

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company,)	
Proposal to establish Rider PORCB)	
(Purchase of Receivables with Consolidated Billing))	Docket No. 10-0138
and to revise other related tariffs.)	

INITIAL BRIEF ON REHEARING OF
THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION

INTRODUCTION AND BACKGROUND

On March 23, 2011, the Illinois Commerce Commission (the “Commission”) granted the Verified Application for Rehearing (“Application”) of the Illinois Competitive Energy Association (“ICEA”), filed on March 9, 2011 and the Petition for Rehearing of the Retail Energy Supply Association (“RESA”), filed on March 11, 2011. (Order, March 23, 2011). ICEA, in its Application, requested that the Commission “restor[e] its original finding in the Final Order that the uncollectibles issue is uncontested and retaining the separate uncollectibles charges proposed by ComEd.” (ICEA Application, p. 10). Similarly, RESA requested that the Commission “enter an order reversing its decision to adopt a single blended uncollectible rate for residential and non-residential customers under ComEd’s Rider PORCB, and adopting separate uncollectible rates, the only method having evidentiary support.” (RESA App. Rhg., p. 10).

The manifest weight of the evidence supports separate uncollectibles factors for residential and small commercial customers. With the exception of Commission Staff (who takes no position on the issue) and Dominion Retail, Inc. (“Dominion”), every other party to this proceeding on rehearing support separates uncollectible factors for residential and non-residential customers. Those parties include ICEA and RESA, trade associations representing numerous companies with long traditions of fostering retail choice in Illinois for all customers and whose member companies, unlike Dominion Retail, are currently

providing retail electric service to residential and non-residential customers in ComEd's service territory, as well as ComEd, the utility required to faithfully implement the law requiring that it offer POR and UCB service.

ARGUMENT

I. Separate Uncollectibles Factors Are the Most Appropriate Cost Recovery Approach to be used for Rider PORCB

The use of separate uncollectible factors for residential and eligible commercial customers is the most appropriate uncollectible cost recovery approach to be used for Rider PORCB. Having separate uncollectible factors fulfills five important objectives:

- It better aligns the recovery of uncollectible costs with the class of customers that causes such costs;
- Consistency with the Memorandum of Understanding;
- In the best interest of *all* Illinois consumers in ComEd's service territory;
- Facilitates an apples-to-apples comparison with ComEd's default service rate; and
- Best comports with the statutory language and underlying policy establishing POR and UCB.

Each of these objectives will be discussed below.

A. **Better aligns the recovery of uncollectible costs with the class of customers associated with those costs.**

By maintaining a separation between residential and eligible commercial customers, the use of separate uncollectible factors ensures that cost recovery is more closely aligned with the class of customers associated with the cost. This establishment of separate charges for the two classes of service upholds the well established principle of costs being allocated most closely to the customers that cause them. The Commission has approved this customer class cost allocation principle for the uncollectible

cost recovery under ComEd's Rider UF in ICC Docket No. 09-0433. Staff, while neutral overall, notes "there is a far stronger connection to cost causation with respect to the uncollectible charges." (Clausen Reb. Rhg., Staff Ex. 2.0, p. 10). There is no policy or other rationale to abandon the principle here. (Wright Dir. Rhg., ICEA Ex. 3.0, p. 4).

B. Is consistent with the Memorandum of Understanding

ICEA, RESA and ComEd's position with regard to the uncollectible factor design was the product of extensive and lengthy negotiations. That process included discussion with the state's leading consumer advocate, the Citizens Utility Board (CUB), which has subsequently been supportive of the settlement. The settlement was a collaborative approach—the sort of which the Commission encourages parties to engage in—to bring the benefits of customer choice and competition to residential *and* small commercial customers in ComEd's service territory as envisioned in Public Act 95-0700. The retail electric suppliers involved in the negotiations included the retail electric suppliers who were involved in the drafting and passage of the statutory language contained in Public Act 95-0700. The negotiations led to a Memorandum of Understanding ("MOU") included in ComEd Ex. 1.3, Direct Testimony of Robert Garcia, which was agreed to between ComEd and virtually the entire retail electric supplier community (and which garnered the support of the CUB). Separate uncollectible factors for residential and non-residential customers were a key component of that MOU. The use of separate uncollectible factors is consistent with ICEA's belief that the uncollectibles rate factor methodology set forth in the MOU is consistent with the goal of creating a PORCB program that will be used by retail electric suppliers in a substantial and widespread manner.

ICEA members have substantial experience in serving residential and small commercial customers in competitive retail markets and in evaluating what works best when it comes to fostering retail electric competition. Moreover, ICEA members possess an active interest in fostering retail electric competition for both residential and non-residential customers in Illinois. Dominion has insinuated throughout the record in this proceeding that they are the only supplier with a real focus on residential

customers. Any such claims are patently false and have been refuted time and time again in the record (See, e.g. Wright Dir. Rhg., ICEA Ex. 3.0, p. 2-4) as well as on a daily basis in the marketplace for retail electric supply in northern Illinois (See, e.g. *Illinois residential electric offerings at www.constellation.com; www.directenergy.com; www.integrysenergy.com; www.championenergyservices.com*). Seven of ICEA's members are licensed to serve residential customers in Illinois. (Wright Reb. Rhg., ICEA Ex. 4.0, p. 3). Many of its members are in fact *servicing* residential customers in Illinois. ICEA members clearly have an interest in being able to effectively serve both residential and small commercial customers in Illinois. Dominion, on the other hand, by its own admission is still not serving any residential electric customers in Illinois, despite the presence of what they claim to be a preferred, combined uncollectibles factor.

The fact is, the concept of using separate uncollectible factors was supported by a diverse group of suppliers with an ongoing and active interest in providing service to residential *and* non-residential customers in the ComEd service territory using ComEd's PORCB tariff. ICEA would not have agreed to enter into the MOU had its members thought it would result in an unused, unworkable and unwanted POR and UCB service for all eligible customers.

C. Is in the best interests of *all* Illinois consumers in ComEd's service territory.

By combining the uncollectible factors, the Commission would be picking winners and losers with regards to ComEd's Rider PORCB tariff. The Commission's rationale for combining uncollectible factors appears to be that the comparatively lower combined discount rate is necessary to incent suppliers to use Rider PORCB to serve residential customers. ICEA emphatically does not believe such an incentive is necessary to foster the widespread use of PORCB by suppliers for all PORCB-eligible customers. To the contrary, the Commission's approach makes PORCB less attractive for retail electric suppliers serving PORCB-eligible commercial customers in ComEd's service territory, thereby quite

possibly denying those commercial customers the robust competitive offerings they might otherwise receive.

Such a discount rate that includes a higher uncollectible factor than may properly be attributed to that class raises serious competitive and subsidization issues. ComEd's rate to serve a small commercial customer taking bundled service from ComEd will reflect an uncollectible factor specific to that class. In contrast, a retail electric supplier serving that same customer under PORCB would need to charge a rate reflective of the higher combined uncollectible factor, thereby increasing the rate that would need to be charged to recover for that additional expense. In setting a combined uncollectible factor for PORCB that is different than the uncollectible factor applied by ComEd to its own bundled customers, the playing field has been tilted against competitive supply. Such an outcome is precisely contrary to the fundamental objective of PORCB -- to bring the benefits of competition to small commercial and residential customers.

D. Facilitates an apples-to-apples comparison with ComEd's default service rate.

The Commission's use of a combined uncollectible factor for Rider PORCB makes apples-to-apples comparisons of a retail electric supplier's electric supply rate (which under the current PORCB approach is calculated using combined uncollectible factors) with ComEd's default service electric supply rate (which is calculated using separate uncollectible factors) harder for consumers to make, thereby frustrating Illinois consumers' ability to make educated decisions about their electric supply. Using the same separate uncollectible factors as used for default service customers avoids such artificial distortions in the electric supply rate.

E. Best comports with the statutory language and underlying policy establishing POR and UCB.

The General Assembly did not authorize the PORCB program to benefit the residential customer class at the expense of the small commercial customer class. If that were its intent, presumably the General Assembly would have put in place language authorizing such discretion or otherwise evidenced

such an intent in the statute establishing the program to accomplish that goal. The members of the General Assembly included no such language. To the contrary, the law clearly requires that POR and UCB be made available to both of these classes. To make PORCB available for small commercial customers only on a discriminatory basis – which a combined discount rate necessarily does is against sound public policy and the objectives underlying the PORCB law. This is especially so in the current economic climate where commercial customers and residential customers alike are looking for ways to save on their electricity costs

II. A Combined Uncollectibles Factor Distorts the Fundamental Purpose of PORCB

Dominion alone urges the Commission to reject the results of the collaborative approach described above and favor instead an approach that better aligns with Dominion's own business practices. On rehearing, Dominion has made clear its true intentions in this proceeding. Dominion would prefer to serve customers using utility consolidated billing without a purchase of receivables option. But given that option is not currently available, Dominion wants the Commission to mandate an uncollectible factor calculation that is more closely in line with their own, apparently much lower and credit-screened, uncollectible experience for their existing natural gas retail choice customer base in Illinois.

Dominion's arguments are contrary to both the law and policy of this State. The law requires that the Commission preserve and protect retail competition. The law mandating PORCB took that policy objective one step further, setting in place a framework designed to bring the benefits of retail competition to the smallest customers. Without PORCB, low-volume energy users may not be as attractive to retail suppliers, in part given the high cost to acquire attributable to factors such as the use of credit checks when compared to potential profit. PORCB eliminates that barrier, ensuring that retail competition is extended to all retail customers. The only advocate for a combined uncollectible factor is a company that does not currently serve residential electric customers in Illinois and, if they ever were so inclined to use PORCB would apparently prefer to limit their initial customer acquisition efforts to their already credit screened natural gas customers. (Crist Reb. Rhg., Dominion Ex. JC-2.0R, p.5). Rebuttal on

Rehearing at 5). ICEA urges the Commission to reject Dominion's self-serving attempt to put in place an approach to uncollectible factors that is clearly designed to benefit Dominion's interests alone.

III. Switching Statistics Do Not Make a Case For Combined Uncollectible Factors

Dominion slices and dices responses to various data requests regarding the limited switching data available for both uncollectible factor approaches. While Dominion's considerable efforts to draw positive conclusions from the switching data do show that suppliers will use PORCB for residential and non-residential customers under both approaches, the data is unable to show what PORCB usage levels would have been for non-residential customers had the separate uncollectible factors approach been allowed to remain in place for the more than a few weeks – far less time than it takes for a company to develop and launch a marketing campaign. By the time RESs were geared up to serve residential customers based on the conclusions contained within the Final Order, the landscape had already shifted beneath them. Simply put, the mere presence of switching is not in and of itself enough to disprove the effect of a combined uncollectible factor as a barrier. The available data is too fractured, incomplete, and covers an insufficient length of time to support any type of meaningful comparisons by the Commission between the two approaches.

CONCLUSION

The simple and undisputed truth is that the residential customer class possesses a higher uncollectible factor than does the small commercial customer class. No party to this proceeding has or can claim otherwise. Distorting the uncollectible factor in such a way as to intentionally subsidize residential customers at the expense of small commercial customers is unsupported either by the record or by the laws and policies of this State. The Commission should therefore reinstate its Findings and

Orderings on this topic from the Final Order, once again appropriately establishing separate uncollectibles factors for the residential and small commercial classes.

Respectfully submitted,

Illinois Competitive Energy Association

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