

## REQUEST FOR COMMENTS

To: All SB1299 workshop participants and other interested parties

Date: August 28, 2008

From: Torsten Clausen  
Office of Retail Market Development  
Illinois Commerce Commission

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The Office of Retail Market Development is taking a fresh look at existing requirements for providers of retail electricity services in Illinois and is looking for input from all interested parties. The list of questions presented here are not meant to be all-inclusive but Staff believes they provide a good starting point for further discussions.

For this inquiry, Staff asks the following:

1. Even if you do not have an opinion on all of the following topics, we encourage you to provide comments on the topics that are of interest to you.
2. It is intended that all comments be publicly available, probably through posting on the ICC web site. Please send your comments by September 29th, 2008. If you wish to provide reply comments, please do so by October 13th, 2008.
3. Please send your comments and reply comments to the following persons:  
Torsten Clausen (tclausen@icc.illinois.gov), Christy Pound (cpound@icc.illinois.gov), and Joseph Fallah (jfallah@icc.illinois.gov).

Constellation NewEnergy, Inc. (“Constellation”) is a certified alternative retail electric supplier (“ARES”) in Illinois. Since the introduction of customer choice in the Illinois electric industry in 1999, Constellation has been an active participant in the Illinois retail market. Constellation has been active in virtually all of the regulatory proceedings before the Commission involving electric industry restructuring and has served as an advocate for fair and competitive open markets that are designed to provide customers with an array of competitive options. Constellation appreciates the efforts of the Office of Retail Market Development (“ORMD”) to adopt measures that will help advance the development of competition for residential and small commercial customers as envisioned in SB 1299.

The absence of a response to a particular question should not be construed as a lack of interest or concern related to such question.

I. Public Act 95-0700 authorizes the Commission “ to establish retail choice and referral programs to be administered by an electric utility or the State in which residential and small commercial customers receive incentives, including, but not limited to, discounted rate introductory offers for switching to participating electric suppliers.”

1. Please state the benefits you anticipate from establishing retail choice and referral programs.

The main benefit Constellation anticipates from the establishment of retail choice and referral programs is customer choice, itself. In the end, customers and the competition among retail electric suppliers (RESs, which include ARES and electric utilities competing outside their service territory) for the loyalty of those customers will discipline the market.

Additionally, the mere existence of customer choice can have a beneficial effect. As has been seen already in the retail electric market among larger businesses and public sector customers, there is likely to emerge – among residential and small commercial customers – an interest in convenience, quality, environmental attributes, and enhanced control over energy usage. In summation, retail electric choice and referral programs incent suppliers to innovate across the board, benefiting all consumers.

2. What are your concerns relating to the creation of such programs?

Constellation’s main concern regarding the creation of retail choice and referral programs is the knowledge that transaction costs will determine the success (or failure) of these programs. We have found that various well-intentioned requirements may result in increased transaction costs which actually create barriers to entry into the market.

Other Constellation concerns include:

- With respect to “purchase of receivables” as a means of reducing transaction costs, the discounts should be reasonable and not prohibitive.
- Start-up/implementation costs allocated to the program should be fair and amortized over a reasonable period.
- Eligibility and tariff requirements must not be allowed to develop in an anti-competitive manner or be treated so as to allow unilateral action by a utility that may result in needless barriers to entry.
- Consumer protections should be consistent with the principles of customer choice and not overly burdensome. A safeguard should be developed to protect consumers from unscrupulous RESs and should simultaneously facilitate and be compatible with the development of competition for residential and small commercial customers.

3. What are important characteristics of such programs?

Constellation finds the following to be important characteristics of retail choice and referral programs:

**Fixed Discount Program**

- A percentage discount off of the utility's supply rate for a set number of billing periods
- Online enrollment or bill insert postcard
- Toll-free telephone number

**New Customer Programs**

- Referral to participating suppliers on a random or other non-discriminatory basis for customers initiating new service
- Customer Call Center Referral Program: Customers that call the utility call center would be referred to enrollment with an ARES
- Purchase of Retail Electric Supplier (RES) accounts receivable, with no discount

4. Would you prefer these programs to be administered by an electric utility or the State? Please describe your preferred administration of these programs as detailed as possible.

Constellation's preference would be to have these programs administered by an electric utility, along with the appropriate oversight and direction provided by the Commission Staff. There must be active ICC Staff opportunity for prompt resolution of problems or disputes.

Furthermore, our preferred administration mode for these programs would include:

- Coordination between electric distribution utilities and RESs to promote non-discriminatory access to electric services
- Ensure timely enrollment
- Seamless electric service for customer
- Timely and accurate switching (DASR) of the customer's electric service between RES providers

5. From a procedural standpoint, what is the preferred manner in which the Commission would establish and/or approve such programs? Should these programs be part of an electric utility's tariff?

In order to move the process along, Constellation is in favor of an accelerated collaborative workshop to develop program details that can be put into place via utility tariff filings in some expedited process. The goal of the workshop process should be to create a proposed plan to be filed with and approved by the Commission. If there is a need to adopt of any Administrative Rules to support these programs that can likewise proceed on an expedited process.

II. The statute describes three possible retail choice and referral programs as follows:

(1) An introductory fixed discount program in which suppliers participating in the program offer customers a fixed percentage discount off of the electric utility's supply rate for a set number of billing periods. Customers would be able to enroll in the program by using an online enrollment form, completing an enrollment card found in their monthly electric utility bill, or by calling a toll-free number. Customers would be free to withdraw from the program at any time and select another alternative retail electric supplier or return to the electric utility.

(2) A new customer program in which electric utilities would offer consumers initiating new electric service a choice of offers from participating electric suppliers to provide the consumer's electric supply service. Customers expressing a preference for a specific electric supplier would be enrolled with that supplier. Customers not expressing a preference for a specific electric supplier would be offered the opportunity to enroll with an electric supplier selected randomly on a rotating basis.

(3) A customer service call center referral program in which customers calling an electric utility's call center would be offered enrollment with an alternative retail electric supplier and informed that they have the option to receive immediate savings or introductory offers by participating in the referral program. Customers choosing to participate would be transferred to a customer service representative for the program and would either select the electric supplier from which they would like to take service or be placed with a participating electric supplier chosen at random on a rotating basis.

1. Please comment on the desirability of having any of these three programs implemented and what the role of the electric utilities, the participating suppliers, the Commission, and others, if any, should be.

All three programs have merit and should be considered by the Commission Staff, RESs, ComEd, and Ameren. All such parties should have an active role in the development of such programs. Of the three programs, the 2<sup>nd</sup> and 3<sup>rd</sup> programs appear to be the most desirable to Constellation. The following are comments on each of the programs:

#### **Program #1**

This program likely does not account for the risk to the supplier of wholesale price changes, subsequent to the setting of the discount and the request by the customer for enrollment.

Also supply risk is present due to the "withdrawal right". This plan does, however, have the merit of reaching out to all utility customers as part of an educational effort and the form does simplify the product offering.

## Program #2

This program has a number of benefits to new customers that might be unfamiliar with their energy choice options in Illinois but have some familiarity with such programs in other states.

## Program #3

This program is strictly a referral program and therefore has the merit of reducing acquisition costs. Such an approach, as found in this program, would only deal with those customers who are already expressing an interest in competitive retail electric service.

At the outset of any collaborative workshop process, the Commission should direct the electric utilities and RESs to agree to the following:

As part of their coordination with RESs to promote nondiscriminatory access to electric service, EDUs and RESs shall work together to develop mutually acceptable programs that facilitate customer' understanding of their retail electric supply options and that enable customers to conveniently chose a RES when contacting the EDU.

2. Are there other retail choice and/or referral programs that you would like the Commission to consider? If so, please describe the characteristics of such programs in detail. For example, do you believe there should be other incentives and/or programs offered to low income consumers in Illinois? If so, should these be based on LIHEAP qualifications and what funding mechanism should be used?

Constellation recommends the Commission analyze and study the different type of such programs utilized in the State of New York and any other similar programs that have been utilized in the natural gas industry. It is our understanding that the programs in New York have been documented as enhancing competition for residential and small commercial customers.

- III. The law further states that “reasonable costs associated with the implementation and operation of customer choice and referral programs may be recovered in an electric utility's distribution rates, except that any costs associated with any introductory discount for switching to a supplier shall be assumed by that supplier. Reasonable costs associated with the implementation and operation of a customer choice program may also be recovered from retail electric suppliers participating in a customer choice and referral program.”

1. Please describe your preferred cost recovery mechanism in detail.

Because customer choice is available to all customers and, as noted above, the mere existence of competition itself disciplines the market. As a result, all residential and small business customers will benefit from an effective customer choice program that operates smoothly.

Therefore, Constellation recommends the implementation of a cost recovery mechanism that allocates the bulk of the costs as a non-bypassable charge collected through delivery service tariffs. Generally speaking, specific costs should not be assessed against suppliers on an account-by-account basis, with the possible exception of a specific service fee for a discreet function occasioned by the switch.

## Section 2

- I. Section 16-117 (b) of the PUA requires the Commission to “implement and maintain a consumer education program to provide residential and small commercial retail customers with information to help them understand their service options in a competitive electric services market, and their rights and responsibilities.”

While the initial implementation of the program was required to be done in the 1999-2002 time frame, Staff is interested in the possibility of re-focusing the education program. Section 16-117(j) states that “each year the General Assembly shall appropriate money to the Commission from the General Revenue Fund for the expenses of the Commission associated with this Section.”

Given that Section 16-117(k) requires the Commission to study the effectiveness of the consumer education program and complete such study “by January 31<sup>st</sup> of each year during the mandatory transition period”, Staff is interested in the parties’ assessment regarding the program’s continued statutory support.

Staff is encouraged by the fact that the General Assembly did not establish a sunset date for Section 16-117 when it originally enacted the Section as part of the Electric Service Customer Choice and Rate Relief Law of 1997 and that this Section was not modified or eliminated at any time subsequent to the end of the mandatory transition period, including the passage of Public Act 95-0481 last year.

1. Please explain whether the General Assembly should appropriate money to the Commission from the General Revenue Fund for the expenses of the Commission associated with Section 16-117.

Constellation would support the appropriation of money to the Commission for the purpose of conducting consumer education activities and the development of consumer education materials. However, given the intense financial pressure on the State’s budget, we are uncertain whether such funds are going to be made available to the Commission for such purposes. At the very least, Constellation recommends that funds be provided to the Commission in order to allow the Commission to administer a web-based customer education program. The allocation of these dollars, as well as the combination of an education and referral program, is the best way to educate consumer about their electric choices and will help ensure lower costs for customers.

2. If you do not believe Section 16-117 is a funding source for any type of a Commission consumer education program, please describe other potential funding sources.

Other potential sources of funding for consumer education programs could be the activities of the Electric Distribution Utilities. The EDUs engaged in extensive customer education activities associated with new demand response and energy

efficiency programs. A similar type of customer education program for residential and small commercial customers via the company's Web sites, local consumer forums at various locations throughout the state, are other ways to educate consumers.

Additionally, well-recognized and respected consumers organizations such as the Citizens Utility Board (CUB), the Attorney General's office, and the City of Chicago have an important role to play in consumer education about electric rates, electric prices, and options for consumers.

3. Please describe the preferred Commission involvement in any consumer education program.

Constellation recommends that the Commission play an active role in consumer education as outlined above. The Commission should also play a role in assuring accuracy and fairness in the communication and/or marketing pieces used by participants in the programs and any other consumer education efforts of others based upon its expertise in such matters.

4. Aside from any potential financial responsibilities, please also describe the preferred involvement of electric utilities, alternative retail electric suppliers, and others.

The responsibilities of electric utilities should be narrowly prescribed and supportive of these programs. RESs must also conduct their own marketing, which has a consumer education element that is beyond the elements handled by the electric utilities. As noted above, consumer groups have a role to play as well.

5. Besides printed materials and information published on public websites, what other specific mediums would you like to see used in such a campaign?

Constellation recommends the use of public service announcements (PSAs), local forums/fairs sponsored by the Commission, and other similar outreach to consumers about the existence of such programs. The use of media interviews by the Commission can also lend a hand toward greater awareness of such programs.

6. The Office of Retail Market Development is interested in creating an online place for consumers to compare offers of electric suppliers. The type of information displayed by the "Power To Choose" websites of Texas and New York as well as other sites such as the Pennsylvania Office of Consumer Advocate seem to be a good starting point.

- a. Please describe what type of additional information not found on those sites you would like to see for the Illinois market.

Additional information such as an ability to post some form of limited pricing information might be relevant for Illinois consumers.

- b. Should the planned website display information for residential customers only?

At a minimum – yes, but it also could include information for “small commercial customers” as that term is defined in the Public Utilities Act.

- c. How often should the information be updated?

RESs should have the ability to update their own specific information whenever they so desire. If too cumbersome, weekly or bi-weekly updates should be allowed.

- d. Does the Commission have the authority to require suppliers to provide their relevant service offerings on such a website? If you believe the Commission currently does not have such authority, please explain why Section 16-117(h) of the PUA would not give the Commission the authority to do so.

It appears that the Commission has such authority under Section 16-117(h) of the PUA and has broad discretion to carry out its responsibilities.

- e. In the event the information displayed on such a website is out of date, should the Commission (and does the Commission have the authority to) require the supplier to provide requesting customers the opportunity to sign up for a service offering displayed on the website even if the supplier has subsequently modified or eliminated such an offering?

No.

- II. Section 16-117(h) of the PUA states that “the Commission may also adopt a uniform disclosure form which alternative retail electric suppliers would be required to complete enabling consumers to compare prices, terms, and conditions offered by such suppliers.” Assuming you agree that Section 16-117’s legal standing has not changed following the end of the mandatory transition period, please comment on the following:

Constellation suggests the use of a collaborative stakeholder process to assist in the development of a uniform disclosure form.

- 1. If the Commission were to adopt such a uniform disclosure form, what specific items should be on the form?

At a minimum, Price, Term (contract length), Scope of Program (number of enrollments), and Timeframe of Offering(s).

2. Do you agree, given that the items on the disclosure form would differ from offer to offer, that an ARES will have to complete such form for each product it offers at the time?

Possibly. However, RESs may have a common set of terms and conditions (T's and C's) that would apply irrespective of different product offering so it is possible that a single uniform disclosure could be utilized.

3. Should this disclosure form be completed for residential offerings only?

Yes.

4. In addition to the planned website mentioned above, do you believe the Commission should make this type of information available in printed form and how should the material be made available?

It may be helpful to have the information available at the Commission's Chicago and Springfield offices but it is not essential.

5. If so, how often should this printed material be updated?

Monthly.

6. The Texas PUC recently adopted proposed changes to its requirements for information disclosures by retail electric providers.<sup>1</sup> Among other changes, it proposed to create definitions for different types of contracts and proposed to prohibit retail electric providers from using the term "fixed" when marketing products that do not meet the two approved fixed price product definitions.

If the ICC were to adopt similar requirements, do you believe the proposed definitions of the Texas PUC are a workable starting point for definitions applicable to the Illinois market?

If the ICC were to adopt similar requirements, Constellation recommends that an appropriate starting point, where applicable, may be those definitions – tailored for use in Illinois. That being said, the information disclosure rules should not limit the type of products that can be offered by RESs.

If not, what changes would be appropriate?

In particular, please comment on ways to reflect the structural differences when it comes to the manner by which transmission and distribution service charges are billed and collected in Texas.

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<sup>1</sup> <http://tinyurl.com/595jhn>

- III. Section 16-115A(e) of the PUA requires ARES to ensure that “any marketing materials which make statements concerning prices, terms and conditions of service shall contain information that adequately discloses the prices, terms and conditions of the products or services that the alternative retail electric supplier is offering or selling to the customer.” It further states that “before any customer is switched from another supplier, the alternative retail electric supplier shall give the customer written information that adequately discloses, in plain language, the prices, terms and conditions of the products and services being offered and sold to the customer.”

In addition, Section 505/2EE of the Consumer Fraud and Deceptive Business Practices Act states, among other things, that “an electric service provider shall not submit or execute a change in a subscriber's selection of a provider of electric service unless and until the provider first discloses all material terms and conditions of the offer to the subscriber [...]” and it further states that “[...]the terms, conditions, and nature of the service to be provided to the subscriber must be clearly and conspicuously disclosed, in writing, and an electric service provider must directly establish the rates for the service contracted for by the subscriber [...]”

At this time, Constellation does not have any comments on Section III. Constellation reserves the right to respond to any comments at the time that Reply Comments are to be submitted in this matter.

1. Does Section 16-115A(e) and/or Section 505/2EE of the Consumer Fraud and Deceptive Business Practices Act give the Commission authority to require ARES to comply with disclosure obligations similar to Texas’ Terms of Service document, the Electricity Facts Label, and the Your Rights as a Customer document?
  2. If you believe the Commission has the authority to create similarly detailed disclosure requirements, please indicate how they should differ from the Texas rules.
  3. Given that Section 16-115A of the PUA does not give the Commission explicit rulemaking authority pursuant to that Section, please state where such requirements could be incorporated or created.
- IV. 83 Ill. Adm. Code §451.60 allows applicants or ARES to request that the Commission enter an order to protect the confidential, proprietary or trade secret nature of any data, information or studies pursuant to 83 Ill. Adm. Code 200.430 if the applicant or ARES believes any of the information to be disclosed by an applicant or ARES is privileged or confidential. Typically, an ARES uses Code Part 451.60 to request confidential treatment for its annual call center report (filed pursuant to Code Part 410.45).
1. Please explain whether you believe that the Commission should generally grant such requests for confidential treatment of annual call center reports.

Yes, the Commission should continue to treat, on a case-by-case basis, the submission of annual call center reports as confidential information. It is information that can be used to determine the scope of a RESs business in Illinois. As such, such information could be used by another RES to market against another RES.

2. If you do not believe such requests should be granted, please indicate and explain whether you think all of the items in the call center reports should be disclosed or only a subset of those reported.
  3. Aside from the existing reporting requirements, is there any other type of periodic report that you believe would be beneficial in a competitive retail electricity market? If so, please indicate the Commission's authority to require such a report.
- V. Section 16-122(b) of the PUA states that "upon request from any alternative retail electric supplier and payment of a reasonable fee, an electric utility serving retail customers in its service area shall make available generic information concerning the usage, load shape curve or other general characteristics of customers by rate classification. Provided, however, no customer specific billing, usage or load shape data shall be provided under this subsection unless authorization to provide such information is provided by the customer [...]"

On the issue of providing a mass customer list to assist in retail market development, the Pennsylvania PUC adopted the following rule:

(a) An EDC or EGS may not release private customer information to a third party unless the customer has been notified of the intent and has been given a convenient method of notifying the entity of the customer's desire to restrict the release of the private information. Specifically, a customer may restrict the release of either the following:

- (1) The customer's telephone number.
- (2) The customer's historical billing data.

(b) Customers shall be permitted to restrict information as specified in subsection (a) by returning a signed form, orally or electronically.

(c) Nothing in this section prohibits the EGS and EDC from performing their mandatory obligations to provide electricity service as specified in the disclosure statement and in the code.<sup>2</sup>

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<sup>2</sup> 52 Pa. Code § 54.8., Privacy of customer information. EDC stands for Electric Distribution Company and EGS stands for Electric Generation Supplier.

At this time, Constellation does not have any comments on Section V. Constellation reserves the right to respond to any comments at the time that Reply Comments are to be submitted in this matter.

1. Please explain whether Section 16-122 of the PUA would allow for a similar rule to be adopted by the Commission.
2. In Docket No. 07-0241/0242 Consol., the Commission recently directed Peoples Gas and North Shore Gas to provide alternative gas suppliers access to customer information. The Commission's February 5, 2008 Order (starting at page 298) creates three different tiers of reports, with the type of information provided and the customer consent required varying across the three tiers.
  - a. Please explain whether you believe a similar structure should be implemented for the retail electricity market.
  - b. Please explain whether Section 16-122 of the PUA would allow for a similar rule to be adopted by the Commission.

- VI. What provisions related to the operation of a competitive retail electricity market currently not found in the statute, in administrative code parts, utility tariffs, or other regulations would you like to see created?

For each proposed provision, please provide proposed language and the preferred mechanism to create such provisions.

For example, if you propose that all contracts for electricity service be printed on blue paper, please provide the proposed wording of such a requirement and indicate whether such a requirement should be part of a utility's tariff (if so, which tariff section?), an existing or new administrative code part, or some other mechanism.

For each proposed requirement please state the Commission's source of authority for doing so.

In addition, if you propose that certain requirements be part of a utility's tariff, please also state whether you view that to be a permanent place for such requirements or if you propose that these tariff requirements be temporary until a permanent placement has been created.

At this time, Constellation does not have any comments on Section V. Constellation reserves the right to respond to any comments at the time that Reply Comments are to be submitted in this matter.