STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company,	**)**	
	)	**Docket No. 10-0138**
Proposal to establish Rider PORCB	**)**	
(Purchase of Receivables with Consolidated	**)**	
Billing) and to other related tariffs.	**)**	
(Tariffs filed January 20, 2010)	**)**	

INITIAL BRIEF OF THE CITIZENS UTILITY BOARD

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THE CITIZENS UTILITY BOARD ("CUB"), through one of its attorneys, hereby submits this Initial Brief in the above-captioned proceeding pursuant to Section 200.800 of the Illinois Commerce Commission ("ICC" or "the Commission") Rules of Practice. 83 Ill. Admin. Code § 200.8000. This proceeding was initiated by Commonwealth Edison Company ("ComEd" or "the Company") to request ICC approval of certain tariffs filed to meet the Company's obligations under Public Act 95-700, codified at Section 16-118(c) of the Public Utilities Act ("PUA" or "the Act"). See 220 ILCS 5/16-118(c). In particular, ComEd seeks approval for its proposed Purchase of Receivables with Consolidated Billing ("PORCB") projects, including approval of a new rider, Rider PORCB, which gives retail electric suppliers ("RESs") the option to have the Company purchase such RESs' receivables and produce consolidated bills so that the Company may collect such charges from the customers whose receivables it has purchased. ComEd Ex. 1.1 Original Sheet 393. The rider also provides the methodology for how the Company will recover its costs for implementing the rider, which ComEd says will ultimately all be recovered from the RESs taking service under the rider. *Id.* ComEd also seeks approval of revisions to Rider RCA, which ensures that ComEd receives full recover of its costs for purchasing implementing the PORCB projects. ComEd Ex. 1.2.

Since P.A. 95-0700 was enacted, CUB has participated in a series of workshops sponsored by the ICC's Office of Retail Market Development ("ORMD") around a wide variety of consumer protection and market development issues. Along with many parties to this proceeding, CUB was active in the docket approving the implementation of the Ameren Illinois Utilities'[1] ("AIU") consolidated billing and purchase of receivables programs. See ICC Dockets No. 08-0619 through 08-0621 (consolidated). CUB's position on the need for strong consumer protections, equitable program cost recovery, and appropriate transparency in market products are well documented in those proceedings, and will not be repeated here. CUB is pleased that ComEd's proposed filing comports with the ICC's decision in the AIU cases, and CUB commends the Company for engaging stakeholders prior to the filing in an attempt to narrow issues presented to the ICC here. As a result, CUB will address in this Initial Brief only two issues. First, CUB will address why the ICC should reject ComEd's proposal to set the rate of return on PORCB investments at the same rate as for the Company's approved rate base. Second, CUB will address why the ICC should approve the Company's proposed ten-day rescission period.

I. The Commission Should Reject ComEd's Proposed Rate of Return Because PORCB Investments Are Less Risky than Other Investments and Require a Lower Rate of Return.

The Company proposes that the rate of return on PORCB investments should be equal to the overall rate of return on ComEd's rate base, as authorized in its most recent rate case. ComEd Ex. 5.0 at 1, ll. 19-20. ComEd bases this assessment not on the nature of the investments themselves, but on the fact that absent a legislative mandate to invest in PORCB program infrastructure, ComEd would spend those dollars in "other areas of utility operations" which

[1] The Ameren Illinois Utilities in that proceeding included Central Illinois Public Service Company, d/b/a AmerenCIPS, Central Illinois Light Company d/b/a AmerenCILCO, and the Illinois Power Company d/b/a AmerenIP.

equate to typical rate base investments. ComEd Ex. 5.0 at 6-7, ll. 132-138. However, as ICC Staff witness Rochelle Phipps points out, the Company's return on unrecovered investment is not guaranteed. ICC Staff Ex. 4.0 at 3, ll. 42-43. In a traditional rate case, the Company's return on investment is not guaranteed. The Company's return could be more or less than the Commission-approved rate depending upon actual expenses, investments and revenues. The utility could in fact earn more or less than the targeted fair return on investment depending upon the degree to which its actual revenues, expenses and investment differ from the levels composing its revenue requirement. ICC Staff Ex. 4.0 at 3, ll. 44-46. The issue before the Commission in this case is a different one: ComEd witness Fruehe testifies that Rider PORCB and Rider RCA work "in concert… providing ComEd with nothing more than dollar-for-dollar cost recovery in a somewhat timely, albeit protracted, manner." ComEd Ex. 1.0 at 10, ll. 252-255. Therefore, PORCB investments are less risky than other rate base assets, since the utility will earn a guaranteed return. As a result of that lesser risk, investors should receive a lower rate of return. CUB agrees with Staff that the Commission should approve a rate of return which fairly accounts for the true degree of risk involved in PORCB when coupled with Rider RCA: the 6.71 percent recommended by Ms. Phipps. Staff Ex. 4.0 at 7, ll. 30-36.

In a traditional rate case, the Company's return on investment is not guaranteed. The Company's return could be more or less than the Commission-approved rate depending upon actual expenses, investments and revenues. Common equity shareholders are exposed to more cash flow risk than debt holders because public utility debt holders are paid first out of the company's earnings. CUB Ex. 1.0 at 3, ll. 70-71. Any remaining earnings accrue to shareholders as dividends. *Id.* at ll. 72-73. Therefore, in a rate case, costs for which the company does not recover but for which it has taken on debt results in lower dividends to shareholders. *Id*. at ll. 72-73. That is not the case here, where the Company has included a mechanism, Rider RCA, which captures the differential (positive or negative) between actual and projected recovery of PORCB costs. *Id*. at 2, ll. 43-45. This ensures that for all prudently incurred costs, ComEd will recover all of its expenses. By arguing that the appropriate rate of return for PORCB is equal to the rate of return in its most recent rate case, ComEd does not take into account the risk-lessening effect of its own proposed mechanism.

Staff witness Ms. Phipps proposes a reasonable methodology for calculating the capital costs associate with ComEd's proposed PORCB assets. Ms. Phipps bases her proposed rate of return on her analysis of the degree or risk involved in the PORCB program (the Company conducted no such risk analysis). Staff Exhibit 4.0 at 3-4, ll. 55-59, citing Company Response to ICC Staff Data Request RP 1.10. Ms. Phipps compares some aspects of PORCB to AAA-rated transitional funding instruments, and ComEd takes issue with that comparison. ComEd Ex. 5.0 at 3-5, ll. 49-93. Ms. Phipps takes into account that the Commission will undertake a prudency review of ComEd's expenses associated with PORCB, and she increases the rate of return based on the risks associated with such a review. Staff Ex. 4.0 at 6, ll. 104-115. She considers that while there is some degree of risk involved in PORCB, assuming the Commission approves a prudency review, that risk is significantly less than the risks involved in rate base expenditures. Staff Ex. 4.0 at 3, ll. 40-54. She arrives at an overall rate of return of 6.71%, the midpoint between the ten-year yield on AAA-rated utility debt and the Company's rate of return on rate base, as adjusted to reflect a ten-year maturity. *Id*. at 2, ll. 30-36.

The Commission has previously found that rider recovery mechanisms reduce the risk of cost recovery in a way that affects capital costs. For example, in one such case the Commission found that the overall cost of capital should be reduced:

> The Commission finds that Rider VBA [Volume Balancing Adjustment, also known as decoupling] will lessen the Utilities' risk associated with their cash flow. Moreover, we agree with Staff's recommendation that there should be a downward adjustment to the cost of common equity to account for the reduced risk associated with the accepted riders. Staff Ex. 10.0 at 23.
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> …
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> While the record in this case lacks an exact calculation of the reduction in risk due to Rider VBA, we note that determining the cost of common equity is not an exact science. Amax Zinc Co. v. Illinois Commerce Comm., 124 Ill. App. 3d 4, 11-12 (5th Dist 1984). Overall, we find the record to support a downward adjustment, and in the absence of an exact calculation we find it reasonable to reduce the return on common equity by ten (10) basis points for the duration of the pilot program.

Illinois Commerce Commission v. North Shore Gas Company and The Peoples Gas Light and Coke Company, Proposed general increase in rates for gas service, ICC Dockets 07-0241/07-242 (cons.), Final Order at 99, February 5, 2008.

Similarly, in ICC Docket 09-0306c, the Commission found that the rate of return on common equity for investments that are less risky than others in rate base should be adjusted to reflect that lesser risk. In that case, the Commission found that an increased fixed portion of the customer charge placed AIU "at less risk of recovering less than its fixed costs of service for gas operations, which should be reflected in a reduction in the approved cost of common equity for AIU's gas operations." *Illinois Commerce Commission v. Central Illinois Light Company d/b/a/ AmerenCILCO et al*., Proposed general increase in electric and gas delivery service rates, ICC Docket 09-0306c, Final Order at 217, April 29, 2010. Also in that case the Commission addressed the risk involved in a prudency review where the utility complained that such a review created a risk for the company. *Id*. at 218. The Commission "remind[ed] AIU that it largely controls the outcome of any such prudence review so long as it acts prudently…" and determined that a reduction in uncertainty that a utility will earn its authorized rate of return calls for a reduced cost of common equity, even where a prudency review will take place. *Id*. at 218-19.

Similar to the investments described in the above cases, the Company is exposed to less risk for PORCB investments than it is for a typical rate case. Although a prudency review does create some risk, the Commission should remind ComEd as it reminded AIU that the utility can control that risk by acting prudently, and should reduce the Company's return according to the reduced risk. CUB agrees that Ms. Phipps's proposed rate of return of 6.71 percent is a reasonable return on assets considering the risk profile. CUB Ex. 1.0 at 4, ll. 80-87.

II. A Ten Day Initial Rescission Period is Necessary to Protect Consumers

As part of PORCB, ComEd has also included changes to Rate BES- Basic Electric Service ("Rate BES"), Rate BESH- Basic Electric Service Hourly ("Rate BESH"), Rate RDS- Retail Delivery Service ("Rate RDS") and Rate MSPS- Metering Service Provider Service ("Rate MSPS"). ComEd. Ex. 2.0 at 14-15, ll. 316-320. These changes update the rules which regulate switching electric power and energy suppliers. Specifically, the proposed changes increase the minimum amount of time for submission of Direct Access Service Requests ("DASRs") in advance of the switch of a mass market customer (a) from ComEd supply under Rate BES or Rate BESH to RES supply (Rate RDS); (b) from one RES to another RES while on Rate RDS; or (c) from RES supply (Rate RDS) to ComEd supply on Rate BES or Rate BESH. ComEd Ex. 2.0 at 15, ll. 328-335. CUB's support for ComEd's proposal is based, at least in part, upon CUB's understanding that ComEd has agreed to a ten-day period following a request to switch electric power and energy providers during which the customer may rescind without penalty.

This ten-day rescission period is necessary to protect consumers. During that time, consumers have the opportunity to review and reconsider the contract they signed. CUB Ex. 2.0 at 2, ll. 30-35. Staff initially opposed tariff provisions related to a rescission period, as a rulemaking proceeding is underway in the Commission to address that. Staff Ex. 1.0 at 25, ll. 540-558. However, in the interest of not delaying ComEd's PORCB projects, Mr. Clausen's rebuttal testimony states that Staff will not oppose the tariff provisions in question provided that the Commission makes certain declarations about those provisions. Staff Ex. 5.0 at 29, ll. 657-690. First, Staff requests that the Commission make clear that tariff revisions related to a rescission period do not supersede the rules related to a rescission period in the rulemaking. Id. at 29-30, ll. 653-676. Second, Staff requests that the Commission clarify that it is making no decision as to what constitutes an appropriate definition of "small commercial customer" in this proceeding, as that is also being contested in the rulemaking. Id. at 30, ll. 677-685. CUB does not oppose Staff's two requests so long as they will serve to ensure the proposed rescission period take effect contemporaneously with the approval of the PORCB program.

ComEd's proposal regarding the initial rescission period should be in place and functional contemporaneously with the approval of its Purchase of Receivables with Consolidated Billing ("PORCB") program. The initial rescission period gives customers the opportunity to review and reconsider the contract they signed with a RES. CUB Ex. 2.0 at 2, ll. 31-32. Moreover, ComEd's commitment to field customer calls and process rescissions during this 10-day post-contract period is important because this will shield customers from potential high pressure retention efforts on the part of the contracting RESs. *Id*. at ll. 32-35. As ComEd witness Garcia notes, the utility made certain assumptions, based upon the ORMD workshop process in order to build the infrastructure to support the PORCB program. ComEd Ex. 3.0 at 26-27, ll. 637-650.

In the AIU dockets implementing P.A. 95-0700, CUB submitted testimony asking the Commission not to approve Ameren's tariffs until there were more robust rules protecting consumers. *See Illinois Commerce Commission v. Central Illinois Light Company d/b/a/ AmerenCILCO et al.*, Proposal to implement a combined Utility Consolidated Billing (UCB and Purchase of Receivables (POR) Service, ICC Docket 08-0619/08-0620/08-0621 (cons.), CUB Exs. 1.0 and 3.0. The Commission responded by directing a rulemaking proceeding to address consumer protections rules, a process underway in ICC Docket No. 05-0592. *Id.*, Final Order at 48, August 19, 2009. While these rules are not yet in place, ComEd's proposal addresses CUB's concerns from the AIU dockets. Consumer protection must be a priority to the Commission, and ComEd's proposal can serve that function while the rulemaking is underway. Without such protections, the Commission should not approve ComEd's PORCB program.

Conclusion

CUB generally favors approval of ComEd's proposed PORCB program, and agrees with the cost recovery mechanisms filed by ComEd. However, ComEd did not properly analyze the risk involved in PORCB investments, and thus ComEd's proposed rate of return on PORCB is unfairly high. The Commission should consider the risk involved in PORCB relative to other risks in order to determine a fair rate of return and adopt the rate of return proposed by Staff. Additionally, the Commission should approve ComEd's proposed rescission period in order to protect consumers. CUB respectfully requests that the Commission approve ComEd's proposed tariffs with the modification to the rate of return discussed herein.

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Respectfully Submitted,

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