

**BRIEFING OF
THE RETAIL ENERGY SUPPLY ASSOCIATION
REGARDING SECTION 16-107.5 OF THE PUBLIC UTILITIES ACT**

INTRODUCTION

The Retail Energy Supply Association (“RESA”) is a broad and diverse group of retail energy suppliers (“RES”) who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than a regulated utility structure.¹

On August 21, 2013, RESA submitted joint comments with the Illinois Competitive Energy Association (“ICEA”), proposing modifications to the Commission Staff’s August 2, 2013 revised draft of proposed revisions to 83 Ill. Admin. Code Part 465 (“Staff’s Revised Draft”). On August 22, 2013, ICEA and RESA participated in the Staff’s conference call regarding Staff’s Revised Draft. During that conference call, Staff requested a “legal briefing” regarding certain issues raised during the call, including whether electric utilities are required by Section 16-107.5 of the Public Utilities Act to remove net metering customers from their net metering programs (thereby forfeiting both their supply credits and their distribution credits) when those customers switch their supply service to a RES. RESA hereby offers this response to that request.

¹ RESA’s members include AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

SECTION 465.35, NET METERING APPLICATION AND ENROLLMENT

PROCEDURES

In their August 21, 2013 Comments, ICEA and RESA proposed a modification to Section 465.35, Net Metering Application and Enrollment Procedures.² Specifically, ICEA and RESA proposed to add a Subsection 465.35 (i) to Staff’s Revised Draft. Proposed Subsection 465.35 (i) provides that when a customer who is a net metering customer with an electric utility switches from purchasing electricity from that utility to purchasing electricity from an ARES, that customer will remain a net metering customer of the electric utility with respect to distribution service. This is the current practice of Ameren Illinois Company (“AIC”), but not Commonwealth Edison Company (“ComEd”). The modification was designed to improve the operation of net metering programs when net metering customers switch from utility service to purchasing their supply from an ARES.

During the conference call, ComEd indicated that, under its interpretation of Section 16-107.5 of the Public Utilities Act, it was required to remove a customer from its net metering program and forfeit that customer’s net metering credits, both for supply and delivery service, when that customer switches its supply service to a RES. Staff suggested, given the fact that AIC’s practices in this regard were different, that parties “brief” this issue.

² ICEA and RESA also proposed to add a Subsection 465.35 (j) to Staff’s Revised Draft. Proposed Subsection 465.35 (j) provides that when a net metering customer switches its supply service from an electric utility to an ARES, the electric utility must notify the ARES via an electronic method, approved by the utility, that the customer being switched is a net metering customer. However, ICEA’s and RESA’s understanding is that this issue is being addressed in another proceeding, Docket 13-0506.

RESA believes that the following provision is the provision upon which ComEd bases its position³:

Section 16-107.5 (d) (3) At the end of the year or annualized over the period that service is supplied by means of net metering, or in the event that the retail customer terminates service with the electricity provider prior to the end of the year or the annualized period, any remaining credits in the customer's account shall expire.

RESA does not believe that the above provision requires a “legal briefing”, rather just a review of the ordinary meaning of the language of that provision should suffice. When a customer terminates service with an electric provider and the electric provider is a RES, then it makes sense that the electric provider would forfeit any remaining credits (which, in the case of a RES, would only be supply credits) because that customer would no longer be a customer of the RES because the RES is only providing supply service; the electric utility is providing delivery service. When a customer terminates service with an electric provider and the electric provider is an electric utility, it makes sense for the electricity provider—the electric utility—to forfeit any remaining credits (which in the case of an electric utility would be both supply credits and distribution credits) because the customer would no longer be a customer of the electric utility. However, when a customer switches its supply service to a RES, it is not terminating service with the electricity provider when the electricity provider is an electric utility because the customer remains a customer of the electric utility. That is, the customer continues to receive distribution service from the electric utility. While it makes sense for the electric utility to forfeit the supply credits for the net metering customer in this situation, it makes no sense for the

³ Note that there is a comparable provision in Section 16-107.5 for another class of net metering customer, namely Subsection 16-107.5 (e) (3).

electric utility to forfeit the distribution credits for the net metering customer, nor to remove that customer as a net metering customer.

Because Part 465 is a rule of general applicability, there is no reason why the practices of AIC and ComEd should be different. Moreover, AIC's practice is more appropriate and customer-friendly. Finally, even if the Public Utilities Act **could** be interpreted in ComEd's manner, it **does not have to be** interpreted this way, as evidenced by AIC's practices. In other words, RESA does not interpret the Public Utilities Act as mandating ComEd's practice.

Respectfully submitted,

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