

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
)	No. 07-0483
)	
Development of net metering standards)	
required by P.A. 95-0420)	

**VERIFIED REPLY COMMENTS OF
CONSTELLATION NEWENERGY, INC.**

Now comes Constellation NewEnergy, Inc. (“CNE”), and submits these Verified Reply Comments in the above-captioned proceeding.

1. On January 16, 2008, the Illinois Commerce Commission (the “Commission”) Staff (“Staff”) presented a “target rule” for net metering standards to apply to electricity providers under Section 465 of the Illinois Administrative Code, 83 Ill. Adm. Code 465 (“Part 465”). The “target rule” attempts to establish standards for the provision of net metering as required by P.A. 95-0420, which adds a new Section 16-107.5 to the Public Utilities Act (the “Act”). The “target rule” reflects consensus items from a lengthy stakeholder collaborative process, in which substantial progress was made toward a set of net metering standards that would apply to electricity providers in Illinois on a permanent basis. Staff and various intervening parties offered changes to the “target rule” in their respective initial comments. CNE responds to certain of the parties’ suggested changes, as described below.

Office of the Attorney General

The Office of the Attorney General (“AG”) first proposes that subsection 465.50(b)(1)(i) of Part 465 be modified to indicate that net suppliers should receive a credit from their electricity provider of the electricity provider’s avoided cost, multiplied by the net amount sold to the

electricity provider. AG Init. Comments, p. 3. The AG's suggested change highlights the potential for confusion associated with "avoided costs". "Avoided costs" is defined as "the incremental costs to the electricity provider of electric energy or capacity or both which, but for the purchase from an eligible customer, the electricity provider would generate itself or purchase from another source." Subsection 465.05(c). If "avoided costs" is interpreted as an electricity provider's overall savings in not providing to the customer the energy that the customer supplies to the grid, to add a multiplier to that figure as the AG suggests would result in substantial over-recovery by the customer. If the AG is assuming that "avoided costs" are to be calculated on a per-MWh basis, that is not clear from the rule. In order to accept the AG's proposed modification, therefore, the AG's proposed language must be modified to include the change identified via underline: "If the customer is a net seller of electricity, the electricity provider shall compensate the customer at the electricity provider's avoided costs of electricity supply per kWh, multiplied by the net amount of electricity sold to the electricity provider."

The AG further suggests that subsection 465.90(a) include an additional sentence which indicates that, in cases where an existing retail contract requires an eligible customer to pay a termination fee to terminate service with an ARES, the ARES must offer net metering service to that customer on terms that meet the minimum requirements set forth in section 465.50. AG Init. Comments, p. 4. The AG's proposed additional sentence is neither appropriate nor necessary and should be rejected, for several reasons. First, and most significantly, the sentence is in direct conflict with the Act. The relevant portion of the Public Utilities Act, 220 ILCS 5/16-101, *et seq.*, as relates to existing contracts between an ARES and retail customers, reads as follows:

Nothing in this Section shall affect the right of an electricity provider to continue to provide, or the right of a retail customer to continue to receive service pursuant to a contract for electric service between the electricity provider and the retail customer in accordance with the prices, terms, and conditions provided for in that

contract. Either the electricity provider or the customer may require compliance with the prices, terms, and conditions of the contract.

220 ILCS 5/16-107.5(m). The Act's language could not be clearer, in that the net metering standards shall not affect any existing contract between an electricity provider and a customer. The language suggested by the AG would be in direct conflict with the Act, and would violate the very sanctity of existing retail contracts that the language quoted above was designed to protect. Similarly, to the extent that the language seeks to establish a condition between an ARES and a retail customer for future contracts, the proposed language is also in conflict with the Act, which reads as follows, in relevant part:

... Subsections (c) through (e) of this Section shall not be construed to prevent an arms-length agreement between an electricity provider and an eligible customer that sets forth different prices, terms, and conditions for the provision of net metering service, including, but not limited to, the provision of the appropriate metering equipment for non-residential customers.

220 ILCS 5/16-107.5(e). Second, the AG fails to provide any authority for the purported authority under which the Commission possesses the legal authority to oversee this aspect of the competitive service offered by ARES to retail customers. Indeed, it cannot, as the Commission is vested with authority only as granted by the legislature.

In addition to the legal flaws described above, the AG's recommendation suffers from practical problems, as well. Foremost, there is no apparent nexus between termination fees and the billing processes that are the exclusive focus of Section 465.50. It is unclear what the AG is trying to accomplish with its proposed change, or what relationship exists between termination fees in contracts and billing processes for net metering. In addition, the AG's proposed language seems to rely on an improper assumption that there is somehow unequal bargaining power between ARES and retail customers. This is simply not the case, as both parties will be in a position to fully negotiate the prices, terms, and conditions for the provision of net metering

service just as they do with other aspects of the provisions of competitive retail electric service. This fact was recognized by the General Assembly when it included language regarding "arms length agreements" in Section 16-107.5(e) of the Act, as noted above.

Commonwealth Edison Company

Commonwealth Edison Company ("ComEd") recommends several revisions that, while attempting to clarify the obligations as between utilities and other electricity providers, are insufficiently clear. ComEd suggests that 465.50(b)(1)(ii) and 465.50(b)(2)(ii) be modified to indicate that any compensation to the customer may be used to offset other charges assessed by the electricity provider, rather than by the utility, as the subsection currently reads. Given the fact that the preceding sentence in Part 465 refers to delivery charges, fees and taxes assessed by the electric utility, the change could be read to mean that credits relating to delivery services could be applied to an electricity provider's service. Applying a credit for a utility service to services that an electricity provider other than the electric utility provides is quite obviously improper, and unlawful. CNE does not believe that this was the intended by ComEd but, rather, is the result of mixing into a single subsection a discussion of the services provided by an electricity provider, and the distinct delivery services and related charges assessed by an electric utility. The confusion can be avoided by addressing delivery services charges, fees, and taxes in a subsection distinct from energy supply, as CNE recommended in its initial comments. CNE Init. Comments, p. 6.

MidAmerican Energy Company

MidAmerican Energy Company ("MidAmerican") suggests that subparts 465.50(a)(1)(iii) and (a)(2)(iii) be modified to indicate that, with regard to any unused credits resulting from a customer's status of a net seller of electricity during any billing period, utilities

shall not be required to convert unused kWh credits to cash at the termination of the provision of net metering service or at the end of the Annual Period. CNE agrees that credits under Part 465 may not be redeemed for cash. Any such change to Part 465 should apply equally to electricity providers other than electric utilities.

MidAmerican further suggests that subpart 465.50(b)(2)(i), referring to charges or credits for time of use customers, is to be based on an avoided cost rate, rather than some other rate or charge. It is not clear what MidAmerican is suggesting. First, there is no set “avoided cost rate” for either utilities or alternative retail electric suppliers. Second, similar to ComEd, MidAmerican creates confusion with its proposed revisions to subsections 465.50(b)(1)(ii) and 465.50(b)(2)(ii) by discussing delivery services and related charges provided by an electric utility in combination with a “generation credit”, which may apply to services provided by an entity other than an electric utility. Once again, the confusion can be avoided by addressing delivery services charges, fees, and taxes in a subsection distinct from energy supply, as CNE recommended in its initial comments. CNE Init. Comments, p. 6.

Environmental Law & Policy Center

The Environmental Law & Policy Center (“ELPC”) recommends that Section 465.50(b)(1)(i) be modified to indicate that compensation for a net seller of electricity shall apply to any excess kilowatt-hour credit. ELPC Init. Comment, p. 5. ELPC’s recommendation is consistent with Section 16-107.5, with the addition of “over the monthly billing period or as otherwise specified by the terms of an agreement negotiated between the customer and electricity provider” at the end of the sentence including the proposed modification.

The ELPC also suggests that section 465.60 should require that electricity providers include, in their annual report to the Commission, results of their consideration of meter

aggregation for purposes of net metering. However, ELPC does not provide any detail of their proposal, nor do they articulate a purpose to be served by providing this information. If ELPC is suggesting that electricity providers confirm that they have considered net meter aggregation, CNE has no objection to an additional sentence to that effect. However, to the extent that ELPC is suggesting that electricity providers make a more detailed reporting on the subject, this suggested requirement exceeds the reporting requirements of the Act, which requires only that electricity providers report on an annual basis the total number of net metering customers, along with the type, capacity, and energy sources used by the net metering customers, and that the Commission be informed when the total generating capacity of net metering customers is equal to or greater than 1% of the total peak demand supplied by the electricity provider during the prior year. 220 ILCS 5/16-107.5(k).

WHEREFORE, Constellation NewEnergy, Inc. recommends that the Administrative Law Judge accept or reject certain proposed modifications to the “target” rule in accordance with the above.

Respectfully submitted.

A handwritten signature in black ink that reads "Cynthia A. Fonner". The signature is written in a cursive style and is positioned above a horizontal line.

Cynthia A. Fonner
Senior Counsel
Constellation Energy Group, Inc.
550 West Washington, Blvd., Suite 300
Chicago, IL 60661
312.704.8518 (p)
cynthia.a.fonner@constellation.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing documents was served this 23rd day of January, 2008 by electronic mail upon the persons listed below.

A handwritten signature in black ink, reading "Cynthia A. Fonner", is centered on a white rectangular background. The signature is written in a cursive style with a long horizontal flourish at the end.

Cynthia A. Fonner

Melanie Acord
MidAmerican Energy Company
PO Box 4350
Davenport IA 52808-4350

Garrett E Bissell
Integrus Energy Services, Inc.
5 Computer Dr., Ste. 204
Albany NY 12205

Michael R Borovik
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago IL 60601

Janice A Dale
Assistant Attorney General
Public Utilities Bureau
100 W. Randolph St., 11th Fl.
Chicago IL 60601

Jay H Dillavou
MidAmerican Energy Company
PO Box 657
666 Grand Ave.
Des Moines IA 50303

Erika Dominick
Paralegal
Ameren Services Company
1901 Chouteau Ave.
PO Box 66149
St. Louis MO 63166-6149

Joseph E Donovan
Atty. for Coalition of Energy Suppliers
DLA Piper US LLP
203 N. LaSalle St., Ste. 1900
Chicago IL 60101-1293

Laura M Earl
Atty. for Ameren Illinois Utilities
Jones Day
77 W. Wacker
Chicago IL 60601-1692

David I Fein
Vice President
Constellation NewEnergy, Inc.
550 W. Washington Blvd., Ste. 300
Chicago IL 60661

Edward C Fitzhenry
Ameren Services Company
PO Box 66149 (M/C 1310)
1901 Chouteau Ave.
St. Louis MO 63166-6149

Christopher W Flynn
Atty. for Ameren Illinois Utilities
Jones Day
77 W. Wacker, Ste. 3500
Chicago IL 60601-1692

Cynthia A Fonner
Senior Counsel
Constellation Energy Group, Inc.
550 W. Washington St., Ste. 300
Chicago IL 60661

David Geraghty
Commonwealth Edison Company
3 Lincoln Centre
Oak Brook IL 60521

John Gomoll
Direct Energy Services, LLC
1111 W. 22nd St., 8th Fl.
Oak Brook IL 60523

Jeff Hart
MidAmerican Energy Company
PO Box 4350
Davenport IA 52808-4350

Susan J Hedman
Office of the Illinois Attorney General
100 W. Randolph St., 11th Flr.
Chicago IL 60601

Karen M Huizenga
Senior Attorney
MidAmerican Energy Company
106 E. Second St.
PO Box 4350
Davenport IA 52808

Robert Kelter
Environmental Law & Policy Center
35 E. Wacker Dr., Ste. 1300
Chicago IL 60601

Bradley D Klein
Environmental Law & Policy Center
35 E. Wacker Dr., Ste. 1300
Chicago IL 60601

Michael J Lannon
Illinois Commerce Commission
160 N. LaSalle, Suite C-800
Chicago IL 60601

Barry Matchett
Environmental Law & Policy Center
35 E. Wacker Dr., Ste. 1300
Chicago IL 60601

Carla S Meiners
MidAmerican Energy Company
PO Box 657
666 Grand Ave.
Des Moines IA 50303-0657

John N Moore
Environmental Law and Policy Center
Suite 1300
35 E. Wacker Drive
Chicago IL 60601

Stephen J Moore
Atty. for Retail Energy Supply Association
Rowland & Moore LLP
200 W. Superior St., Ste. 400
Chicago IL 60610

Kristin Munsch
Asst. Attorney General
Illinois Attorney General's Office
100 W. Randolph St., 11th Floor
Chicago IL 60601

Vu Nguyen
MidAmerican Energy Company
PO Box 657
666 Grand Ave.
Des Moines IA 50303

Michael S Pabian
Atty. for Commonwealth Edison Company
10 S. Dearborn St., 49th FL
Chicago IL 60603

Erica Randall
Paralegal
Office of the Illinois Attorney General
100 W. Randolph St., 11th Fl.
Chicago IL 60601

Kevin D Rhoda
Atty. for Retail Energy Supply Association
Rowland & Moore LLP
200 W. Superior St., Ste. 400
Chicago IL 60610

Thomas Rowland
Atty. for Retail Energy Supply Association
Rowland & Moore LLP
200 W. Superior St., Ste. 400
Chicago IL 60610

Claudia Sainsot
Administrative Law Judge
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago IL 60601-3104

Eric Schlaf
Case Manager
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield IL 62701

Christopher N Skey
Atty. for Coalition of Energy Suppliers
DLA Piper US LLP
203 N. LaSalle Street, Suite 1900
Chicago IL 60601-1293

Suzan M Stewart
Managing Senior Attorney
PO Box 778
401 Douglas St.
Sioux City IA 51102

Matthew R Tomc
Ameren Services Company
PO Box 66149, MC 1310
1901 Chouteau Ave.
St. Louis MO 63166

Christopher J Townsend
Atty. for Coalition of Energy Suppliers
DLA Piper US LLP
203 N. LaSalle St., Ste. 1500
Chicago IL 60601-1293

Jennifer Witt
Integrus Energy Services, Inc.
500 W. Madison St., Ste. 3300
Chicago IL 60661

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