

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Commonwealth Edison Company,)	
Proposal to establish Rider PORCB)	
(Purchase of Receivables with Consolidated Billing))	No. 10-0138
and to revise other related tariffs.)	
)	

**INITIAL BRIEF OF
THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION**

Dated: September 2, 2010

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**INITIAL BRIEF OF
THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION**

The Illinois Competitive Energy Association ("ICEA"),¹ by and through its counsel, respectfully submits the following Initial Brief and Proposed Order (Attachment A) in the above captioned proceeding.

ICEA is an Illinois not-for-profit corporation established as an Illinois-based trade association to represent the interests of competitive energy suppliers, including licensed Alternative Retail Electric Suppliers ("AREs" or "Suppliers"), and others interested in preserving and enhancing opportunities for customer choice and competition in the electric and natural gas industries in Illinois. ICEA's members include some of the largest competitive energy suppliers in Illinois, such as Ameren Energy Marketing, Champion Energy, LLC, Constellation NewEnergy Inc., Direct Energy Services, LLC, Exelon Energy Company, Integrys Energy Services, Inc., MC2 Energy Services, LLC, and Nordic Energy Services, LLC. ICEA's members serve residential, commercial, industrial, and public sector customers, including companies involved in the manufacturing industry, retail businesses; local units of government; cultural, sporting, and educational institutions; as well as hospitals, hotels, and restaurants throughout the state of Illinois.

EXECUTIVE SUMMARY

At the outset, ICEA emphasizes its gratitude and respect for the diligent work of the Illinois Commerce Commission Staff and the Office of Retail Market Development ("ORMD") (hereinafter, collectively referred to as "Staff") in this proceeding. While ICEA and Staff share the goal of promoting retail electric competition for the residential market, ICEA respectfully submits a divergent opinion as to how best to effectuate the Commission's broader mandate for POR / UCB availability and usage under the Public Utilities Act ("Act"). Staff is essentially asking the Commission in this proceeding to re-write

¹ The comments expressed in this filing represent the position of ICEA as an organization but may not represent the views of any particular member of ICEA.

Section 16-118(c) to limit the availability of PORCB to only those customer classes with no competitive supply options. Or, to put it another way, Staff is asking the Commission to forego establishing a potentially widely-used and widely-supported PORCB offering for residential and eligible commercial customers in order to "bet"² on a proposal that will likely be largely unused by suppliers serving commercial customers but that is thought by Staff to be slightly more attractive to suppliers who serve small volume residential customers.³ ICEA does not believe that the goals of promoting retail electric competition for both residential and commercial customers need to be, or should be, mutually exclusive or unobtainable in this proceeding.

The General Assembly clearly envisions a competitive retail electric market that benefits all Illinois consumers including residential and small commercial consumers. And, the General Assembly has placed in the hands of the Commission the tools-- including POR and UCB-- to make this vision a reality. By placing its bet on residential competition in general and low volume residential users in particular, Staff improperly narrows the intended beneficiaries of POR and UCB and places the Commission squarely on the horns of a false dilemma-- having to unnecessarily choose between residential and small commercial customers. Fortunately, the task before the Commission is much more certain than Staff would make it out to be. The General Assembly has already decided who should benefit from PORCB. The service is clearly to be designed with both residential and commercial customers in mind.

Designing a rate structure that will ensure the widespread use of PORCB and treat ratepayers fairly is ultimately a public policy determination that is not constrained to one ratemaking approach for cost recovery over another.

Further, ComEd's cost recovery mechanism treats ratepayers fairly while properly taking into account the impact that a too-high discount rate could have on supplier participation.

² See, Rebuttal Testimony of Torsten Clausen, ICC Staff Exhibit 5.0 line 258.

³ The difference between Staff and ComEd's proposal for low use customer according to ComEd's calculations is only 16 cents. See, Rebuttal Testimony of Robert Garcia, ComEd Ex. 3.0 at lines 270-272.

Accordingly, ICEA requests that ComEd's Rider PORCB and related tariff provisions be approved by the Commission.

ARGUMENT

1. INTRODUCTION: MEMORANDUM OF UNDERSTANDING.

The ORMD, Commonwealth Edison ("ComEd"), Ameren Illinois Utilities ("AIU"), ICEA and its member companies, other retail electric suppliers, the Citizens Utility Board ("CUB") and the Illinois Attorney General's office ("AG") have worked diligently since January 2008 to implement Public Act 95-0700.⁴ With regard to the availability of POR and UCB in ComEd's service territory, late last year ICEA participated in settlement discussions with ComEd which resulted in the January 13, 2010 Memorandum of Understanding ("MOU") filed in this proceeding between ComEd, ICEA and the Retail Energy Supply Association ("RESA").⁵ In addition, the cost recovery mechanism reflected in the MOU was developed in cooperation with the Citizens Utility Board.⁶

The MOU reflects ICEA's agreement with ComEd on the discount rate and cost recovery mechanism as well as other terms and conditions. ICEA believes that the MOU represents a reasonable and equitable compromise that should help bring the benefits of customer choice and competition to both residential and small commercial retail customers in ComEd's service territory.

ComEd has been faithful to the MOU in designing its PORCB filing. ICEA supports the discount rate and overall cost recovery methodology set forth in Rider PORCB and Rider RCA; ComEd's proposal

⁴ In addition to enacting the Public Utilities Act provision at issue in this proceeding, Section 16-118(c), Public Utilities Act 95-0700 also addressed other retail electric competition issues, including adding a section to Article XX of the Public Utilities Act dealing with retail choice and referral programs, Section 20-130.

⁵ See, "Agreement Regarding Tariffs To Be Filed With The Illinois Commerce Commission For Approval Pursuant To Subsection (c) Of Section 16-118 Of The Public Utilities Act", ComEd Ex. 1.3, attached to the Direct Testimony of Robert Garcia.

⁶ See, ComEd Ex. 1.0, Direct Testimony of Robert Garcia at line 169.

to establish the fixed monthly charge portion of the discount rate at \$0.50 cents per bill; and, ComEd's proposed "all-in" restriction with respect to residential customers.⁷

ICEA notes that per the MOU, the parties have agreed to commence stakeholder discussions with regard to the "all in" restriction when customer accounts enrolled by all retail electric suppliers in ComEd's PORCB tariff offering exceeds 150,000 during a monthly billing period.⁸

ICEA believes the MOU is consistent with the goal of creating a PORCB program that will be used by retail electric suppliers to serve residential and small commercial customers in a substantial and widespread manner. ICEA President Kevin Wright testified that "ICEA would not have agreed to enter into the MOU had its members thought it would result in an unused, unworkable and unwanted POR and UCB service."⁹

2. DOMINION RETAIL IS NOT THE ONLY RETAIL ELECTRIC SUPPLIER IN THIS PROCEEDING WITH A SIGNIFICANT BUSINESS INTEREST IN SERVING RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS.

Dominion Retail Inc. ("Dominion Retail"), the only retail electric supplier ("RES" or "supplier") to testify in this proceeding that is not a signatory to the MOU, attempts to position itself as the only supplier with a "significant business interest" in serving residential and small commercial customers.¹⁰ ICEA does not doubt Dominion Retail's desire to serve residential and small commercial customers in Illinois. Nor does ICEA question the resolve behind Dominion Retail's "adamant" adherence to the positions it has taken in this proceeding.¹¹ But ICEA finds disingenuous and demonstrably incorrect

⁷ Under the MOU reached with ComEd, a retail electric supplier that chooses to use Rider PORCB to serve residential customers within ComEd's service territory must use Rider PORCB for all of its residential customers that it serves within ComEd's service territory (hence, "all-in").

⁸ See, Paragraph 4 of the "Agreement Regarding Tariffs To Be Filed With The Illinois Commerce Commission For Approval Pursuant To Subsection (c) Of Section 16-118 Of The Public Utilities Act", ComEd Ex. 1.3, attached to the Direct Testimony of Robert Garcia.

⁹ See, Rebuttal Testimony of Kevin Wright, ICEA Ex. 2.0 at page 3:17-18.

¹⁰ See, Rebuttal Testimony of James L. Crist on Behalf of Dominion Retail, Inc., Exhibit JC-2.0 lines 49 through 113.

¹¹ Id. at lines 104-106 ("Dominion is very adamant about the positions it has taken in this proceeding because it has a direct interest in pursuit in the pursuit of those positions.")

Dominion Retail's implicit claim to be the one and only true voice for RESs interested in serving residential and small commercial customers in Illinois. As ICEA witness Kevin Wright testified:

ICEA and its member companies have been, and continue to be, vocal and active participants in the quest to foster and maintain the development of retail electric competition in Illinois. Indeed, ICEA members actively sought passage of the legislation that would become the POR and UCB provisions in the Public Utilities Act. ICEA member companies have several years of experience serving customers in other jurisdictions using POR and UCB mechanisms. In addition, ICEA members Champion, Integrys and Direct Energy collectively serve over three million residential gas and/or electric customers in North America. Three ICEA members are currently licensed to serve residential electric customers within ComEd's service territory (Champion Energy, LLC; Direct Energy Services, LLC; and, Integrys Energy Services, Inc.) and others are contemplating entry into that market. The successful implementation of PORCB in ComEd's service territory will likely expedite that market entry.¹²

Dominion Retail's attempt to discredit the legitimacy of signatories to the MOU to speak credibly to residential and small commercial competition matters borders on the farcical. Dominion points to the PlugInIllinois.org website to claim that only one of the members of RESA and ICEA referenced in the MOU (Liberty Power Holdings, LLC) has completed the registration process necessary to serve residential customers in ComEd's service territory.¹³ As of the date of this brief, however, Dominion Retail itself does not appear on the PlugInIllinois.org list of retail electric suppliers that have completed the registration process with ComEd to serve residential customers.¹⁴ ICEA is not surprised that suppliers might wait for the outcome of this proceeding before expending the financial and human resources to take the step of registering with ComEd. The lack of such registration does not demonstrate a lack of interest in serving residential customers but rather fiscal prudence in not expending resources until the parameters for using PORCB at issue in this proceeding have been determined.

ICEA has never claimed to be the only voice speaking on behalf of RESs interested in serving residential and small commercial customers. ICEA certainly respects the fact that other RESs may have

¹² See, Rebuttal Testimony of Kevin Wright, ICEA Ex. 2.0, beginning at page 3:8 through page 4:5.

¹³ See, Rebuttal Testimony of James L. Crist on Behalf of Dominion Retail, Inc., Exhibit JC-2.0 at lines 60-64.

¹⁴ Moreover, Dominion Retail fails to mention that ICEA member Champion Energy, LLC, who joined ICEA after the MOU was signed, appears on the PluggedInIllinois.org list of companies that have completed registration with ComEd to serve residential customers as does a supplier, Commerce Energy, which was recently acquired by a RESA member.

different views on how best to foster residential and small commercial retail electric competition.¹⁵ But, as noted above by ICEA witness Kevin Wright, ICEA members have led the effort to foster retail electric competition for residential and small commercial customers in Illinois, have several years experience in jurisdictions with POR and UCB mechanisms, and serve over 3.5 million residential gas and electric customers throughout North America. In addition, three ICEA members have already taken steps to secure certificates from the Commission to serve residential customers and other ICEA members are contemplating entry into this market segment. Accordingly, the Commission should reject Dominion Retail's attempt to position itself as the only RES with a significant business interest in serving residential and small commercial customers.

3. STAFF AND ICEA SHARE THE GOAL OF PROMOTING RETAIL ELECTRIC COMPETITION FOR RESIDENTIAL CUSTOMERS BUT HOLD DIVERGENT OPINIONS AS TO HOW BEST TO EFFECTUATE THE COMMISSION'S BROADER MANDATE FOR POR / UCB AVAILABILITY AND USAGE UNDER THE PUBLIC UTILITIES ACT.

A) THE GENERAL ASSEMBLY CLEARLY DESIGNED POR AND UCB FOR USE BEYOND RESIDENTIAL CUSTOMERS.

While it is true that POR and UCB are widely promoted as best practices to foster residential competition, the residential market is not the only market which can benefit from these market development tools and the General Assembly clearly directed that POR and UCB be offered for use beyond residential customers. Section 16-118(c) of the Act which sets forth the POR service that electric utilities are to provide to suppliers, begins:

An electric utility with more than 100,000 customers shall file a tariff pursuant to Article IX of this Act that provides alternative retail electric suppliers, and electric utilities other than the electric utility in whose service area the retail customers are located, with the option to have the electric utility purchase their receivables for power and energy service provided to residential retail customers **and non-residential retail customers with a non-coincident peak demand of less than 400 kilowatts.**

¹⁵ ICEA notes that the National Energy Marketers Association ("NEMA") and the Illinois Energy Marketers Coalition (IEMC) have intervened in this proceeding but have not submitted testimony of their own. IEMC, for Illinois purposes, is apparently comprised of Energy Plus Holdings, Inc. and Illinois Gas and Electric.

(Emphasis supplied.)¹⁶

Section 16-118(c) was a component of Senate Bill 1299 ("SB 1299") in the 95th General Assembly. In addition to POR and UCB, SB 1299 contained other tools / provisions designed to encourage retail electric competition such as the ability for a RES to enroll customers telephonically without the need for a "wet" signature as well as the possibility for customer choice and referral programs. SB 1299 passed the Illinois House of Representatives on a 105-1 vote on August 10, 2007. Five days later, on August 15, 2007, the Illinois Senate voted in favor of SB 1299 39-0. There is no indication from a review of the rather limited floor debate related to the passage of SB 1299 on August 10th and 15th, 2007, that the legislators had any intent of limiting POR and UCB availability only to RESs serving residential customers. To the contrary, in the House, SB 1299's sponsor Rep. Holbrook noted that SB1299 "will bring Illinois the tools it needs to meet competition for residential and small business consumer [sic] electric in this deregulated state and environment we are in now."¹⁷ Rep. Holbrook noted that SB 1299 "will give Illinois consumers the best practices that we have in the country for competitive residential electric markets and small consumers."¹⁸ The Senate Sponsor, Sen. Harmon, spoke generally that the amended SB 1299 the legislators were voting on was designed "to encourage competition in the electricity market by removing barriers to entry."¹⁹ Senator Harmon noted that SB 1299 "would provide for competitive providers to enter the market and take advantage of things like consolidated billing, the purchase of receivables, telephonic enrollment, and customer choice and referral programs."²⁰

Yet, in its desire to spark residential competition, Staff appears to have lost interest in following the intent of the General Assembly to develop a viable POR-UCB offering for non-residential customers. ComEd outlines a number of persuasive concerns as well as negative impacts for suppliers if Staff's

¹⁶ Further, while a "stand alone" UCB product is not at issue in this proceeding, ICEA notes that Section 16-118(d) which pertains to utility consolidated billing has no customer-based limitations whatsoever.

¹⁷ See, State of Illinois, 95th General Assembly, House of Representatives Transcription Debate, 115th Legislative Day, August 10, 2007 at pages 28-29.

¹⁸ *Id.* at 29.

¹⁹ See, State of Illinois, 95th General Assembly, Regular Session, Senate Transcript, 91st Legislative Day, August 15, 2007 at page 8.

²⁰ *Id.*

percentage-based cost recovery proposal were to be adopted.²¹ Among them, that Staff's proposed percentage-based charge is discriminatory in that it unjustly charges suppliers different rates for the provision of the same service to different customers based on extraneous factors that bear no relationship to the nature of the costs incurred for the service provided.²² ComEd also correctly notes that "a percent-based charge potentially could discourage the use of PORCB for larger, non-residential customers . . ."^{23,24}

In comparing implementation cost recovery mechanisms, it is important to keep in mind that participation in the ComEd PORCB program is voluntary for RESs. Further, it is important to note by way of comparison that under ComEd's single billing service (whereby the retail electric supplier bills for ComEd) RESs are only compensated 54 cents by ComEd for including ComEd's charges on the supplier's bill to the customer. A discount rate that includes a cost recovery component that is significantly higher than 54 cents would likely discourage the use of ComEd's PORCB service. Staff's .68 percent proposal would result in charges to suppliers for implementation cost recovery that is significantly higher than 54 cents. For example, under Staff's proposal a supplier serving a 30 kW customer with a monthly electric supply charge of approximately \$921 per month (say for example a family restaurant or diner or a law firm leasing a floor in a downtown office building), would pay approximately \$6.26 per month to ComEd for PORCB implementation cost recovery. And a supplier serving a 300 kW customer (say for example a suburban 2 to 3 story hotel) with a monthly electric supply charge of approximately \$9,210 per month would pay \$62.62 per month to ComEd for PORCB implementation cost recovery.²⁵

ICEA shares Staff's goal for wanting to bring competitive electric supply options to customers who currently do not have such options.²⁶ Bringing the benefits of retail electric competition to residential customers in ComEd's service territory has been a much longer and arduous journey than ICEA ever anticipated. But, we must respectfully disagree with any cost recovery mechanism that effectively limits

²¹ See, Rebuttal Testimony of Robert Garcia, ComEd Ex. 3.0 at pages 8 through 14.

²² See, Surrebuttal Testimony of Robert Garcia, ComEd Ex. 6.0 at lines 141-144.

²³ See, Rebuttal Testimony of Robert Garcia, ComEd Ex. 3.0 at pages 9, lines 233-234.

²⁴ For more detail on the impact of a percentage based charge please see Section 4 of this Initial Brief.

²⁵ See, Rebuttal Testimony of Kevin Wright, ICEA Ex. 2.0, at page 7:10-22.

²⁶ See, Rebuttal Testimony of Torsten Clausen, ICC Staff Exhibit 5.0 lines 246-249.

the availability of POR / UCB to only those customer classes who currently are not being offered competitive supply options.

Despite Staff's assertion that there are "numerous suppliers" serving commercial customers²⁷, there are a number of small and medium commercial customers who have not yet switched to competitive supply and who could benefit from the increased choices that a successful PORCB program could bring. ICEA President Kevin Wright testified that according to the latest DASR report posted on the Illinois Commerce Commission's website and dated February 28, 2010, only 14.1% of small commercial customers (0-100 kW) are taking supply service from a retail electric supplier. 205,913 remain on ComEd's fixed price supply. Of the medium commercial customers (100-400 kW), Mr. Wright testified that 60.2 percent are taking service from a retail electric supplier. 5,323 medium commercial customers remain on ComEd's fixed price supply.²⁸

B) THE GENERAL ASSEMBLY CLEARLY ENVISIONS A COMPETITIVE RETAIL ELECTRIC MARKET THAT BENEFITS ALL ILLINOIS CONSUMERS.

Further evidence of the General Assembly's intent with regard to which customer classes should enjoy the benefits of competitive retail markets can be found in Article XX of the Public Utility Act which sets forth the findings and intent of the Illinois General Assembly in passing the Retail Electric Competition Act of 2006:

Sec. 20-102. Findings and intent.

- (a) A competitive wholesale electricity market alone will not deliver the full benefits of competition to Illinois consumers. For Illinois consumers to receive products, prices and terms tailored to meet their needs, a competitive wholesale electricity market must be closely linked to a competitive retail electric market.
- (b) To date, as a result of the Electric Service Customer Choice and Rate Relief Law of 1997, thousands of large Illinois commercial and industrial consumers have experienced the benefits of a competitive retail electricity market. Alternative electric retail suppliers actively compete to supply electricity to

²⁷ See, Rebuttal Testimony of Torsten Clausen, ICC Staff Exhibit 5.0 line 264-266.

²⁸ See, Rebuttal Testimony of Kevin Wright, ICEA Ex. 2.0 at page 8:1-9.

large Illinois commercial and industrial consumers with attractive prices, terms, and conditions.

- (c) A competitive retail electric market does not yet exist for residential **and small commercial consumers**. As a result, millions of residential **and small commercial consumers** in Illinois are faced with escalating heating and power bills and are unable to shop for alternatives to the rates demanded by the State's incumbent electric utilities.
- (d) The General Assembly reiterates its findings from the Electric Service Customer Choice and Rate Relief Law of 1997 that the Illinois Commerce Commission should promote the development of an effectively competitive retail electricity market that operates efficiently and **benefits all Illinois consumers**.

(Source: P.A. 94-1095, eff. 2-2-07.)(Emphasis supplied.)

The General Assembly clearly envisions a competitive retail electric market that benefits all Illinois consumers including residential and small commercial consumers. And, as noted above, the General Assembly has placed in the hands of the Commission the tools-- including POR and UCB-- to make this vision a reality. By placing its bet on residential competition in general and low volume residential users in particular, Staff improperly narrows the intended beneficiaries of POR and UCB and places the Commission squarely on the horns of a false dilemma-- having to unnecessarily choose between residential and small commercial customers. Fortunately, the task before the Commission is much more certain than Staff would make it out to be. The General Assembly has already decided who should benefit from PORCB. The service is clearly to be designed with both residential and commercial customers in mind.

C) ICEA DOES NOT BELIEVE THAT COMED'S PROPOSED 50 CENT PER-BILL CHARGE WILL LOCK OUT SMALLER VOLUME RESIDENTIAL CUSTOMERS FROM RECEIVING COMPETITIVE SUPPLY OFFERS.

Staff is right to be concerned about the impact a discount rate can have on supplier participation in a PORCB program. (Only, ICEA notes, this concern is equally valid for low volume residential customers as it is for small commercial customers.) Mr. Wright testified that he has "no doubt that, in deciding whether or not to use a utility's PORCB service, there is a 'tipping point' for each retail electric

supplier-- a point beyond which the total cost associated with using a utility's PORCB service renders that service uneconomic in the eyes of a particular supplier."²⁹

While ICEA shares Staff's concern for not wanting to create disincentives for RESs to serve relatively low usage customers, ICEA does not believe that the 50 cent per-bill charge in the MOU will lock out smaller volume residential customers from receiving competitive supply offers.³⁰

ICEA President Kevin Wright testified that while he does not know what an individual retail electric supplier may or may not do when it comes to making a decision to serve a particular segment of the market, he is "optimistic that residential customers with below 'average' usage will receive competitive supply offers using the 50 cent per bill cost recovery mechanism agreed to in the MOU."³¹

Mr. Wright testified that his optimism is based on the following:

- First, Mr. Wright notes that the suppliers who agreed to the fixed 50 cent per-bill charge includes suppliers who are experienced in serving residential customers. ICEA would not have agreed to the MOU, Mr. Wright said, had its members thought it would result in an unused, unworkable and unwanted POR and UCB service.³²
- Second, Mr. Wright testified that he was personally not aware of a supplier or suppliers who only target their customer acquisition efforts at low-volume residential electric users:

My presumption is that most mass market retail electric suppliers are just that -- mass market retail electric suppliers. At any given point in time, their portfolio of residential customers will presumably include a mix of customers with varying amounts of monthly electricity usage. My point is simply this: it seems reasonable to assume that a mass market residential retail electric supplier will view the fixed 50 cent per-bill charge in relation to their anticipated customer portfolio as a whole. When viewed in relation to a supplier's portfolio of residential customers taken as a whole, the effective discount rate for a low volume residential customer may very well be offset by the effective discount rate for a higher volume residential customer.³³

²⁹ See, Rebuttal Testimony of Kevin Wright, ICEA Ex. 2.0 at page 5:5-8.

³⁰ *Id.* at page 4:16-17.

³¹ *Id.* at page 4:18 through page 5:3.

³² See, Rebuttal Testimony of Kevin Wright, ICEA Ex. 2.0 at page 5 lines 12-15.

³³ *Id.* pages 5:17 through 6:2.

The last point-- that mass market suppliers serve a variety of customers of varying usage levels-- is something that even Staff apparently concedes. In discussing Pennsylvania Power and Light's residential switching experience, Staff witness Torsten Clausen notes that:

"35.9% of the residential load switched to an alternative supplier within a period of nine months. Notably, this 35.9% of the residential load represents 31.5% of residential customers. This means that either a broad range of high and low use customer switched to alternative supply or that only the average electricity users (and slightly above average users) switched to alternative supply. While I certainly do not have evidence either way, I would think the former scenario is the more likely scenario."³⁴

Finally, if ICEA's optimism is misplaced, and competitive supply offers don't materialize for small volume users, then ICEA notes that this issue can be raised in the stakeholder process called for in the MOU to begin on or after December 1, 2011 and conclude by July 1, 2012.³⁵

4. Designing a Discount Rate Structure That Will Ensure the Widespread Use of PORCB and Treat Ratepayers Fairly is Ultimately a Public Policy determination That is Not Constrained to One Ratemaking Approach For Cost Recovery Over Another.

Staff's attempt to spread the "paint" of Commission approval from the Ameren proceeding over its arguments in this proceeding in support of its preferred cost recovery methodology is not supported by the record. The robust debate over cost-recovery methodologies between Staff and ComEd in this proceeding did not occur in the Ameren proceeding. Ameren's decision to use a percentage-based implementation cost recovery mechanism was never a litigated issue in the Ameren proceeding. Nor, to ICEA's recollection, did Staff ever assert in the Ameren proceeding that it was "more reasonable" and "appropriate" for suppliers serving commercial customers to pay more of the implementation costs than suppliers focused on serving residential customers. Rather, Ameren's overall POR discount rate (of which the implementation cost recovery mechanism would have been but one input) was the subject of a broader

³⁴ See, Rebuttal Testimony of Torsten Clausen, ICC Staff Exhibit 5.0 at Rebuttal lines 162-171.

³⁵ See, ComEd Ex. 1.3 MOU paragraph 5.

Memorandum of Understanding agreed to by ICEA and other suppliers.³⁶ Accordingly, ICEA believes it is inappropriate to attach any broad or persuasive policy significance or weight as to the methodology employed by Ameren for its own cost recovery.

Further, as ICEA witness Kevin Wright noted, there are many distinctions between ComEd and Ameren, including different geographic footprints and customer demographics, belonging to different Regional Transmission Organizations with different capacity costs, experiencing different uncollectible rates, expending vastly different sums in terms of POR-UCB implementation costs and adhering to (apparently) different philosophies as to the best ratemaking approach to use for the recovery of those implementation costs.³⁷

Mr. Wright noted that POR and UCB are tools to foster retail energy competition. Like any tools, they have to be used to be effective. Designing a rate structure that will ensure their use and treat ratepayers fairly is ultimately a public policy determination that is not constrained to one ratemaking approach over another. Mr. Wright concluded that "each utility's choice of cost recovery mechanism (ComEd's and that of the Ameren Illinois Utilities) -- different as they may be-- reflect that utility's good faith effort to meet these public policy objectives."³⁸

Mr. Wright also sounded a note of caution in blindly following the mechanism chosen by AIU for its implementation cost recovery:

If anything, one could speculate (although I concede it may be a bit too early to do so) that the current POR-UCB usage rates by retail electric suppliers operating within the service territories of the Ameren Illinois Utilities -- which my understanding is remain low-- suggest a possible need for the Commission to explore other ratemaking approaches to POR-UCB implementation cost recovery.³⁹

³⁶ See, Appendix A to Initial Brief of RESA and ICEA, ICC Docket Nos. 08-0619/-0620/-0621 (Cons.), filed on e-Docket on April 29, 2009.

³⁷ See, ICEA Rebuttal Testimony of Kevin Wright at page 8:25 through 9:3.

³⁸ Id. at 9:7-13.

³⁹ Id. at 9:15-20.

5. COMED'S COST RECOVERY MECHANISM TREATS RATEPAYERS FAIRLY WHILE PROPERLY TAKING INTO ACCOUNT THE IMPACT THAT A TOO-HIGH DISCOUNT RATE COULD HAVE ON SUPPLIER PARTICIPATION.

"From ComEd's perspective, the amount represents an attempt to strike a balance between full and somewhat timely cost recovery and a discount rate that is not so high as to make RESs' participation under Rider PORCB cost prohibitive and or make full cost recovery from RESs doubtful."

-- ComEd Witness Robert Garcia.⁴⁰

ICEA believes ComEd (in cooperation with CUB) has designed a cost recovery mechanism that treats ratepayers fairly while properly taking into account the impact a too-high discount rate could have on supplier PORCB participation rates. As Mr. Wright notes, in his experience "utilities are usually very adept at crafting rate mechanisms that have the best likelihood of ensuring fast and complete cost recovery. I have seen no reason to assume that is not the case in this proceeding."⁴¹ Further, there is no indication that the fixed 50 cent per-bill recovery mechanism proposed by ComEd will result in an under-collection of implementation costs from suppliers to the disadvantage of ComEd's ratepayers. As ComEd explains:

As proposed, the \$0.50 per bill charge embedded in the discount rate will remain in effect until all costs (*i.e.* DICs, AOCs, BSMICs and BSAOCs), **including reimbursements for any portion of such costs borne by customers with demands under 400 kW**, are recovered from the RESs taking service under Rider PORCB, after which the amount may be reduced. (*See* ComEd Ex 1.1. at Sheet No. 399.⁴²

It seems to ICEA, based on the ComEd language above, so long as there are RESs using ComEd's PORCB service that the potential for PORCB implementation cost recovery from participating RESs is 100 percent.⁴³

⁴⁰ *See*, Direct Testimony of Robert Garcia, ComEd Ex. 1.0, at page 22:524-527.

⁴¹ *See*, Direct Testimony of Kevin Wright, ICEA Ex. 2.0 at page 8:10-13.

⁴² *See*, Direct Testimony of Robert Garcia, ComEd Ex. 1.0, page 22:528-533.)(Emphasis in bold type supplied.

⁴³ *See*, Rebuttal Testimony of Kevin Wright, ICEA Ex. 2.0 at page 6:17-26.

6. ComEd's Proposed Rider PORCB and related tariffs Should be Approved by the Commission.

As noted earlier in this brief, the task before the Commission is much more certain than Staff would make it out to be. The General Assembly has provided clear direction that POR and UCB service is to be made available to both residential and eligible commercial customers with demand below 400kW. POR and UCB should be provided at rates that promote their widespread use in keeping with the General Assembly's goal set forth in Section 20-102 of the Act that all Illinois consumers receive the benefits of a competitive retail electricity market. ComEd, building on the foundation of the ORMD's workshop process, has put together a PORCB program for its service territory that treats ratepayers fairly and has the best chance to maximize PORCB usage for both residential and commercial customers. Two leading competitive retail energy supplier trade associations, ICEA and RESA, along with ComEd have joined together as signatories to an MOU that supports key attributes of ComEd's PORCB program. In addition, the cost recovery mechanism reflected in the MOU was developed in cooperation with the Citizens Utility Board. For these reasons, and the reasons more fully set forth above and in the testimony of ICEA witness Kevin Wright, the Commission should approve ComEd's Rider PORCB and related tariffs.

7. Miscellaneous Issues which do not need to be resolved in this proceeding.

The following issues, some (implementation costs and switching rules) more significant at this time than others (bill inserts) need not be resolved in this proceeding.

A) IMPLEMENTATION COSTS

ICEA is concerned about the level of ComEd's implementation costs, as well as their increase over time. However, ICEA understands that ComEd is not requesting approval of its implementation costs in this proceeding but that these costs will be subject to review in another ICC proceeding(s). Accordingly, ICEA's only comment at this time is to note its expectation that all interested parties will

have an opportunity to review these costs and their reasonableness, as well as ComEd's supporting arguments, in detail in a future proceeding(s).

B) SWITCHING RULES

As noted by ICEA witness Kevin Wright, ICEA has withdrawn its support for Staff's proposed revisions to ComEd's switching rules in order to avoid the potential for further delay in the PORCB "go live" date.⁴⁴ ICEA understands that Staff has also withdrawn its proposed revisions provided that the Commission's order approving ComEd's PORCB tariffs contains certain findings.⁴⁵ ICEA further understands that ComEd agrees that such findings are acceptable.⁴⁶ ICEA does not object to Staff's proposed findings which essentially attempt to avoid the potential for decisions in this proceeding to have any bearing on the resolution of related issues in the ongoing Part 412/543 rulemaking proceeding in Docket No. 09-0592.

As ICEA understands Staff's proposed findings, the Commission would reiterate that it is not deciding upon a new rescission period for residential and small commercial customers when it approves ComEd's proposed tariff revisions. The Commission would recognize that there is a distinction between the extended enrollment period described in ComEd's proposed tariff revisions and the rescission period contemplated in the ongoing Part 412 rulemaking. The latter addresses issues between a RES and the retail customer (primarily the issue of early termination fees), while the former does not. The Commission would also emphasize that it is not making any determination as to whether any new rescission period (or other potential additional obligations) will apply to non-residential customers using more than 15,000 kWh annually. By approving ComEd's proposed tariff revisions, the Commission would state that it is not prejudging the issue of what constitutes an appropriate definition of a "small commercial customer," which is being contested in the Code Part 412 rulemaking.

⁴⁴ See, Rebuttal Testimony of Kevin Wright, ICEA Ex. 2.0 at page 11:6-12.

⁴⁵ See, Rebuttal Testimony of Torsten Clausen, ICC Staff Ex. 5.0 at page 29:648-30.690.

⁴⁶ See, Surrebuttal Testimony of Robert Garcia, ComEd Ex. 6.0 at page 21:476-477.

ICEA also reiterates that it is not opposed to a process that allows mass market customers to contact ComEd directly within a prescribed time frame to effectuate a rescission.⁴⁷

Upon entry of the Commission's final order in the Part 412 rulemaking proceeding, ComEd's switching rules will have to be reviewed for consistency with the new Part 412 rule and possibly updated. ICEA believes that such a review would benefit at the outset from an ORMD-led collaborative process at which time a comprehensive review of ComEd's switching rules and processes can be undertaken.

ICEA also respectfully suggests that any claims of delay with regard to PORCB implementation by ComEd--whether it be in regard to this issue or any other, and even if ultimately judged to be meritorious-- should be met by the Commission in the first instance with heightened scrutiny and concern. ICEA does not intend by this statement to cast blame on ComEd. Rather, this is simply a reminder that for all these many months and years that have been spent trying to implement PORCB in ComEd's service territory, the Commission has been denied a tool to fulfill its mandate to foster retail electric competition for ComEd's electric customers.

With the above concern in mind, ICEA states that if the issue of ComEd's switching rules turns out to be an uncontested issue, which it appears it may end up being, or if the Commission ends up making no changes to ComEd's proposed rescission language, then the Commission should direct ComEd to revise the "go live" effective date for PORCB back to ComEd's originally proposed December 1, 2010 date.

C) BILL INSERTS

Staff notes that "[i]f a RES is obligated to include ComEd's bill inserts when the RES bills the customer, it appears reasonable to direct ComEd to include the RES' required bill inserts when ComEd bill the customer."⁴⁸ ICEA agrees with this statement. However, this is not an issue that necessarily must be decided in this proceeding prior to the roll out of POR-UCB in ComEd's service territory. While this

⁴⁷ See, Direct Testimony of Kevin Wright, ICEA Ex. 1.0 at page 4:12-18.

⁴⁸ See, ICC Staff Ex. 1.0, Direct Testimony of Torsten Clausen, page 29:650-652.

would not appear to be an insurmountable issue upon which to reach conclusion (as Staff's agreement with Ameren to ensure consistent treatment of bill inserts attests⁴⁹) based upon the opposition to Staff's proposed language raised in the rebuttal testimony of ComEd witness Robert Garcia, the issue of parity when it comes to mailing of required bill inserts would appear to benefit from further discussion and exploration in a future ORMD-led workshop.

CONCLUSION

ICEA believes that in the instant proceeding, the Commission has before it the makings of a successful PORCB program that will help the Commission carry out its statutory mandate of promoting the development of an effectively competitive retail electricity market that operates efficiently and benefits all Illinois consumers.

Accordingly, the Commission should enter an Order approving ComEd's Rider PORCB and related tariff provisions.

Respectfully Submitted,

⁴⁹ See, ICC Staff Exhibit 1.0, Direct Testimony of Torsten Clausen, page 28:617-619.

THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION

By: Kevin Wright
Kevin Wright
President
Illinois Competitive Energy Association
1601 Clearview Drive
Springfield, Illinois 62704
217-741-5217
wright2192@sbcglobal.net

By: /s/ John Gomoll
John Gomoll
Attorney for ICEA
P.O. Box 211
Saint Charles, Illinois 60174
630-640-6213
john@johngomoll.com

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