

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On Its Own Motion)	Docket No. 09-0592
)	
Adoption of 83 Ill. Adm. Code 412 and)	
Amendment of 83 Ill. Adm. Code 453.)	

BRIEF ON EXCEPTIONS
OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION

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NATIONAL ENERGY MARKETERS ASSOCIATION**

The National Energy Marketers Association (NEM)¹ hereby respectfully submits its Brief on Exceptions pursuant to Section 200.830 of the Commission’s Rules of Practice, 83 Ill. Adm. Code 200.830, to the Administrative Law Judge’s Corrected Proposed First Notice Order (“Proposed Order”) issued on March 18, 2011. In its Brief on Exceptions, NEM will address the following three issues: 1) the Proposed Order and proposed regulations should be modified to permit the disclosure statement to accurately express the terms of a competitive fixed rate contract; 2) the Proposed Order and proposed regulations should be changed to provide a three day rescission period for consumers; and 3) the Proposed Order and proposed regulations should be clarified to consistently reject the provision of an additional ten day period after receipt of the first bill to terminate a contract without a termination fee. NEM also offers language to change a typographical error.

¹ The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

This document reflects the views of the National Energy Marketers Association and does not necessarily reflect the views of any specific member of the Association. NEM notes that there may be individual member(s) that have different views on the issues herein.

I. The Proposed Order and Proposed Regulations Should be Modified to Permit the Disclosure Statement to Accurately Express the Terms of a Competitive Fixed Rate Contract (Proposed Order Section III.B.3).

Section III.B.3 of the Proposed Order and the proposed regulations would require supplier Disclosure Statements to include the expression of the price per kilowatt hour for power and energy service. In particular, with respect to fixed price contracts, the supplier would have to, “provide the total average price for electric supply and delivery service reflecting all recurring charges, excluding state and local sales taxes.” (Proposed Subsection 412.110(o)(1)). NEM recognizes and supports the Commission’s intent to provide consumers with adequate disclosure of the products that they are contracting for with a supplier. However, we are concerned that the proposed regulatory language as drafted would have the unintended consequence of increasing risks and costs to suppliers. This is because the utility delivery service rate component of a fixed rate contract is subject to change and may not remain fixed, without notice to the supplier. Indeed, delivery service rate changes are proposed solely by the utility and subject to approval by the Commission. Therefore, the Proposed Order and proposed regulations should be modified to permit the Disclosure Statement to accurately express the terms of a competitive fixed rate contract, by which the “fixed” nature is referring to the commodity component of the rate and not the utility delivery service component of the rate, which can and does vary over time.

The language of the Proposed Order at page 15 should be clarified as follows:

The Commission finds the RESs must fully disclose their pricing components. We believe it is best to regulate the method the RES uses to disclose their pricing to consumers in an effort to maintain continuity. The Commission finds the RES is required to disclose their fixed-price services on a kilowatt per hour basis to best serve the customer, **but also recognizes that the overall price may vary due to changes in the utility delivery service rate.** We reject the revisions that impose the responsibility of customer disclosure on the underlying utility, therefore the Commission will adopt the language as revised.

(Change indicated in bold).

The language in Appendix A, Subsection 412.110(o)(1) at page 6 should be clarified as follows:

12) If a product is being offered at a fixed per kilowatt hour rate that does not change for the duration of the term, the RES shall provide the total average price for electric supply and delivery service reflecting all recurring charges, excluding state and local sales taxes. **The actual price may vary from the disclosed amount due solely to local utility delivery service rate changes.**

(Change indicated in bold).

II. The Proposed Order and Proposed Regulations Should Be Changed to Provide a Three Day Rescission Period for Consumers (Proposed Order Section IV.B.)

The Proposed Order in Section IV.B provides that residential customers would have ten calendar days to rescind a contract from the date the utility processes their enrollment request (Proposed Order at 23), and the Proposed Order rejected the proposal to provide a three day rescission period. (Proposed Order at 24). The Proposed Order should be revised to provide a three day right of rescission to a consumer that runs from the date of the consumer's signing of the contract. (NEM Initial Brief at 2). The Proposed Order does not acknowledge that current Illinois statute and administrative laws expressly provide for a three-day rescission period. (NEM Initial Brief at 3).

Significantly, NEM notes the recent Proposed Order issued in Docket 09-0460 pertaining to the Ameren UCB/POR settlement in Docket 08-0619 that incorporated a ten-day rescission period for internet enrollments by residential consumers. The Proposed Order in Docket 09-0460 would require Ameren to reform its tariff to provide residential consumers with a three business day right of rescission, consistent with Section 453.40(a)(4) of the Commission's existing regulations. (Proposed Order, Docket 09-0460, dated March 4, 2011, at page 7).

The language of the Proposed Order at pages 23-24 should be changed as follows:

The Commission finds ~~the 10-day enrollment~~ **that a three day** rescission period **from the date of the consumer's signing of the contract** is reasonable and appropriate for this Rule. ~~We believe the consumer should be afforded an adequate amount of time to receive confirmation of enrollment and determine whether they will rescind the contract.~~ The Commission finds a 3-day rescission period is ~~a not~~ sufficient **amount of time within which a consumer can make the determination** to determine when a customer should cancel his or her enrollment. ~~Therefore, the Commission will adopt this Section.~~

(Changes indicated in bold and strikethrough).

The language of Appendix A, Section 412.210 at pages 12-13 should be changed as follows:

The customer has the ability to rescind the contract with the RES before the RES submits the enrollment request to the electric utility. Within one business day after ~~accepting~~processing a valid electronic enrollment request from the RES, the electric utility shall notify the customer in writing of the scheduled enrollment and provide the name of the RES that will be providing power and energy service. The written enrollment notice from the electric utility shall state the last day for making a request to rescind the enrollment, and provide contact information for the RES. The written enrollment notice from the electric utility to non-residential customers shall state that non-residential customers with annual usage above 15,000 kWh may incur early termination fees and that customers shall contact the RES if they are unsure about their annual electric usage. If a residential ~~the~~ customer wishes to rescind the pending enrollment with the RES, the customer will not incur any early termination fees if the customer contacts either the electric utility or the RES within **three days of the consumer's signing the contract** ~~ten calendar days after the electric utility processes the enrollment request.~~ If a small commercial customer wishes to rescind the pending enrollment with the RES, the customer will not incur any early termination fees if the customer contacts the RES within three days of the consumer's signing of the contract ~~ten calendar days after the electric utility processes the enrollment request.~~ If the ~~third~~third ~~calendar~~ day falls on a non-business day, the rescission period will be extended through the next business day. In the event the residential customer provides notice of such rescission to the electric utility, the electric utility shall notify the RES. ~~Nothing in this section prohibits a utility from~~

~~accepting a request to rescind a pending enrollment by a RES from customers other than residential customers or small commercial customers.~~

(Changes indicated in bold and double strikethrough).

III. The Proposed Order and Proposed Regulations Should Be Clarified to Consistently Reject the Provision of an Additional Ten Day Period After Receipt of the First Bill to Terminate a Contract Without a Termination Fee (Proposed Order Section IV.D.)

Section IV.D of the Proposed Order and the proposed regulations address early termination fees in a confusing and possibly contradictory manner. The Analysis & Conclusions portion of the Proposed Order would reject the provision of an additional ten day period after the consumer receives its first bill to terminate a contract without a termination fee, finding that to do so would be “at great expense to the remaining consumers in the form of higher costs.” (Proposed Order at 25). The Proposed Order would properly focus on the requirements that termination fees be reasonable and fully disclosed to the consumer rather than prohibit or unnecessarily restrict the use of early termination fees. (Id.) NEM agrees with such a result because early termination fees do allow marketers to control their costs to serve consumers by managing their risk, and when early termination fees are adequately disclosed to consumers up-front, they serve a valid and important role in the marketplace. (NEM Initial Brief at 4-5). The Proposed Order recognizes these conditions. (Proposed Order at 25). However, the proposed regulatory language in Appendix A, Section 412.230 appears to reach a contradictory result. The language in proposed Section 412.230 would allow a consumer to terminate a contract, “without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES one time per 12-month period.”

For clarification purposes, the language in the Analysis & Conclusions portion of the Proposed Order at page 25 should be modified as follows:

The Commission will adopt this Section with revision. We find that a once per 12-month early termination fee waiver is not reasonable under the circumstances. There are many other variables which would cause the amount billed to differ from the amount charged on the contract, some of which cannot be directly attributed to the RES. The Commission will not adopt language that allows the consumer to terminate their contract, at great expense to the remaining consumers in the form of higher costs. We find the opportunity for the consumer to rescind their contract ~~within 10 days of enrollment~~ is already present in Section 412.210. **The consumer is therefore adequately protected, and we will not require an additional ten business day period after receipt of the first bill in which a consumer can rescind the contract without an early termination fee.** In addition, the parties have not introduced any data to support a finding that capping the early termination fee at \$50 is reasonable. Although the parties have alluded to a formula to calculate the early termination fee, no actual calculations were provided for the Commission to consider. Thus, we find the early termination fee should be reasonable given the relative cost to the RES. Finally, we find that full disclosure of the terms and conditions of the contract should be provided to each customer. These issues have been addressed as set forth in Section 412.110.

(Changes indicated in bold and strikethrough).

The language in Appendix A, Section 412.230 at page 13 should be conformed to the conclusion reached in the Proposed Order and be reworded as follows:

Any ~~contract agreement~~ between a RES and a customer that contains an early termination fee shall disclose the amount of the ~~early termination fee, or the formula used to calculate the termination fee.~~ ~~Any contract agreement that contains an early termination fee shall provide the customer the opportunity to contact the RES to terminate the contract agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES one time per 12-month period.~~ ~~The contract agreement shall disclose the opportunity and provide a toll-free phone number that the customer may call in order to terminate the contract agreement.~~ ~~This requirement does not relieve the customer of obligations to pay for services rendered under the contract agreement until service is terminated.~~

(Changes indicated in double strikethrough).

III. Typographical Errors (Proposed Order Section I)

The Procedural Background, Section I of the Proposed Order at page 2 should be corrected as follows:

“Commission Staff, AG, ComEd, Ameren, Blue Star, Dominion, ICEA, IIEC, **NEMA** and RESA filed initial briefs on August 27, 2010.”

(Change indicated in bold).

IV. Conclusion

For the reasons discussed herein, NEM respectfully requests that the Commission modify the Proposed Order and Appendix A in accordance with the arguments and exceptions language provided.

Respectfully submitted,

THE NATIONAL ENERGY MARKETERS
ASSOCIATION
s/Craig G. Goodman

By _____

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Dated: April 8, 2011.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the Brief on Exceptions of the National Energy Marketers Association upon the service list for Docket No. 09-0592 by email on April 8, 2011.

S/ Craig G. Goodman

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