

**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.)
)

**PROPOSED DRAFT ORDER OF
THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION**

By the Commission:

I. PROCEDURAL BACKGROUND

[ICEA information only.]

The Petition to Intervene of the Illinois Competitive Energy Association ("ICEA") was granted on March 26, 2010.

ICEA filed the Direct Testimony of ICEA President Kevin Wright, ICEA Ex. 1.0, on e-Docket on June 10, 2010.

ICEA filed the Rebuttal Testimony of ICEA President Kevin Wright, ICEA Ex. 2.0, on e-Docket on August 4, 2010.

The Direct and Rebuttal Testimony of ICEA President Kevin Wright, ICEA Ex. 1.0 and 2.0, as well the corresponding affidavit, were admitted into the record on August 19, 2010.

II. UNCONTESTED ISSUES

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III. CONTESTED

A. Cost Recovery Mechanism Used in the Discount Rate

1. **ComEd Position**
[Intentionally left blank.]
2. **Staff Position**
[Intentionally left blank.]
3. **ICEA Position**

ICEA notes that its 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. Accordingly, ICEA states that its membership clearly has a significant business interest in serving residential and small commercial customers.

Late in 2009, 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").¹ Among other issues, the MOU addressed ComEd's discount rate and overall cost recovery methodology set forth in Rider PORCB and Rider RCA as well as ComEd's proposal to establish the fixed monthly charge portion of the discount rate at \$0.50 cents per bill. ICEA notes that the cost recovery mechanism reflected in the MOU was developed in cooperation with the Citizens Utility Board.²

ICEA supports ComEd's discount rate and overall cost recovery methodology set forth in Rider PORCB and Rider RCA as well as ComEd's proposal to establish the fixed monthly charge portion of the discount rate at \$0.50 cents per bill.

ICEA notes that there appears to be general agreement that the Commission's goal should be to make Rider PORCB a service that will be used in a substantial and widespread manner. There also appears to be general agreement that if the overall per bill cost associated with using PORCB service-- of which the implementation and administrative costs recovered by the cost recovery mechanism are one component—is too high, then at best PORCB will underperform in its role as a tool to foster greater retail electric competition. At worst, a high priced PORCB offering will gather dust in ComEd's tariff books-- unused by the very retail electric suppliers it was meant to attract.³

¹ 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.

² See, ComEd Ex. 1.0, Direct Testimony of Robert Garcia at line 169.

³ See e.g. ComEd Ex. 1.0 Direct Testimony of Robert Garcia at page 12:289-293 ("... a rate for an optional service that is unaffordable to RESs would be self-defeating because the service will never be used and, therefore, the costs

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").

In support of its broader mandate argument, ICEA notes that 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 ICC notes 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.**

(Emphasis supplied.)⁴

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

will never be fully recovered from RESs.). See also ICC Staff Ex. 1.0 Direct Testimony of Torsten Clausen at page 9:181-187 ("Staff recommends that the Commission do its part to ensure that the PORCB participation by the RESs be as high as possible. A successful PORCB program will not only 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,' it will also increase the likelihood that the PORCB implementation costs are being recovered from participating RESs.")(Internal citations omitted.); *See also*, Id. At page 14:298-302 ("The Commission's goal should be to make the Rider PORCB service that will be used in a substantial and widespread manner. The more Rider PORCB is used the more money that can be collected, through the POR discount rate from participating RESs."). *See also*, Rebuttal Testimony of ICEA witness Kevin Wright concurring with Staff at page 3:3-9.

⁴ 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.

needs to meet competition for residential and small business consumer [sic] electric in this deregulated state and environment we are in now."⁵ 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."⁶ 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."⁷ 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."⁸

Yet, in its desire to spark residential competition, it seems ICEA believes as if Staff appears to have lost interest in following the intent of the General Assembly to develop a viable POR-UCB offering for smaller non-residential customers. ComEd outlines a number of persuasive concerns as well as negative impacts for suppliers if Staff's percentage-based cost recovery proposal were to be adopted.⁹ 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.¹⁰ ComEd also correctly notes that "a percent-based charge potentially could discourage the use of PORCB for larger, non-residential customers . . ."^{11,12}

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.¹³

⁵ See, State of Illinois, 95th General Assembly, House of Representatives Transcription Debate, 115th Legislative Day, August 10, 2007 at pages 28-29 (Emphasis supplied).

⁶ *Id.* at 29.

⁷ See, State of Illinois, 95th General Assembly, Regular Session, Senate Transcript, 91st Legislative Day, August 15, 2007 at page 8.

⁸ *Id.*

⁹ See, Rebuttal Testimony of Robert Garcia, ComEd Ex. 3.0 at pages 8 through 14.

¹⁰ See, Surrebuttal Testimony of Robert Garcia, ComEd Ex. 6.0 at lines 141-144.

¹¹ See, Rebuttal Testimony of Robert Garcia, ComEd Ex. 3.0 at pages 9, lines 233-234.

¹² For more detail on the impact of a percentage based charge please see Section 4 of this Initial Brief.

¹³ See, Rebuttal Testimony of Kevin Wright, ICEA Ex. 2.0, at page 7:10-22.

ICEA shares Staff's goal for wanting to bring competitive electric supply options to customers who currently do not have such options.¹⁴ 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, ICEA must respectfully disagree with any cost recovery mechanism that effectively limits the availability POR / UCB to customer classes with no competitive supply options.

Despite Staff's assertion that there are "numerous suppliers" serving commercial customers¹⁵, 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.¹⁶

In addition to the clear direction of the General Assembly that POR and UCB are to be available for use beyond the residential market, the General Assembly's overall vision for the competitive retail market (reiterated by the General Assembly in Section 20-102(d) of the Act) is a market that benefits all Illinois consumers including residential and small commercial consumers. 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, ICEA notes, 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.

ICEA further states that it 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."¹⁷

¹⁴ See, Rebuttal Testimony of Torsten Clausen, ICC Staff Exhibit 5.0 lines 246-249.

¹⁵ See, Rebuttal Testimony of Torsten Clausen, ICC Staff Exhibit 5.0 line 264-266.

¹⁶ See, Rebuttal Testimony of Kevin Wright, ICEA Ex. 2.0 at page 8:1-9.

¹⁷ See, Rebuttal Testimony of Kevin Wright, ICEA Ex. 2.0 at page 5:5-8.

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.¹⁸

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."¹⁹

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.²⁰
- 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.²¹

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

¹⁸ *Id.* at page 4:16-17.

¹⁹ *Id.* at page 4:18 through page 5:3.

²⁰ *See*, Rebuttal Testimony of Kevin Wright, ICEA Ex. 2.0 at page 5 lines 12-15.

²¹ *Id.* pages 5:17 through 6:2.

certainty do not have evidence either way, I would think the former scenario is the more likely scenario."²²

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, 2012.²³

ICEA also spoke to the process of designing a discount rate structure as well as to the import in this proceeding of the Commission's decision in approving the Ameren Illinois Utilities' discount rate structure in ICC Docket Nos. 08-0619/-0620/-0621. ICEA notes that 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 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 Memorandum of Understanding agreed to by ICEA and other suppliers.²⁴ 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.²⁵

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."²⁶

²² See, Rebuttal Testimony of Torsten Clausen, ICC Staff Exhibit 5.0 at Rebuttal lines 162-171.

²³ See, ComEd Ex. 1.3 MOU paragraph 5.

²⁴ 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.

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

²⁶ Id. at 9:7-13.

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.²⁷

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."²⁸ Further, ICEA states that 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. 399.²⁹

Based on the ComEd language above it certainly seems, ICEA notes, that 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.³⁰

4. RESA Position
[Intentionally left blank.]

5. Dominion Retail Position
[Intentionally left blank.]

²⁷ Id. at 9:15-20.

²⁸ See, Direct Testimony of Kevin Wright, ICEA Ex. 2.0 at page 8:10-13.

²⁹ See, Direct Testimony of Robert Garcia, ComEd Ex. 1.0, page 22:528-533.(Emphasis in bold type supplied.

³⁰ See, Rebuttal Testimony of Kevin Wright, ICEA Ex. 2.0 at page 6:17-26.

6. Commission Conclusion

The Commission concurs with ICEA that 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. The Commission also agrees that 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, in the Commission's opinion, has the best chance to maximize PORCB usage for both residential and commercial customers. Two leading competitive retail energy supplier associations, ICEA and RESA, along with ComEd have joined together as signatories to an MOU that supports key attributes of ComEd's PORCB program including the cost recovery mechanism. In addition, the cost recovery mechanism was developed by ComEd in cooperation with the Citizens Utility Board. Accordingly, the Commission finds ComEd's proposed 50 cent per bill charge appropriate and approves it herein.

B. Implementation Costs

1. **ComEd Position**
[Intentionally left blank.]
2. **Staff Position**
[Intentionally left blank.]
3. **ICEA Position**

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 simply notes 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).

4. **RESA Position**
[Intentionally left blank.]
5. **Dominion Retail Position**
[Intentionally left blank.]

6. Commission Conclusion

ComEd is not requesting approval of its implementation costs in this proceeding. 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).

C. Switching Rules

1. **ComEd Position**
[Intentionally left blank.]
2. **Staff Position**
[Intentionally left blank.]
3. **ICEA Position**

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.³¹ ICEA understands that Staff has also withdrawn its proposed revisions provided that the Commission's order approving ComEd's PORCB tariffs contains certain findings.³² ICEA further understands that ComEd agrees that such findings are acceptable.³³ 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.

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.³⁴

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

³¹ See, Rebuttal Testimony of Kevin Wright, ICEA Ex. 2.0 at page 11:6-12.

³² See, Rebuttal Testimony of Torsten Clausen, ICC Staff Ex. 5.0 at page 29:648-30.690.

³³ See, Surrebuttal Testimony of Robert Garcia, ComEd Ex. 6.0 at page 21:476-477.

³⁴ See, Direct Testimony of Kevin Wright, ICEA Ex. 1.0 at page 4:12-18.

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.

4. RESA Position

[Intentionally left blank.]

5. Dominion Retail Position

[Intentionally left blank.]

6. Commission Conclusion

The Commission agrees with parties that voiced concerns over potential further delays by ComEd in the "go live" date for Rider PORCB. As the Commission understands it, Staff has agreed to withdraw its proposed revisions to ComEd's switching rules so long as the Commission makes certain findings in this Order. The Commission concurs with Staff's concerns and proposed findings set forth in the Rebuttal Testimony of ICC Staff witness Torsten Clausen, ICC Ex. 5.0 at pages 29:648 to 30:685. Specifically, the Commission reiterates 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 recognizes 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 also emphasizes 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 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.

The Commission also hereby directs the ORMD to, upon entry of the Commission's final order in the Part 412 rulemaking proceeding, lead a collaborative process at which time ComEd's switching rules can be reviewed for consistency with the new Part 412 rule and the need for possible updates can be proposed and debated.

[Additional proposed language if the issue of ComEd's proposed rescission language turns out to be an uncontested issue or if the Commission rejects any proposed changes to ComEd's proposed rescission language] Since no changes are being made to ComEd's proposed rescission language that would appear to necessitate code being rewritten and

additional testing on ComEd's part, the Commission hereby directs ComEd to re-establish the originally proposed "go live" effective date for PORCB back to ComEd's originally proposed December 1, 2010 date.

V. DEFERRED ISSUES

A. Bill Inserts

- 1. ComEd Position**
[Intentionally left blank.]
- 2. Staff Position**
[Intentionally left blank.]
- 3. ICEA Position**

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."³⁵ 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 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 attests³⁶) 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.

- 4. RESA Position**
[Intentionally left blank.]
- 5. Dominion Retail Position**
[Intentionally left blank.]

³⁵ See, ICC Staff Ex. 1.0, Direct Testimony of Torsten Clausen, page 29:650-652.

³⁶ See, ICC Staff Exhibit 1.0, Direct Testimony of Torsten Clausen, page 28:617-619.

6. Commission Conclusion

The issue of a bill inserts is not ripe for decision in this proceeding. If a RES makes an actual request for bill inserts, the ORMD should convene a collaborative workshop process among the utilities and interested parties to identify and attempt to resolve any operational or other issues associated with such a request.

VI. FINDINGS AND ORDERING PARAGRAPHS

IV Findings and Ordering Paragraphs

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the record herein, is of the opinion and finds that:

- (1) ComEd is an Illinois corporation engaged in the distribution and sale of electricity to the public in Illinois, and is a public utilities as defined in Section 3-105 of the Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter herein;
- (3) the Commission finds that ComEd's Proposed Rider PORCB and related tariffs treats ratepayers fairly and, in the Commission's opinion, has the best chance to maximize PORCB usage for both residential and commercial customers.
- (4) The Commission also directs the ORMD to, upon entry of the Commission's final order in the Part 412 rulemaking proceeding, lead a collaborative process at which time ComEd's switching rules can be reviewed for consistency with the new Part 412 rule and the need for possible updates can be proposed and debated.
- (4) *[To be used if the issue of ComEd's proposed rescission language turns out to be an uncontested issue or if the Commission rejects attempts to modify ComEd's proposed rescission language]* Since no changes are being made to ComEd's proposed rescission language that necessitate code being rewritten and additional testing on ComEd's part, the Commission hereby directs ComEd to re-establish the originally proposed "go live" effective date for PORCB back to ComEd's originally proposed December 1, 2010 date.

ICEA ATTACHMENT A
Proposed Draft Order

- (4) all motions, petitions, objections, and other matters in this proceeding which remain unresolved should be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that ComEd's Proposed Rider PORCB and related tariffs treats are hereby approved.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that the ORMD shall upon entry of the Commission's final order in the Part 412 rulemaking proceeding, lead a collaborative process at which time ComEd's switching rules can be reviewed for consistency with the new Part 412 rule and the need for possible updates can be proposed and debated.

[To be used if the issue of ComEd's proposed rescission language turns out to be an uncontested issue or if the Commission rejects attempts to modify ComEd's proposed rescission language] IT IS FURTHER ORDERED that ComEd re-establish the originally proposed "go live" effective date for PORCB back to ComEd's originally proposed December 1, 2010 date.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the 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 ___ day of _____, 2010.