

**BEFORE THE ILLINOIS COMMERCE COMMISSION
STATE OF ILLINOIS**

Illinois Department of Commerce)
and Economic Opportunity)
) ICC Docket No. 13-0499
Approval of its Energy Efficiency Portfolio)
and Plan Pursuant to Sections 8-103(e) and (f))
and 8-104(e) and (f) of the Public Utilities Act)

REPLY BRIEF

On behalf of

**THE COALITION TO REQUEST
EQUITABLE ALLOCATION OF COSTS TOGETHER**

REACT

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December 10, 2013

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REPLY BRIEF OF REACT

The Coalition to Request Equitable Allocation of Costs Together ("REACT"),¹ by and through its attorneys, Quarles & Brady LLP, pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), in response to the Initial Briefs filed in the instant proceeding, respectfully submits this Reply Brief in the instant proceeding regarding the approval of the Energy Efficiency Plan proposed by the Illinois Department of Commerce and Economic Opportunity ("DCEO").

I.

INTRODUCTION / STATEMENT OF THE CASE

DCEO has stated that the purpose of its Energy Efficiency Plan is to "motivate public sector entities to purchase high efficiency equipment." (*See* DCEO Ex. 1.1 at 17.) REACT has proposed a Self-Direct Pilot Program that is designed to help DCEO achieve that goal. REACT's proposed Pilot Program would give the largest commercial, industrial, and

¹ The REACT members for purposes of this Reply Brief include: A. Finkl & Sons, Co.; Aux Sable Liquid Products, LP; Charter Dura-Bar (f/k/a Wells Manufacturing, Inc.); Flint Hills Resources, LP; FutureMark Paper Group; The Metropolitan Water Reclamation District of Greater Chicago; PDV Midwest Refining, LLC (CITGO); and United Airlines, Inc. The opinions herein do not necessarily represent the positions of any particular member of REACT.

governmental electricity customers improved access to energy efficiency funds, which would encourage cost-effective energy efficiency investment and deployment by those customers. (See REACT Init. Br. at 2, *citing* REACT Ex. 1.0 at 11:244-49, 13:289-14:296; ICC Docket No. 13-0495, REACT Ex. 3.02.) Nothing in the initial briefs of the parties provides any basis to reject REACT's proposed Pilot Program or exclude participants just because they fall within the DCEO's portfolio.

REACT's proposal includes the following attributes:

- The program is not an "opt-out" approach. All verified energy savings would be counted toward statutory savings requirements.
- Eligibility would be limited to a set number of customers, including REACT members, and interested parties would collaborate with DCEO to ensure that state agencies and units of local government are eligible to participate.
- Commonwealth Edison Company ("ComEd") would collect 100% of the Rider EDA funds. 25% of those funds would constitute the customer's contribution to DCEO's program funds; 5% of those funds would be direct to ComEd for program administration, marketing, monitoring, and verification; and the remainder of the funds would be placed into the customer's energy efficiency reserve account.
- The program is a "use-it-or-lose-it" structure, creating an appropriate incentive for customers to use the money to implement energy efficiency projects.
- Qualifying projects must meet the Total Resource Cost ("TRC") test, through verification from the Independent Evaluator.
- Qualifying projects are subject to a monitoring and verification plan to measure energy savings.

(*See id.*)

Given the coordinated nature of the energy efficiency programs that are administered in tandem both by DCEO and the public utilities (*see, e.g.*, 220 ILCS 5/8-103(e) (requiring that the DCEO-administered energy efficiency measures "must be designed in conjunction with the utility and the filing process")), it is important that the Pilot Program apply not only to the

ComEd energy efficiency program, but also to the related DCEO energy efficiency program. (See REACT Init. Br. at 3, *citing* REACT Ex. 1.0 at 5:105-09, 17:377-82; REACT Ex. 2.0 at 10:202-10.)

As REACT witness Mr. Fults explained in his written testimony, the largest customers in Northern Illinois are frustrated because they have paid **millions of dollars** to support the existing ComEd and DCEO energy efficiency programs, but, in large part, have not been able to access those funds. (See REACT Init. Br. at 4, *citing* REACT Ex. 1.0 at 8:161-11:228.) While energy efficiency charges collected under ComEd's Rider EDA have increased for REACT members and similar large energy users, those customers have faced significant barriers to accessing the energy efficiency funds that they have paid. (See *id.*)

REACT has proposed a straightforward solution to enable the largest energy users to become active participants in the ComEd and DCEO energy efficiency programs: an Electric Self-Direct Pilot Program for the largest energy users. (See REACT Init. Br. at 5, *citing* REACT Ex. 1.0 at 11:244-17:382.) As noted by DCEO, as well as the Natural Resources Defense Council ("NRDC") and the Environmental Law and Policy Center ("ELPC"), preliminary reports on the State's existing Natural Gas Self-Direct Program implemented by DCEO show *significant energy savings*, well in excess of any other program in the DCEO portfolio. (See REACT Init. Br. at 5, *citing* DCEO Ex. 1.0 at 32:622-30; NRDC Ex. 1.0 at 5:91-6:93; ELPC Ex. 1.0 at 7:9-15, 8:1-5; REACT Ex. 2.0 at 5:98-7:133.) To be clear, REACT is not proposing an "opt-out" program like exists with the natural gas program. (See REACT Init. Br. at 5, *citing* REACT Ex. 1.0 at 12:251-57). Nevertheless, there is a lesson to be learned from the DCEO Natural Gas Self-Direct Program: if given an appropriate amount of flexibility, the largest customers will leverage energy efficiency program dollars, as evidenced by the apparent

increased customer participation and resulting increased energy efficiency implementation by those customers. (See REACT Init. Br. at 6, *citing* DCEO Ex. 1.0 at 32:622-30; NRDC Ex. 1.0 at 5:91-6:93; ELPC Ex. 1.0 at 7:9-15, 8:1-5.) Given the current low levels of participation by those customers in the electric energy efficiency programs, there is literally nothing to lose in implementing a self-direct model as a pilot program on the electricity side now, and there is potentially much to gain in energy efficiency. (See REACT Init. Br. at 6.)

II.

ANY ELECTRIC SELF-DIRECT PILOT PROGRAM APPROVED IN COMED'S ENERGY EFFICIENCY PLAN PROCEEDING SHOULD BE MADE AVAILABLE TO THE LARGEST CUSTOMERS WHO ARE PART OF THE DCEO PORTFOLIO

In the current Commission proceeding to approve ComEd's 2014-2016 Energy Efficiency Plan, REACT has proposed an Electric Self-Direct Pilot Program that would allow the largest Illinois electricity users to access their own funds to make cost-effective investments in energy efficiency projects, while providing appropriate monitoring and verification. (See REACT Init. Br. at 11, *citing* ICC Docket No. 13-0495, REACT Ex. 3.02.) The REACT Self-Direct Pilot Program is a clear way to get the largest customers more involved in achieving the state's energy efficiency goals. Consistent with the direction in the Act that the DCEO Energy Efficiency Plan be coordinated with the utilities, any self-direct pilot program developed and approved for ComEd's largest customers should likewise be made available to the same size ComEd customers who happen to fall under the DCEO portfolio. (See REACT Init. Br. at 11, *citing* 220 ILCS 5/8-103(e) ("Electric utilities shall implement 75% of the energy efficiency measures approved by the Commission... . The remaining 25% of those energy efficiency measures approved by the Commission shall be implemented by the Department of Commerce

and Economic Opportunity, **and must be designed in conjunction with the utility and the filing process.**") (emphasis added). *See also* REACT Ex. 1.0 at 17:378-82.)

A. Response to DCEO

In its Initial Brief, DCEO fails to provide any substantive commentary regarding REACT's proposed Electric Self-Direct Pilot Program, beyond a simple conclusory statement.

DCEO states:

DCEO believes this program to be premature and recommends that the Commission not take action on an Electric Self Direct Program proposal as part of this proceeding.

(DCEO Init. Br. at 33.) That is DCEO's entire discussion of the issue. DCEO's failure to meaningfully engage on this issue is frustrating, but not altogether surprising, given DCEO's written testimony, which similarly provided only a single, conclusory statement regarding the proposed Electric Self-Direct Pilot Program:

Given the challenges and unknown success of the Natural Gas Self Direct Program, DCEO believes it is premature to embark on a pilot electric self-direct program.

(DCEO Ex. 6.0 at 6:77-80.)

DCEO, as the administrator of the State's public energy efficiency portfolio that includes a self-direct component, is presumably well positioned to offer constructive comments to the REACT proposal or propose practical alternatives to encourage large customer participation. DCEO does neither.

Further, DCEO fails to recognize that there is precedent for a pilot program of this type in the DCEO portfolio. As REACT explained in its Initial Brief, DCEO has implemented several energy efficiency pilot programs that it has presented to the Commission, and DCEO's 2014-2016 Energy Efficiency Portfolio Plan recognizes that pilot programs are a key factor in

the planning and implementation of three-year plans. (*See* REACT Init. Br. at 12, *citing* DCEO Ex. 1.1 at 30) (emphasis added.) DCEO has approached the planning and implementation of this three year plan using solid data from previous program years' evaluations, the Energy Efficiency Potential Study, *piloting various programs*, and extensive program modeling.

In sum, DCEO's treatment -- or rather non-treatment -- of this issue does not meaningfully contribute to the analysis of whether REACT's proposed Self-Direct Pilot Program should be made available to customers participating in DCEO-administered energy efficiency programs. Certainly, DCEO's summary statement -- devoid of substantive analysis or discussion of the relevant issues -- does not provide an evidentiary basis for the Commission to decline to implement REACT's well-supported proposal.

B. Response to the Illinois Attorney General

In its Initial Brief, the Illinois Attorney General ("AG") restates AG witness Mr. Mosenthal's position regarding REACT's proposed Electric Self-Direct Program. (*See* AG Init. Br. at 41-49; AG Ex. 2.0 at 6:15-13:3.) While the AG makes a number of broad statements regarding participation rates and budgetary issues associated with large customer interactions with energy efficiency programs, the evidence establishes that the AG's witness lacks any direct knowledge of the situation on the ground in Illinois, and instead is commenting on out-of-state programs, in particular, programs in Massachusetts. (*See id.*)

As REACT explained in its Initial Brief, the lack of Illinois-specific analysis is confirmed by the AG's Responses to multiple REACT Data Requests, in which the AG admitted that "Mr. Mosenthal has not analyzed Illinois-specific data to determine the extent to which large customers have participated in Illinois programs." (*See* REACT Init. Br. at 13, *citing* REACT Cross Exs. 9.0-11.0; 13.0-14.0.) Respectfully, Mr. Mosenthal's experience in

Massachusetts only serves to underscore that the electric energy efficiency programs in Illinois are failing to tap into a potentially substantial contributor to advance energy efficiency in this state.

Despite the AG's concerns, the AG concludes by requesting that the Commission order a collaborative approach:

[The] ICC should direct REACT to engage with the program administrators and SAG to address its concerns and work with these parties to modify programs in ways that best serve its constituents. In addition, the ICC should make clear that program administrators can and must work with all appropriate customers to commit to multi-year projects that span currently approved program or planning periods, particularly in light of the recent modification to Section 8-104(b) of the Act, which permits achievement of annual savings goals over a three-year period. The People have reason to believe that REACT is willing to engage in such discussions, given recent data requests directed to the People, and truly appreciate that kind of cooperation and interest in developing a collaborative approach with ComEd and interested stakeholders to address these customers' concerns.

(AG Init. Br. at 47.)

REACT reiterates its appreciation for the AG's enthusiasm for a collaborative approach. (See REACT Init. Br. at 13.) However, to the extent that the AG's recommendation suggests that REACT has not been "engage(d) with program administrators and the SAG to address its concerns," REACT must respectfully object. (AG Init. Br. at 47.) REACT *has* participated in the Stakeholder Advisory Group ("SAG") process, including giving a specific presentation regarding the frustrations experienced by large energy users and REACT's proposed Electric Self-Direct Pilot Program. (See REACT Ex. 1.0 at 15:319-329.) Further, any Commission-ordered stakeholder-driven process to develop a Self-Direct Pilot Program, in order to be effective, should include a set time of no longer than 45 days from within which the participants are to develop the details of such a program. (See Attachment 1 to REACT Init. Br.; see also REACT Cross Ex. 20.0, included in Attachment 3 to REACT Init. Br.)

C. Response to the Environmental Law and Policy Center

In its Initial Brief, the Environmental Law and Policy Center ("ELPC") addresses REACT's proposed Pilot Program for the first time in this proceeding. ELPC's argument in its Initial Brief is, in large part, merely a selection of items from AG's witness Mr. Mosenthal's testimony. (*See* ELPC Init. Br. at 9-10.) As discussed above and in REACT's Initial Brief, AG witness Mr. Mosenthal's viewpoint on REACT's proposal is based on his analysis of energy efficiency in *other states*, rather than in Illinois. (*See* REACT Init. Br. at 13.) Further, Mr. Mosenthal confirmed that REACT's proposed framework for the Self-Direct Pilot Program contains many aspects that Mr. Mosenthal supports, and that he supports a proposed stakeholder-driven process to formulate the implementation details for the program. (*See id.*) Accordingly, ELPC's selective citation to Mr. Mosenthal is not persuasive.

ELPC's only comment that is not a mere recitation of Mr. Mosenthal's testimony appears as follows:

If REACT has particular concerns about the effectiveness of current (energy efficiency) opportunities for large customers, then it should bring these issues to the SAG so that program administrators and stakeholders can work together to find appropriate solutions.

(ELPC Init. Br. at 10.) As discussed above, and as REACT witness Mr. Fults explained, REACT *has participated* in the SAG. (*See* REACT Ex. 1.0 at 15:319-329.) On April 30, 2013, REACT presented its Self-Direct Pilot Program concept to the SAG, and welcomed any feedback. (*See id.*) REACT did not receive any feedback from ELPC following its presentation. As Mr. Fults further explained, REACT always has been willing to engage with the utilities, DCEO, and other stakeholders at any early stage of the portfolio planning process to craft the Electric Self-Direct Pilot Program -- or any other program that would enhance cost-

effective energy efficiency opportunities for the largest governmental, commercial and industrial customers. (*See id.*)

Interestingly, ELPC is the only party other than REACT that advocates for the inclusion of a pilot program to better address the needs of a particular class of customers. Specifically, ELPC witness Mr. Crandall recommended that the Commission "direct DCEO to implement a data center pilot program or modify its existing public sector programs to respond more comprehensively to data centers unique characteristics." (*See* ELPC Ex. 1.0 at 14.) Unfortunately, ELPC fails to similarly recognize the unique circumstance of the largest commercial and industrial customers. These are sophisticated energy users who, like data centers, carry the potential for some substantial, long-term energy efficiency savings.

D. Response to the Natural Resources Defense Council

In its Initial Brief, the Natural Resources Defense Council ("NRDC") states:

...REACT and others have raised the issue of creating a large customer electric self-direct pilot program in this case and other cases before the Commission. NRDC would urge the Commission to direct interested parties to work together to propose a statewide pilot electric self-direct program over the coming months.

(NRDC Init. Br. at 27.)

REACT appreciates NRDC's recognition of the efforts of REACT and other parties to advance an Electric Self-Direct Pilot Program, both within and outside of this proceeding. REACT is supportive of NRDC's recommendation, as the Commission could order DCEO to extend the benefits of a Self-Direct Pilot Program to ComEd's customers who fall under the DCEO portfolio, and simultaneously recognize that the details of the Program could be refined through a stakeholder-driven process prior to implementation.

V.

CONCLUSIONS AND RECOMMENDATIONS

A well-designed Electric Self-Direct Pilot Program has the potential to significantly increase participation by the largest energy users, resulting in implementation of additional cost-effective energy efficiency projects. (*See* REACT Ex. 1.0 at 13:291-93.) This truly is an opportunity for a win-win situation, where the largest energy users will have the funds necessary to implement more meaningful short-term and long-term energy efficiency projects that help achieve the goals envisioned by the Act. (*See id.* at 13:293-14:296.) It is neither premature nor unreasonable to pursue this pilot program to increase large customer energy efficiency deployment. On the contrary, implementation of such a program now is entirely consistent with the Act and the public policy of encouraging increased, cost-effective energy efficiency.

For the reasons stated herein, in REACT's Initial Brief, and in the written testimony of REACT's expert witness Bradley O. Fults and the REACT Cross Exhibits, REACT respectfully requests that the Commission:

- Recognize that the State's current Electric Energy Efficiency Programs are not working for the largest customers in Northern Illinois;
- Recognize that although REACT is not proposing an "opt-out" model like the Natural Gas Self-Direct program, the Natural Gas side program nonetheless demonstrates the potential for a Self-Direct Pilot Program to produce significant electric energy efficiency savings; and
- Direct DCEO to extend the benefits of any Self-Direct Pilot Program that the Commission endorses in the current ComEd Energy Efficiency Plan Proceeding (ICC Docket No. 13-0495) to ComEd's largest customers who are part of the DCEO energy efficiency portfolio.

Respectfully submitted,

**THE COALITION TO REQUEST EQUITABLE
ALLOCATION OF COSTS TOGETHER**

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