Energy Choice Matters

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# Illinois Suppliers Want Licensing Exemption for ABCs Selling in Name of Suppliers

Several retail electric suppliers and ABCs have suggested an additional exemption from proposed Illinois regulations for ABC licensing to cover entities conducting sales or marketing activity in the name of a Retail Electric Supplier (RES).

The recommendation, made jointly by the Illinois Energy Professionals Association, the Coalition of Energy Suppliers and the Retail Energy Supply Association (joint suppliers and ABCs), would expand the range of retail electric agents, brokers, and consultants that would not have to comply with draft ICC codes (part 454) to implement last year's SB 1366.

The ICC Staff's draft, following the statute, would not require any person or entity acting exclusively on behalf of a single Retail Electric Supplier to be licensed, provided that such exclusivity is disclosed in writing to any third party contracted in such agent capacity.

The coalition of suppliers and ABCs suggested adding the following language as an additional licensing exemption:

"Any person or entity acting exclusively on behalf of a single RES where such person or entity conducts its sales or marketing activity in the name of the RES and where such person or entity does not hold itself out to the public as being anything other than an exclusive agent of the RES."

Ostensibly, the proposed language would allow the continued use of the now common practice of exclusive third-party call centers and feet on the street branded as the sales force of a Retail Electric Supplier but not technically RES employees (and thus considered ABCs under the law) without having

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# Marketers Warn of Higher Prices for Renewed Customers Under PUCO Staff Proposal

A PUCO Staff proposal to make the rate at which competitive gas customers who renew onto automatic renewals available to customers sooner would, "raise the cost of gas to the vast majority of affected customers who simply let their contracts renew," the Ohio Gas Marketers Group cautioned (08-724-GA-ORD, Matters, 7/22/08).

Currently, customers with contracts that automatically renew for six months or more, have a material change, and have a termination fee of $25 or less, must receive two notices regarding renewal, one at least 45 days before renewal, and another 20 days before renewal. Only the second notice, 20 days before renewal, requires the new price to be listed, or rate formula if a variable price.

Staff has proposed that both notices contain the renewal rate, which would have the practical effect of moving the hedging of the renewal price from a minimum of 20 days before the end of the contract to 45 days, marketers observed.

Because of the premium associated with time and potential volatility, a smaller time period for which a marketer must keep a price offer open means a lower rate for the customer. Staff's longer period accordingly would raise the price of renewal offers to account for risk, marketers said.

Marketers also pointed out that moving the rate notice to 45 days out will leave the renewal customer with a price that could be substantially above the price being quoted on the Apples to Apples chart for new customers, since a new customer would not have their price fixed 45 days in advance of contract commencement.

The current 20-day rate notice requirement was instituted to address market volatility, marketers

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## PUCT Staff Appeals Ruling That Bases Potential Luminant Penalty on Bid Curves, Not MWhs

The PUCT Staff has appealed two ALJs' ruling that any potential penalty arising from Staff's allegations of market manipulation by Luminant during 2005 (docket 34061) be tied to the number of bid curves submitted by Luminant, rather than the total MWs or MWhs involved (Matters, 7/23/08).

Staff argued that the ALJs' ruling is, "troubling because it purports to limit the application of PURA's administrative penalties to specific 'acts' committed by market participants while offering no definition or guidance as to what constitutes such an act or how such acts might be distinguished from 'practices' which are also subject to penalty under the P.U.C. Substantive Rules and, despite being cited in Order No. 26, are not analyzed or discussed in even a cursory manner."

"[T]he implications of Order No. 26 extend far beyond this proceeding and would, if allowed to stand as precedent, possibly prevent the Commission from assessing meaningful penalties against entities that violate provisions of PURA and its Substantive Rules in a wide range of enforcement actions," Staff cautioned.

Staff protested that the ALJs' ruling would allow Luminant to profit from the allegedly improper behavior since Staff alleges Luminant made $18.8 million in profits from the alleged manipulation, while the maximum penalty contemplated under the ALJs' ruling would be $15.425 million. When penalties do not exceed the profits from prohibited activities, they become simply a cost of doing business, and do not meet a specific purpose of PURA § 15.023 which is to deter future violations, Staff noted.

Staff reiterated its view that the alleged violations were not the submission of bid curves, as the ALJs ruled, but rather the alleged "withholding of production," the extent and gravity of which is determined by the amount of electricity in MWs or MWhs that was withheld from the market. Staff's notice of violation alleged that Luminant withheld a total of 252,000 MWh during the period under investigation, and Staff would consider each MWh a separate violation.

## D.C. PSC Implements Quarterly Reporting For Supplier Billing Errors

The District of Columbia PSC adopted final rules requiring electric suppliers to compile monthly reports on certain billing errors, which are to be submitted to the PSC quarterly (FC 1002).

Suppliers are to collect monthly data showing compliance with District of Columbia Municipal Regulations Title 15, Chapter 36: Electric Quality of Service Standards. Under the codes, suppliers must inform the PSC of billing errors in excess of a certain threshold explained below (Matters, 3/5/08). Data is to be collected on a monthly basis in a format established by Commission order.

Suppliers are to submit their monthly reports quarterly, with reports due April 30 (for January through March), July 30, October 30, and January 30.

If a supplier fails a measure in the quarterly report, it must file an explanation for the failure and a plan to remedy the failure in the following quarterly report. Report data is to be retained for seven years.

Under Chapter 36, a supplier is to inform the Commission's Office of Engineering and the Office of the People's Counsel when a billing error has affected 100 or more customers, or the number of affected customers is equal to or more than 2% of the supplier's customer base (whichever is less). A supplier with less than 100 customers is to report errors when two or more customers are affected.

Suppliers must file an initial billing error notification within one business day of discovering or being notified of the error. After submitting the initial notification, suppliers must submit a follow-up written report within 14 calendar days and a final written report within 60 calendar days. Items covered by the reports include the types of billing errors found; the date and time the billing errors were discovered; how the supplier discovered the errors; the duration of the billing errors; the corrective actions and preventative measures taken; and the lessons learned, if any.

## COU Aggregation Should Not Replace SOS, Integrys Unit Says

Aggregation of customers by consumer-owned utilities (COUs) in Maine should not take the place of SOS, Integrys Energy Services told the Maine PUC (2008-250, Matters, 7/16/08).

COU aggregation should not displace SOS because the competitive standard offer bidding process may result in the lowest possible prices for customers, Integrys argued.

Since COU aggregation should not be SOS, Integrys does not favor allowing customers to join the COU pool in the middle of its term. Such customers should either negotiate a new competitive supply contract or take SOS, Integrys said.

However, if customers wishing to join the aggregation pool in the middle of its term are allowed to join, they should receive new pricing, to minimize the aggregation supplier's risk, rather than being allowed to join at the original aggregation price, Integrys recommended.

Integrys suggested that any COU aggregation be an opt-in program.

## *Briefly:*

### ALJ Sets Schedule for Reviewing SCE Solar Plan

An ALJ has set a deadline of Sept. 12 for testimony regarding Southern California Edison's proposed Solar PV Program (Matters, 5/15/08), in a scoping ruling issued Friday (A. 08-03-015). Large customers have questioned the costs of SCE's program while IPPs have opposed the utility-owned development. The ALJ's schedule contemplates a Commission decision in March 2009.

### Dayton Power & Light Issues Green RFP

Dayton Power & Light issued an RFP for at least 38,000 MWh of renewable energy by the end of 2009, for compliance with new green energy mandates in SB 221. Some 625 MWh is to come from solar photovoltaic or solar thermal energy. Dayton will consider a statutory requirement that at least 50% of its renewable energy come from within the state in weighing proposals. SB 221 defines renewal resources as wind, solar, hydro, geothermal, and fuel derived from solid waste. PUCO is to issue new rules regarding RPS soon, and Dayton reserved the right to modify its RFP based on those rules. Proposals are due Sept. 12 (www.dplinc.com/renewablerfp.pdf).

## *ABC Licenses ...* *from 1*

to have those agents disclose in writing during their sales pitches the fact that such entities are exclusive agents of the RES.

BlueStar Energy Services recommended that the disclosure required under the exclusivity exemption be tweaked so that disclosure is required when customers are contacted by ABCs, rather than contracted. BlueStar explained that, as currently written, the draft would exempt an exclusive agent from informing customers of such exclusivity until after a contract has been signed.

"By not requiring disclosure of such exclusivity until after a contract has been signed, the purpose of this statute (consumer protection) would be undermined," BlueStar told the Commission.

BlueStar suggested the following language for the exclusive agent exemption:

"Any person acting exclusively on behalf of a single alternative retail electric supplier on condition that exclusivity is disclosed in writing to any third party contacted in such agent capacity."

The joint suppliers and ABCs proposed several changes meant to limit the ability of competitors or others to improperly use the ABC licensing process as a means to further their own commercial activities.

Accordingly, the joint suppliers and ABCs proposed that only the ICC Staff, in a pleading showing that one or more of the allegations or certifications in the ABC application is false or misleading, should be allowed to request that the Commission delay issuance of an ABC license beyond the 90-day time limit in the rule, rather than any party in the case being able to request such a delay.

The joint suppliers and ABCs also recommended that the draft be revised to prevent competitors and other disinterested persons from filing complaints that would institute an ICC investigation of a licensee's actions under the ABC codes.

A complaint that could prompt such an investigation would have to come from, "a person or entity with direct interest in the transaction with the licensee which is the subject of the complaint or any statutory consumer protection agency as defined in subsection (d) of Section 9-102.1 or on the Commission's own motion," under the joint suppliers and ABCs' proposal.

The joint suppliers and ABCs also argued for changes regarding the ability of ABCs to share pricing information.

First, the joint suppliers and ABCs would remove, "the evaluation of pricing, terms and conditions and the comparison of offers extended by ARES," as falling under the definition of "attempts to procure [electricity]" in order to more closely mirror the language in the statute. Under such a revision, "attempts to procure" would mean, "assisting retail electric customers with the intent to procure on behalf of or sell retail electric service to an electric customer in the state."

Combined with the procurement and sale focus in the definition of an ABC, the suggested change by the joint suppliers and ABCs seemingly (in our interpretation) would exempt non-brokering, “match-making” consultants that don't receive compensation from suppliers from licensing, since under the suggested definition change, the draft's requirement that ABCs that attempt to procure power must be licensed would no longer include those ABCs that simply provide pricing comparisons and do not "procure on behalf of" customers.

The draft rules currently provide that ABCs shall not present electricity pricing information in a manner that favors one supplier over another, unless a valid pricing comparison is made utilizing all relevant costs and terms. The joint suppliers and ABCs want the draft to include a provision that a customer requesting that the ABC provide pricing only from certain, customer-specified suppliers would be permissible and not considered favoritism.

BlueStar and the joint suppliers and ABCs both recommended different approaches to accomplish the same goal -- that the ABC rules exclude Illinois electric utilities providing competitive retail electric service outside of their service areas, just as the rules exclude alternative retail electric suppliers (ARES's). Technically, utilities providing such service are not considered ARES's (and do not need an ARES license), so the draft's exemption of ARES's needs to be tweaked to include such utilities.

## *Ohio Renewals ...* *from 1*

reminded, and struck a balance that permitted the customer enough time to shop the renewal, yet still enjoy a competitive renewal price. Since the 20-day rule was implemented in April 2007, marketers are unaware of any complaints from customers regarding the length of time the customer has to reject a contract renewal after receiving the renewal price.

While Staff may be concerned that the 20-day period might not allow enough time for a switch to be executed before the renewal price takes effect, marketers argued that customers are better off with the lower price and a shorter decision period, since rates of customer renewal are "very" high; only a few customers may be assisted by a longer period; and the maximum cost for the customer who does not effectuate a termination or switch within the 20 day window is "fairly small."

Marketers suggested that PUCO study specific data on the costs and the benefits of the current 20-day period versus the proposed amendment. Marketers noted that one of the reasons that customers may miss stopping an auto-renewal in the 20-day period is that a switch at LDCs with more antiquated billing systems may take two billing cycles instead of one. Therefore, the public interest may be better served by improving the billing systems of certain LDCs so that there are no extensive waiting periods for a choice customer to terminate or switch a supplier, marketers noted, suggesting that PUCO evaluate such billing system upgrade costs.

The Ohio Consumers' Counsel urged that contract renewals that include material changes must require affirmative customer consent as opposed to automatic renewal. Under Staff's proposal, only contracts longer than six months that include material changes would require affirmative consent. OCC also proposed that a "substantive" change in a supplier's ownership or operating business plan constitute a material change for contracting purposes. Staff's two notices regarding renewal should be sent to all customers with renewals, not just those with renewals lasting longer than six months, OCC added.

Marketers also sought to change the exemption that customers receive from termination fees when moving. Marketers noted that some LDCs' computer systems can now handle keeping a relocating customer moving within the same service territory with the same supplier. Thus marketers argued that customers should only be allowed to avoid termination penalties when relocating to another LDC service area, or where the LDC cannot accommodate maintaining the contract if moving within the same service area.

OCC suggested that marketers and governmental aggregators be required to adhere to the same force majeure requirements as an LDC, and found Staff's force majeure provisions to be overly complex and subjective. The Staff language is meant to allow marketers to end a contract due to force majeure without penalty, without having to give the customer right to terminate a contract without penalty.

Although OCC does not address the subject in comments, the OCC's redline regarding the force majeure language would also remove the provision that customers can terminate a contract without penalty if the supplier can do so for any other reason than non-payment or force majeure, effectively ending the notion of termination right reciprocity embedded in the current rules. OCC's redline would only allow customer termination without penalty in the case of relocation.