

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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| <b>Illinois Commerce Commission</b>      | : |                |
| <b>On Its Own Motion</b>                 | : |                |
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|  | : |                |
| <b>Revision of 83 Ill. Adm. Code 280</b> | : | <b>06-0703</b> |

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**BRIEF ON EXCEPTIONS  
OF THE STAFF OF THE  
ILLINOIS COMMERCE COMMISSION**

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NOW COMES Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.830 of the Illinois Commerce Commission’s (“ICC” or “Commission”) Rules of Practice (83 Ill. Adm. Code 200.830), and respectfully submits its Brief on Exceptions (“BOE”) to the Proposed Order (“PO”) and accompanying Attachment 1 issued by the Administrative Law Judge (“ALJ”) on June 6, 2012, in the instant proceeding.

On October 31, 2006, Commission initiated a rulemaking proceeding to revise 83 Ill. Adm. Code 280 (“Part 280” or “rule”). The PO was issued following the conclusion of evidentiary hearings held on June 7, 8, and 9, 2011 and the filing of initial and reply briefs by Staff, AARP, the People of the State of Illinois, through Lisa Madigan, Attorney General of the State of Illinois, (“AG”), City of Chicago (“City”) and the Citizens Utility Board (“CUB”) (collectively, “GCI”), Low Income Utility Advocacy Project (“LIRC”), Ameren Illinois Company (“Ameren”), Commonwealth Edison Company (“ComEd”), Illinois-American Water Company (“IAWC”), MidAmerican Energy Company (“MEC”), Mt. Carmel Utility Company (“MCPU”), Northern Illinois Gas Company d/b/a Nicor Gas Company (“Nicor Gas”), Peoples Gas Light and Coke Company, North Shore Gas

Company (“PGL/NSG”), the Retail Gas Suppliers (“RGS”), and Dynegy. Although Staff supports many of the PO’s conclusions, there are items to which Staff takes exception to as set forth below.

**I. Introduction**

Staff takes exception to and seeks modification of only ten items within the PO and its accompanying Attachment 1. Staff notes that there are other changes from Staff’s proposed rule within the PO and Attachment 1 that Staff is not commenting upon here. In many such instances, Staff is either satisfied with the PO’s changes, accepts the logical conclusion reached by the PO or maintains a position of neutrality on the topic. Notwithstanding the foregoing, Staff does not waive its right to provide analysis upon and seek modification to these portions of the PO and Attachment 1 in its Reply Brief on Exceptions, depending upon what the other parties offer in their BOE filings.

**II. Section 280.15 Compliance**

The PO accepts the addition of this proposed section, sponsored by Nicor, with a modification offered by ComEd to insert the concept that each requirement of the rule be implemented “as quickly as reasonably practicable” but within a full 24 months from the effective date of the rule. The PO also establishes a new requirement that utilities post updates to their websites to indicate to the public when they have come into compliance with each new requirement of the rule. (PO, p.32, Attachment 1, p. 32) While Staff welcomes the new concept of public website compliance updates, Staff takes exception to the offering of the full 24 months to come into compliance and again raises its strong concern that utilities not be allowed to prioritize the implementation of those provisions of the rule that benefit them over those that benefit consumers. (Staff

IB, pp. 7-8) Recognizing that the ALJ is persuaded by the arguments of utilities that implementation could reasonably take a significant amount of time, but still believing that two years is simply too long, Staff suggests a compromise from its originally suggested six month timeline (Staff RB, Pages 13-14) to 12 months. The following changes should be made to the PO and Attachment 1:

Staff Proposed Language  
(PO, p. 32)

### **9. Commission Analysis and Conclusion**

This Docket is more than six years old. Delaying the implementation of a revised Part 280 for an extended period of time after its adoption is not consistent with the public interest. Nevertheless, the overwhelming weight of the evidence suggests that conforming utility systems to these rules will be expensive and time consuming. Per ComEd's suggestion, the Commission finds that it will require implementation of each requirement as quickly as reasonably practicable, but in no event later than ~~24~~ 12 months from the date of the effectiveness of the rules, and that each utility will be required to post and update a "checklist" on its website so that the public can be informed when the utility has brought itself into compliance with each new requirement of Part 280 as rewritten. Lastly, the rule shall require that utilities prioritize implementation in a balanced manner so that those items which benefit utilities are not implemented first while delaying those that benefit consumers.

Staff Proposed Language  
(PO, Attachment 1, p. 4)

#### **Section 280.15 Compliance**

The Commission shall require implementation of each requirement as quickly as reasonably practicable, but in no event later than ~~24~~ 12 months from the effective date of the rules, and that each utility post and update a "checklist" on its website so that the public can be informed when the utility has brought itself into compliance with each new requirement of Part 280 as rewritten. Each utility shall schedule implementation of the requirements of this rule in a balanced manner so that requirements which benefit utilities are not given priority over those that benefit consumers.

### III. Section 280.20 Definitions

#### A. “Medical Certificate”

The PO reasonably accepts MCPU’s suggestion that a definition for “Medical Certificate” should be included in the rule, but errs in adopting MCPU’s language that includes a requirement that the certificate contain a description of the medical equipment that the patient uses. (PO, pp. 42-43, Attachment 1, p. 5) Staff notes that the PO agrees with Staff’s concern that medical privacy laws not be violated by requirements of the rule (PO, p. 42), and therefore Staff suggests that any reference to a patient’s medical equipment, treatments or condition be removed from the rule. Staff also notes that MCPU’s language does not accurately reflect the remaining medical certificate content requirements found in PO, Attachment 1, Section 280.160 (d). Staff believes the definition of Medical Certificate should be changed to mirror those content requirements verbatim. (Attachment 1, p. 48) Lastly, Staff observes that the PO’s definition’s exclusive use of the word “written” (PO, Attachment 1, p. 5) fails to recognize that initial certification under the rule may be accomplished by phone call, with the written document provided later. (PO, Attachment 1, pp. 48-49) Staff offers the following edits to the PO and Attachment 1:

Staff Proposed Language  
(PO, p. 43)

#### 3. Commission Conclusion and Analysis

The Commission agrees with MCPU’s suggestion that the term Medical Certificate be defined in the Rule. The Commission finds that the First Notice Proposed Rules shall include a definition similar to that suggested by MCPU with modifications so that the definition follows the actual requirements of medical certification found in the rule.

Staff Proposed Language

(PO, Attachment 1, p. 5)

“Medical Certificate” means written certification (though initial certification may be by phone) of medical information necessity provided to the utility company by a doctor or the local board of health. If a customer or occupant in the home is very sick, a medical certificate will provide the following documentation to the utility company: ~~1) the name of the sick person~~ Name and contact information for the certifying party; ~~2) a statement that the person resides at the premise~~ Service address and name of patient; ~~3) the name, business address and telephone number of the certifying party~~ A statement that the patient resides at the premises in question; and ~~4) the period of time during which termination of utility service will aggravate the condition~~ A statement that the disconnection of utility service will aggravate an existing medical emergency or create a medical emergency for the patient.; and, ~~5) the type of medical equipment needed to aid or assist the sick person.~~

**B. “Written or writing”**

The PO accepts MidAmerican’s assertion that the rule should define written or writing to include electronic communications and not just those made by hard copy. By adopting, at MidAmerican’s suggestion, the language from Section 5-115(a) of the Electronic Commerce Security Act (5 ILCS 175/5-515(a)), the PO and Attachment 1 also attempt to safeguard those provisions of the rule that would always require a hard copy. (PO, p. 50, Attachment 1, p. 7) While Staff does not object to this concept generally, Staff notes that the definition uses the broad language of the statute to include the phrasing, “a rule” rather than “this rule.” Further, the statutory language only references delivery of hard copy by U.S. Mail, while utilities with field personnel are capable of hand delivery. Lastly, the broad statutory language necessarily does not include the important concept that both utility and customer would need to agree to (indeed they would both need to possess the technology to even be capable of) electronic communication in order for this to work. Accordingly, Staff offers the following

changes to the PO and Attachment 1 including a correction of a scrivener's error to the statutory section:

Staff Proposed Language  
(PO, p. 50)

## **2. Commission Conclusion and Analysis**

The Commission agrees with MidAmerican's suggestion and finds that ~~that~~ the word "written" as defined in 5 ILCS 5-~~10~~15 should be incorporated into Section 280.20 of the proposed draft rules, with modifications to: 1) allow for other means of hardcopy delivery beside U.S. Postal Service; 2) apply its requirements only to this rule; and 3) ensure that both utility and consumer have agreed to the use of electronic communications.

Staff Proposed Language  
(PO, Attachment 1, p. 5)

"Written or writing " means either a hard copy or electronic copy, unless it is specifically stated a hard copy must be placed in the U.S. Mail or delivered by other means. Where a this rule requires information to be "written" or in "writing," an electronic record satisfies that requirement, so long as both utility and customer have agreed to electronic communications.

## **IV. Section 280.30 Applications**

### **A. Subsection 280.30 (c)(2) - Third party applications**

The PO adopts the compromise language offered by ComEd (PO, pp. 59-60) to attempt to settle Staff's concerns over alleged misuse of third party applications under the current Part 280 rule whereby some utilities who fail to disconnect service when there is no customer of record choose to unilaterally declare customer status upon persons who may be associated with a premises but do not wish to be customers. (Staff IB, pp. 15-16) While Staff appreciates the PO's stated goal to reject the loose "user responsibility" language proposed by utilities, Staff notes that ComEd's language still

allows a utility to “name” a customer based upon an application that was not properly verified. Staff also questions whether a Commission rule can limit a complainant’s right to complain about billing responsibility to a six months time frame when Section 5/9-252.1 of the Public Utilities Act (“Act”) clearly provides for two years (220 ILCS 5/9-252.1) For those reasons, Staff seeks the following changes to the PO and the attached rule:

Staff Proposed Language  
(PO, p. 50)

**4. Commission Conclusion and Analysis**

The Commission finds that ~~ComEd’s suggested amendment (immediately above) to Staff’s proposed language is a reasonable compromise on this issue that is hereby adopted in addition to Staff’s proposed language~~ is reasonable and appropriate and should be adopted.

Staff Proposed Language  
(PO, Attachment 1, p. 7)

- 2) ~~Third party applications may be made only by persons who have been authorized to act on behalf of the applicant, and the utility must verify this authorization either by documentation or by direct contact with the applicant. If a utility fails to verify authorization, it shall not be entitled to collect for service, if the customer disclaims any responsibility for requesting the service; provided, however, that named customers who reside and receive mail at the service/billing address will be rebuttably presumed to have authorized the application if they do not contact the utility to contest billing within six months of service activation.~~

**V. Section 280.40 Deposits**

**A. Subsection 280.40(e)(4) – Deposits for “large commercial or industrial customer[s]”**

The PO adopts Nicor’s proposed language that would allow utilities to assess deposits upon “large commercial or industrial customer[s].” (PO, p. 105, Attachment1, p. 15.) Staff has explained that the Consumer Services Division, the department within the

ICC that administers the Part 280 rules on a day to day basis, lacks the expertise to assess the corporate “financial insecurity” upon which Nicor’s proposed language is based, and that therefore the topic may be better suited to a different setting. (Staff Ex. 2.0, p. 33, Lines 748-749) However, if the Commission sees fit to adopt Nicor’s language, Staff notes that the rule fails to define “large commercial or industrial customer[s].” Staff observes that the rule does define a “small business” as having “50 or less full time employees in Illinois.” (PO, Attachment 1, p. 6) Staff therefore suggests that the Commission, should it choose to accept Nicor’s language, define “large commercial or industrial customers” for the purposes of this rule as those having more than 50 employees in Illinois. Staff offers language changes to the PO and Attachment 1 if the Commission rejects Nicor’s language (Staff’s preference) and also offers alternative language if the Commission accepts Nicor’s language (including the correction of one scrivener’s error):

Staff Proposed Language  
(PO, p. 105)

## **5. Commission Analysis and Conclusion**

~~The Commission finds that Nicor’s proposal has merit and adopts it but finds that the Part 280 rulemaking is not an appropriate venue to explore this topic given Consumer Service Division Staff’s lack of expertise and the lack of participation of business interests with expertise in this proceeding. The Commission agrees that the creditworthiness of large commercial customers is a significant concern for utilities. The Commission disagrees with Staff’s argument that this is not the appropriate forum to consider this issue. This docket specifically addresses billing and deposit issues and parties of record representing varying points of view have commented on this issue. Because further Commission action will be required under tariff filings to establish the criteria and source of information used to determine financial insecurity, such parties will have a further opportunity for input~~

Staff Proposed Language  
(PO, Attachment 1, p.15)

- 4) ~~A present large commercial or industrial customer may be required to pay a deposit for indications of financial insecurity in accordance with and as allowed by the terms and conditions of a utility's effective tariffs.~~

Staff Proposed Language (Alternative)  
(PO, p. 105)

**5. Commission Analysis and Conclusion**

The Commission finds that Nicor's proposal has merit and adopts it with the addition of a new supporting definition for "large commercial or industrial customer." The Commission agrees that the creditworthiness of large commercial customers is a significant concern for utilities. ~~The Commission disagrees with Staff's argument that this is not the appropriate forum to consider this issue. This docket specifically addresses billing and deposit issues and parties of record representing varying points of view have commented on this issue.~~ Because further Commission action will be required under tariff filings to establish the criteria and source of information used to determine financial insecurity, such parties such as Commission Staff with expertise in corporate finances and accounting will have an further opportunity for input.

Staff Proposed Language (Alternative)  
(PO, Attachment 1, p. 5 after definition of "Illegal tap")

"Large commercial or industrial customer" means an Illinois business with over 50 full time employees in Illinois.

**VI. Section 280.50 Billing**

**A. Subsection 280.50(b)(3) - more frequent bills to "large, non-residential customers"**

The PO accepts MidAmerican's suggested change that would allow for more frequent billings of "large, non-residential customers." (PO, p.112-113, Attachment 1, p. 18) While Staff remains neutral on the topic, Staff points out that this suggested change has the same issue of a lack of definition for "large" customer that was discussed above

under Subsection 280.40(e)(4). Staff also notes that the second sentence of Mid American's proposed change in Attachment 1 lacks the phrase "large, non-residential" before "customer" and could therefore be misconstrued as applying to all customers. If the Commission accepts Mid American's change, Staff suggests the following changes to the PO and Attachment 1 including Alternative language in the event that the Commission also accepts Nicor's suggested language as discussed in Subsection 280.40(e)(4) above :

Staff Proposed Language  
(PO, p. 113)

### **3. Commission Analysis and Conclusion**

The Commission finds that Mid American's proposed additional Section 280.50 (b)(3) concerning special billing for large commercial customers is reasonable and should be added to the rule with the addition of a new supporting definition for "large, non-residential customer."

Proposed Language  
(PO, Attachment 1, p. 5 after definition of "Illegal tap")

"Large, non-residential customer" means an Illinois business with over 50 full time employees in Illinois.

(PO, Attachment 1, p. 18)

- 3) Bills to large, non-residential customers may be rendered more frequently than monthly when agreed to by the utility and customer. More frequent billing may be offered if the large, non-residential customer is subject to disconnection or payment of a deposit. The more frequent billing shall not extend more than six months, at which time monthly billing shall resume.

Proposed Language (Alternative)  
(PO, Attachment 1, p. 5 after definition of "Illegal tap")

In the event that the Commission also accepts Nicor's suggested language as discussed in Subsection 280.40(e)(4) above, then Staff suggests the following proposed language to capture both concepts:

“Large commercial or industrial customer or large, non-residential customer” means an Illinois business with over 50 full time employees in Illinois.

**VII. Section 280.60 Payments**

**A. Subsection 280.60(d)(3) - budget billing late fees**

The PO eliminates the long standing current Part 280 policy of not allowing the assessment of late fees upon customer accounts on budget billing programs. To attempt to address Staff’s concern about uncertainty and potential unfairness as to which amount owing on a budget plan would have the late fee applied to it, the PO accepts IAWC’s suggestion that it will be the amount of the installment in the event the customer pays late. (PO, p. 129, Attachment 1, pp. 23-24) Staff admits that on its face this concept appears to address concerns of uncertainty, particularly when customers are running a large budget shortfall (typically in late winter when the budget plan surplus has been consumed by heating bills). However, as Staff has observed, budget plans have too many moving parts to allow for accurate late fee assessments. (Staff Ex. 2.0, p. 51, Lines 1153-1168) The PO’s proposal would assess a percentage based late fee upon a fictional amount owing (the budget plan amount) and not the true amount owed. Moreover, in the event that a customer is running a budget plan surplus credit, Staff notes that such customers may technically owe nothing to the utility for what would be their actual billing. Staff believes that late fees are intended to incent customers to pay timely and to mitigate some of the damage caused by late arriving revenue for utilities. Staff is not persuaded that utilities are harmed by budget billing payments that arrive late when customers are already running a credit surplus on their actual bill amounts.

Staff reasserts its belief that budget billing programs are simply not an appropriate area for the Commission to institute late fees, and submits the following changes to the PO and Attachment 1 including one scrivener's error:

Staff Proposed Language  
(PO, p. 129)

**3. Commission Analysis and Conclusion**

The Commission finds that IAWC's proposed modification to Section 280.60 (d)(23), allowing a late fee computed on undisputed overdue budget payment amounts is not an appropriate alternative to terminating a customer's participation in a budget payment plan for late payment because the late payment fee would not be assessed upon the true amount owing and would not account for instances where late paying customers are running a budget plan surplus credit balance. The Commission finds that Staff's proposed language for Section 280.60 (d)(3), is appropriate and should be adopted.

Staff Proposed Language  
(PO, Attachment 1, p. 5)

- 3) Late fees ~~may~~ shall not be assessed on ~~undisputed overdue budget installment amounts (not the accumulated uncollected budget plan payment balance)~~ owing on a budget payment plan as ~~an alternative to termination of participation in the plan for late payment.~~

**VIII. Section 280.80 Budget Payment Plan**

**A. Subsection 280.80(i) - budget billing late fees**

As discussed immediately above, Staff does not support the PO's addition of late fee assessments for budget billing plans. The identical topic appears in this subsection as well, and Staff submits the following changes to the PO and Attachment 1 for the same reasons described immediately above:

Staff Proposed Language  
(PO, p. 138)

**D. Subsection 280.80 (i)**

### 1. Staff's Position

Staff maintains the position it described in its Initial Brief, that late fees are not appropriate for budget payment plans. (Staff IB at 44.) As discussed under Subsection 280.60 (d) (3), Staff rejects utility concerns that they should be allowed by the proposed rule to begin a new policy of assessing late fees on untimely payments for budget payment plans because there is no fair way to assess percentage based late fees upon the various amounts actually owing on a customer's budget plan throughout the course of a year. (Staff Ex. 2.0 at 51.) IAWC, as also described in subsection 280.60 (d)(3), claims that it should not be constrained from applying late fees to untimely payments on a budget payment plan. (IAWC IB at 36.) Staff asserts that maintaining this prohibition from the current rule is an appropriate policy (Staff IB at 44; Staff Ex. 2.0 at 51; Staff RB at 71.)

### 3. Commission Analysis and Conclusion

The Commission finds that Staff's proposed language is reasonable and should be adopted. ~~problematic. Under Staff's proposed version of Section 280.80(k)(2) a utility may cancel a budget payment plan if a payment is less than the full amount or 21 days in arrears. The Commission finds that in lieu of budget plan termination for a single late or partial payment, a utility may issue a written warning about cancellation of the budget plan for further late payments and charge a late fee on the overdue part of the budget installment amount. The Commission also finds that the deletion of Section 280.80(i) is reasonable and appropriate.~~

#### Staff Proposed Language

(PO, Attachment 1, p. 27, inserted between h) and j))

- i) Late payments: No late payment fees shall be assessed on an account on a budget payment plan.

### IX. Section 280.120 Deferred Payment Arrangements (DPAs)

#### A. Subsection 280.120(b)(1)(B) - deferred payment arrangement (DPA) eligibility limited to period prior to day of disconnection

The PO adopts utility supported language to limit DPA eligibility up until the actual day of disconnection as a matter of safety for utility field personnel. (PO, pp. 165-166, Attachment1, p. 33) While the language appears rather innocuous on its face, it does not properly reckon with the actual utility collection practices that might flow from

it. Nor does it take into account the robust communications systems that utilities maintain which allow them to stop a disconnection that has not yet occurred. Staff also observes that the PO's proposed rule elsewhere removes the requirement for field personnel to attempt contact with customers at the time of disconnection – a feature that should mitigate many safety concerns for utility personnel. As Staff warned, utilities often do not disconnect service to delinquent customers, even on the day that they have scheduled to do so. There are simply too many variables with field work to ensure that all the scheduled work is accomplished. Indeed, the rule would not need to contain the concept of multiple serial disconnection notices if utilities were able to act immediately on the first day disconnection can occur. Without intending to do so, the PO's adoption of the utility language may effectively prevent a customer from obtaining a DPA once the final due date on his or her disconnection notice has arrived, regardless of whether or not the utility is actually able to act upon the notice. Since not even utilities can be certain that a scheduled disconnection notice will occur in the field on that day, they may default to the practice described by AIU to simply assume that the service is off if a disconnection was scheduled, and therefore full payment is the only option for the customer. This could happen for many days in a row, ultimately discouraging any payment if the customer simply does not have the full required amount. (Staff Ex. 2.0, pp. 65-66, Lines 1484-1507) For these reasons, Staff submits the following changes to the PO and the attached rule:

Staff Proposed Language  
(PO, p. 166)

## **2. Commission Analysis and Conclusion**

The Commission finds that Staff's proposed language for Section 280.120(b)(1)(B) is reasonable and should be adopted. ~~with the modification suggested by PGL/NSG and Ameren making the deadline for DPAs the day before disconnection is scheduled. A customer shall only be eligible for a DPA only up to the "day of scheduled disconnection" as suggested by PGL/NSG to lessen confusion and the possibility of violence in the in the field~~

Staff Proposed Language  
(PO, Attachment 1, p. 33)

- B) A customer who is eligible for a DPA under this subsection shall remain fully eligible until ~~but not including the day~~ utility service is disconnected.

**X. Section 280.125 Deferred Payment Arrangements for Low Income Customers**

**A. Subsection 280.125 (e) - changes "Second DPA" to "Amended DPA" for low income customers**

The PO errs in accepting MCPU's suggestion that the "second DPA" is actually intended to be an "amended" or altered version of the first DPA that the low income customer had previously established. (PO, p. 177, Attachment 1, p. 37) As Staff explained (Staff RB, Attachment B, p. 35), MCPU's fear of having to administer simultaneous DPAs is eliminated by the prohibition on "overlapping arrangements" without the consent of both parties. (Attachment 1, p. 36, under I)) Staff notes that in practice it will not matter whether the DPA is termed "second" or "amended" so long as the conditions and requirements of the second/amended DPA are retained as they are in the Attachment 1. While Staff prefers the retention of the term "second" DPA, in particular for the simplicity of language and for logical flow since the remaining text of the subsection references "first" DPA several times, Staff observes that if the

Commission chooses to adopt the MCPU language, it will need to change all the references to “second” in this subsection of rule to “amended” as follows:

Staff Proposed Language  
(PO, Attachment 1, p. 37)

- e) Amended DPA:
  - 1) A utility shall offer an amended DPA to a low income customer who is in default on a first DPA if the customer has made at least two consecutive full payments under the first DPA and the customer has not been in default on the first DPA for more than 90 days.
  - 2) The ~~second~~ amended DPA shall be for the same term or longer than the term of the first DPA.
  - 3) As a condition of entering the ~~second~~ amended DPA, the utility may require the customer to participate in the payment option described in Section 280.80.

**XI. Conclusion**

WHEREFORE, Staff respectfully requests that the Commission’s order in this proceeding reflect all of Staff’s recommendations.

Respectfully submitted,

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