AUSTIN ENERGY®

MEMORANDUM

TO: Low Income Consumer Advisory Task Force

FROM: Liz Jambor, Manager, DABI

DATE: 02/06/15

SUBJECT: On-Bill Financing

Overview

On-bill financing is a mechanism that allows utility customers to pay for energy efficiency improvements without upfront costs. Through on-bill financing, a utility customer receives a loan to finance energy efficiency improvements and repays the loan on the monthly utility bill. The energy cost savings resulting from improvements offset the cost of the loan repayment, ideally leading to no change to the customer's total monthly bill. Repayment is attached to a property, not to a customer, ensuring that the beneficiary of the improvements is responsible for loan repayment. If a customer moves, the new tenant would assume repayment of the loan.

Several years ago, Austin Energy analyzed the viability of an on-bill financing pilot program in order to achieve greater energy efficiency savings. Several practical impediments arose, and, after discussions with legal staff, it appeared that on-bill financing presented legal issues, including but not limited to the following:

- The Texas Constitution restricts a municipality from lending public credit and providing public money to private parties. As the administrator of loan repayment through utility bills, is Austin Energy assuming the role of surety/guarantor and thus lending its credit to a private entity?
- Does AE have the legal authority to place non-utility charges on the customer utility bill?
- Does AE have the legal authority to disconnect utility service for nonpayment of the loan repayment fee?

Lending of Public Credit

The Texas Constitution prohibits governmental entities from donating or lending public funds and from lending credit in support of the debts of private entities. Under an outside-funded on-bill financing pilot program, the City of Austin would not be providing any public funds for loans to a private entity – a bank would provide the loan funds. The issue is whether the prohibition on a municipality lending its credit applies to Austin Energy's role as the administrator of the loan repayment.

In an Environmental Defense Fund report (Legal Authority of the Public Utility Commission of Texas to Approve A Tariffed Installation Program for Energy Efficiency Measures), Daniel Rosenblum states:

> "Lenders are willing to provide funding, since repayment streams are protected by utilities' ability to disconnect for nonpayment of bills, utilities' guarantee of payment and utilities' treatment of nonpayments the same as any other uncollectible (i.e., recovered from all ratepayers)."

Using this analysis of the utility's role in administering the program and assuring debt repayment, Austin Energy would serve in the role of surety and assumes secondary liability for the debt. This would make the program impermissible under Texas law.

A loan of public credit refers to the assumption of some kind of financial liability (both primary and secondary) by the government. The assumption of a financial liability by the government may constitute a loan of credit or may implicate other constitutional or statutory prohibitions. Austin Energy's role as surety in guaranteeing repayment of a loan through utility billing and through the established recourse for nonpayment (e.g., disconnection of utility service) may violate the Constitutional prohibition of a municipality lending credit in support of the debts of private persons.

<u>Non-Utility Charges on a Utility Bill</u>
An on-bill financing program hinges on a utility's authority to include a non-utility charge on a utility bill and to disconnect utility customers for nonpayment of the loan repayment charge. As a home rule city, the City of Austin may charge fees not specifically prohibited by state law, subject to certain legal requirements. Fees not specifically authorized in state law that are in excess of the cost to regulate an activity are an illegal tax. In this case, aside from administration, there is no cost to Austin Energy in providing the service, and Austin Energy would be billing for and collecting the loan repayment fee merely as an intermediary. As a result, the loan repayment fee could be perceived as a cost above Austin Energy's cost and labeled an illegal tax. Therefore, the safest approach may be to wait for affirmative statutory authority to place a third party's debt obligation on utility bills.

<u>Disconnection for Nonpayment</u>
Another key element in the implementation of on-bill financing programs is the use of utility disconnection as the mechanism for ensuring repayment of the loan. Lenders are attracted to on-bill financing programs by a utility's ability to secure the loan through the threat of disconnection for nonpayment of utility bills including loan repayment fees. However, under the Public Utility Commission rules, electric utility service may not be disconnected for failure to pay for merchandise or charges for non-electric utility service provided by the electric utility. Further, the Austin City Code's Utility Service Regulations do not include non-utility services under a customer's service contract obligations and do not authorize termination of utility service for nonpayment of unrelated City charges and fees. The City's practices regarding termination of utility services for nonpayment of the customer's utility bill are compatible with PUC rules.

<u>Conclusion</u>
The prospect of on-bill financing with Austin Energy and the City of Austin as participants does not appear to be a viable method for financing energy efficiency measures at this time. Due to prohibitions as outlined in the Texas Constitution and the PUC rules, the electric utility cannot serve the role necessary for an effective on-bill financing program to succeed.

An alternative to on-bill financing could be the current loan program through Velocity Credit Union. Velocity currently offers low APR loans to finance energy saving home improvements as well as solar water heaters. These are most often utilized by our Home Performance with Energy Star customers.