

**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.)	
)	

**BRIEF ON EXCEPTIONS OF
THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION**

Oral Argument Requested

The Illinois Competitive Energy Association (“ICEA”),¹ by and through its counsel, respectfully submits the following Brief on Exceptions in the above captioned proceeding.

Summary

Purchase of Receivables (POR) and Utility Consolidated Billing (UCB) are widely considered to be best practices in the development of competitive retail energy markets. The members of ICEA and other Retail Electric Suppliers (“RESs”) have worked for several years to bring these policy tools to Illinois. These parties, which represent virtually the entire RES community in Illinois with an active interest in using ComEd's PORCB service, have spoken out in support of the proposed 50 cent per bill charge for PORCB cost recovery. The 50 cent per bill charge has the best chance to maximize PORCB usage for both residential and commercial customers. The Proposed Order would forego establishing a potentially widely-used and widely-supported PORCB offering for residential and eligible commercial customers in order to put in place a PORCB service that will likely be largely unused by suppliers serving

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. 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.

commercial customers. 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. Accordingly, ICEA recommends that the Commission reject the Proposed Order's conclusion on this issue and approve ComEd's 50 cent implementation cost recovery charge.

Exception 1: ICEA takes exception to the Proposed Order's statement that the 50 cent per bill charge "is not in accord with the General Assembly's articulated purpose" set forth in Section 16-118(a) of the Act. Order at 23.

The 50 cent per bill charge is fully in accord with Section 16-118(a) of the Public Utilities Act ("Act") and offers the Commission the best opportunity to maximize PORCB usage for both residential and commercial customers in accordance with the requirements for POR and UCB service set forth in Sections 16-118(c) and (d) of the Act. In addition, the 50 cent charge is in complete accord with the General Assembly's statutory mandate to the Commission to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers.

Notwithstanding the Proposed Order's claims to the contrary, the General Assembly clearly intended certain consumers to be the beneficiaries of POR and UCB service. Proposed Order at 22. Indeed, the statutory language requiring utilities to provide POR and UCB services, could not be clearer as to the customer groups to which each respective service is to be made available:

Section 16-118(c) of the Act, the POR provision, provides in pertinent part:

(c) 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.

220 ILCS 5/16-118(c). Emphasis supplied.

Section 16-118(d) of the Act, the UCB provision, provides no class based or peak demand restriction to the usage of UCB services whatsoever. Section 16-118(d) provides in pertinent part:

(d) An electric utility with more than 100,000 customers shall file a tariff pursuant to Article IX of this Act that would provide alternative retail electric suppliers or electric utilities other than the electric utility in whose service area retail customers are located with the option to have the electric utility produce and provide single bills to the retail customers for both the electric power and energy service provided by the alternative retail electric supplier or other electric utility and the delivery services provided by the electric utility to the customers.

220 ILCS 5/16-118(d). As set forth above, UCB, in its "stand alone" form, is to be available to any size or class of customer served by a RES.

If the General Assembly had wanted to limit the use of POR and UCB to residential customers, or had a preference for the use of POR and UCB to serve residential customers, they could, and presumably would, have expressed such limitation or preference in the language of 16-118(c) and (d). The language relied upon by the Proposed Order in Section 16-118(a) of the Act, the floor debate surrounding the passage of the POR and UCB provisions, and the statutory mandate of the Act to foster retail competition that benefits all consumers set forth in 16-101A and 20-102(d) are all supportive of the notion that the General Assembly intended the relatively wide scope of availability for POR and wide-open availability for UCB service set forth above in Sections 16-118(c) and (d).

The Proposed Order concludes that the 50 cent cost recovery charge is not in accord with a statement contained in Section 16-118(a) of the Act that "[i]t is in the best interest of Illinois energy consumers to promote fair and open competition in the provision of electric power and energy and to prevent anticompetitive practices in the provision of electric power and energy." (ICEA notes as an aside that Section 16-118(a), which echoes broad themes regarding retail electric competition found in Section 16-101A and Section 20-102(d) of the Act, was already in the original Section 16-118 and the language contained in 16-118(a) was left unchanged by the Public Act that amended 16-118 to incorporate the POR and UCB provisions.)

The Proposed Order arrives at this conclusion on the belief that the 50 cent cost recovery mechanism "discourages retail electric suppliers from tapping" the residential market in general and "low use" customers in particular. Proposed Order at 24. To arrive at this conclusion, the Proposed Order ignores the fact that the entire RES community with an active interest in PORCB (as evidenced by their participation in this proceeding), with the exception of one solitary RES, strongly supports the adoption of the 50 cent cost recovery mechanism. ICEA provides more detail on this issue *infra* in regards to Exception 2, but notes here that given the weight of the RES industry behind it, the 50 cent cost recovery proposal has the greatest likelihood of fulfilling the requirements of Section 16-118(c) and (d) of the Act as well as the Commission's broader statutory mandate to foster retail competition that benefits all consumers. *See*, 16-101A and 20-102(d) of the Act.

In supporting Staff's percentage based cost recovery approach, the Proposed Order ignores the testimony of ICEA President Kevin Wright that "[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." Wright Reb., ICEA Ex. 2.0, page 7, lines 13-14. By ignoring industry-wide concerns that a percentage based cost recovery mechanism would likely discourage usage of ComEd's PORCB service for higher volume users, the Proposed Order appears to be contemplating its own policy framework whereby POR and UCB are primarily mechanisms to encourage competitive retail electric supply options for residential and low usage residential customers by shifting costs to non-residential customers.

And, if a supplier thinks the costs to use PORCB is too high, they "are always free to supply electricity to their customers without POR or UCB service." Proposed Order at 24. While the Proposed Order is correct that POR and UCB are optional services, as already noted above, the Proposed Order's attempt to narrow the use of POR and UCB to residential customers is not supported by the statutory language authorizing POR and UCB service.

In addition to the clear statutory directives as to the intended beneficiaries of POR and UCB services set forth in Sections 16-118(c) and (d) of the Act, there is no indication from the 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. *See*, ICEA Initial Brief at pages 6-7.

Further, the specific direction of the General Assembly as to who should be able to be served via POR and UCB, set forth above in Sections 16-118(c) and (d), are clearly in accord, and are useful tools provided by the General Assembly, to assist the Commission in fulfilling its statutory directive to "act to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers." Section 16-101A(d) of the Act. The scope of availability of POR and UCB service set forth in Sections 16-118(c) and (d) are also in accord with Section 16-101A(e) of the Act which states in part that "[a]ll consumers must benefit in an equitable and timely fashion from the lower costs for electricity that result from retail and wholesale competition" In February 2007, the General Assembly reiterated its findings from the Electric Service Customer Choice and Rate Relief Law of 1997 in the Retail Electric Competition Act of 2006 "that the Illinois Commerce Commission should promote the development of an effectively competitive retail electricity market that operates efficiently and benefits all Illinois consumers." Section 20-102(d) of the Act.

Suggested replacement language to address Exceptions 1, 2, 3 and 4 is set forth at the end of Exception 4.

Exception 2: ICEA takes exception to the statements and findings of fact contained in the Proposed Order that approving the 50 cent cost recovery charge would "leave lower-end users without the benefit of competition" (Proposed Order at 22) and "discourages retail electric suppliers from tapping [the residential market]." Proposed Order at 24.

The RES community--with the sole exception of Dominion Retail-- has indicated its support for the 50 cent cost recovery mechanism. The RESs in support of the 50 cent charge are not singularly focused on business customers but instead are some of the very companies who have been invested in the Illinois marketplace since the beginning of retail energy competition and includes a number of suppliers that have worked long and hard to remove barriers to residential electric competition and to bring the POR and UCB statutory provision to life in Illinois. These are some of the very companies who invested their time and capital to advocate for the creation of the Office of Retail Market Development and for the provisions that became 16-118(c) and 16-118(d).

The companies that support the 50 cent charge collectively serve over 3.5 million residential gas and electric customers in North America and have several years experience working with POR and UCB mechanisms in other states with competitive retail electric markets. One company, Direct Energy, just recently expanded its certificate in Illinois to serve residential customers. *See*, ICC Docket No. 10-0322, Order entered July 14, 2010. Another, Constellation NewEnergy, is in the process of expanding its Illinois certificate to include residential customers. *See*, ICC Docket No. 10-0540, Order anticipated around October 25, 2010. In addition, Integrys Energy Services, Inc. currently holds a certificate to sell electricity and power to residential customers. *See*, ICC Docket No. 07-0498, Order entered October 29, 2007.

At no point in this proceeding has Staff itself claimed that RESs will not seek to serve low use customers under the 50 cent cost recovery charge. Rather, Staff has expressed concern that the 50 cent charge has the potential to discourage RES from signing up customers who consume relatively small amounts of electricity each month. Clausen Reb., ICC Ex. 5.0 at lines 69-93 (emphasis supplied).

Dominion Retail argues that if its proposals are not adopted, then "the POR program will not be effective in providing competitive alternatives for small commercial and residential customer." Crist Dir., Dominion Retail Ex. JC-1.0, lines 366-368. Dominion Retail's primary position is that "that NO charge (not \$0.50, nor 0.68%) should be constructed as a barrier." Crist Reb., Dominion Retail Ex. JC-2.0, lines 192-195, emphasis in original text. "It is important," Dominion Retail warns "to not repeat the Ameren history where all of the implementation costs were allocated to the RES, creating a barrier that R&C [*residential and commercial*] customers have chosen not to cross." *Id.* Interestingly, Dominion Retail appears to acknowledge in the above quote that a percentage based cost recovery mechanism presents a barrier to market entry not only for RESs serving residential customers but for RESs serving commercial customers as well.

The Proposed Order notes that within ComEd's service territory there are approximately 3.7 million PORCB eligible residential customers and less than 300,000 PORCB eligible non-residential customers. The Proposed Order then states that these eligible customer estimates:

"are some indicia that with ComEd's proposal retail electric suppliers would have a much easier time gaining profit, if they merely marketed to the higher-end commercial users, leaving lower end users without the benefit of competition."

Proposed Order at 22.

It is not clear to ICEA how ComEd's PORCB eligible customer estimates translates to an indication that suppliers "would have a much easier time gaining profit" using ComEd's proposal to serve commercial customers. In any event, the Proposed Order appears to be making the assertion that the 50 cent charge will cause retail electric suppliers to neglect "lower end users" because the impact of the 50 cent charge is proportionately greater on the potential profits associated with serving a smaller volume user compared to a larger volume users.

ICEA witness Kevin Wright responded to this concern in his rebuttal testimony. Mr. Wright testified, ICEA would never have entered into its agreement with ComEd "had its members thought it would result in an unused, unworkable and unwanted POR and UCB service." Wright Reb., ICEA Ex. 2.0 at page 3: lines 17-18. Mr. Wright further testified that suppliers who agreed to the fixed 50 cent per-bill charge include suppliers who are experienced in serving residential customers and that ICEA does not believe that the 50 cent cost recovery charge will lock out smaller volume residential customers from receiving competitive supply offers. *Id.* page 3 line 24 to page 4 line 1; page 4, lines 15-17.

In addition, Mr. Wright noted that he was personally not aware of a supplier or suppliers who only target their customer acquisition efforts at low-volume residential electric users. *Id.* page 5, line 16 to page 6, line 2. (ICEA notes that even Dominion Retail testified that Dominion Retail's focus in Illinois is on small commercial and residential customers . . . " Crist Dir., Dominion Retail Ex. JC-1.0 at lines 134-135.) Mr. Wright noted his presumption 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. Mr. Wright noted that 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. Wright Reb., ICEA Ex. 2.0, page 5, line 16 to page 6, line 2.

Mr. Wright also testified that if competitive supply offers don't materialize for small volume users, then this issue can be raised in the stakeholder process called for in the (Memorandum of Understanding (MOU) to begin on or after December 1, 2011 and conclude by July 1, 2012. *See*, ComEd Ex. 5 1.3 MOU paragraph 5.

Since the close of the evidentiary record, the Illinois Energy Marketers Coalition ("IEMC"), which is comprised of Energy Plus Holdings LLC and Illinois Gas & Electric, both of which serve residential and small commercial customers, submitted a Reply Brief in this proceeding in which they supported the 50 cent cost recovery mechanism. In their brief, the IEMC notes: "The position taken by ICC Staff that the \$.50 per bill fee would discourage RESs from enrolling low use customers is not supported by any empirical evidence. Moreover, the \$.50 per bill charge is fair to the customer and is based on the assumption that the POR costs will be fully recovered." IEMC Reply Brief at 3.

As outlined above, the 50 cent charge enjoys the overwhelming support of the retail electric supplier industry and the record in this proceeding reflects that overwhelming support. A number of the companies supporting the 50 cent charge either want to or are actively looking into serving residential customers. Further, a number of the companies supporting the 50 cent charge have worked hard to tear down barriers to residential competition and to obtain POR and UCB in Illinois. As noted by Mr. Wright, these companies would not have agreed to the 50 cent proposal had they thought it would foreclose the use of PORCB for residential customers. Clearly, the 50 cent option has the greatest likelihood of fulfilling the requirements of Section 16-118(c)(d) and broader goal of Act to benefit all Illinois consumers.

Suggested replacement language to address Exceptions 2 is set forth at the end of Exception 4.

Exception 3: ICEA takes exception to the statement that under the 50 cent cost recovery charge "lower-end PORCB customers would subsidize the higher-end users" (Proposed Order at 22) and that the Proposed Order's conclusion that a percentage charge "more equitably serves the persons and entities in ComEd's service territory." Proposed Order at 25.

The Proposed Order claims that if Retail Electric Suppliers passed on the 50 cent charge to their customers "in the manner in which ComEd bills them, effectively, lower-end (in usage) PORCB customers would subsidize the higher-end users." Proposed Order at 22. The Proposed Order states that there is no indication that the General Assembly intended such a subsidy. The Proposed Order then appears to conclude that such a subsidy will cause Retail Electric Suppliers to not serve "persons or entities that do not use much electricity" (Proposed Order at 22 to 23) contrary to the intent of the General Assembly that "all Illinoisans should benefit from the services of retail electric suppliers." *Id.*

In Exception 2, above, ICEA refuted the claim that the 50 cent charge will cause Retail Electric Suppliers to not serve "persons or entities that do not use much electricity." Proposed Order at 22 to 23. ICEA now addresses the subsidy and equity claims contained in the Proposed Order analysis and conclusions regarding the 50 cent charge.

Before reviewing the Proposed Order's subsidy and equity statements, there are five points the Commission should keep in mind:

First, as ICEA witness Kevin Wright noted, POR and UCB are at their core tools to foster retail energy competition. Designing a rate structure that will ensure their widespread use and treat ratepayers fairly is ultimately a public policy determination that is not constrained to one ratemaking approach over another. Wright Reb., ICEA Ex. 2.0, page 9, lines 7-10.

Second, the 50 cent charge is designed for the recovery of start-up and ongoing administrative and operations costs. *See, e.g.* Garcia Dir., ComEd Ex. 1.0, lines 327-328; lines 402-446; and lines 514-520. These costs "are largely fixed or sunk" and "do not vary from month to month or year to year . . ." Garcia Reb., ComEd Ex. 3.0, page 9, lines 194-198.

Third, an essential element of the service that is being provided by ComEd to RESs using its PORCB service is that every month, for every RES customer on PORCB, ComEd is placing the RES charges on its bill and mailing the bill via U.S. Mail to the customer. Under ComEd's single billing service (whereby the RES bills for ComEd) retail electric suppliers are compensated a fixed charge of 54 cents by ComEd for including ComEd's charges on the supplier's bill to the customer. Wright Reb., ICEA Ex. 2.0, page 7, lines 10-13; Garcia Reb., ComEd Ex. 3.0, page 9, lines 211-221.

Fourth, under ComEd's proposed PORCB tariff, so long as RESs are using ComEd's PORCB service, the 50 cent charge would remain in place until all costs, "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." Garcia Dir., ComEd Ex. 1.0, page 22, lines 528-534. Or, to put another way, so long as there are retail electric suppliers using ComEd's PORCB service that the potential for PORCB implementation cost recovery from participating retail electric suppliers is 100 percent. Wright, Reb., ICEA Ex. 2.0, page 6, line 13 to page 7, line 3.

Fifth, to the best of ICEA's recollection and understanding of Staff's argument, Staff has never argued that the 50 cent cost recovery proposal results in an improper subsidization of PORCB costs. ComEd appears to be the first party to make a subsidy argument of any kind in its rebuttal testimony and that was to assert the potential for intra-class subsidies to arise under Staff's proposal. Specifically, ComEd noted that "a percentage charge may create intra-class subsidies" and to note that "the fixed per

bill charge avoids potential intra-class subsidies." Garcia, Reb., ComEd Ex. 3.0, page 9, lines 206-210 (emphasis supplied).

In its rebuttal testimony, Dominion Retail, does not deny the potential for intra-class subsidies to arise under Staff's percentage based cost recovery approach. Nor does Dominion urge that the potential for all such cross subsidies be eliminated altogether or that any potential cross subsidies be kept to a minimum. Rather, Dominion Retail's focus appears to be on maximizing its potential to receive the lowest allocation of PORCB costs possible. To wit, Dominion Retail claims that there is "no statutory or policy support for the concept that the average customer, who would pay \$0.16 under the Staff's proposal, should cross subsidize the larger use residential customers who would pay more under the Staff's proposal than the ComEd proposed \$0.50 fee." Crist Reb., Dominion Retail Ex. JC-2.0, page 9, lines 183-187.

It is against this backdrop that ICEA now turns to the subsidy and equity statements with regard to the 50 cent cost recovery proposal. The Proposed Order appears to agree with the position taken by Staff that one of the Commission's goals should be "ensuring a meaningful cost contribution from participating RES." Clausen Reb., ICC Staff Ex. 5.0, lines 237-238. Specifically, Staff assumes that as one moves up the usage scale, RESs who serve non-residential customers make more revenue per customer, and hence more profit per customer, and thus are better able to "absorb" higher charges for implementation costs. *See, e.g.* Clausen Dir., ICC Staff Ex. 1.0, lines 294-323. Staff takes as a sign that its percentage based approach is "more reasonable than ComEd's proposed fixed per bill charge" the fact that RESs serving commercial customers will "contribute significantly more" towards implementation cost recovery than RESs serving residential customers while at the same time the relative contribution (on a percentage basis) from a RES serving only residential customers and a RES serving only eligible commercial customers would be the same. *Id.* at lines 311-323.

ICEA does not disagree that there should be a meaningful cost contribution from participating RESs. ICEA believes that the 50 cent cost recovery proposal provides just that. Specifically, as noted supra, so long as there are retail electric suppliers using ComEd's PORCB service the potential for PORCB implementation cost recovery from participating RESs is 100 percent. So from a policy perspective-- if the concern is protecting eligible customers--a disparate treatment in the allocation of implementation costs is not needed to increase the likelihood of recovery from RESs. Indeed, if anything, a disparate treatment in the allocation of costs, if it leads to less RES usage of PORCB, could result in a longer time period to complete cost reimbursement by the RES community.

Staff's proposed percentage allocation, on the other hand, is neither fair nor equitable. An essential element of PORCB service, as noted above, is ComEd placing the RES charges on its bill and mailing the bill via U.S. Mail to the customer. The Proposed Order's percentage based recovery approach would leave RESs paying vastly different charges each month for essentially the same service. For example, for the same per-bill PORCB service, a RES might pay .43 cents in cost recovery for one customer and \$62.62 in cost recovery for another. This, despite the fact that as ComEd has noted, their underlying costs are largely fixed or sunk and do not vary month to month or year to year.

The Proposed Order does not solve the unfairness or inequity of the percentage based approach to cost recovery. As ComEd noted in its verified response to the ALJ's request for additional information:

Using the corrected average uncollectibles charge of 1.5065%, the total per customer charge to a RES using PORCB to serve a low-use residential customer is approximately \$4.52 annually, while the total per customer charge to a RES using PORCB service to serve a high-use residential customer is approximately \$25.01 annually. (*See* Attachment 2, page 3). With respect to nonresidential customers, the total per customer charge to a RES using PORCB to serve a low-use nonresidential customer (namely, those nonresidential customers in Watt-hour class) is \$9.83 per year on average, while the total per customer charge to a RES using PORCB to serve a high-use nonresidential customer (namely, those nonresidential customers in the Medium Load class with demands of over 100 kW to 400 kW) is \$1,058.87 per year on average.

Commonwealth Edison Company's Verified Response to the Administrative Law Judge's Request for Additional Information, dated October 19, page 2.

Another argument raised by the Proposed Order states that:

While ComEd contends that its costs per bill are constant, high-use customers use a greater amount of retail electric supplier service. However, it is the policy of this State to reduce overall energy consumption. (220 ILCS 5/8-103). The subsidy proposed by ComEd and by various retail electric suppliers does not further this policy.

Proposed Order at 24.

ICEA initially notes that the above argument is unique to the Proposed Order and has not had the benefit of exposition as it might had if it had been raised in testimony and debated in the parties briefs. Accordingly, it is not completely clear to ICEA from the language contained in the Proposed Order what is meant by "subsidy" in this context or how such a "subsidy" would cause the energy consumption patterns of consumers to rise. Nor is it clear how the Proposed Order applies Section 8-103 of the Act to PORCB. Section 8-103(a) of the Act states in part "[i]t is the policy of the State that electric utilities are required to use cost-effective energy efficiency and demand-response measures to reduce delivery load." POR and UCB are neither energy efficiency nor demand response measures. Further, the utilities providing POR and UCB are statutorily required to provide both services and the users of POR and UCB services are not utilities (which is who Section 8-103 is directed at) but RESs.

Suggested replacement language to address Exceptions 3 is set forth at the end of Exception 4.

Exception 4: ICEA takes exception to the statement that "any argument that larger-use customers using PORCB will suffer, if a percentage charge is imposed, is without merit. Proposed Order at 24.

The Proposed Order states:

We note that there has been no showing here that, if larger-use customers receive a higher PORCB bill, they will not, nevertheless, receive a lower bill with PORCB services. Therefore, any argument that larger-use customers using PORCB services will suffer, if a percentage charge is imposed, is without merit. Additionally, since there are so many residential customers that could take PORCB services, as opposed to commercial customers, it also may be possible that lower-use customers may make up through the volume of customers what they lack in actual usage per customer.

Proposed Order at 24.

ICEA initially notes that the above arguments are unique to the Proposed Order and have not had the benefit of exposition as they might had they been raised in testimony and briefs. If ICEA understands the argument contained in the above excerpt correctly, the argument appears to be this: "even if larger-use customers are billed by the suppliers for a greater share of PORCB costs than smaller-use customers, no party has shown that these larger-use customers will not be receiving a lower overall bill because their supplier is serving them using PORCB." If we have re-cast the argument correctly, the argument assumes, among other things, that there is no upper limit to PORCB costs beyond which a supplier would decide that the use of PORCB is uneconomic.

ICEA has noted that in deciding whether or not to use a utility's PORCB service there undoubtedly 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." Wright Reb., ICEA Ex. 2.0, page 5, lines 5-8. A point of comparison that RES would likely use in deciding whether or not to use PORCB is the cost associated with using ComEd's single billing service (whereby the retail electric supplier bills for ComEd) retail electric suppliers. As noted above, RES are only compensated 54 cents by ComEd for including

ComEd's charges on the supplier's bill to the customer. A cost recovery component that is significantly higher than 54 cents would likely discourage the use of ComEd's PORCB service. *Id.* page 7, lines 10-14.

What that means for customers is that at some tipping point, RESs will choose not to use PORCB and perhaps choose not to enter the market altogether. Such a decision to not enter the market at all clearly causes a loss for these commercial customers-- the loss of a potential lower priced alternative source of supply, the loss of an innovative "green" product offering, the loss of a longer term fixed priced contract, etc. Furthermore, such a loss is not necessarily limited to commercial customers. It is certainly conceivable that a supplier might only enter the Illinois residential market using PORCB if it can also at the same time economically serve commercial customers using PORCB. In such a case, an uneconomic rate for PORCB for commercial customers would have negative ramifications for both the commercial and residential market.

Suggested replacement language to address Exceptions 1, 2, 3 and 4 is set forth immediately below.

Delete the "Analysis and Conclusions" Section of the Proposed Order found on pages 22-25 and replace with the following:

Analysis and Conclusions

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. The cost recovery mechanism also enjoys the support of the Illinois Energy Marketers Coalition. Accordingly, the Commission finds ComEd's proposed 50 cent per bill charge appropriate and approves it herein.

Exception 5: Greater clarity is needed in the findings section of the Proposed Order regarding the "go live" date for PORCB.

The Proposed Order notes that there is no need for ComEd to extend the "go live date" for PORCB (the date upon which PORCB becomes available for use by RESs) based on "the results of this docket." Proposed Order at 10. The Commission further notes that "here [*in Docket 10-0138*] we are not authorizing ComEd to extend its go-live date beyond December 1, 2010." *Id.* ICEA does not disagree with these conclusions but notes that the Proposed Order's finding paragraphs are somewhat vague on this point. Specifically, finding four in the Proposed Order provides for the revised tariffs in compliance with the Commission's order to be filed within 3 days from the date the order is entered "to be effective immediately." Proposed Order at 48, finding (4).

Suggested replacement language to address Exceptions 5.

(4) new tariff sheets that are in conformance with this Order should be filed by Commonwealth Edison Company within three (3) days from the date, upon which, this Order is entered, to be effective immediately. The tariff sheets shall reflect a "go live date" for ComEd's PORB service of December 1, 2010;

Request for Oral Argument

Pursuant to Section 9-201(c) of the Act, and Section 200.850(a)(3) of the Commission's Rules of Practice, 83 Ill. Admin. Code Part 200, ICEA hereby requests the opportunity to present oral argument on the issue of the PORCB cost recovery mechanism, the go live or effective date of the tariffs, and any other matter that might be addressed during oral argument.

CONCLUSION

ICEA believes that in the instant proceeding, the 50 cent cost recovery mechanism has 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.

For the foregoing reasons, ICEA requests that the Proposed Order be modified as provided herein and that the Commission enter the Order as so revised.

Respectfully Submitted,

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