the Commission with an Order initiating a proceeding wherein all interested parties may file Initial Comments and Reply Comments regarding the methodology and criteria to be utilized by the evaluators. The utility will file notice of its appointment of its evaluator in this proceeding. The evaluator will file its recommendation for its methodology and criteria and the ALJ will develop and provide the Commission with an expedited schedule for comments and replies to the evaluators' recommendations.

Within 6 months of the appointment of an evaluator by each utility, the ALJ will file with the Commission a report detailing the comments and replies and a recommendation for the standardized methodology and criteria.

2. Continuance of Program During Evaluation

CUB is concerned about what happens to the OBF Program during the pendency of the evaluation. Although both Ameren 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. 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.

3. Data Collection

The AIU has no objection to complying with Staff's request.

X. Taxes

In Nicor's related dockets, NS/PGL ask the Commission to determine whether the Public Utility Tax applies to the revenue from the OBF Program. These utilities did not explain why such a determination was necessary in this docket and no argument or further explanation was offered. The reply comments were the last scheduled filing and, therefore, no party was able to respond. Accordingly, the ALJ requested that parties file additional comments addressing the tax issues.

A. Ameren

Ameren submits that, to the extent it is possible to do so, the best way to make an identification of the universe of taxes would be for the utilities or Commission to seek guidance from the respective taxing entity, be it the IDOR or other taxing body. Ameren notes that this process could be time consuming and, perhaps onerous and certainly cannot be completed in the time allotted for these additional comments.

Ameren does not believe the Commission has been asked to determine the applicability of any taxes on the OBF Program. Rather, the Commission has been asked to approve the OBF Program and its associated costs, neither of which include a

mechanism to account for the costs associated with complying with either GRT nor any of the unidentified municipal taxes raised by Staff. Thus, the only tax issues the Commission needs to determine in this docket is whether the record supports the exclusion of those taxes at this time.

The factual and legal basis for a determination as to tax applicability is set forth in the IDOR memorandum, which concludes that constitutional issues weigh in favor of a conclusion that the loan payments are not included within gross receipts under the Gas Revenue Tax. Thus, the issue of whether the OBF Program should be included in gross receipts for the purposes of the GRT is both supported by the evidence and not meaningfully contested - the Commission should approve the exclusion of the GRT from the OBF Program and associated costs.

The AIU have no issue with Staff's argument that the Commission does not have jurisdiction to determine the applicability of the Gas Revenue Act, the Electricity Exercise Tax Law, and various municipal tax laws. However, the AIU disagree with Staff that the Commission that the PUF Tax is within the Commission jurisdiction. The AIU are not convinced by the Staff's reasoning. The AIU point out Staff's lack of case law support for its position and reiterate that the imposition of taxes cannot come from the Commission, but from the legislature.

The AIU agree with Staff that the determination of 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 AIU further agree that to the extent any taxes are imposed, they are recoverable. Finally, the AIU suggest that the utilities seek private letter rulings, provide them to Staff and the Commission, and file necessary amendments to the OBF tariffs.

The AIU agree with Staff that the IDOR memo is not binding.

The AIU takes no position on the applicability of the PUF tax and believes it is an open question.

B. CUB

The AIU agree with CUB that utilities should exclude any gross receipts tax from the cost of an OBF Program measure. Staff solicited the opinion of the Illinois Department of Revenue ("IDOR") on its interpretation of whether the Gas Revenue Tax Act ("GRT Act") applies to any OBF Program revenues. IDOR, at the request of the Office of General Counsel of the Commission 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. 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. 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 gas using 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. AIU accepts the memorandum from IDOR indicating the tax is not applicable. CUB agrees with IDOR's conclusion. CUB believes IDOR's memorandum should be sufficient to allow 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. 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.

CUB agrees 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).

The Act imposes Public Utility Fund ("PUF") tax upon "gross revenue" which is collected by a public utility. 220 ILCS 5/2-202. For the purposes of the PUF tax, "gross revenue" is defined to include all revenues collected by a public utility subject to regulation under the PUA, Section 3-121, but to exclude revenue from the production, transmission, distribution, sale, delivery or furnishing of electricity, Section 2-202. 220 ILCS 5/3-121; 220 ILCS 5/2-202. 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.

C. 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.

D. 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 to the loan payments included on utility bills. 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 Program , 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 loan payments are collected pursuant to either Section 5/19-140 or Section 5/16-111.7. For that reason alone, the OBF loan payments 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 is 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.

Moreover, Staff's position would lead to uneven results. Section 5/2-202 makes clear that the PUF tax does not apply to electric service. Thus, if a customer participated in the OBF Program through a gas utility, the customer would be subject to additional taxes, but not if the customer participated through an electric utility.

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. This paragraph specifies, in no uncertain terms, that the loan is the <u>sole responsibility of the participant</u>. 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.

In the related Peoples Gas proceeding (Docket 10-0090), Peoples Gas relies on a court decision concerning whether taxes were applicable where a utility rented appliances to ratepayers. <u>Illinois Power Co. v. Mahin</u>, 49 Ill. App. 3d 713 (4th Dist. 1977) ("<u>Mahin</u>"), *aff'd* 72 Ill. 2d 189 (1978). The court found that the revenue received from these rentals was includable in "gross receipts" and was associated with the use of gas or electricity supplied by the utility. It is an entirely different fact situation than presented here. In the <u>Mahin</u> case, the utility was renting and maybe even selling the appliances and including the payments on the utility bill. Here, the utility is not selling

the energy efficiency equipment, but rather a third party vendor is. Although the court in Mahin recognized that the appliances were available from other sources it did not take the further step and find that if the appliance were purchased elsewhere the public utility tax or gas revenue tax would apply. The Mahin decision is not controlling.

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 appears that because of the manner in which utilities calculate taxes it is appropriate that the individual customer be responsible for the additional taxes. This is especially important for municipal taxes that are specific to only certain municipalities.

XI. 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) Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS and Illinois Power Company d/b/a AmerenIP is a corporation organized and existing under the laws of the State of Illinois. Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS and Illinois Power Company d/b/a AmerenIP is a public utility within the meaning of Section 3-105 of the 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 Ameren as modified herein should be approved;

(5) the tariffs proposed by Ameren, Rider EDR and Rider GER, as modified herein, should be approved;

(6) Staff should reconvene the workshop participants after the completion of the FI RFP process to provide the utilities an opportunity to provide the results of the RFP process and the list of eligible measures;

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

(8) Ameren should work with Staff and workshop participants to develop the proposed consumer information that will be made available to potential participants;

(9) Ameren will file notice of its appointment of its evaluator in this Docket;

(10) Staff shall provide the Commission with an Order initiating a proceeding wherein all interested parties may file comments and replies regarding standard evaluation methodology and standard evaluation criteria to be utilized by evaluators.

(11) the evaluator will file its recommendation for a standard evaluation methodology and standard evaluation criteria;

(12) the ALJ will develop an expedited schedule for comments and replies to the evaluators' recommendations;

(13) within 6 months of the appointment of the evaluator, the ALJ will file with the Commission a report detailing the comments and replies and a recommendation for the standardization of evaluation methodology and evaluation criteria;

(14) 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 Ameren and modified herein, is approved.

IT IS FURTHER ORDERED that the proposed tariffs, Rider EDR and Rider GER, as proposed by Ameren and modified herein, is approved.

IT IS FURTHER ORDERED that Staff of the Commission is directed to reconvene the workshop participants following completion of the FI RFP process to allow the utilities an opportunity to provide the results of the RFP process and the list of eligible measures.

IT IS FURTHER ORDERED that following completion of the RFP process, Ameren 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, Ameren 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 Ameren will file notice of its appointment of its evaluator in this Docket.

IT IS FURTHER ORDERED that Staff provide the Commission with an Order initiating a proceeding wherein all interested parties may file comments and replies regarding standard evaluation methodology and standard evaluation criteria to be utilized by evaluators.

IT IS FURTHER ORDERED that the evaluator will file its recommendation for a standard evaluation methodology and standard evaluation criteria.

IT IS FURTHER ORDERED that the ALJ will develop an expedited schedule for comments and replies to the evaluators' recommendations.

IT IS FURTHER ORDERED that within 6 months of the appointment of the evaluator the ALJ will file with the Commission a report detailing the comments and replies and a recommendation for the standardization of evaluation methodology and evaluation criteria.

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.

By Order of the Commission this 2nd day of June, 2010.

(SIGNED) MANUEL FLORES

Acting Chairman