

**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.)

**INITIAL BRIEF
OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION**

Dated: August 27, 2010

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This proceeding involves the promulgation of consumer protection rules that will govern the provision of electric customer choice service by competitive retail energy suppliers. The National Energy Marketers Association (NEM)¹ believes that the most effective consumer protection rules are premised on the fundamental requirement of informed consumer consent derived from accurate, affirmative statements from marketers that disclose the attributes of contracted-for products and services and likewise require accurate, affirmative statements of RES identification. Consumer protection regulations can and should be narrowly tailored to accomplish this objective. Rules that are unnecessarily prescriptive of marketer behavior result in increased costs being borne by the competitive marketplace and restrict marketers' ability to offer innovative products in response to consumer preferences.

Coincident with the initiation of the instant case, NEM adopted a Consumer Bill of

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.

Rights² evincing marketers' commitment to ethically serve energy consumers. NEM's Consumer Bill of Rights proactively addresses the need for clear marketer responsibilities and consumer expectations with respect to appropriate marketing practices and informs our arguments herein. Marketers are keenly interested in providing a superior level of customer service and satisfaction to consumers. This is one of the many ways in which marketers offer added value. Marketers must be acutely aware of and focused on identifying and serving their customer needs. Indeed, a sustainable, long-term marketer business plan can be founded upon nothing less.

The references to proposed rule sections in NEM's Initial Brief are to the proposed rules appended to Staff's reply comments filed in this matter. 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 specific members have different views on the issue of rescission and cancellation, with certain members supporting the ten day recommendation.

I. Consumers Should Have a Three-Day Rescission Period from the Date of the Signing of the Contract

NEM opposes the proposed language in Section 412.210 that would allow a customer to rescind its contract upon contacting the utility or the RES within ten days of the utility's acceptance of the enrollment request. NEM supports the provision of a three day right of rescission to a consumer that runs from the date of the consumer's signing of the contract. (See also Surreply Comments of Bluestar Energy Services at 4-6). NEM submits that the proposed rule, by providing a ten-day rescission period, is inconsistent with current

² The full text of the NEM's Consumer Bill of Rights is attached hereto and also available at: http://www.energymarketers.com/Documents/Consumer_Bill_of_Rightsfinal_formatted.pdf.

Illinois statute and administrative laws that expressly provide for a three-day rescission period. (See 83 Ill. Adm. Code 453.40(a)(4) and Section 2EE of the Consumer Fraud and Deceptive Business Practices Act). Moreover, although the Ameren UCB/POR settlement in Docket 08-0619 incorporated a ten-day rescission period, given the generic import of this rulemaking and the broader cross-section of potentially-affected stakeholders, the non-unanimous Ameren settlement should not be construed to prejudge the outcome of the instant case.

Likewise, NEM submits that the proposed rule is inconsistent with consumer understanding and expectations in keying the right of rescission to the utility enrollment process rather than the consumer's contract. It is highly unlikely that the average consumer will have a grasp of the concept of what a DASR is, nor will they logically associate their rescission rights or performance obligations under a contract with the utility enrollment process derived-concept of a DASR.

Additionally, if the rescission period were extended from three days to ten days, it would significantly increase ARES' risk in serving consumers, particularly with fixed price or other hedged energy products. By increasing the risk to marketers in serving consumers, it will eventually be reflected as an unnecessary and otherwise avoidable increased cost in energy to those consumers.

Proponents of a ten-day rescission period have failed to justify a departure from a three-day rescission period in the record in this case and it should be rejected.

II. Early Termination Fees Serve a Legitimate Role in the Marketplace and Should Not be Restricted in the Manner Proposed

NEM opposes the language in proposed Section 412.230 that would allow a customer, “the opportunity to terminate the 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.” Rather than restricting early termination fees (ETFs) in the manner proposed, NEM believes that the proper focus should be on ensuring that consumers have received accurate disclosure of the terms and conditions of the service that is being offered up-front, including the termination fee, if applicable. (See also Bluestar Surreply at 8). Indeed, if the consumer is not made aware of the termination fee up front, the marketer should be precluded from collecting it. The underlying premise of this proposed Section is that the customer was not aware of the terms and conditions of the contracted-for service. NEM supports well-designed consumer protection rules that ensure accurate disclosure of terms and conditions, including early termination fees. If those rules are established and complied with, there should be no need to defer the applicability of an early termination fee, or cap its level, beyond the currently applicable three-day right of rescission. It is for this reason that we also oppose the CUB/AG proposal to cap ETFs at \$50. (CUB/AG Surreply at 13-14).

Termination fees serve an important purpose for marketers. There are significant costs associated with terminations, particularly when the customer has enrolled in a fixed price program or other hedged pricing service (such as capped variable). The marketer must “unwind” the hedge and is subject to substantial market risk in doing so. Moreover, this proposed limit on ETFs could encourage consumers to knowingly and willingly enter into contracts that they fully understand and then unfairly take advantage of the extended

window to back out of the deal without consequence if they find a lower priced offer. Meanwhile, the marketer that actively hedged to provide commodity service to that customer would bear the financial detriment of the customer's decision.

NEM is particularly concerned about the applicability of the proposed rule requirements to small commercial customers. Allowing small commercial customers to terminate an agreement ten days after the date of their first bill would impose a significantly higher risk on RESs. The application of the proposed rule to small commercial customers is particularly unnecessary because these customers possess the requisite sophistication to enter in many complex transactions attendant with their businesses, including energy choice decisions.

NEM also does not support Staff's proposed alternative to allow a customer to cancel a contract without an ETF one-time per 12 month period. (Staff Reply Comments at 41-42). This does not address the fundamental risks marketers will bear in allowing customers to terminate contracts after their first bill when they have been fully informed and educated about the contract they chose to enter into. We also question how Staff's proposal could work in practice given existing minimum stay requirements. (See 220 ILCS 5/16-103(d)).

III. Marketers Should Not be Restricted From Offering Fixed Charge Service

NEM opposes the CUB/AG proposal to restrict RESs from offering fixed charge service, in other words, only to allow per kwh charges. (CUB/AG Surreply at 3-6). While such a proposal may have been made in the spirit of providing greater price transparency, we believe that it would undermine the availability of innovative product offerings in the marketplace. With the introduction of POR/UCB, mass market energy consumers will

have increased competitive energy choice options available to them. Now is not the time to restrict marketers in their ability to innovate in response to consumer needs and preferences. There is no question that consumers require and deserve full and accurate descriptions of contracted-for energy products. This, however, does not mean that marketing standards should incorporate an unnecessarily restrictive price disclosure paradigm.

IV. Conclusion

The development of the competitive retail electric market has reached a critical juncture in Illinois. With the introduction of measures such as utility POR programs, marketers will be able to enter the Illinois market and serve consumers in a more cost-effective way. With the influx of marketing activity, all due care must be taken to ensure that consumers are appropriately protected. NEM's arguments are offered to ensure that the consumer protection rules that are ultimately adopted provide consumers with adequately protection in the marketplace but likewise recognize valid and appropriate concerns of marketers.

Respectfully submitted,

THE NATIONAL ENERGY MARKETERS
ASSOCIATION

s/Craig G. Goodman

By _____

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Dated: August 27, 2010.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the Initial Brief of the National Energy Marketers Association upon the service list for Docket No. 10-0138 by email on August 27, 2010.

S/ Craig G. Goodman

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