

**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)

**DRAFT
PROPOSED ORDER**

On behalf of

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

REACT

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DRAFT PROPOSED ORDER OF REACT

The Coalition to Request Equitable Allocation of Costs Together ("REACT"),¹ by and through its attorneys, Quarles & Brady LLP, pursuant to Section 200.810 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), respectfully submits its Draft Proposed Order in the instant proceeding regarding the approval of the Illinois Department of Commerce and Economic Opportunity's ("DCEO's") proposed Energy Efficiency Plan.

INTRODUCTION / STATEMENT OF THE CASE

REACT's goal in this proceeding is straightforward: to ensure that the largest electricity customers in Northern Illinois -- including certain governmental entities that are eligible for electric energy efficiency programs administered by DCEO -- are able to participate fully and easily in energy efficiency programs. Through the first six years of statutorily mandated energy efficiency programs, the largest energy users in Northern Illinois have paid **millions of dollars** to support those electric energy efficiency programs, but have received very little direct benefit.

¹ The REACT members for purposes of this Draft Proposed Order 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.

(See REACT Init. Br. at 1-2, *citing* REACT Ex. 1.0 at 8:168-76; REACT Ex. 2.0 at 2:31-35.)

This situation is contrary to the fundamental public policy embodied in Section 8-103 of the Public Utilities Act ("Act"), which unambiguously seeks to expand the implementation of electric energy efficiency projects. (See REACT Init. Br. at 2 *citing* 220 ILCS 8-103(a) ("It 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.") It is also contrary to the Act's specific requirement for energy efficiency programs to "represent a diverse cross-section of opportunities for customers of **all rate classes** to participate in the programs." (See REACT Init. Br. at 2, *citing* 220 ILCS 5/8-103(f)(5) (emphasis added).)

In this proceeding, REACT has advocated that the Commission order that any pilot program that is offered to the largest energy users under the Commonwealth Edison Company ("ComEd") Energy Efficiency Plan presented in ICC Docket No. 13-0495 also be made available to the largest energy users that fall under the DCEO portfolio. In this respect, REACT originally advocated for a Self-Direct Pilot Program. REACT advises the Commission that pursuant to a settlement recently reached with ComEd, REACT now supports a modified version of the ComEd Large C&I Pilot program, with details to be developed in a collaborative process following the conclusion of that proceeding. (See ICC Docket No. 13-0495, Joint Exs. 1 and 2, attached hereto and made a part hereof as Attachments 1 and 2, respectively.) Accordingly, to the extent that the Commission approves the ComEd modified Large C&I Pilot program in Docket No. 13-0495, that program also should be made available to the largest energy users that fall under the DCEO portfolio.

Accordingly, REACT offers the following proposed section for inclusion in the Commission's Order in the instant proceeding.

REACT'S PROPOSAL FOR THE LARGEST ENERGY USERS

REACT has requested that the Commission extend the benefits of any 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 a part of the DECO energy efficiency portfolio. (*See* REACT Reply Br. at 10.) In that regard, REACT originally proposed a Self-Direct Pilot Program to give the largest electricity customers improved access to energy efficiency funds. (*See id.* at 2; *see also* REACT Init. Br. at 2-3.) Subsequently, REACT and ComEd agreed to a modified version of the ComEd Large C&I Pilot program, in order to increase deployment of energy efficiency projects by those customers. REACT respectfully requests that, to the extent that the Commission approves the ComEd modified Large C&I Pilot program in Docket No. 13-0495, the program also be made available to the largest energy users in the DCEO portfolio.

REACT's Original Self-Direct Pilot Program Proposal

REACT's original proposal included the following attributes:

- The program was not an "opt-out" approach. All verified energy savings were to be counted toward statutory savings requirements.
- Eligibility would have been 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.
- ComEd would have collected 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 have been 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 was a "use-it-or-lose-it" structure, creating an appropriate incentive for customers to use the money to implement energy efficiency projects.

- Qualifying projects would have been required to meet the Total Resource Cost ("TRC") test, through verification from the Independent Evaluator.
- Qualifying projects would have been subject to a monitoring and verification Plan to measure energy savings.

(*See id.*)

DCEO, the Illinois Attorney General ("AG"), the Environmental Law and Policy Center ("ELPC"), and the Natural Resources Defense Council ("NRDC") commented on the REACT's original Self-Direct Pilot Program proposal.

The Illinois Department of Commerce and Economic Opportunity's Position

REACT explained that DCEO failed to provide any substantive commentary regarding REACT's proposed Electric Self-Direct Pilot Program, beyond a simple conclusory statement.

(*See* REACT Reply Br. at 5.) DCEO stated:

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.) REACT noted that this is DCEO's entire discussion of the issue. (*See* REACT Reply Br. at 5.) REACT expressed frustration at DCEO's failure to meaningfully engage on this issue because 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. (*See id.*) DCEO did neither. (*See id.*)

REACT explained that DCEO's extremely limited 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. (*See id.* at 6.) 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 the pilot program. (*See id.*)

The Illinois Attorney General's Position

REACT noted that 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, Mr. Mosenthal, lacks any direct knowledge of the situation on the ground in Illinois. (*See id.*) Instead, the AG's witness commented on out-of-state programs, in particular, programs in Massachusetts. (*See id.*)

As REACT explained, 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 id., citing* REACT Init. Br. at 13; REACT Cross Exs. 9.0-11.0; 13.0-14.0.) REACT stated that 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. (*See* REACT Reply Br. at 6-7.)

As REACT explained, 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 noted its appreciation for such a collaborative approach, and expressed its belief that a stakeholder-driven process can be used to develop further details associated with a pilot program for the largest customers. (See REACT Reply Br. at 7.)

The Environmental Law and Policy Center's Position

ELPC addressed REACT's proposed Pilot Program for the first time in this proceeding in its Initial Brief. (See ELPC Init. Br. at 9-10.) In response, REACT explained that ELPC's argument is, in large part, merely a selection of items from AG's witness Mr. Mosenthal's testimony. (See REACT Reply Br. at 8, *citing* ELPC Init. Br. at 9-10.) REACT noted that 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 Reply Br. at 8; *see also* 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 REACT Reply Br. at 8.) Accordingly, as REACT noted, ELPC's selective citation to Mr. Mosenthal is not persuasive. (See *id.*)

The Natural Resources Defense Council's Position

REACT pointed out NRDC's suggestion that it would be helpful to have a collaborative process to develop a self-direct program:

...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 expressed appreciation for NRDC's recognition of the efforts of REACT and other parties to advance a pilot program for the largest customers and the importance of a stakeholder-driven process to formulate the implementation details of such a program. (See REACT Reply Br. at 9.)

The Modified Version of the ComEd Large C&I Pilot Program

Under the modified version of the ComEd Large C&I Pilot program, which REACT now supports:

- The program is not an "opt-out" approach. All verified energy savings are to be counted toward statutory savings requirements.
- Eligibility will be limited based upon the budget established for the program.
- ComEd will collect 100% of the Rider EDA funds. 25% of those funds would constitute the customer's contribution to DCEO's program funds; 12% of those funds will be used by ComEd for program administration; and 3% will be dedicated to monitoring and verification; the remainder of the funds will be placed into the customer's energy efficiency reserve account.
- The program is a "use-it-or-lose-it" structure, creating an incentive for customers to use the money to implement energy efficiency projects within the 3-year Plan period.
- Qualifying projects are required to meet the Total Resource Cost ("TRC") test, through verification from the Independent Evaluator.
- Qualifying projects will be subject to a monitoring and verification Plan to measure energy savings.

(See ICC Docket No. 13-0495, Joint Ex. 1, attached hereto and made a part hereof as Attachment 1.)

REACT maintains that given the coordinated nature of 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 pilot programs intended to address the needs of the largest customers apply not only to the ComEd energy efficiency program, but also to the related DCEO energy efficiency program. (See REACT Reply Br. at 2-3; see also REACT Init. Br. at 3.) Accordingly, to the extent that the Commission approves that ComEd modified Large C&I Pilot program in Docket No. 13-0495, that program should also be made available to the largest energy users that fall under the DCEO portfolio.

The State's Current Electric Energy Efficiency Programs Are Not Working For The Largest Customers In Northern Illinois

REACT witness Mr. Fults explained that ComEd's largest customers have experienced frustration with the existing Energy Efficiency Programs, as they have been required to pay ComEd a substantial amount of money to support energy efficiency, but have been unable to meaningfully participate in the programs. (See REACT Init. Br. at 6, citing REACT Ex. 1.0 at 8:165-176.) In short, those customers have paid in **millions of dollars** to support energy efficiency programs administered by DCEO and ComEd, but have received little, if any, direct benefit. (See REACT Init. Br. at 6-7, citing REACT Ex. 1.0 at 8:168-72; REACT Ex. 2.0 at 2:31-35.) REACT makes the corresponding point that energy efficiency programs have received limited actual benefit from the type of large impact energy efficiency projects that could be implemented if the largest energy users had realistic access to the energy efficiency funds that they continue to pay into the programs. (See REACT Init. Br. at 7, citing REACT Ex. 1.0 at 8:176-76.)

REACT identified a number of factors have caused this circumstance. (See REACT Init. Br. at 7.) First, REACT indicated that most of the largest energy users have dedicated energy managers or utility supervisors who are continuously seeking ways to lower their energy costs

through energy conservation, load management, and competitive supply purchases. (*See id.*, *citing* REACT Ex. 1.0 at 8:179-81.) As part of their job, those dedicated professionals already have implemented many of the “low hanging fruit” options, which are easy cost-effective efficiency measures such as lighting and variable speed motors. (*See* REACT Init. Br. at 7, *citing* REACT Ex. 1.0 at 9:184-86.)

Second, REACT noted that oftentimes energy efficiency projects at large facilities require complex planning, longer lead times, and larger capital contributions to achieve energy efficiency savings beyond the “low hanging fruit.” (*See* REACT Init. Br. at 7, *citing* REACT Ex. 1.0 at 9:188-90.) As a result, planned energy efficiency projects are in constant “competition” with non-energy projects for capital dollars. (*See* REACT Init. Br. at 7, *citing* REACT Ex. 1.0 at 9:190-91.) Therefore, anything that the Commission, DCEO, and the utilities can do to increase the ease of directing capital funds toward energy efficiency projects for large customers will help achieve the overall goal of energy efficiency growth in Illinois. (*See* REACT Init. Br. at 7, *citing* REACT Ex. 1.0 at 9:190-91.)

Third, REACT explained that large energy users have been frustrated by the needless bureaucracy and lack of clarity associated with the electric energy efficiency programs. (*See* REACT Init. Br. at 7, *citing* REACT Ex. 1.0 at 9:197-98.) Simply trying to figure out the rules under which the energy efficiency program funds might be accessed has been a struggle. (*See* REACT Init. Br. at 8, *citing* REACT Ex. 1.0 at 9:198-200.) Moreover, according to REACT, the suggestion that a utility or government agency knows best which energy efficiency projects should be funded for these large, sophisticated energy users ignores reality. (*See* REACT Init. Br. at 8, *citing* REACT Ex. 1.0 at 9:200-04.) REACT stated that under the current situation, the customer ends up having to spend time trying to educate the program administrator (rather than

visa versa), further undermining the opportunity to implement large-scale energy efficiency projects that could have a significant impact on overall energy efficiency achievement. (*See* REACT Init. Br. at 8, *citing* REACT Ex. 1.0 at 9:198-200.) Thus, REACT emphasized that the Commission should appreciate that under the existing programs, customers have to incur significant time and expense simply to apply for the funds, with no level of confidence that the project will be approved in a way that is workable for the customer. (*See* REACT Init. Br. at 8, *citing* REACT Ex. 1.0 at 9:204-10:207.) REACT explained that just a single bad experience for management of an organization can result in a decision that it is not worth even making the initial expenditure to attempt to actively participate in the program. (*See* REACT Init. Br. at 8, *citing* REACT Ex. 1.0 at 10:207-09.) REACT stated that as a result, projects that could have realized substantial energy efficiency can be shelved due to just the perception of shifting program parameters or an onerous application process. (*See* REACT Init. Br. at 8, *citing* REACT Ex. 1.0 at 10:209-11.)

REACT also explained that additional frustration has been experienced by the largest energy users because the Energy Efficiency Plans of DCEO and the utilities have been based on a three-year planning horizon, such as the June 2014 to May 2017 planning period being reviewed in this proceeding. (*See* REACT Init. Br. at 8, *citing* REACT Ex. 1.0 at 10:204-16.) Large energy users do not necessary think in terms of the planning period, and the three-year planning horizon may not be workable for capital intensive projects. (*See* REACT Init. Br. at 8, *citing* REACT Ex. 1.0 at 10:216-18.) REACT explained, for example, that some REACT members only shut down facilities or processes for maintenance once every three to five years, or even less frequently. (*See* REACT Init. Br. at 8, *citing* REACT Ex. 1.0 at 10:218-19.) In other words, they run their plants as long as possible to avoid shutdowns, and many energy

efficiency projects must be completed during these "down times." (See REACT Init. Br. at 8-9, *citing* REACT Ex. 1.0 at 10:219-21.) If the time to obtain approval under the Energy Efficiency Plan is lengthy, a three-year project timeline becomes unworkable. (See REACT Init. Br. at 9, *citing* REACT Ex. 1.0 at 10:221-23.)

The Energy Savings Associated With The Natural Gas Self-Direct Program Have Been Significant

REACT explained that according to DCEO, 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 Reply Br. at 3; *see also* 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.) REACT emphasized that it is not proposing an "opt-out" program like exists with the natural gas program. (See REACT Reply Br. at 3; *see also* REACT Init. Br. at 5, *citing* REACT Ex. 1.0 at 12:251-57). Nevertheless, REACT noted that 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 Reply Br. at 3-4; *see also* 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.)

COMMISSION ANALYSIS AND CONCLUSIONS

The Commission begins from the premise that reasonable efforts to increase energy efficiency participation, whether administered through a DCEO program or a utility program, should be encouraged, and that objections that rely on overly formalistic interpretations of the relevant legal authority are generally unpersuasive. The Commission also notes that REACT has presented a creative proposal, which builds on the self-direct model that exists in the DCEO-administered natural gas program, but is clearly not an opt-out model under which energy efficiency savings are somehow outside the statutory savings requirements. Finally, the Commission notes that as a result of recent developments, including a settlement between ComEd and REACT, REACT now supports a modified version of the ComEd proposed Large C&I Pilot program. The Commission applauds the effort to reach a negotiated resolution of that issue, and finds it constructive that the utility and REACT have been able to make progress in formulating a program that the Commission designed to improve large customer participation in energy efficiency, particularly since the level of large customer participation currently is not what it should be in the Commission's view.

Although we need not specifically rule on the REACT Self-Direct Pilot Program structure, we note that in this proceeding, several parties recognized that the energy savings attributable to the large customers participating in the Natural Gas Self-Direct Program are significant. (*See* NRDC Ex. 1.0 at 20:321-24; ELPC Ex. 1.0 at 8:3-4.) The Commission notes that the preliminary reports on the Natural Gas Self-Direct Program show an impressive level of savings have been achieved in just its first year. The Commission believes this experience strongly suggests that a self-direct approach for the largest energy users is an efficient and

productive way to achieve deployment of substantial energy efficiency projects by the largest, most sophisticated energy users.

The Commission further notes that although REACT has not proposed an "opt-out" model like the Natural Gas Self-Direct program, the Natural Gas side program nonetheless demonstrates the potential for an Electric Self-Direct Pilot Program to produce significant electric energy efficiency savings.

Both the REACT's original Self-Direct Pilot Program and the modified Large C&I Pilot Program currently advocated by REACT appear to represent creative and potentially effective ways to get the largest customers more involved in achieving the state's energy efficiency goals, in accord with the Act's requirements. Consistent with the direction in the Act that the DCEO Energy Efficiency Plan be coordinated with the utilities, any large customer 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.)

In sum, REACT has demonstrated to the Commission the need to implement creative solutions to improve programs for energy efficiency participation by for the largest Illinois electricity users, including those who fall under the DCEO portfolio. The Commission, therefore, orders DCEO to extend the benefits of any large customer Pilot Program that it may endorse in the ComEd Energy Efficiency proceeding (ICC Docket No. 13-0495) to ComEd's

customers who fall under the DCEO portfolio. The Commission further orders DCEO and ComEd to engage in a stakeholder-driven process to formulate the implementation details of the Program during final program design.

For the reasons stated herein, the Commission:

- Recognizes that the State's current Electric Energy Efficiency Programs are not working for the largest customers in Northern Illinois; and
- Directs DCEO to extend the benefits of any large customer 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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