STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company d/b/a AmerenCILCO	)	No. 08-0619
Central Illinois Public Service Company d/b/a AmerenCIPS	)	No. 08-0620
Illinois Power Company d/b/a AmerenIP	)	No. 08-0621
Proposal to implement a combined Utility Consolidated Billing (UCB) and Purchase of Receivables (POR) service.	)	

Reply Brief of the

Retail Energy Supply Association and the Illinois Competitive Energy Association

Dated: May 13, 2009

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company d/b/a AmerenCILCO	)	No. 08-0619
Central Illinois Light Company d/b/a AmerenCIPS	)	No. 08-0620
Central Illinois Light Company d/b/a AmerenIP	)	No. 08-0621
Proposal to implement a combined Utility Consolidated Billing (UCB) and Purchase of Receivables (POR) service.	)	

REPLY BRIEF

The Illinois Competitive Energy Association ("ICEA") and the Retail Energy Supply Association ("RESA")(collectively "ICEA/RESA"), by one of its attorneys, pursuant to Section 10-101 of the Public Utilities Act (the "Act") and Section 200.800 of the Rules of Practice of the Illinois Commerce Commission ("Commission" or "ICC"), hereby submit their Reply Brief in the instant proceeding regarding the proposal of Central Illinois Light Company, Central Illinois Public Service Company, and Illinois Power Company (collectively "the Ameren Illinois Utilities" or "AIU") to implement a combined Utility Consolidated Billing (UCB) and Purchase of Receivables (POR) service ("UCB/POR").

In this Reply Brief, ICEA/RESA respond only to the Attorney General's ("AG") assertions regarding the definition of Power and Energy and the Citizen's Utility Board's ("CUB") suggestion that the entire AIU proposal be rejected. Both the AG's and CUB's comments should be rejected by the Commission.

ARGUMENT

III. E. Definition of Power and Energy

1. The AG's Comments Regarding the Definition of Power and Energy Should Be Rejected.

As an initial matter, ICEA/RESA note that the AG's arguments are directed to the revision to the definition of power and energy submitted by AIU Witness Pearson in her Surrebuttal Testimony. Ameren Ex. 8.0, 9:191-194. That revision added a clarification to the original AIU definition that renewable product costs were included in power and energy for the purposes of POR:

> **Power and Energy Service**
>
> Power and Energy Service for the UCB/POR Program refers to the RES charges included in the receivables purchased by the Company and shall only include charges for Power and Energy Service. Such charges for Power and Energy Service shall include only those components the RES is obligated to procure to meet its Customers' instantaneous electric power and energy requirements and may also include charges for Transmission Services and related Ancillary Transmission Services. **Power and Energy Service may include supply products that utilize renewable energy credits in meeting load requirements**. The accounts receivables purchased for the RES shall not include items such as early termination fees or fees for value added service.

Ameren Ex. 8.1 p 19 of 53 (emphasis added).

As fully explained and supported in our Initial Brief, several parties later entered into an MOU which further clarified that not only renewable energy products, but also alternative compliance payments, REC purchases, and any other costs associated with an ARES' obligations to comply with the applicable renewable portfolio standards imposed under the Public Utilities Act and the Commission's Rules should also be included in the definition of Power and Energy for purposes of the UCB/POR tariff:

Power and Energy Service

> Power and Energy Service for purposes of the UCB/POR Program refers to the RES charges included in the receivables purchased by the Company and shall include such charges for Power and Energy Service the RES is obligated to procure to meet its Customers' instantaneous electric power and energy requirements. Such charges may also include charges for Transmission Services and related Ancillary Transmission Services and **supply products that utilize renewable energy credits, represent alternative compliance payments or other appropriate means of establishing compliance with the renewable portfolio standards as set forth in Public Act 95-1027, the Public Utilities Act, and/or Administrative Rules of the Commission**. The accounts receivables purchased for the RES shall not include items such as early termination fees or fees for value added service.

MOU, Ameren Br., Appendix A (emphasis added). Thus, we assume for the purposes of this reply brief that the AG's arguments regarding Witness Pearson's revision would also apply to the MOU language which further clarifies the same point.

We turn now to the AG's arguments regarding the definition of Power and Energy. In its initial brief, the AG proposes for the first time that power and energy charges must be expressed on a per kilowatt hour basis. AG Br. at 7. The AG fails to provide any specifics on this proposal, how it would be implemented, or how it would provide any substantial benefit to anyone. Indeed, there is not a single citation to any record evidence in support of such a proposal. Accordingly, such a proposal is too vague and unsupported by any evidence whatsoever in order to be properly considered by the Commission and must be rejected.

The AG goes on to make what appears to be an objection to the revised definition of power and energy that was proposed by Ameren witness Pearson and was subsequently revised in the MOU executed by AIU, ICEA, RESA and Dominion Retail. AG Br. at 7. Specifically, the AG states that the original definition of power and energy proposed by AIU is perfectly acceptable and that it should not be revised to specifically enumerate renewable energy costs as a POR eligible cost. AG Br. at 7. The AG's objection should be rejected for several reasons.

First, the AG's claim that only RESA supports the revision (AG Br. at 7) is not a reason for failing to adopt the revision and, moreover, is wholly inaccurate. The MOU revised definition is supported by ICEA, RESA, Dominion Retail and AIU. That is, all parties other than Staff that expressed an interest in the issue and presented testimony and tariff language support the revision. With respect to Staff, Staff's only stated for not supporting the revision is that Staff viewed the language as superfluous because Staff already interpreted the language as including renewable energy products and related costs. ICC Staff Ex. 7.0 at 11-12. Further, Staff Witness Clausen testified that it would be illogical to exclude RECs from the definition of power and energy for POR program purposes. *Id.* Thus, there is little if any substantive disagreement between the parties who provided evidence on interpretation of the definition of power and energy. RESA/ICEA contend that the added clarification to the language as proposed in the MOU would help avoid any potential future disputes.

Second, the AG's arguments must be rejected because they are unsupported by record evidence. The AG states that the definition of power and energy is "far too broad" for the purposes of POR. (It is not clear, but we assume that the AG is referring to the revised definition.) The AG goes on to speculate that a broad definition would somehow cause market inefficiencies, result in customer confusion and obfuscate the actual price of energy. AG Br. at 7. Assuming *arguendo* that the AIU revision is "broad" (which it is not), how would the clarification that renewable energy costs incurred by an ARES in providing power and energy are eligible for POR treatment lead to any of the results mentioned by the AG, and how would one quantify those effects to determine if they are pernicious? The AG makes not a single citation to the record or any empirical evidence to support any of these propositions. In fact, if the AG is concerned about allowing customers to make an apples-

to-apples comparison of the cost of power and energy between utility bundled supply and competitive offers from ARES, then ARES must be allowed to include such costs as do the electric utilities.

Third, inclusion of the clarifying language regarding the costs associated with compliance with the renewable portfolio standards as delineated in the MOU will not broaden, much less unduly broaden, the POR program as implied by the AG. AG Br. at 7. As noted by Staff Witness Clausen, in his view, these charges and costs are necessary to provision of electric power and energy supply in Illinois and thus are, and should be, includable in the POR under even the original AIU language. ICC Staff Ex. 7 at 11-12. As mentioned above, while ICEA/RESA would agree with that interpretation, the revised language clarifies this point and would help avoid any potential disputes. Thus, the insinuation that the revised language would somehow improperly broaden the POR program should be rejected. There is also no record support that inclusion of costs associated with compliance with the renewable portfolio standards would lead to market inefficiencies, customer confusion and price obfuscation, as speculated by the AG. AG Br. at 7-8. Market efficiencies and price discovery are unaffected by what is includable for POR purposes. Whether includable in the POR program or not, these costs and charges are necessarily incurred by ARES in the provision of electric power and energy products in Illinois and will have to somehow be recovered from customers. These same types of costs will be included and recovered in AIU rates. No ICEA/RESA member is proposing to hide any of its charges to its customers because they may, or may not be, includable for POR purposes. Indeed, ARES must recover their costs to remain viable economically and remain in compliance with the law and applicable rules. Thus, customers will know the full cost and price of alternative service offerings from ARES and may choose an ARES for a variety of

reasons whether based upon cost or other value, just as they do today. For this simple reason, market efficiency and price discovery are not at issue in the instant proceeding.

In conclusion, given that, as of June 1, 2009, RESs are required to meet new renewable portfolio standards as a condition of providing service to retail customers in Illinois, the Ameren UCB/POR tariff must accommodate and reflect that legal reality. While the exact rules and regulations regarding how RESs will be able to demonstrate compliance has not yet been established, great care must be taken to not restrict the ability of RESs to collect their costs with meeting these compliance obligations by way of overly restrictive UCB / POR tariffs. The MOU resolves this issue in a manner that is consistent with applicable law and anticipated revisions to the Public Act 95-1027.

III. F. CUB CONSUMER PROTECTION

1. CUB's Comments Regarding Consumer Protection Should Be Rejected.

CUB's argument that the AIU filing does not provide adequate consumer protections and should therefore be rejected (CUB Br. at 3) is not supported by the record and should itself be rejected.

While RESA/ICEA agree that it is important to have adequate and sufficient consumer protections as part of any competitive market structure (Cerniglia Reb, ICEA-RESA Ex. 2.0, 9:14-19), adequate consumer protections currently exist in the Public Utilities Act, Part 451 of the Illinois Administrative Code, and the Illinois Consumer Fraud Act and Deceptive Business Practices Act. AIU Br. at 19-20. Moreover, any additional measures should apply only to ARES serving residential and "small commercial customers" as defined in the Public Utilities Act (those consuming no more than 15,000 kWhs annually).

Further, the ongoing ORMD workshop process will refine those consumer

protections for residential and small commercial customers so that RESs that serve or market to those customer segments will have additional procedures that must be followed. As such, consumers will have additional protections and a more refined process for obtaining redress in the event that a RES fails to comply with said requirements. Those workshops are proceeding and the results of those workshops should be in place by the time customers are taking service under the UCB / POR program. There is no reason for the Commission to delay any part of these proceedings, or start the review of Ameren's UCB / POR tariffs all over again. Cerniglia Reb, ICEA-RESA Ex. 2.0, 9:2-10.

Given the consumer protections already in place, and further measures are being considered in a parallel forum, CUB's concerns are not well-founded and should be rejected.

CONCLUSION

The Commission decision in this proceeding will determine whether the benefits of retail competition can now be enjoyed by residential and smaller commercial customers as envisioned by the General Assembly in enacting Public Act 95-0700, just as they have been enjoyed by medium and large commercial and industrial customers. The outcome of this proceeding will ultimately determine whether residential and smaller commercial customers will have a meaningful choice of electric power and energy suppliers. The proposed Ameren UCB/POR program, modified pursuant to the MOU, is a workable mechanism that can bring the benefits of retail competition to residential and smaller commercial customers.

WHEREFORE, ICEA/RESA respectfully request that the Commission enter an Order based upon the record evidence and consistent with the MOU that:

(1) Rejects the arguments of the AG regarding the definition of Power and Energy;

(2) Rejects CUB's suggestion that the AIU filing be rejected pending the further small customer protection measures;

(3) Modifies the proposed "All-In" or "All-Out" approach;

(4) Modifies the definition of Power and Energy so as to not restrict the specific types of costs and charges that RESs are allowed to include under the UCB / POR program, including but not limited to renewable offerings and the ability to recover costs associated with compliance with the RPS requirements; and

(5) Adopts a discount rate that does not act as a barrier to the successful utilization of the UCB/POR program.

Respectfully Submitted,

s/ Mark J. McGuire

Kevin K. Wright

Mark J. McGuire 10 South Riverside Plaza, Suite 1800 Chicago, Illinois 60606 571.216.6665 mj53hcky@yahoo.com	Kevin K. Wright 1601 Clearview Drive Springfield, Illinois 62704 217.741.5217 wright2192@sbcglobal.net
Attorney for **Retail Energy Supply Association**	**President** **Illinois Competitive Energy Association**