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.	**)**	

REPLY BRIEF ON REHEARING OF
THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION

The Illinois Competitive Energy Association ("ICEA"), by and through its counsel, respectfully submits the following Reply Brief in the above-captioned proceeding. In addition to ICEA, Initial Briefs were submitted by Commonwealth Edison Company ("ComEd"), the Retail Energy Suppliers Association ("RESA"), Staff of the Illinois Commerce Commission ("Staff"), Dominion Retail Inc. ("Dominion"), and the National Energy Marketers Association ("NEMA"). This Reply Brief will focus on certain arguments made in the Initial Briefs of Dominion and the NEMA. Failure to address any specific aspect of any of the party's Initial Briefs on Rehearing should not be construed as agreement with those arguments.

INTRODUCTION

ICEA appreciates the Illinois Commerce Commission's ("Commission") willingness to revisit the use of separate uncollectible factors for residential and small commercial customers. The manifest weight of the evidence and related arguments support separate uncollectible factors for residential and small commercial customers. Dominion's case on rehearing makes one thing crystal clear: Dominion wants the Commission to retain an uncollectible factor that more closely reflects its special circumstances as a potential retail electric market entrant with an existing base of residential gas customers in Illinois that it has already paid to have credit screened. On rehearing, Dominion's witness Mr. James Crist states that "[a] marketer such as Dominion that has a policy of credit-screening its customers would be at a disadvantage to now be forced to participate in POR and pay the average credit discount when it has a superior customer base." (Crist Direct Testimony on Rehearing at lines 447-449. *See also,* Crist Rebuttal Testimony on Rehearing at 98-123*;* Dominion Initial Brief on Rehearing at 3-7).

Rather than use the same supply-related uncollectible cost factors for customers served under Rider PORCB that ComEd applies to its own supply charges, which is an approach that is in complete accord with the enabling language of Section 16-118(c) of the Public Utilities Act ("Act") and that has the support not only of ICEA, but RESA and the Citizens Utility Board ("CUB"), Dominion seeks special regulatory treatment that favors its business model to the disadvantage of everyone else's. Dominion does so at the expense of the development of the market as a whole, the statutory language enabling POR and UCB, and the policy of the state to foster fair competition in the provision of electric power and energy. 220 ILCS 5/16-118(a). Armed now with this clearer view of Dominion's intentions with regard to this proceeding, the Commission should reject Dominion's blatant attempt to have the Commission pick "winners" and 'losers" via regulatory fiat and instead put in place the widely sought and widely supported separate uncollectible factors.

Dominion, which had been the lone supporter of a combined discount rate approach in this proceeding, seemingly received incremental support for its position with the filing of an Initial Brief on Rehearing by NEMA. When NEMA filed to Intervene in this proceeding on March 10, 2010, NEMA noted that "its participation in this process will aid the Commission by enhancing the quality of the record to be developed here." (NEMA Petition to Intervene at 1). Despite the apparently keen interest by NEMA membership in developing the record in this proceeding, NEMA did not file testimony in this proceeding. Instead, NEMA waited almost 15 months before participating in this proceeding by filing a brief that essentially parrots the positions taken by Dominion. Indeed, other than lending its name to Dominion's arguments, NEMA's Initial Brief on Rehearing adds nothing new to this proceeding.

Staff has continued to express its neutrality on the matter at issue on rehearing, and other consumer advocates have either been supportive of separate discount rates (CUB), or have been silent on the issue (The Office of the Attorney General). Virtually the entire community of active retail electric suppliers with an interest in PORCB (many of whom unlike Dominion currently do serve residential customers in ComEd's service territory) support the use of separate uncollectable factors, as does ComEd, which is charged with implementing the law, and which has a stake in ensuring that PORCB is used as widely as possible in order to ensure expeditious recovery of its implementation costs. Contrary to the claims of Dominion (and echoed by NEMA):

- Class-Specific Discount Rates Best Reflect the Cost of Service;
- The Uncollectibles Factors Must Be Evaluated Separately From Implementation Costs;
- The Use of Separate Discount Rates Would Not Discourage Retail Electric Suppliers From Using PORCB For Residential Customers; and,
- The Use of Separate Discount Rates Is Consistent With the Law.

This Reply Brief will reply to each of Dominion's above-mentioned claims against the adoption of separate uncollectible factors for residential and small commercial customers.

ARGUMENT

I. <u>Class-Specific Discount Rates Best Reflect the Cost of Service</u>

Dominion appears to acknowledge that whatever rate(s) is chosen should reflect the cost of service. (Dominion Init. Br., p. 2). However, Dominion ultimately reaches the wrong conclusion as to who's cost of service the discount rate should be based. Section 16-118(c) of the Public Utilities Act ("Act") is clear that the discount rate "shall be based on the *electric utility's* historical bad debt . . ." (Emphasis supplied). Dominion advocates for a combined uncollectible factor because it would prefer a discount rate that is based upon, or at least as close as possible, to its own historical bad debt experience. While Dominion might prefer such an approach, the law is clear that the discount rate should be based off of the utility's historical bad debt experience. An individual retail electric supplier's historical bad debt experience is irrelevant for purposes of the setting the discount rate.

In arguing for a blended uncollectible rate, Dominion points to the fact that ComEd uses a single blended uncollectible rate for all residential rate classes, and a single blended uncollectible rate for different nonresidential customer classes such as watt hour, small load delivery, and medium load delivery. (Id. at 3). Although Dominion 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. The nonresidential classes all have relatively low uncollectibles, eventhough some are smaller than others. In contrast, there is a dramatic and obvious difference between the uncollectibles experience for residential customers (2.24%) as compared with nonresidential customers (.77%). (Garcia Dir. On Rehg., ComEd Ex. 12.0, p. 5).

Dominion further claims that ComEd's overall uncollectibles experience will be different than for PORCB customers (Dominion Init. Br., pp. 3-4) is without merit. Their first proposition is that nonresidential uncollectible rates will be higher for PORCB participants than the current nonresidential experience. Their 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.[1] Of course, the all-in/all-out provision is a settled matter, based on a strong foundation of wanting all suppliers to be able to compete for small nonresidential customers, and is not at issue here. Most significantly, Dominion provides the Commission with ample speculation but absolutely no data to support its hypothesis.

Dominion's claim that uncollectible rates of residential customers on PORCB will be lower than the general residential population is similarly without merit. Dominion bases its theory solely on its own business model of credit-screening residential customers for the provision of natural gas service. Dominion does not identify a single active residential electric supplier in ComEd's service territory that markets to residential electric customers that uses that same model. Once again, Dominion leaves the

[1] Ironically, with respect to its Illinois retail natural gas business, Dominion appears to be engaging in the same sort of "cherry picking"— credit screening to pick the good-paying customers and leaving the rest to take supply from the gas utility.

Commission with ample speculation but absolutely no data to support its hypotheses. And, as noted above, even if Dominion did provide data on either of these points, the law is clear that in arriving at the discount rate the focus is on the utility's historical bad debt experience not the bad debt experience of an individual retail electric supplier.

Dominion's statement that "it is impossible to conceive of a successful business strategy that would involve targeting high credit risk residential customers" demonstrates a lack of understanding of the fundamental tenet of PORCB. (Dominion Init. Br., p.6). Specifically, under PORCB, retail electric suppliers are indifferent to the credit-worthiness of a particular residential customer and instead make their offerings available to all, on a non-discriminatory basis. Dominion's contention that the Commission should affirm an order with a discount rate that assumes, and thereby encourages, retail electric suppliers to serve only those residential customers deemed by the suppliers to be credit-worthy is not only against sound public policy, but is in direct conflict with the legislative goals that customer choice should be extended to all customers.

II. <u>Uncollectible Factors Must Be Evaluated Separately From Implementation Costs</u>

Dominion's next argument, which appears to also be echoed by NEMA, that having different discount rates is somehow unfair to residential customers because it represents a larger portion of their bill is similarly without merit. (Dominion Init. Br., p. 12). There are two different components of the discount rate, one for implementation and on-going costs, and the other for the uncollectible factor that quantifies the uncollectible costs associated with serving that particular customer class. The two components are separate and distinct, and should remain so, as they are intended to cover different costs and risks that factor into the whole.

The 50 cent per bill charge is designed to recover implementation *and on-going costs*. Interestingly, when referring to the 50 cent charge, Dominion and NEMA rarely if ever focus on the administrative and on-going cost recovery aspects associated with the 50 cents (costs incurred by ComEd for example to prepare a customer's bill each month and for the U.S. postage required to mail the customer's bill). Perhaps this is because their focus on "effective discount rates" loses considerable steam when one considers that, were PORCB not available, a supplier would still have to cover the costs each month of preparing customers' bills and paying U.S. postage to mail each customer's bill. When viewed in that light, the 50 cents per bill charge compares favorably to the 44 cents charge for first class U.S. postage. Furthermore, with regard to the 50 cents, there are no differences in the costs for PORCB system modifications and business processes required to serve a residential customer as compared with the costs to serve a nonresidential customer. That reality is reflected in the Commission's appropriate approval of the 50 cent per bill charge, consistent with the Memorandum of Understanding ("MOU") entered into by ICEA, RESA, and ComEd, (ComEd Ex. 1.3, Direct Testimony of Robert Garcia), and agreed to by CUB. The uncollectible factors have nothing whatsoever to do with the 50 cent per bill component.

Although Dominion states that "it is not arguing in this rehearing that the Commission should change its decision" to adopt the fixed 50 cent charge, (Dominion Init. Br., p. 10), its argument to intentionally and unabashedly skew the uncollectible factors in favor of residential customers at the direct expense of nonresidential customers. The Commission correctly ordered that the fixed 50 cent charge was appropriate. (Amendatory Final Order at 25). The Commission denied Dominion's petition on rehearing to review the fixed 50 cent charge. Dominion has placed the fixed 50 cent charge on appeal and thus this issues has no place in this rehearing proceeding.

III. <u>The Use of Separate Uncollectible Factors Would Not Discourage Retail Electric Suppliers From Using PORCB For Residential Customers</u>

Dominion argues that a discount rate should encourage residential customers to enter the competitive market. (Dominion Init. Br., p. 11). Dominion's arguments are ambiguous, on one hand it argues that only credit-worthy residential customers should or would enter the competitive market and on the other hand it argues that the fundamental premise that a discount rate should not be prohibitive and that "fair and open competition should be foremost in the mind of the Commission when it makes its decision in this rehearing." (Dominion Init. Br., p. 11). ICEA agrees with Dominion's latter argument. ICEA members held this tenet in mind when they met prior to the start of this proceeding with ComEd and RESA in a series of meetings lasting several months to arrive at an agreed-upon formula that all participants believed would result in a PORCB tariff that would be widely used for both residential and nonresidential customers.

Dominion and NEMA cite to a snapshot of switching volumes as support for their contention that residential customers should continue to be subsidized. (Dominion Init. Br., p. 13). However, the data in no way shows what PORCB usage levels would have been for nonresidential customers had the separate uncollectible factors approach been allowed to remain in place for more than a few weeks, which is far less time than it takes for a supplier to develop and launch a residential marketing campaign. By the time retail electric suppliers were geared up to serve residential customers based on the conclusions ostensibly contained within the Final Order, the landscape had already shifted beneath them. The mere presence of switching is not in and of itself enough to disprove the effect of a combined uncollectible factor as a barrier to nonresidential switching. The available data is too fractured, incomplete, and of insufficient time to support any meaningful comparisons by the Commission between the two approaches.

Rather, the best indication of the success of a particular discount rate is with the suppliers who are and will use it. Even NEMA acknowledges the fact that the Commission must consider what "the net impact will be on supplier participation." (NEMA Init. Br., p. 2). With the limited exception of Dominion and NEMA's unnamed and unknown membership, the retail electric supplier community that has actively participated in this proceeding, which represents suppliers that have long-been active in opening up Illinois' retail electric market to competition and who currently serve residential and nonresidential electric customers within ComEd's service territory, supports the use of separate uncollectible factors; and, vehemently opposes a blended uncollectible factor that subsidizes residential customers at the expense of small nonresidential customers. Suppliers are in the best position to understand the impact that a particular approach to uncollectibles might have. Today, a number of ICEA members are serving residential customers using PORCB under the blended approach. Yet, ICEA continues to stand behind its view that the separate uncollectible approach is better for all customer classes residential and nonresidential alike. The evidence in this proceeding is clear: the retail electric supplier community has a vested interest in using PORCB and overwhelmingly believes that an approach using separate uncollectible factors will not discourage retail electric suppliers from using PORCB to serve residential customers.

IV. <u>The Use of Separate Uncollectible Factors Is Consistent With The Law</u>

Dominion's argument that separate discount rates for residential and small nonresidential customers is prohibited by the law is simply untrue. The legislature did not specify the precise structure for PORCB; rather, they appropriately left that in the capable hands of the Commission. However, the legislature did acknowledge that, just like residential customers, small commercial customers had not seen the benefits of a competitive electric market, and directed that the Commission should promote an "effectively competitive" market that operates efficiently and benefits all Illinois consumers.

> (c) A competitive retail electric market does not yet exist for residential and small commercial consumers. As a result, millions of residential and small commercial consumers in Illinois are faced with escalating heating and power bills and are unable to shop for alternatives to the rates demanded by the State's incumbent electric utilities.
>
> (d) The General Assembly reiterates its findings from the Electric Service Customer Choice and Rate Relief Law of 1997 that the Illinois Commerce Commission should promote the development of an effectively competitive retail electricity market that operates efficiently and benefits all Illinois consumers.

220 ILCS 5/20-102(c) and (d).

An "effectively competitive" market is one that puts all suppliers on a level playing field. The use of a skewed uncollectible factors does precisely the opposite. It would, as ComEd notes, "require

ComEd to charge RESs a different bad debt rate to serve customers under Rider PORCB than it would have charged such customers had they remained on ComEd fixed-price supply." (ComEd Init. Br., p. 5).

Nor does ICEA believe that the law authorizing POR and UCB provides the Commission policy discretion to discriminate against nonresidential customers to benefit residential customers. There is no indication in the statutory provisions authorizing POR and UCB that the legislature intended to provide the Commission such discretion. Instead, consistent with the state policy enumerated above in Section 20-102(c) and (d) of the Act 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. Specifically, Section 16-118 (c) and (d) states in part:

> (c) An electric utility with more than 100,000 customers shall file a tariff pursuant to Article IX of this Act that provides alternative retail electric suppliers, and electric utilities other than the electric utility in whose service area the retail customers are located, with the option to have the electric utility purchase their receivables for power and energy service provided to residential retail customers **and non-residential retail customers with a non-coincident peak demand of less than 400 kilowatts.**
>
> (d) An electric utility with more than 100,000 customers shall file a tariff pursuant to Article IX of this Act that would provide alternative retail electric suppliers or electric utilities other than the electric utility in whose service area retail customers are located with the option to have the electric utility produce and provide single bills **to the retail customers for both the electric power and energy service provided by the alternative retail electric supplier** or other electric utility and the delivery services provided by the electric utility to the customers.

220 ILCS 5/16-118(c) and (d). (Emphasis supplied).

The law authorizing POR and UCB clearly contemplates their widespread availability 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.

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 factors in such a way as to subsidize residential customers at the expense of small commercial customers and to essentially pick "winners" and "losers" in the retail electric marketplace is unsupported either by the record or by the laws and policies of this State. Given the additional clarity provided on rehearing surrounding Dominion's desire to put in place by regulatory fiat, an uncollectible factor designed solely with its business model in mind, and for the additional reasons outlined above as well as in the briefs of ComEd and RESA, the Commission should reinstate separate uncollectible factors for the residential and small commercial classes.

Respectfully submitted,

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