

Energy Choice

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Illinois Commerce Commission Adopts ABC Licensing, Conduct Rules as Final

The Illinois Commerce Commission adopted as final previously published rules regulating the licensing and behavior of electric agents, broker and consultants, after the Joint Committee on Administrative Rules certified the rules with no objection (Matters, 7/31/09). The ICC adopted the ABC rules with an effective date of November 1, 2009.

As only reported in *Matters*, the adopted rules broadly define the terms "attempts to procure" and "attempts to sell." Under the ABC law, ABCs subject to the law's code of conduct and licensing provisions are those entities which attempt to procure or attempt to sell electricity, with various exceptions (such as for a retail supplier acting on its own behalf).

An ALJ had recommended that "attempts to procure" should be defined as meaning only ABCs that have been provided with the authority by a retail customer to sign contracts for the purchase of electric power and energy on behalf of that customer (Matters, 1/15/09). The Commission called such a definition inconsistent with the Act's stated purpose of customer protection. The ICC found that Section 16-115C of the Public Utilities Act necessitates that ABC licensing must occur before ABCs enter contractual relationships with either buyers or sellers, not afterward.

Accordingly, the Commission defined "attempts to procure" as follows:

"Attempts to procure" means a third-party individual or entity which takes a substantial step to Procure electric power and energy, such as but not limited to preparing solicitations, notifying potential bidders of the solicitation, or determining the results of a solicitation; except, it shall not

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FirstEnergy Solutions Says One-Year Term of PPL POR Compels Suppliers to Credit Screen

PPL should be required to lift restrictions on customer credit screening by electric generation suppliers (EGS) participating in its POR program due to the temporary nature of the program, FirstEnergy Solutions (FES) said in a petition to intervene (Only in Matters, 9/23/09).

As only reported by *Matters*, PPL has proposed that the POR program ordered by the Pennsylvania PUC should only be in place for 2010, with the post-2010 program negotiated in a separate proceeding as per PPL's post-2010 default service settlement. Among the terms of PPL's proposed 2010 POR program is that suppliers would be required to accept any customer regardless of credit, and would not be allowed to collect deposits.

However, FirstEnergy Solutions expects that the majority of supplier contracts signed with customers will extend beyond the POR sunset date of December 2010.

"Being forced to accept all customers, regardless of credit, leaves an EGS exposed to increased credit risk should PPL significantly change the terms of the program starting January 1, 2011," FirstEnergy Solutions said.

Accordingly, FirstEnergy Solutions said suppliers must be allowed to conduct credit checks on any customer that signs a contract extending beyond December 31, 2010, since those receivables would not be guaranteed under PPL's instant proposal.

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NOPEC Cites Additional Concerns on FirstEnergy Corporate Separation Plan

The Northeast Ohio Public Energy Council cited additional concerns regarding the corporate separation plan of the FirstEnergy Ohio utilities in a surrepley brief filed with PUCO.

As only reported by *Matters*, NOPEC had previously said it has concerns about FirstEnergy Solutions' (FES) relationship with the three FirstEnergy distribution utilities, and the marketing practices of FirstEnergy Solutions (Only in Matters, 9/4/09).

In its surrepley brief, NOPEC further said that its specific concerns include, "the use and extent of the references to 'First Energy' and/or the [distribution] Companies' attributes in FES's retail advertising."

NOPEC also cited affiliate FirstEnergy Solutions' "dominant" generation market position in the FirstEnergy distribution territories as causing concern.

NOPEC further raised concern regarding the reassignment of employees from the regulated distribution companies to FirstEnergy Solutions, "and the implications of shared executive decision-making between the [distribution] Companies and FES."

D.C. PSC Adopts Higher RPS Alternative Compliance Payments

The District of Columbia PSC adopted final language to update its RPS codes to reflect the Clean and Affordable Energy Act of 2008, which, among other things, revises implementation of the carve-outs for solar energy (Only in Matters, 4/2/09).

Under the new rules, electricity suppliers shall meet the solar requirement by obtaining the equivalent amount of renewable energy credits from solar energy systems interconnected to the distribution grid serving the District of Columbia. "Only after an electricity supplier exhausts all opportunity to meet this requirement," through district-interconnected solar could the supplier obtain RECs from jurisdictions outside the District of Columbia, the language states.

Constellation Energy had said that such

language is ambiguous since nothing describes how a supplier is considered to have exhausted all opportunities to use district-interconnected solar (Only in Matters, 5/12/09). The Commission noted that the rule reflects statutory language which it cannot change, but agreed that clarification and implementation issues should be reviewed in a future rulemaking.

The new rules also raise the compliance fee for Tier I resources to \$50 from \$25 per REC. For shortfalls in solar RECs, the compliance fee has increased from \$300/REC to \$500/REC for the period 2009 through 2018.

The Commission also informed retail suppliers that several district-based solar facilities have been certified since November 2008, and said that such information is available on the PSC's website as well as the PJM-EIS website. The Commission encouraged suppliers to review the "Solar Weighted Average Price" report, available on the PJM-EIS website, to determine whether district solar RECs are available, before acquiring solar RECs from other jurisdictions.

SCMC Says N.Y. Should Use Collaborative for Future Capacity Release Changes

"Given the ubiquitous nature of capacity release which is now the policy applicable to all firm transportation service and the myriad number of issues, concerns as well as potential changes that may be proposed in the future," the current informal process used by distribution companies to file tariff changes related to capacity release is no longer sufficient, the Small Customer Marketer Coalition said in comments at the New York PSC.

SCMC was responding to Consolidated Edison and Orange & Rockland's request to implement weighted average pricing for the release of capacity to ESCOs on November 1, 2009. SCMC joined Hess Corporation in asking for a one-year delay in implementation to allow ESCOs to include the new pricing regime in their retail contracts (Only in Matters, 9/28/09).

"[U]tilities contemplating modifications to existing capacity release program[s] should notify the ESCO community and Staff of the proposed changes and thereafter a collaborative process [should] be instituted

under which all interested parties would have the opportunity to examine the proposal, obtain underlying and related data as well as present ... views and concerns to the utilities and Staff," SCMC said.

"Such a collaborative structure process would provide a more structured, contemplative and useful process by which to examine proposed changes to capacity release service which ultimately will have a material and far reaching impact upon retail access to gas customers in the State of New York," SCMC added.

"For these reasons SCMC respectfully requests that the Commission direct the utilities to implement a collaborative process to discuss all proposed changes to their capacity release service programs."

Pa. ALJ Recommends Approval of UGI-Gas Division Settlement

A Pennsylvania ALJ has recommended approval of an uncontested settlement among UGI Utilities - Gas Division, the Retail Energy Supply Association and other parties which would, among other things, require UGI to defer implementation of pipeline direct assignments until December 1, 2010 (Only in Matters, 8/24/09).

Under the recommended stipulation, the mix of pipeline capacity directly assigned to choice suppliers will reflect the suppliers' pipeline delivery obligations. Such a requirement will ensure that suppliers can meet their peak day requirements and will enhance reliability to customers, RESA said.

Furthermore, UGI agrees to provide eight months notice to suppliers of any intent to commence the direct assignment of storage capacity to choice suppliers. The various capacity release deferral or notice provisions will provide suppliers with a reasonable opportunity to incorporate the pricing changes associated with capacity release programs into their contracts, and customers will have time to adjust their contract terms, RESA said.

Under the settlement, the choice tariffs would be clarified to hold that capacity released by UGI to choice suppliers will be recalled on critical days only in cases where the choice supplier fails to have such released capacity scheduled for delivery in the first NAESB-defined timely

nomination cycle.

UGI will continue to communicate daily delivery requirements to choice suppliers through EDI transactions. Peak day requirements relating to the pipeline assignment beginning next year will be communicated electronically via EDI and other means.

UGI also agrees to reduce its swing supply service volumes by one half beginning in December 1, 2009. For its remaining swing supply service volumes, UGI will submit a plan in its 2010 Purchased Gas Cost filing detailing whether swing service should be continued, modified, or eliminated for the period beginning December 1, 2010.

A stipulation at UGI Penn Natural Gas with similar provisions has also been recommended for approval (Only in Matters, 9/11/09).

OPC Says WGL Imbalance Penalties Should be Tied to Market Prices

The District of Columbia PSC should raise Washington Gas Light's proposed penalties to be imposed on competitive suppliers falling outside of an imbalance tolerance if natural gas prices increase, the Office of People's Counsel said in supporting WGL's petition to institute a daily nomination and delivery requirement for all interruptible delivery volumes.

As only reported by *Matters*, WGL's proposed tariff revisions would make competitive suppliers directly responsible for shortfalls of deliveries during curtailment, and would more clearly delineate the responsibility of an interruptible customer when notice of curtailment or interruption is provided by WGL (Only in Matters, 7/13/09).

Under WGL's proposal, suppliers not delivering within the daily 15% tolerance level would be subject to a penalty of \$10 per dekatherm during normal operating conditions, and \$25 per dekatherm during balancing curtailments or operational flow orders. WGL has also applied to raise the fee for interruptible balancing from the current \$0.002 per therm to \$0.006 per therm due to cost increases in offering the service, which are currently being borne by firm service customers.

While finding the proposed charges to be

appropriate, OPC said that the penalties should be increased if gas prices increase, to discourage competitive suppliers from relying on resources paid for by firm customers. The penalties must keep pace with market conditions to ensure that the fees are not lower than the cost of interrupting customers, OPC said.

Briefly:

Maine PUC Approves CMP, BHE Mass Market Standard Offer Rates

The Maine PUC approved new Standard Offer rates for residential and small commercial customers at Central Maine Power and Bangor Hydro-Electric for the 12-month period beginning March 1, 2010. At CMP the new Standard Offer rate is \$0.090286/kWh, and at BHE the rate is \$0.0878204/kWh.

Constellation Energy Projects & Services Seeks Ohio Broker License

Constellation Energy Projects & Services Group applied for an Ohio electric broker/agggregator license to serve commercial, industrial and mercantile customers in all service territories.

Energy Management Resources of Missouri Applies for Ohio Broker License

Energy Management Resources of Missouri applied for an Ohio electric broker/agggregator license to serve commercial, industrial and mercantile customers in all service territories. Energy Management Resources said that in the 2008 contract year, it managed contracted energy of 4,894,132,000 kWh and 56,578,000 MMBtus across a national footprint.

Scioto Energy Seeks Ohio Broker License

Scioto Energy applied for an Ohio electric broker/agggregator license to serve commercial, industrial and mercantile customers in all service territories. Scioto was formed last year by Greg Bechert, who formerly managed Constellation NewEnergy's Midwest sales team.

Early Bird Power Receives Ohio Electric License

Early Bird Power was granted an electric aggregator/broker license by the Public Utilities Commission of Ohio to serve non-residential

customers at all utilities (Only in Matters, 8/25/09). Early Bird Power was recently awarded an Ohio gas license as well.

Patriot Energy Receives Ohio License

Patriot Energy Group was granted an electric aggregator/broker license by the Public Utilities Commission of Ohio to serve non-residential customers at all service areas (Only in Matters, 8/25/09).

D.C. PSC Adopts Updated WFRSA

The District of Columbia PSC adopted the SOS working group's proposed Wholesale Full Requirements Service Agreement and Request for Proposals for the next District of Columbia SOS solicitation (FC 1017, Matters, 8/4/09). The PSC ordered two minor changes to reflect the recent codification of current SOS rules including the non-residential minimum stay (Only in Matters, 6/30/09), and to update the reference to the applicable statute governing RPS due to legislative changes in 2008.

First Choice Power Lowers Prices Again

First Choice Power said it is again lowering prices in October, cutting rates up to 15%, due to lower commodity prices.

ABCs ... from 1

include an individual or entity providing professional services incidental to the procurement of retail service, such as but not limited to legal, accounting or engineering services.

The provision exempting services incidental to procurement is meant to assuage concerns raised by certain suppliers that the broader definition would cause attorneys, accountants, bookkeepers, or financial advisors to be licensed as ABCs.

The Commission also modified the definition of "attempts to sell" as follows:

"Attempts to sell" means a third-party individual or entity which takes a substantial step to sell electric power and energy to end user customers, such as but not limited to soliciting customers, making offers or preparing contracts; except, it shall not include an individual or entity providing professional services incidental to the

sale of retail service, such as but not limited to legal, accounting or engineering services.

The ICC removed a second part of the proposed "attempts to sell" definition which had referenced, "an individual or entity who receives compensation, salary or other remuneration from a [retail supplier]." The Commission was concerned that the stricken language could have been construed as applying to salaried employees of a supplier, even though the ABC Act exempts any licensed retail supplier acting on its own behalf from the ABC rules.

Rejecting a recommendation from several suppliers, the Commission declined to allow an ABC to comply with the required disclosure to customers of the ABC's anticipated remuneration through an oral disclosure. Consistent with the Act, the ICC will require all ABCs to provide written disclosure of their remuneration prior to entering into the contract. The disclosure statement must also be signed by the customer.

The ICC also rejected recommendations from certain suppliers to prevent competitors from filing complaints under the ABC rules and from requesting hearings in ABC license applications.

As adopted by the Commission, any person or entity required to be licensed as an ABC shall:

a) Disclose in plain language in writing the nature of the services offered by the ABC;

b) Disclose in plain language in writing to all persons it solicits the total anticipated remuneration to be paid to it by any third party over the period of the proposed underlying customer contract. Any such disclosure must be made prior to entering into the contract and signed by the customer;

c) Not hold itself out as independent or unaffiliated with any retail supplier, or both, or use words calculated to give that impression, unless the person or entity offering service under Section 16-115C of the Act has no contractual relationship with any retail supplier or its affiliates regarding retail electric service in Illinois;

d) Not utilize false, misleading, materially inaccurate, defamatory or otherwise deceptive language or materials in the soliciting or providing of its services;

e) Maintain copies of all marketing materials disseminated to third parties for a period of not

less than three years;

f) Maintain copies of all disclosure statements required in subsections (a) and (b) for a period of not less than three years;

g) 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; and

h) Comply with the requirements of Sections 2EE, 2FF, 2GG and 2HH of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE, 2FF, 2GG and 2HH].

The approved rules also establish licensing requirements (including a bonding requirement) and application procedures. Annual reports must be filed by ABCs as well.

The rules do not apply to the following:

1) Any retail supplier offering retail electric service on its own behalf;

2) Any person or entity acting exclusively on behalf of a single retail supplier on condition that exclusivity is disclosed to the customer;

3) Any person or entity representing a municipal power agency, as defined in Section 11-119.1-3 of the Illinois Municipal Code [65 ILCS 5/11-119.1-3];

4) Any person or entity that attempts to procure retail electric service on behalf of, or sell retail electric service to, a third party that has an aggregate billing demand of all of its affiliated electric service accounts in Illinois of greater than 1,500 kW;

5) A retail customer that operates or manages, either directly or indirectly, any facilities, equipment or property used or contemplated to be used to distribute electric power or energy if that retail customer is a political subdivision or public institution of higher education of Illinois; or

6) Any corporation, company, limited liability company, association, joint-stock company or association, firm, partnership or individual, or their lessees, trusts or receivers appointed by any court whatsoever that are owned or controlled by the political subdivision, or public institution of higher education, or are operated by any of its lessees or operating agents.

PPL ... from 1

Dominion Retail agreed that the temporary nature of PPL's proposed POR program creates, "significant concern and uncertainty" for suppliers, and said in a motion to intervene that the temporary aspect of the program must be changed.

FirstEnergy Solutions is also concerned that PPL's proposed residential customer discount of 1.37% is "too large and does not satisfy the Commission guideline of 'little or no discount' as set forth in the Tentative Order."

"This discount will have a direct and substantial impact on the competitiveness of offers from FES," FirstEnergy Solutions said.

As only reported in *Matters*, the proposed discount rate for residential customers is 1.37%, and the proposed discount rate for small commercial customers is 0.17%. Dominion Retail said such a wide variance between the two discount rates, "does not seem to be either plausible or appropriate under the circumstances."

PPL would also require suppliers using utility consolidated billing to participate in the POR program, which FirstEnergy Solutions called, "inconsistent with the spirit of a voluntary program."

POR and utility consolidated billing are separate programs which should not be linked, FirstEnergy Solutions said.

"Forcing an EGS to participate in the POR program creates a disincentive to an EGS that is able to control uncollectible expenses at a rate in excess of the POR program discount rate and who could otherwise have a competitive advantage," FirstEnergy Solutions noted.