

**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)

BRIEF ON EXCEPTIONS

On behalf of

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

REACT

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BRIEF ON EXCEPTIONS OF REACT

The Coalition to Request Equitable Allocation of Costs Together ("REACT"),¹ by and through its attorneys, Quarles & Brady LLP, pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), respectfully submits this Brief on Exceptions to the December 23, 2013 Proposed Order in the above-captioned proceeding ("Proposed Order") regarding the approval of the Energy Efficiency Plan proposed by the Illinois Department of Commerce and Economic Opportunity ("DCEO"). Attachment A to this Brief on Exceptions contains Proposed Replacement Language to the Proposed Order.

I.

INTRODUCTION / STATEMENT OF THE CASE

There is a significant problem associated with the current administration of energy efficiency programs in Northern Illinois. To a great extent, the largest energy users -- those who could have the greatest energy efficiency impact -- have been sidelined. Fortunately, it

¹ The REACT members for purposes of this Brief on Exceptions 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.

appears that at least a partial potential solution will emerge in the docket addressing the Energy Efficiency Plan of Commonwealth Edison Company ("ComEd"), ICC Docket No. 13-0495. (See ICC Docket No. 13-0495, Jan. 2, 2014 Proposed Order at 75 (recommending conditional approval of the modified "Large C&I Pilot" program as a means to "increase net energy efficiency investment for Large C&I customers.")) Surprisingly, the Proposed Order in the instant proceeding suggests that the Commission should exclude some of the largest energy users from that solution; specifically, the Proposed Order suggests that those customers who are in the DCEO portfolio of customers should not be provided with an opportunity to participate in the ComEd pilot program. (See Proposed Order at 45.)

REACT's singular goal in participating in both this proceeding and the ComEd Energy Efficiency proceeding is to ensure that the largest electricity users in Northern Illinois are able to participate fully and easily in energy efficiency programs. REACT presented un rebutted evidence in this proceeding demonstrating that the largest electricity customers currently are not able to effectively access energy efficiency programs in Northern Illinois. (See generally REACT Exs. 1.0, 2.0.) In an attempt to enable additional participation by these customers, REACT requested that the Commission direct DCEO to extend the benefits of any pilot program offered to the largest customers as part of the ComEd Energy Efficiency Plan to the largest energy users that fall under the DCEO portfolio. (See REACT Reply Br. at 4-5, 9-10; REACT Draft Proposed Order at 2, 14.)

REACT also advised the Commission that, pursuant to a recent settlement between REACT and ComEd, a modified version of a pilot program originally proposed by ComEd known as the "Large C&I Pilot" is advancing within the ComEd proceeding. (See *id*; see also Attachment 1 to REACT Draft Proposed Order (ICC Docket No. 13-0495, Joint Ex. 1).)

Importantly, that Large C&I Pilot Program is neither an "opt-out" program nor a "self-direct" program, but rather a variation of the existing "custom" program, with more specific rules regarding eligibility, procedures and funding. (*See id.*)

REACT further advised the Commission that REACT and ComEd have also agreed that the implementation details of the modified version of the Large C&I Pilot Program would be developed in a collaborative process following the conclusion of that proceeding. (*See* Attachment 2 to REACT Draft Proposed Order (ICC Docket No. 13-0495, Joint Ex. 2).) The January 2, 2014 Proposed Order in ICC Docket No. 13-0495 would approve both the modified Large C&I Pilot and that collaborative process, noting that there is a "broad consensus" of support for both. (ICC Docket No. 13-0495, Jan. 2, 2014 Proposed Order at 75.)

REACT's goal of getting the largest energy users involved in the energy efficiency programs is precisely consistent with the direction given in the Public Utilities Act ("Act"), which requires 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).) Further, REACT's recommendation that DCEO mirror the solution that has been developed in the ComEd proceeding is consistent with the direction given in the Act that energy efficiency measures implemented by DCEO "*must be designed in conjunction with the utility and the filing process.*" (220 ILCS 5/8-103(e) (emphasis added).)

Despite the un rebutted evidence, the clear direction in the Act, and the "broad consensus" of support for the modified Large C&I Pilot in ICC Docket No. 13-0495, the Proposed Order in this proceeding suggests that the Commission should not extend the benefits of the Large C&I Pilot Program that may be approved in ICC Docket No. 13-0495 to ComEd's

largest customers who are part of the DCEO energy efficiency portfolio. REACT respectfully requests that the Commission revisit this finding, so that the largest customers who happen to fall under the DCEO portfolio are not excluded from the Large C&I Pilot Program.

II.

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

No party objects to moving forward with Commission approval of the modified Large C&I Pilot Program for ComEd -- indeed, a "broad consensus" supports that pilot program. (*See* ICC Docket No. 13-0495, Proposed Order at 75; REACT Draft Proposed Order at 2, 12.) Similarly, no party has provided a convincing reason why a pilot program developed and approved for ComEd's largest customers should not be equally available to the same size ComEd customers that are part of the DCEO portfolio. (*See* REACT Reply Br. at 2.) Nevertheless, the Proposed Order suggests that the Commission should refuse to direct DCEO to extend the benefits of the pilot program to the largest customers who fall under the DCEO portfolio. REACT respectfully requests that the Commission revise the Proposed Order and direct DCEO to offer the benefits of the Large C&I Pilot Program to the largest customers in its portfolio.

Specifically, the Proposed Order provides:

The Commission does not find it appropriate for DCEO to institute an electric self direct pilot program. The Commission notes that while DCEO has statutory authority to implement the gas self direct program, no similar provision exists for an electric self direct program.

ComEd has proposed a pilot for large electric customers in Docket 13-0495. The specifics of that pilot are addressed in that docket.

(Proposed Order at 45.)

Respectfully, the premise of the Proposed Order's conclusion -- i.e., that REACT is requesting an "electric self direct program" and that there is a lack of a statutory provision regarding such an "electric self direct program" -- is inaccurate. The Large C&I Pilot Program currently before the Commission in Docket No. 13-0495 -- an unopposed program to which nearly all parties have expressed active agreement -- **is not a "self direct program."** (See REACT Draft Proposed Order at 2.) Therefore, any analysis of a "self direct program" is not relevant to the pilot program that is advancing in the ComEd proceeding, and likewise is not relevant to the instant proceeding.

REACT *originally* proposed an Electric Self-Direct Pilot Program to give the largest electricity customers improved access to energy efficiency funds. (See REACT Draft Proposed Order at 3, *citing* REACT Reply Br. at 2; REACT Init. Br. at 2-3.) Subsequently, however, REACT informed the Commission that it is no longer requesting approval of a Self-Direct Pilot Program because REACT and ComEd agreed to a modified version of ComEd's Large C&I Pilot program, with implementation details to be developed in a collaborative process following the conclusion of that proceeding. (See REACT Draft Proposed Order at 3; *see also* ICC Docket No. 13-0495, REACT Init. Br. at 3.) Accordingly, REACT respectfully requested that, to the extent that the Commission approves the modified version of the Large C&I Pilot program in Docket No. 13-0495, that program also be made available to the largest energy users in the DCEO portfolio. (See REACT Draft Proposed Order at 2.)

The modified version of the Large C&I Pilot Program "is intended to stimulate the implementation of large scale energy efficiency measures by ComEd's largest (i.e., over 10 MW) customers," with a "specific emphasis on increased and improved coordination between

ComEd and program participants, increased flexibility to accommodate the complexity of large scale energy efficiency projects, expedited approval mechanisms, and increased certainty in funding availability." (See Attachment 1 to REACT Draft Proposed Order (ICC Docket No. 13-0495, Joint Ex. 1).) A broad consensus has developed in support of the modified Large C&I Pilot Program. (See ICC Docket No. 13-0495, Proposed Order at 75; REACT Reply Br. at 1-2; ComEd Reply Br. at 24-25; AG Reply Br. at 15-16; NRDC Reply Br. at 17-22; ELPC Reply Br. at 1 n.1; IIEC Reply Br. at 3.) Other parties take no position regarding the modified Large C&I Pilot Program. (See ICC Docket No. 13-0495, Proposed Order at 75; Staff Reply Br.; CUB/City of Chicago Reply Br.; MCA Reply Br.) The bottom line is that no party objects to moving forward with Commission approval of ComEd's modified Large C&I Pilot Program, and a number of parties support it.

REACT also has requested that, in the context of approving the modified Large C&I Pilot Program, the Commission direct the initiation of a stakeholder-driven process to formulate the implementation details of that Program. ComEd indicated that it supports that collaborative process as well, and agreed to work with interested stakeholders during that process. (See Attachment 2 to REACT Draft Proposed Order (ICC Docket No. 13-0495, Joint Ex. 2).) Other parties who have commented on the Program also support that approach, and no party has objected to that approach. (See ICC Docket No. 13-0495, ComEd Reply Br. at 24-25; AG Reply Br. at 15-16; NRDC Reply Br. at 17-22; ELPC Reply Br. at 1 n.1; IIEC Reply Br. at 3; Staff Reply Br. *generally*; CUB/City of Chicago Reply Br. *generally*; MCA Reply Br. *generally*.) The Proposed Order in ICC Docket No. 13-0495 endorses that collaborative effort. (See ICC Docket No. 13-0495, Proposed Order at 75.) If the Commission orders a post-proceeding, stakeholder-driven process to formulate the details of the modified ComEd Large

C&I Pilot Program as jointly requested by REACT and ComEd, DCEO could work within that process to ensure that the implementation efforts by ComEd and DCEO are fully coordinated, consistent with the Act's requirement.

Certainly nothing in the statute precludes the Commission from directing DCEO to extend the benefits of any pilot program offered to the largest customers as part of the ComEd Energy Efficiency Plan to the largest customers that may fall under the DCEO portfolio. (*Cf.* Proposed Order at 43 ("There is nothing in the statute that would prohibit the use of energy efficiency funds to perform the required audit.)) To the contrary, doing so would be entirely consistent with the public policy unambiguously stated in the Act in favor of expanding energy efficiency deployment. (*See* 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 also would be consistent with the provisions of the Act which require such coordination between the utility and DCEO:

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.*

(220 ILCS 5/8-103(e)(emphasis added). *See also* REACT Ex. 1.0 at 17:378-82.)

REACT notes that the Proposed Order provides that the specifics of the ComEd Large C&I Pilot Program are being addressed in ICC Docket No. 13-0495. To the extent that the Commission believes that it would be more appropriate to direct DCEO to extend the benefits of the modified Large C&I Pilot Program to DCEO portfolio participants within the context of ICC Docket No. 13-0495 -- rather than the instant proceeding -- REACT has no objection to that procedural decision.

III.

CONCLUSION

For the reasons stated herein, and in REACT's other submissions in the instant proceeding, 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; and
- Direct DCEO to extend the benefits of any Pilot Program for the largest customers that the Commission endorses in the current ComEd Energy Efficiency Plan Proceeding (ICC Docket No. 13-0495) to ComEd's largest customers who may be part of the DCEO energy efficiency portfolio.

Respectfully submitted,

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

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