STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company,	**:**	
	:	
Proposal to establish Rider PORCB	**:**	**10-0138**
(Purchase of Receivables with Consolidated	**:**	
Billing) and to revise other related tariffs.	**:**	
(Tariffs filed on January 20, 2010)	**:**	

ORDER ON REHEARING

Background

Effective November 9, 2008, Public Act 95-0700 amended Section 16-118 of the Public Utilities Act (220 ILCS 5/16-118) to add language requiring electric utilities with more than 100,000 customers to file tariffs establishing Utility Consolidated Billing ("UCB") and Purchase of Receivables ("POR") services. The purpose of this new law is: "It 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." 220 ILCS 5/16-118(a).

Section 16-118(c) provides for POR services. Pursuant to this subsection, an electric utility must provide a retail electric supplier (a "RES") with the option to have the electric utility purchase the alternative electric supplier's receivables for the power and energy that it provides to residential and small commercial retail customers. This subsection also requires that the receivables for power and energy service of retail electric suppliers "shall be purchased at a just and reasonable discount rate, to be reviewed and approved by the Commission after notice and a hearing." 220 ILCS 5/16-118(c). This discount rate "shall be based on the electric utility's historical bad debt and any reasonable start-up costs and administrative costs associated with the electric utility's purchase of receivables." *Id*.

The Procedural History

On January 19, 2010, Commonwealth Edison Company ("ComEd") filed tariffs implementing UCB and POR services. On February 24, 2010, the Commission suspended these tariffs and initiated the instant docket. This Commission issued a final Order in this docket on February 21, 2011. The Retail Energy Supply Association ("RESA") and the Illinois Competitive Energy Association ("ICEA") timely filed Applications for Rehearing. On March 23, 2011, this Commission granted rehearing regarding one issue-the single rate for the uncollectible factor, which blends the uncollectible charge for residential and commercial customers.

On rehearing, an evidentiary hearing convened before a duly-authorized Administrative Law Judge on June 13, 2011. Testifying on behalf of Staff was Torsten Clausen, Director of the Commission's Office of Retail Market Development ("ORMD"). The following persons testified on behalf of the intervening parties: Kevin Wright, President of the ICEA, on behalf of the ICEA; Roy Boston, the Strategic Planning and Policy Manager-East for Noble American Energy Solutions, on behalf of RESA; and James L. Crist, the President of the Lumen Group, on behalf of Dominion Retail Inc. ("Dominion"). Robert Garcia, ComEd's Manager of Regulatory Strategies and Solutions, testified on behalf of ComEd. All of the parties waived their rights to cross-examine opposing witnesses. The parties filed Initial Posttrial Briefs on June 20, 2011. ComEd, RESA, ICEA and Dominion filed Reply Briefs on June 28, 2011. An Administrative Law Judge's Proposed Order (an "ALJPO") was filed and served on July 19, 2011. Briefs on Exception were filed by the ICEA and RESA (jointly), ComEd, Dominion and Commission Staff, on July 26, 2011. Reply Briefs on Exception were filed on August 1, 2011.

The Arguments Presented

The sole issue before this Commission concerns the POR portion of ComEd's program. It is whether to retain the rate that "blends" the uncollectible factors in the purchase of receivable portion of the program that currently exists for both residential and commercial customers into one single uncollectible factor, as was the case in Ameren's POR, or, whether to create two separate uncollectible factors for these two groups of customers, based upon ComEd's historic bad debt (uncollectibles) for these two groups of customers. No party contends that the blended rate that was adopted in the final Order in this docket is inaccurate. Also, it is undisputed that ComEd's historic bad debt for residential customers is higher than it is for commercial customers. Currently, according to unrefuted evidence, the blended rate is 1.84%. If these rates were separately-imposed, they would be 2.23% for residential customers and 1.19% for commercial customers. *See, e.g.,* Dominion Ex. 2.0R at 1-2.

The Legal Argument-Whether Two Separate Rates for Uncollectibles is Permitted by Law

Dominion argues that it is contrary to law to have two separate rates for commercial and residential customers. It cites Section 16-118(c) of the Public Utilities Act, in support of this argument, which provides that:

> Receivables for power and energy service of alternative retail electric suppliers or electric utilities other than the electric utility in whose service area the retail customers are located shall be purchased by the electric utility at a just and reasonable discount *rate* to be reviewed and approved by the Commission after notice and hearing. The discount *rate* shall be based on the electric utility's historical bad debt and any reasonable start-up costs and administrative costs associated with the electric utility's purchase of receivables. The discounted *rate* for purchase of receivables shall be included in the tariff filed pursuant to this subsection (c). The discount *rate* filed pursuant to this subsection (c) shall be subject to

> periodic Commission review. The electric utility retains the right to impose the same terms on retail customers with respect to credit and collection, including requests for deposits, and retain the electric utility's right to disconnect the retail customers, if it does not receive payment for its tariffed services or purchased receivables, in the same manner that it would be permitted to if the retail customers purchased power and energy from the electric utility. The tariff filed pursuant to this subsection (c) shall permit the electric utility to recover from retail customers any uncollected receivables that may arise as a result of the purchase of receivables under this subsection (c), may also include other just and reasonable terms and conditions, and shall provide for the prudently incurred costs associated with the provision of this service pursuant to this subsection (c) . . . .

220 ILCS 5/16-118(c); emphasis added. *See also* Dominion Initial Brief at 13. Dominion points out that that the General Assembly's use of the word "rate" which appears four times in the section of the statute above, is singular. It contends that therefore, creating two separate discount rates violates the plain meaning of the statute. Dominion Initial Brief at 13.

ComEd's Position

ComEd posits that the statute provides for the components of the discount rate, which are: the electric utility's historical uncollectibles and any reasonable start-up costs and administrative costs associated with an electric utility's purchase of receivables. Because its historical uncollectible rate would be reflected in separate factors, ComEd contends that use of more than one uncollectible factor is consistent with Section 16-118(c) of the Act. ComEd Reply Brief at 8.

ICEA's Position

According to ICEA, the General Assembly did not specify the precise structure for PORCB. Instead, it continues, the General Assembly left that in the hands of the Commission to structure. ICEA further asserts that the General Assembly acknowledged that a competitive retail market does not yet exist for residential customers as well as small commercial customers, citing 220 ILCS 5/20-102(c) and (d). ICEA Reply Brief at 8.

ICEA further posits that an "effectively competitive" market is one that places all suppliers on a level playing field. It asserts that the use of what it terms as "skewed uncollectible factors" does not create an effectively competitive market. It contends that, consistent with the policy enumerated in Section 20-102(c) and (d) and in Section 16-118 of the Act, the Illinois General Assembly clearly intended POR and UCB to be made available to more than just residential customers. Citing Sections 16-118(c) and (d), ICEA further asserts that the law authorizing POR and UCB clearly contemplates their widespread availability, which is in keeping with the state's overall goal of promoting the development of an effectively competitive retail electricity market that operates efficiently and benefits all Illinois consumers. ICEA Reply Brief at 9.

RESA's Position

RESA contends that Dominion's argument deprives the Commission of "any discretion" to establish appropriate rates that reflect what RESA terms "the significant" cost differences related to the two customer groups. Also, RESA avers that Dominion's argument is not consistent with the General Assembly's intention that POR and UCB programs should be available to retail electric suppliers that serve non-residential customers. According to RESA, Section 16-118(c) allows retail electric suppliers the option to have ComEd purchase their receivables for both residential *and* non-residential customers. RESA Reply Brief at 9-10.

Analysis and Conclusions

The purpose enunciated for enactment of the POR and UCB program is as follows:

> Services provided by electric utilities to alternative retail electric suppliers.
>
> a) *It 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. Therefore, to the extent an electric utility provides electric power and energy or delivery services to alternative retail electric suppliers and such services are not subject to the jurisdiction of the Federal Energy Regulatory Commission, and are not competitive services, they shall be provided through tariffs that are filed with the Commission, pursuant to Article IX of this Act. . . .

220 ILCS 5/16-118(a); emphasis added. Therefore, the purpose of this statute is the general promotion of fair and open competition in the electric markets. Additionally, as was stated above, the statute governing the rate to be charged for POR services uses the word rate (singular) at least four times. This is in contrast to other portions of the Public Utilities Act which, in general, use the word "rates." *See, e.g.,* 220 ILCS 5/9-101, 5/9-102.

The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly. *Sheffler v. Commonwealth Edison Co.,* 399 Ill. App. 3d 51, 75, 923 N.E.2d 1259 (1st Dist. 2010); *People v. Keller,* 399 Ill. App. 3d 654, 656, 926 N.E.2d 890 (1st Dist. 2010). When construing a statute, this Commission must look to the plain meaning of the statutory provision. *Rexam Beverage Can Co. v. Bolger,* 620 F. 3d 718, 732 (7th Cir. 2010) (applying Illinois law regarding statutory construction); *People v. Evans,* 405 Ill. App. 3d 1005, 1008, 939 N.E.2d 1014 (2nd Dist. 2010). We cannot depart from the plain meaning in a statute by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent. *Keller,* 399 Ill. App. 3d at 656. The "plain ordinary meaning" is what is found in a dictionary. *Rexam,* 620 F. 3d at 732. Also, when the plain meaning is clear and unambiguous, it must be

applied as written, without resort to extrinsic aids of statutory construction. *Evans,* 405 Ill. App. 3d at 1016.

Section 16-118(c) of the Public Utilities Act provides, in four places, that a "rate" shall be formed, not "rates." 220 ILCS 5/16-118(c). In English, the "s" on the end of a word connotes plurality. Absent that "s," we cannot presume that the General Assembly intended to allow the existence of more than one "rate" for POR services. And, as was stated earlier, this is in stark contrast to language in other portions of the Public Utilities Act regarding other utility rate-type charges, which envision "rates." Thus, the General Assembly was aware that generally, an entity providing electricity or another type of utility service could provide service pursuant to more than one rate.

While it is true, as the ICEA posits, that Section 20-101 *et seq.* of the Public Utilities Act confers discretion upon this Commission, that section of the Act confers discretion regarding the creation of and management of the Commission's Office of Retail Market Development, otherwise known as "ORMD." This argument does not aid ICEA, as it does not concern the specific issue here-whether a rate or rates shall be used in ComEd's purchase of receivables tariffs.[1] Additionally, the specific intent of Section 16-118(a) is to promote competition, with no mention of whom, amongst all Illinois residents, that competition concerns. That intent is not merely to have profitable POR program. Given that the commercial sector is less than 10 percent of the population in ComEd's service territory, (*See,* Tr. 29-30) the interpretations of Section 16-118 that the ICEA and RESA posit do not address the needs of the overwhelming majority of the population that could be served by competition. Therefore, RESA's and ICEA's remedy lies with the General Assembly, not with this Commission.

Also, contrary to RESA's and ICEA's contention, the General Assembly *did* specify certain structures for POR and UCB. Those structures are contained in Section 16-118 of the Act. And, in fact, they are very specific. They are to create, for purchase of receivable programs, a rate that is just and reasonable, after notice and a hearing that is based upon a utility's historical bad debt and also, any reasonable start-up costs, as well as administrative costs. 220 ILCS 5/16-118(c). This Commission does not have the broad discretion regarding purchase of receivable programs that these entities assert. Therefore, we conclude that the language in Section 16-118(c) of the Public Utilities Act, in its current form, does not permit this Commission to devise more than one "rate" for POR services.

On Exceptions, RESA/ICEA cite laws and cases regarding statutory construction, regarding when a law is unclear, for the proposition that the conclusion above is incorrect because according to them, words importing the singular can be construed to mean the plural. RESA/ICEA Brief on Exceptions at 9-10. This argument ignores the laws cited above, which require construction of a statute in accordance with the plain meaning of that statute and also rule that one should resort to use of extrinsic aids of

[1] On Exceptions, RESA/ICEA state that the ALJPO did not analyze or address this statutory scheme. RESA/ICEA Brief on Exceptions at 13. Obviously, this is incorrect.

statutory construction only when the plain meaning is unclear. *See, e.g., Lindley v. Murphy,* 387 Ill. 506, 516-17, 56 N.E.2d 832 (1944), cited by RESA/ICEA, where the Court concluded that the article "a" in a statute governing unemployment contributions on the part of employers meant "any," stating that:

> We are asked, however, to construe it (the statute) otherwise in view of the rule that 'words importing the singular number may extend and be applied to several persons or things.' But obviously this rule is not one to be applied except where it is necessary to carry out the evident intent of the statute.

(citations omitted). *Lindley,* 387 Ill. at 518.[2] The *Lindley* Court also noted that:

> [W]here, as here, the words of the relevant statutory provision are singularly free from ambiguity, we decline to render them ambiguous by a tortuous process of construction. . .

Id. at 515. *See also Sutherland, Statutory Interpretation,* 7th ed., at Sec. 47.34, which provides that:

> The principle (regarding singular and plural numbers) does not require that singular and plural forms have interchangeable effect, and discrete applications are favored except where the contrary intent or reasonable understanding is affirmatively indicated.

Finally, *Smith v. Zachary,* 255 F. 3d 446, 451 (7th Cir 2001), which was also cited by RESA/ICEA, does not compel a different result. The *Smith* Court rejected an inmate's claim that the exhaustion of administrative remedies requirement in the federal Prisoner Litigation Reform Act did not apply to him because it only applied to prison conditions, and not a single prison condition. In so ruling, it noted that "[W]e note the obvious: no canon of statutory interpretation requires us to abandon common sense." *Id.*

Here, in the context of public utility regulation, the word "rate" is a legal term of art. As was mentioned above, the statutes governing "rates" of other types of utilities in the Public Utilities Act use the word "rates" in the plural form. The treatises/case law that RESA/ICEA cite do not require this Commission to abandon what is written in a statute. In fact, they state the opposite, as, in essence, that a statute must be construed according to its plain meaning, unless the meaning cannot be derived from the statute. That is not the case here.

The language in Section 16-118(c) provides, in four different locations, that a "rate" shall be formed. We cannot conclude that the absence of plurality in the statute is accidental. This argument does not aid RESA/ICEA.

[2] ComEd also makes this argument. *See,* ComEd Brief on Exceptions at 6.

On Exceptions, Staff points out that before rehearing, Staff took the position that, pursuant to the $0.50 charge, in effect, the number of potential discount rates is almost limitless and therefore this Commission was being asked to judge the reasonableness of not one discount rate, but, in effect, a wide range of discount rates will arise, depending on the amount of receivables purchased by a retail electric supplier. Staff states that it is unconvinced that the statutory language forecloses the $0.50 cost recovery charge, even if it results in a range of effective discount rates, depending upon the amount of receivables that an alternative electric supplier purchases. Staff Brief on Exceptions at 3; *See also,* Staff Ex. 1.0 at 6.

However, there are no statutory limitations upon the manner in which a "rate" is formed. (*e.g.,* whether it is based upon a percentage, or, a flat charge for services, irrespective of the amount of services.). In fact, many charges that are subject to Commission review as "rates" can be flat fees, (*e.g.,* meter charges, charges for energy efficiency programs) like the $0.50 charge. Therefore, the statutory limitations regarding charging a single rate in Section 16-118(c) do not concern the $0.50 charge. The charges for uncollectibles, in contrast, would have two entirely separate numerical amounts, if they were not blended. The statute governing how to impose a "rate," speaks of a "rate" in the singular, four times. 220 ILCS 5/16-118(c). We see a logical distinction between imposition of the $0.50 charge, to all customers, and imposing two separate charges.

The Policy Arguments

As shall be set forth below, even if the Public Utilities Act permitted more than one POR "rate," the policy arguments made, when closely scrutinized, do not favor the adoption of dual rates for commercial and residential customers.

Whether a Single Blended Uncollectible Charge Furthers Competition

ICEA's Position

ICEA contends that the best indication of the success of a particular discount rate is with the suppliers who are and will use it. It avers that, with the limited exception of Dominion and NEMA's "unnamed and unknown membership," the retail electric supplier community that actively participated in this proceeding supports the use of separate uncollectible factors. It "vehemently opposes a blended uncollectible factor that subsidizes residential customers at the expense of small nonresidential customers." ICEA concludes that the suppliers are in the best position to understand the impact that a particular approach to uncollectibles that might exist. ICEA Reply Brief at 6-7.

ICEA states that although Dominion (see below) characterizes differences in nonresidential classes as significant, an analysis of the difference in the uncollectibles experience of those classes does not bear that claim out. According to ICEA, the non-residential classes all have relatively low uncollectibles, even though some are smaller than others. In contrast, ICEA notes that there is a "dramatic and obvious" difference between the uncollectible experience for residential customers, as compared with

differences among nonresidential customers. In support, it cites ComEd Ex. 12.0 at. 5. ICEA Reply Brief at 4.

ICEA challenges Dominion's claim that the uncollectible rate of residential customers for PORCB will be lower than that of the general residential population. ICEA contends that Dominion based its theory solely on its own business model of credit-screening residential customers. It asserts that Dominion does not identify a single active residential electric supplier in ComEd's service territory that markets to residential electric customers using that same model. It concludes that Dominion leaves the Commission with speculation, but no "data" to support its hypotheses. ICEA Reply Brief at 4-5.

ICEA further states that, under PORCB, retail electric suppliers are indifferent to the credit-worthiness of a particular residential customer. Instead, according to ICEA, these alternative suppliers make their offerings available to all, on a non-discriminatory basis. It therefore concludes that Dominion's statement that "it is impossible to conceive of a successful business strategy that would involve targeting high-credit risk residential customers" is unfounded. *Id*. at 5.

Dominion's Position

Dominion points to the fixed, per-customer, monthly $0.50 cent charge for start-up and administrative costs. It states that, given that the Commission chose to allow the recovery of startup costs with the per-bill charge, the best chance that ComEd has to recover those costs is if the maximum number of customers, regardless of their class or usage level, are placed on PORCB. It avers that at the end of April, 2011, ComEd and retail electric suppliers combined to provide electric supply to 3,431,631 residential customers and 356,350 nonresidential customers, which is a ratio of approximately 10 to 1. *See,* Dominion Ex. 2.6. It cites Staff's Initial Brief which states that, if every single non-residential (commercial) customer were taking PORCB service and paying the $0.50 per bill charge, this would only generate the same amount of revenue that is less than nine percent of residential customers taking PORCB.[3] Dominion Reply Brief at 5.

Dominion takes issue with ComEd's assertion (below) that non-residential customers may not be able to use PORCB, if the discount rate is blended. Dominion argues that nonresidential customers *are* using PORCB. In fact, it asserts, as of the end of April 2011, non-residential customers under 100kW demand were approximately 50 percent more likely to take service using PORCB than residential customers (0.2117% of total under 100kW customers vs. 0.1315% of total residential customers). Dominion Ex. 2.0R at 10; Dominion Ex. 2.6.

[3] On Exceptions, RESA/ICEA contend that if only residential customers are enrolled in ComEd's POR program, ComEd will not recover its uncollectible costs that are associated with Rider PORCB. RESA/ICEA Brief on Exceptions at 8-9. This factual conclusion was unsupported with actual facts. *Id.* Also, it does not take Staff's figures, set forth above, into account regarding the $0.50 charge, which may create excess revenues from residential customers, due to imposition of that charge. This argument lacks factual support.

Dominion proffers that it is quite common for ComEd to blend the uncollectible rates of its rates classes. In fact, it continues, the three rate classes that comprise the group of non-residential PORCB customers have base uncollectible factors of (with 1.00 being no uncollectibles): Watt-Hour customers are 1.0160; Small Load Delivery customers are 1.0082; and Medium Load Delivery customers are 1.0029. Dominion states that the Small Load Delivery customers are approximately three times as likely as Medium Load Delivery customers to have uncollectibles. (0.0082 / 0.0029). Watt-Hour customers are more than five times as likely to have uncollectibles as Medium Load Delivery customers (0.0160 / .00029). Dominion argues that, despite the huge difference in these uncollectible rates, ComEd uses a single blended rate for all of these classes. Similarly, ComEd blends the uncollectible rates of its four residential rate classes. Dominion reasons that thus, using a discount rate that blends residential and nonresidential rates is not a departure from ComEd's or this Commission's practice. Dominion Ex. 2.2R; Dominion Initial Brief at 3.

Dominion states that it will concentrate its initial marketing efforts on its existing natural gas customers. It concludes that other Illinois retail electric suppliers providing gas service to residential customers can be expected to do the same. It therefore avers that it is inaccurate for Staff witness Mr. Clausen to argue that it is unlikely that the receivables sold by the majority of the suppliers using PORCB will be lower than those of ComEd because "one of the major benefits to POR, if not the biggest benefit, is that suppliers do not have to credit screen its potential customers." (*See,* Staff Ex. 2.0 at 9). Dominion posits that the Commission must consider the business reality that Dominion is not the only company that will market both gas and electric service and use credit-screening. It concludes that, while not every supplier providing service to residential customers using PORCB will have uncollectible rates as low as Dominion's, combination suppliers like Dominion will bring down the average for residential customers. Dominion Initial Brief at 5-6.

Dominion questions the veracity of ComEd witness Mr. Garcia's statement that a retail electric supplier might expressly target its marketing efforts toward residential customers with high collection risks, thus offsetting any effect of previously credit-screened customers. (*See,* ComEd Ex. 13.0 at 6). According to Dominion, the only example that he provided of such a strategy makes no sense, as, he stated: "For example, low introductory prices with less than transparent escalation provisions could easily entice customers struggling to pay their electricity bills." *Id.* Dominion concludes that low introductory prices with less than transparent escalation provisions will attract *all* customers, regardless of their credit risk. Also, Dominion states, given the structure of the Illinois residential retail competition law, Commission rules and ComEd tariffs, it is impossible to conceive of a successful business strategy that would involve targeting high credit-risk residential customers. Dominion reasons that, regardless of the credit-worthiness of its customers, a retail electric supplier using PORCB must pay the same discount rate on all of its customers and will need to compete with ComEd and other retail electric suppliers' energy prices. Dominion Initial Brief at 6.

Staff's Position

Staff notes that the Commission is not setting a PORCB discount rate that has the best fit for Dominion's customers. While it is possible, Staff continues, that the receivables sold by Dominion would have lower uncollectibles than ComEd's overall historic residential uncollectibles, it is unlikely that this is the case for the majority of suppliers using PORCB. Staff reminds this Commission that one of the major benefits of PORCB is that suppliers do not have to credit-screen potential customers. Staff Initial Brief at 9.

Staff opines that, while the record in this proceeding shows that Staff did not agree with the notion that cost-causation was a convincing argument for the use of the $0.50 monthly fee, there is a far stronger connection to cost-causation with respect to the uncollectible charges. *Id.* at 10. Regarding Dominion's switching statistics, Staff avers that the Commission currently has only a few months of information regarding actual PORCB usage. Also, Staff states, even if suppliers are using PORCB for non-residential customers under a combined uncollectible charge, it is not possible to speculate whether that number would have been higher, if separate uncollectible charges were still in effect. Staff additionally opines that there are very few suppliers exclusively serving residential customers. Staff concludes that therefore, the impact of using a combined uncollectibles charge will be missed for a large number of suppliers. Staff Initial Brief at 11-12.

Staff avers that the impact on cost recovery through the $0.50 charge from suppliers serving non-residential customers is not very significant. Staff states that it is important to keep in mind that the number of non-residential customers is very small. Even the non-residential customer class with the most customers (0-100 kW) consists of little more than seven percent of the customers in the residential class. Staff concludes that if every eligible non-residential customer switched to suppliers using PORCB, the same revenue would be generated, if less than nine percent of the residential customers switched to PORCB. *Id.* at 12-13.

In addressing ComEd's argument (below) regarding the effect of a combined uncollectibles charge, Staff states that this argument does not take into account any impact of supplier PORCB usage for residential customers as a result of the Commission's decision in this rehearing proceeding. For example, Staff continues, it fails to take into account the possibility that a supplier's usage of PORCB will be higher, as a result of keeping the combined uncollectible charge, because higher usage of PORCB leads to increased revenues from the $0.50 cost recovery charge. Staff posits that whether such a hypothetical increase in revenue will offset any potential residential uncollectible under-recovery depends upon the actual gap between the combined uncollectible percentage and the experienced actual PORCB residential uncollectibles percentage, as well as the nominal value of the average residential receivables. Staff concludes that therefore, this scenario depends upon whether the extra funding from the $0.50 generated as a result of having the combined uncollectibles charge is greater than the difference between the applied PORCB uncollectibles charge and the actual PORCB residential uncollectibles charge. Staff Initial Brief at 13.

In support, Staff proffers a numerical example with some of the numbers used in the original phase of this proceeding, assuming that the actual experienced residential PORCB uncollectibles percentage is 2.23%, while the blended uncollectibles charge applied to the supplier's receivables is 1.84%. Staff states that, using these numbers, if an average residential monthly receivable were $49, ComEd would under-recover its uncollectible costs by $0.19. However, Staff continues, assuming that the reason this customer was enrolled by the supplier is because of the lower combined uncollectible charge, the net effect in terms of extra revenue for ComEd (and therefore the net effect on the cost recovery from all eligible customers) would be positive, because ComEd collected an additional $0.50 from the supplier, as a result of the flat $0.50 monthly implementation cost recovery method. Staff Initial Brief at 14.

ComEd's Position

ComEd contends that linking the uncollectible cost factors that are reflected in its supply charges places retail electric suppliers' offerings via Rider PORCB on a level playing field with ComEd's default supply offerings. ComEd asserts that, if the factor used to "gross up" its supply charges for bad debt is lower than the one that is applied to retail electric suppliers using Rider PORCB, the retail electric supplier using Rider PORCB would be at a competitive disadvantage. This could be particularly detrimental, it continues, to a retail electric supplier that does not have adequate billing and bad debt management capabilities. ComEd Initial Brief at 5-6.

ComEd states that averaging the uncollectible rates does not reflect the actual uncollectible experience regarding these customers, which creates a variety of adverse outcomes. Specifically, it allegedly violates traditional ratemaking practices and the principle of cost-causation, as it results in the overcharging of retail electric suppliers using Rider PORCB to service non-residential customers and the undercharging of retail electric suppliers that use Rider PORCB to serve residential customers. ComEd also avers that the use of a single blended rate discourages the use of Rider PORCB to serve non-residential customers, as a single blended uncollectible charge imposes higher uncollectible costs than what would otherwise be applied. ComEd further states that it will under-recover its costs from these suppliers because the blended uncollectible charge is less than the uncollectible factor that would otherwise apply to residential receivables. Also, it may become uneconomic for a retail electric supplier to use Rider PORCB to serve non-residential customers. ComEd Initial Brief at 6-8.

ComEd further avers that use of a blended rate forecloses the opportunity to study an alternative approach. Presumably, although ComEd does not specifically so state, this is because in the Ameren UCB/POR docket, this Commission approved use of the type of blended rate that is at issue here. *Id.* at 8.

ComEd also disputes Dominion's assertion that it is not uncommon for ComEd to blend uncollectibles. ComEd insists that instead, there is a "bright line" between residential and non-residential customers. However, ComEd does not provide this Commission with facts establishing that this "bright line" exists, or, that it should exist. ComEd Reply Brief at 3. ComEd further takes issue with Dominion's assertion that the blended uncollectible rate has not discouraged retail suppliers from using Rider PORCB

for non-residential customers. ComEd states that the early "data" is premature and speculative. ComEd Reply Brief at 7-8.

ComEd additionally argues that Dominion's credit-screening practices are irrelevant. In ComEd's opinion, Dominion's statement to the effect that, due to credit screening, Dominion should have a customer base with a lower uncollectible factor than the average ComEd residential customer is "speculation." *Id.* at 4.

RESA's Position

RESA contends that use of a blended rate violates the principles of cost-causation and it results in a subsidy. ComEd's historic uncollectibles with residential customers is 2.239%. It states that the blended discount rate is 1.8354%.[4] It reasons that to the extent that retail electric suppliers "sign up" their residential customers under Rider PORCB, they will be receiving an amount for their receivables which is greater than the amount that ComEd will recover, based on its historic bad debt experience. RESA Ex. 1.0 on Rehearing at 7; RESA Initial Brief at 6.

RESA avers that, if ComEd's Rider PORCB continues to use a single blended rate, it is unlikely that retail electric suppliers will enroll non-residential customers in Rider PORCB. Its witness Mr. Boston opined that it makes economic sense for a retail electric supplier to enroll residential customers in Rider PORCB because the amount that ComEd is paying for the supplier's receivables is greater than the amount it would probably collect, assuming that its ability to collect is equal to that of ComEd. According to RESA, the most recent information available demonstrates that the use of a single uncollectible rate has discouraged the enrollment of non-residential customers under Rider PORCB.

As of May 31, 2011, according to RESA, there were 21,276 residential customers taking service from retail electric suppliers and 19,359, or 91%, of those customers were taking service under Rider PORCB. In contrast, RESA continues, as of May 31, 2011, there were 63,823 eligible (Watt Hour Delivery, Small Load Delivery, and Medium Load Delivery) non-residential customers taking service from a retail electic supplier, but only 1,738, or 2.7%, were taking service under Rider PORCB. RESA Ex. 2.0 on Rehearing at 7; RESA Initial Brief at 7.

RESA further asserts that if only residential customers are enrolled in Rider PORCB, ComEd will not fully recover its uncollectible costs. It posits that this is due to the fact that ComEd is currently compensating retail suppliers for their receivables based upon a discount rate of 1.84%, but, its actual bad debt experience for this class of customers is 2.24%. RESA Initial Brief at 7-8.

[4] RESA states that these were the rates reflected in the Commission's orders in this proceeding. However, it continues, the comparable rates for the period beginning June 1, 2011 are extremely similar: For the one year period which began June 1, 2011, the new single, blended uncollectible rate is 1.84% and the uncollectible rate for residential customers would be 2.23%. RESA Initial Brief at 6.

RESA acknowledges that a single, blended rate might encourage more activity in the residential market; however, it states that this does not make it a good policy decision for the Commission. RESA argues that whenever there are two customer groups with one paying above actual utility cost and the other receiving service below actual utility cost, it is "understandable" that the "subsidized" group will favor that structure whereas the subsidizing customer group will avoid it, if possible. Further, citing Section 16-118(c) of the Public Utilities Act, RESA states that the Illinois General Assembly intended that POR/UCB programs, like ComEd's Rider PORCB, would be available for non-residential customers. RESA Initial Brief at 8-9.

RESA further avers that while the single discount rate supported by Ameren in its POR/UCB case may be reasonable, it begs the question whether a single discount rate is reasonable when ComEd's residential discount rate is almost twice as high as the non-residential customer rate. Ameren neither provided nor supported separate discount rates in its POR/UCB docket. *Id.* at 9.

RESA disagrees with Dominion's assertion that the single blended uncollectible rate reflects the cost of service more closely. Dominion's argument fails, RESA continues, because it misses the basic point that ComEd proposed to set the uncollectible rate by applying the same supply-related uncollectible cost factors set forth in its Rider UF that it applies to its own supply charges under Rate BES, Basic Electric Service, which is ComEd's fixed price bundled electric service tariff. RESA Reply Brief at 5-6.

Analysis and Conclusions

The most compelling argument presented is the fact that the blended rate will not mirror the uncollectible factor in ComEd's rates for the general public. However, according to the figures proffered by RESA (*See,* footnote 1 herein) the difference is less than one percent. In fact, it is approximately one-half of one percent. The parties could have, but did not, present evidence establishing that this figure, which, on its surface, appears to be small, is material to them, or, is a material obstacle to competition in Illinois. Because there is no such evidence, we cannot conclude that the difference between the two rates is material.[5]

On Exceptions, RESA/ICEA contend that a difference that is approximately one-half of one percent, which, they state, appears to be small, is nevertheless a material obstacle to competition in Illinois. RESA/ICEA Brief on Exceptions at 16-17. RESA/ICEA do not state why this is so. *Id.* In fact, rehearing was granted to hear evidence on this issue and RESA and ICEA did not present any evidence establishing the materiality of the difference, or, the harm that imposition of a blended rate could cause to any consumer or alternative electric supplier. Therefore, a blanket statement that the difference between the blended rate and single rates between commercial and residential customers could present a "material obstacle" to competition in Illinois is

[5] In fact, ComEd acknowledges that use of two separate discount factors will result in "slightly different discount rates for the residential and small commercial segments." *See,* ComEd Brief on Exceptions at 1.

factually unsupported. We urge all parties to present evidence in support of their factual arguments in the future.[6]

Also on Exceptions, RESA/ICEA state that no party made the argument that the difference between the single rate and separate rates is not material, "so parties were not aware that this would be an issue until it was raised for the first time in the ALJPO." RESA/ICEA Brief on Exceptions at 18-19. This argument ignores the Rules of Evidence and basic trial practice, as, the relevance and materiality of the evidence are always an issue for the trier of fact. *See, e.g.,* Ill. Sup. Ct. Rules 401, 402 and 403. Moreover, this argument overlooks the obvious, which is, that a trier of fact should not be placed in the position of considering immaterial evidence.

In support, RESA/ICEA cite Staff witness Mr. Clausen's testimony that a theoretical average residential customer with $49 in monthly supply charges would incur an extra $0.20 cents in supply charges, while a medium load delivery customer in the 50th percentile would be charged $19.70 more than under a single rate than the applicable non-residential (non-blended) uncollectible rate. RESA/ICEA Brief on Exceptions at 19. The problem with this averment is that there is no evidence indicating that the $19.70 for this particular group of commercial customers is typical of all commercial customers, or, it is something that does not benefit commercial customers. Stated another way, there is no evidence indicating that commercial customers will not, nevertheless, receive a rate that is less than what ComEd offers, or, less than what other retail electric suppliers offer, pursuant to offers that do not include ComEd's purchase of receivables program. In short, there is no evidence that the small commercial market will be harmed or impeded by this difference.

Also on Exceptions, RESA/ICEA assert that, while a single blended discount rate may have been reasonable for Ameren's POR/UCB program, (which has already been approved by this Commission in docket 08-0619) here, ComEd's residential uncollectible rate is considerably more than for commercial customers. RESA/ICEA Reply Brief on Exceptions at 8. However, RESA/ICEA admit that there is no evidence indicating a similarity or dissimilarity between the uncollectible amounts here and for Ameren. *See,* RESA/ICEA Reply Brief on Exceptions at 8: "Ameren neither provided nor supported separate discount rates in its POR/UCB docket. . . .: This argument does not aid RESA/ICEA.

Additionally, as Staff and Dominion point out, due to the imposition of the $0.50 per month administrative and start-up cost charge upon all POR customers, many residential customers, specifically, those who do not consume much electricity, will be paying a greater proportion of the cost of those services, in relation to what they actually

[6] On Exceptions, Dominion contends that the mere fact that the parties are in dispute over the blended discount rate establishes materiality. Dominion Reply Brief on Exceptions at 8-9. However, there can be reasons for disputing an issue that is not material, in an evidentiary sense, such as competition, desiring a slightly greater profit margin, etc. Moreover, if the parties truly thought that an amount that approximates one half of one percent was important, surely they would have presented evidence establishing why this relatively low amount was important. They did not.

use, than larger users.[7] As Staff notes, even a relatively small-use customer will be yielding a positive net effect, due to the imposition of the monthly $0.50 charge upon all customers, regardless of usage. While some parties have claimed that the retail electric suppliers will be under-recovering from residential customers if there is a blended uncollectible charge, the $0.50 charge should make up the difference in relation to customers who do not use much electricity, which would be most residential customers.

While RESA and ICEA correctly point out that the propriety of the $0.50 monthly charge is not at issue here, we have a responsibility to view the impact of the PORCB elements, as a whole, upon customers. This includes the impact of the $0.50 charge.

We additionally agree with Staff that, at this point in time, the use of statistics is not valuable. This is because the program here is just too new. It will also take some time for many customers to understand that they now have a choice regarding electric suppliers, and do research on the subject. Therefore, we decline to consider the statistics that were proffered by Dominion and RESA. It should also be pointed out, again, that the purpose of Section 16-118 is to further competition in general, not to create a profitable PORCB program. 220 ILCS 5/16-118(a). Of course, creation of a healthy PORCB program is of the utmost importance to this Commission. However, we would be remiss if we did not take into account the fact that there are other alternative supplier programs in addition to PORCB programs.

On Exceptions, RESA/ICEA argue that because the word "therefore" appears after the statement of statutory intent in Section 16-118(a), "the General Assembly did not make this policy statement as a general and broad proposition" Also, according to RESA/ICEA, a declaration of policy is not a part of the substantive portion of the statute and therefore, it should be ignored. RESA/ICEA Brief on Exceptions at 15.

However, RESA/ICEA did not state why the word "therefore" would change the meaning of the statement of the General Assembly's intent. Nor is it obvious after this entire section of 16-118 is examined. It provides:

> 16-118. Services provided by electric utilities to alternative retail electric suppliers.
>
> (a) It 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. Therefore, to the extent that an electric utility provides electric power and energy or delivery services to alternative retail electric suppliers and such services are not subject to the jurisdiction of the Federal Energy Regulatory Commission and are not competitive services,

[7] Staff correctly points out, on page 8 of its Brief on Exceptions, that the $0.50 monthly charge is paid by the retail electric supplier, and not by the end-user customer. While the language above acknowledges that this charge will be part of a retail electric supplier's overhead, and therefore, probably passed on to end-user customers, this is a fee that is paid by the alternative supplier to ComEd on a customer-by-customer basis.

> they shall be provided through tariffs that are filed with the Commission, pursuant to Article IX of this Act. Each electric utility shall permit alternative retail electric suppliers to interconnect facilities to those owned by the utility provided they meet established standards for such interconnection, and may provide standby or other services to alternative retail electric suppliers. The alternative retail electric supplier shall sign a contract setting forth the prices, terms, and conditions for interconnection with the electric utility and the prices, terms and conditions for the services provided by the electric utility to the alternative retail electric supplier in connection with the delivery by the electric utility of electric power and energy supplied by the alternative retail electric supplier.

220 IlCS 5/16-118(a). Clearly, this portion of Section 16-118 envisions competition as a whole in Illinois. RESA/ICEA's argument that use of the word "therefore" compels this Commission to ignore Section 16-118(a) of the Public Utilities Act is not meritorious.

The RESA/ICEA argument that this Commission should not consider the statement of policy in Section 16-118(a) because it *is* a statement of policy (*See,* RESA/ICEA Brief on Exceptions at 15) is indeed a novel one. The whole purpose of statutory construction is to give effect to the intent of the General Assembly. *See, e.g., Board of Education of Auburn Community Unit Scholl District No. 10 v. Department of Revenue,* 242 Ill. 2d 272, 276, __ N.E.2d __, 2011 WL 1886592 at 4 (2011); *Elgin Board of Education School District U-46 v. Ill. Workers' Compensation Commission,* 409 Ill. App. 3d 943, 949, 949 N.E.2d 198 (1st Dist. 2011). The best indication of this intent is in the language of the statute, which must be given its plain and ordinary meaning. *Elgin,* 409 Ill. App. 3d at 949. Also, a statute must be read in its entirety, keeping in mind the subject it addresses and the legislative objective in enacting it. *Auburn,* 242 Ill. 2d at 276. Therefore, this Commission must look to the language in the entire statute to ascertain the legislative intent. We will not ignore statutory language that proclaims the purpose of a statute.

Also on Exceptions, RESA/ICEA assert that the ALJPO has not considered the policy statement in Section 16-118(a) together with Section 16-118(c). RESA/ICEA Brief on Exceptions at 15-16. This is simply incorrect. In fact, The ALJPO analyzed both provisions, in detail, and concluded that the general policy statement in Section 16-118(a) cannot be ignored when analyzing the language in Section 16-118(c).

RESA's argument that recent statistics indicate that commercial customers are discouraged from using POR services, due to the blended rate (*See, e.g.,* RESA Initial Brief at 7) is also not meritorious. As set forth elsewhere herein, use of a few months of statistics regarding a program that is brand-new to the general populous is not helpful. Additionally, RESA's figures indicate in fact, many, many commercial customers are using the services of retail electric suppliers; they are using services that are not POR services. It also does not consider the all-in, all-out requirement for retail electric suppliers service residential customers. It should be pointed out that there is no all-in all-out requirement for commercial customers. This argument lacks the factual information necessary to make it factually valid.

On Exceptions, ComEd states that Section 16-118(a) was enacted 10 years before Section of 16-118(c) of the Act, and therefore, the general policy stated in Section 16-118(a) should not be considered. Essentially, ComEd avers that these two separate sections of the same statute must be viewed separately. ComEd Brief on Exceptions at 3-4. In so arguing, however, ComEd overlooks the obvious-if the General Assembly intended the two to be entirely separate, Section 16-118(c) would have been a separate statute. It would not have been incorporated into a statute that promotes competition generally. This argument does not conform with very basic principles of statutory construction.

ComEd also argues on Exceptions that Section 16-118(c) of the Public Utilities Act controls over Section 16-118(a). ComEd Brief on Exceptions at 4-5. This is undoubtedly true regarding the specific elements of a utility's POR program. But in this case, we are left with a decision regarding how to implement the specifics in Section 16-118(c) that does not violate Section 16-118(a) of the Public Utilities Act. This argument does not aid ComEd. Further, the case that ComEd cites in support does not aid it. ComEd Brief on Exceptions at 5. In *Unifund CCR Partners v. Shah,* 407 Ill App. 3d 737, 747, 946 N.E.2d 885 (1st Dist. 2011) the court was construing two separate statutory schemes-the Illinois Code of Civil Procedure and also Section 8b of the Collection Agency Act. *Shah,* 407 Ill. App. 3d at 747. Here, not only are the two separate statutes in the same statutory scheme, (the Public Utilities Act) they are subsections of the same statute.

In summation, the parties did not present evidence establishing that a blended rate would harm competition. This is the case because they did not present evidence establishing that the difference between a blended rate and separate charges is material. In so determining, we acknowledge that the parties asserted this factual conclusion. However, the record on rehearing is absent of facts indicating that this difference, which appears to be small, would be one that actually "makes a difference" in terms of the overall operation of an alternative supplier's business, as there is no evidence as to what this difference would result in or has resulted in other jurisdictions with competition.

On Exceptions, RESA/ICEA aver that the General Assembly intended the purchase of receivables program to be available to retail electric suppliers providing service to non-residential customers. RESA/ICEA Brief on Exceptions at 8. This is undoubtedly correct. This argument appears to be based upon RESA's contention that it is "understandable" that the "subsidized" group will favor that structure whereas the subsidizing customer group will avoid it, if possible. The problem with this contention is that there is no evidence indicating for commercial customers, the blended PORCB rate will be disfavorable, in comparison to ComEd's rates, or in comparison to other rates from retail electric suppliers that are not pursuant to ComEd's purchase of receivables rate. It is only logical that, if a retail electric supplier's rates are less than these rates, small commercial customers will nevertheless consider these POR rates. There is no evidence, in this record, indicating that commercial customers will receive a rate,

pursuant to a blended uncollectible charge, that is greater than or less than other "rates" that may be available to them. This argument does not aid RESA/ICEA.

Whether the Use of Separate Uncollectible Factors Discourages Retail Electric Suppliers from Marketing PORCB to Residential Customers

ComEd's Position

In its Reply Brief, ComEd cites 220 ILCS 5/20-102(c), which was enacted in 2007, and states that this statute evidences the General Assembly's concern that a competitive retail market does not exist for small commercial customers. ComEd Reply Brief at 2, 7. It concludes that there is no legal or factual basis to rewrite the General Assembly's policy (expressed in Section 16-118(c)) by requiring small commercial customers to "prop up" residential customers. *Id.* at 7. According to ComEd, the $0.50 charge is a just and reasonable rate which is not at issue on rehearing. It reasons that therefore, it is "inappropriate" to imply that this charge should be mitigated. ComEd Reply Brief at 5-6. ComEd further asserts that even with the all-in all-out provision for residential customers, nothing prevents a retail electric supplier from targeting certain residential populations that are likely to have higher uncollectible rates. ComEd Reply Brief at 3-4.

Dominion's Position

Dominion cites Section 118(a) of the Public Utilities Act and argues that the promotion of fair and open competition should be the foremost consideration here. Citing Dominion Ex. 2.0R at 10, it points out that competition is already healthy for most non-commercial customers. Specifically, at the end of April, 2011, 18.8% of non-residential 0-100 kW customers and 65.7% of non-residential 100-400kW customers were taking service from retail electric suppliers; however, the participation rate for residential customers was only 0.18%. Dominion Initial Brief at 11.

Yet, Dominion continues, many of the provisions of ComEd's tariff favor nonresidential customers over residential customers. Dominion states that examples include allowing ComEd to recover its startup costs in a per-bill charge and the requirement that only residential customers are bound by the all-in all-out rule. According to Dominion, the Commission has compounded the impact of recovering all startup costs in a monthly billing charge by allowing ComEd to place all of its Information Technology costs, including significant costs that were not exclusive to POR implementation into that charge, pending a review of the appropriate allocation of those costs in its first reconciliation proceeding. Dominion Ex. 1.0R at 15 and 20. Dominion further avers that ComEd made it additionally difficult for alternative suppliers to provide service to residential customers by creating a requirement prohibiting them from using consolidated billing ("CB") without also having ComEd purchase those customers' receivables. Dominion Ex. 1.0R at 18-19.

Dominion reasons that given all of these factors, it will already be difficult for retail electric suppliers to market their services to residential customers. It concludes that maintaining the blended discount rate is an appropriate policy decision that will

prevent the placement of one more obstacle in front of alterative retail suppliers that are attempting to provide service to residential customers. Dominion Initial Brief at 11-12.

Dominion avers that customers served through PORCB will be effectively paying a discount rate with two components: the discount rate that is the subject of this proceeding and the $0.50 per bill charge that is being assessed to collect ComEd's startup costs of PORCB. It states that because the $0.50 charge is fixed, the lower a customer's usage, the greater amount of the effective discount rate. Dominion opines that generally, residential customers have lower usage than the average nonresidential customer; therefore, residential customers already pay an effective discount rate that is higher than what non-residential customers pay. Dominion contends that thus, changing from a blended discount rate to separate discount rates unfairly increases that differential.[8] Dominion Initial Brief at 7.

Dominion posits that fact that the $0.50 per bill charge is not reflective of the cost of service should be factored into the decision in this rehearing. While it is true, Dominion continues, that start-up and implementation costs do not vary with the amount of receivables purchased, it is equally true that they do not vary with the number of bills issued. Dominion avers that it does not wish to re-litigate the propriety of the $0.50 per bill charge here. However, it points out that this charge is not cost-based; instead, it is the product of a balancing decision between ComEd and other retail electric suppliers. Dominion Initial Brief at 10.

Dominion states that ComEd has no all-in all-out requirement for non-residential customers.[9] Therefore, retail electric suppliers can choose, or "cherry-pick," which non-residential customers to place on PORCB and the average uncollectible rate of non-residential customers on PORCB will be above the level of what ComEd uses in its supply charges. According to Dominion, using the separate non-residential discount rates for non-residential customers therefore understates their costs of service. Dominion Reply Brief at 3-4.

[8] Dominion disagrees with the numbers Staff uses in its calculations. It states, citing Dominion Ex. 1.0R at 10-11, that on a monthly basis, these figures would be 404 kWh, 664 kWh and 1027 kWh. Thus, according to Dominion, Staff witness Mr. Clausen's assumption of 700 kWh monthly usage is slightly above the average ComEd residential single-family non-space heat customer and well above the average usage of a multifamily residential customer. Also, Dominion states, a Medium Load Delivery customer in the 50th percentile has an annual consumption of 519,817 kWh (43,318 kWh monthly). Assuming $0.07 per kWh, that customer's monthly energy charges would be $3,032. It concludes that, while some non-residential customers in the Small Load Delivery class may have supply charges near the $400 assumed by Mr. Clausen, that figure is not reflective of the Medium Load Delivery class, which is significantly higher. Dominion Initial Brief at 8.

[9] The All-in Provision requires that, if a retail electric supplier elects to use PORCB to serve one of its residential customers, it must offer PORCB to all of its residential customers. In other words, a retail electric supplier cannot "pick and choose" its residential customers. (Tr. 31).

Staff's Position

Staff also contends that the Commission should consider the impact of this difference in effective discount rates. Staff is of the opinion that, because the Commission adopted the $0.50 cost-recovery charge, moving away from the combined uncollectibles charge would further harm retail electric suppliers that are focused on residential customers. This is so, Staff continues, because imposition of the $0.50 cost recovery charge creates widely-varying effective PORCB discount rates for the participating suppliers. Staff witness Mr. Clausen testified that:

> [A] RES (retail electric supplier) signing up ten average customers in the 100 – 400kW class is paying the same $5 towards PORCB cost recovery as a RES signing up ten average residential customers even though the latter RES sold $630 worth of receivables to the utility, and the former sold $39,454 worth of receivables to the utility.

Staff Ex. 2.0 at 2, 3. He also compared the effective discount rates of a theoretical residential customer with $49 in monthly supply charges (assuming 700 kWh usage at $0.07 per kWh) and a nonresidential customer with $400 in supply charges. He calculated that the combined blended discount rate and $0.50 charge result in an effective discount rate of 2.86% for the residential customer and 1.965% for the nonresidential customer. He concluded that: "Moving away from the combined uncollectibles charge will further increase the effective PORCB discount rate for receivables of residential customers and decrease the effective PORCB discount rate for receivables of non-residential customers." *Id*. at. 3-4.

Staff contends that the presence of the all-in or all-out provision does not compel results that are as simple as Dominion states. Staff avers that in order for a retail electric supplier to be able to pick and choose its non-residential customers, it must be able to use its own billing system in order to take advantage of the single-billing option and/or dual billing system, for the customers that it deems to be above-average credit risks. Staff states that this ability is not available for all retail electric suppliers because some rely exclusively on PORCB to serve their customers. Also, if a retail electric supplier can perform credit checks, Staff opines that there really is nothing to stop that supplier from "cherry-picking" right now. Staff Initial Brief at 6-7.

Staff concludes that Dominion's reasoning appears to be limited to situations where the availability of PORCB service encourages some retail electric suppliers to increase any "cherry-picking." Staff points out that the availability of PORCB does not necessarily result in an additional amount of "good paying" customers moving to an alternative retail electric supplier who has single-billing capability or dual-billing capability. Staff states that the scenario that Dominion describes appears to be limited to those situations, in which, the availability of PORCB will widen the targeted customer segment for an alternative supplier who has previously limited itself to a narrower customer segment, but now "cherry-picks" to a different segment of customers. Staff Initial Brief at 7. Staff opines that, while there could be additional "cherry-picking" by alternative electric suppliers that are capable of single-billing, it is not clear that this additional "cherry-picking" would be sufficient justification for the Commission to

conclude that the uncollectible factor in a blended rate would be more accurate for non-residential customers on PORCB. *Id.* at 7-8.

ICEA's Position

ICEA disputes the veracity of Dominion's assertion that ComEd's overall uncollectible experience will be different than ComEd's historical uncollectible experience. According to ICEA, Dominion's entire argument rests on the theory that, without an "all-in/all-out" provision, suppliers will "cherry pick" good-paying customers and keep such customers off of PORCB. ICEA posits that the all-in/all-out provision is a settled matter, based on a strong foundation of desiring all suppliers to be able to compete for small nonresidential customers. ICEA argues that therefore, the consequences of this provision are not at issue here.

ICEA avers that the uncollectible factor must be viewed separately from the $0.50 charge. It contends that they are two different components of the discount rate, as, one is for implementation and administrative costs and the other is the uncollectible factor. ICEA further states that Dominion's argument is merely one that "intentionally and unabashedly skews" the uncollectible factor in favor of residential customers, at the direct expense of non-residential customers. ICEA Reply Brief at 5-6.

NEMA's Position

National Energy Marketers Association ("NEMA") avers that, as a strong proponent of POR programs in Illinois and other retail choice jurisdictions, it is concerned whether the outcome of this case will in fact promote the development of energy choice for residential consumers, as is required by Illinois law.[10] Citing Sections 16-118(a) and 20-102(c) and (d) of the Public Utilities Act, NEMA contends that it was the intent of the General Assembly to promote residential consumer shopping. To effectuate that intent, NEMA continues, this Commission must consider the entire unique scheme of the specific ComEd POR program and what the net impact of that program will be on supplier participation and residential migration. Specifically, NEMA states that in addition to the blended discount rate, ComEd's program uses a fixed $0.50 per bill charge to recover program costs and has an "all-in or all-out" requirement that is applicable only to residential consumers. Also, ComEd requires marketers using its consolidating billing system to use POR. NEMA Initial Brief at 1-2.

[10] NEMA states that it is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. Its membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEMA members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies. NEMA Initial Brief at 1.

NEMA states that the blended discount rate for the June 2011 billing period is 1.84%. However, if that charge were created separately, the residential rate would be 2.23% and the commercial rate would be 1.19%. NEMA concludes that therefore, by applying a blended discount rate, residential consumers benefit from a lower overall rate than that which they would pay, if their rate were to be segregated. Also, the $0.50 charge for administrative fees and system improvements has a greater net impact on low-usage residential customers than on non-residential customers.

Citing Staff's Rebuttal testimony at 3-4, NEMA states that the effective discount rate created by the fixed $0.50 per bill charge for certain residential consumers is as high as 0.798%, where the effective rate for an average medium-load customer is only 0.021%. NEMA concludes that by blending the discount rate created by residential and non-residential uncollectible rates, this Commission would ameliorate the disproportionate burden created by the fixed $0.50 per bill charge for residential consumers. Citing Dominion Ex. 2.0R at 10-11, NEMA further argues that the blended discount rate that is currently in effect has not discouraged non-residential consumer participation in ComEd's POR program. NEMA Initial Brief at 3.

RESA's Position

RESA acknowledges that the residential PORCB rate (the $0.50 charge) is higher for residential customers than the commercial rate in this context. It also acknowledges that a blended charge encourages the development of the residential customer market by producing a lower rate. However, according to RESA, these facts do not make the use of a blended charge advisable public policy. This is true, it continues, because to the extent that retail electric suppliers sign up their residential customers under Rider PORCB, they will be receiving an amount for their receivables that is greater than the amount that ComEd will recover. RESA Initial Brief at 10-11.

RESA further contests the assertion that Dominion allegedly made that the Commission would aggravate the differences in effective discount rates, if it abandons the blended discount rate and instead orders separate rates that are higher for residential customers. RESA argues that the Commission has already decided whether to impose the $0.50 per customer charge and should not revisit that issue. *Id.* at 11.

RESA disagrees with Dominion's argument that the lack of an "all-in" provision for non-residential customers under Rider PORCB will allow retail electric suppliers to "cherry-pick" customers. RESA states that Dominion stands the concept of cherry-picking on its head, as this term is generally used to identify a practice of enrolling only the best customers—here Dominion uses the term to suggest that retail electric suppliers will select the worst customers. RESA Reply Brief at 6-7.

Analysis and Conclusions

As was stated earlier herein, this Commission's role, as was defined by the General Assembly, is to promote competition, generally. 220 ILCS 5/16-118(a). The promotion of competition necessarily favors including the interests of the vast majority of

Illinois consumers. Neither RESA, nor ICEA nor ComEd have stated any reason establishing that it is best to ignore what is more than 90% of the potential PORCB customers.

On Exceptions, RESA/ICEA state that they have never argued this Commission should ignore the interests of residential customers. RESA/ICEA Brief on Exceptions at 21. However, when stating, in essence, that the interest of a group of small commercial customers should be considered, above those of the interests of residential customers, who are approximately or above 90% of ComEd's service territory, RESA/ICEA have done just that. These entities have presented no evidence indicating that ComEd's POR program will not be viable, or even profitable, if, the interests of residential customers are taken into account. Instead, they have merely asserted, without providing evidence in support, that the interests of small commercial customers will be harmed, if the interests of 90% (approximately) of ComEd's service territory (residential customers) are taken into account.

We note at the outset that rehearing was granted specifically and only to take evidence on this issue. RESA and ICEA could have presented evidence regarding the impact of blended uncollectible rate upon commercial and residential customers. (*e.g.,* actual charges for these two classes of customers). They did not. They also could have, but chose not to, cross-examine other parties' witnesses. There is no evidence here indicating that the rate that could/would be charged to small commercial customers pursuant to the POR rate is still not more favorable than which these customers are offered now, either by ComEd, or by other alterative suppliers pursuant to other pre-existing alternative retail suppliers' plans.

We further note that no party has contested the veracity of Dominion's assertions indicating that ComEd's POR program is already skewed in a manner that disfavors competition in the residential market. The interests of competition are best served by continuing to use a blended rate.

On Exceptions, ComEd argues that the ALJPO "cannot point to any evidence in support of the conclusion that it is in the best interest of Illinoisans to impose a lower uncollectible charge on residential customers' receivables." ComEd Brief on Exceptions at 2, 7. However, this argument overlooks the unchallenged evidence presented by Dominion, which established that ComEd's POR program already disfavors residential customers. This argument also ignores the undisputed evidence that residential customers comprise at least 90 percent of ComEd's service territory. This argument ignores the record in this docket.

Also on Exceptions, RESA/ICEA contend that the General Assembly's intent was to have both customer classes on equal footing. RESA/ICEA Brief on Exceptions at 13. This is undoubtedly true. However, Dominion's evidence establishing that ComEd's POR program already disfavors residential customers was not challenged by RESA or ICEA. Therefore, there is evidence of "unequal footing" disfavoring residential customers. This argument does not aid RESA/ICEA.

On Exceptions, Staff concludes that Dominion has not presented more in the form of evidence that a move away from the blended rate will be material to it than that which RESA and ICEA presented in their arguments for separate uncollectible rates.

According to Staff, it is unlikely that either side would be able to meet such a standard when the evidence would be dependent upon the actions of several dozen registered and not yet registered alternative electric suppliers in Illinois. Staff Brief on Exceptions at 7-8.

This argument overlooks the nature of evidence. At a bare minimum, retail electric suppliers' actual charges for these two classes, what was done in other states that already have alternative suppliers regarding these two classes, business plans, marketing plans, and cross-examination, could have, but were not, used to establish, or even project, the likely effects of the use of separate uncollectible charges, as opposed to the use of one blended charge for all of ComEd's POR customers.

We note that retail electric suppliers that serve residential customers will be negatively affected, if this Commission abandons the blended uncollectible rate and the suppliers that focus primarly on non-residential customers will continue to pay a higher uncollectible rate than that which they would pay, under a separate uncollectible rate, if this Commission continues to use a blended rate. Thus, moving away from the blended uncollectible rate increases the effective discount rate for the receivables of residential customers. We note, based upon the lack of evidence to the contrary, only very recently have residential customers been able to choose service from an alternative electric supplier, which, could be due to the availability of PORCB services, as, it is a relatively new law. While the receivables of non-residential customers are equally eligible for ComEd's PORCB program, much more competitive activity has occurred in the non-residential market over the last several years. At this time, therefore, it appears to be that it is best to affirm use of a blended uncollectible rate.

We also recognize that ComEd's PORCB program will, in all likelihood, continue for many years in the future. This Commission is not adverse to revisiting the issue of an uncollectible rate for all of ComEd's PORCB customers, at some point in time in the future.

In summation, for the many reasons that are stated above, we conclude that the blended rate that was adopted in the original order in this docket is required by the General Assembly pursuant to the language in Section 16-118(c) of the Public Utilities Act. We additionally conclude that the policy reasons expressed by the parties herein make it clear that the people of the state of Illinois, competition in this state, and, the interests of the retail electric suppliers are best served by the blended uncollectible rate that was adopted in the final Order in this docket. No change is warranted.

Finding and Ordering Paragraphs

The Commission, having considered the record herein, is of the opinion and finds that:

(1) the Commonwealth Edison Company is an Illinois corporation that is engaged in the distribution and sale of electricity to the public in Illinois; as such, it is a public utility, as is defined in Section 3-105 of the Public Utilities Act;

(2) this Commission has subject-matter jurisdiction and jurisdiction over the parties;

(3) the proposed tariff sheets filed by the Commonwealth Edison Company pursuant to this Commission's Order which issued on February 21, 2011 that implement a joint UCB/POR service accurately reflect various findings in this Order.

IT IS THEREFORE ORDERED that the proposed tariff sheets filed by the Commonwealth Edison Company pursuant to this Commission's Order issued on February 21, 2011 that implement a joint UCB/POR service accurately reflect various findings in this Order.

IT IS FURTHER ORDERED that, as is set forth herein, the charge for uncollecible accounts shall be what was previously approved, which is, a rate that is "blended" between the historical uncollectible rate for both commercial and residential customers.

IT IS FURTHER ORDERED that the Commonwealth Edison Company shall comply with any requirement is set forth in this Order.

IT IS FURTHER ORDERED, any motions, petitions, objections and other matters in this proceeding which remain unresolved are disposed of in a manner consistent with the conclusions herein.

IT IS FURTHER ORDERED that, subject to the provisions in Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 17th day of August, 2011.

(SIGNED) DOUGLAS P. SCOTT

Chairman