

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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

BRIEF ON EXCEPTIONS OF THE ENVIRONMENTAL LAW & POLICY CENTER

The Environmental Law & Policy Center (ELPC) hereby files this Brief on Exceptions pursuant to the Proposed Order issued by the Administrative Law Judge (ALJ) on February 7, 2008. This brief is offered:

1. To correct the ALJ’s ruling regarding billing for non-residential customers with generators over 40 kW and to ensure that proposed Section 465.50(b)(1)(i) complies with 220 ILCS 5/16-107.5(f)(2); and
2. To ensure that the Illinois Commerce Commission’s rules require some evidence that electricity providers have “considered” meter aggregation in compliance with the requirements of 220 ILCS 5/16-107.5(l).

I. 220 ILCS 5/16-107.5(f)(2) requires compensation at avoided cost for “excess kilowatt-hour credits.”

Both ELPC and the Office of the Attorney General (AG) requested that the Commission amend Section 465.50(b)(1)(i) of the Proposed Rule to clarify that avoided cost payments for non-residential customers with generators over 40 kW apply only to the customer’s *net* amount of electricity sold to the electricity provider during the billing period. *See* ELPC Initial Comments pp. 4-5; AG Initial Comments p. 3 (offering slightly different language to accomplish the same goal). As explained below, this change is required to make the rule consistent with the statute.

The analysis in the ALJ's Proposed Order appears to reject ELPC and the AG's proposals. (See Proposed Order at 8). However, the Proposed Rule attached to the ALJ's Order does in fact adopt the language that was suggested by the AG and included by Staff in the redlined rule accompanying Staff's Reply Comments.

... If the customer is a net seller of electricity, the electricity provider shall compensate the customer at the electricity provider's avoided cost of electricity supply, multiplied by the net amount of electricity sold to the electricity provider. ...

Staff Redlined Rule Section 465.50(b)(1)(i); ALJ Proposed Rule Section 465.50(b)(1)(i).

This language should be retained in the Rule as it is compelled by the plain language of the net metering statute.

Each month that service is supplied by means of dual-channel metering, the electricity provider shall compensate the eligible customer *for any excess kilowatt-hour credits* at the electricity provider's avoided cost of electricity supply over the monthly period ...

220 ILCS 5/16-107.5(f)(2) (emphasis added). The statute is clear that avoided cost payments apply only to a customer's "excess kilowatt-hour credits." *Id.* Kilowatt-hour credits are created only when "the amount of electricity produced by a customer during the billing period exceeds the amount of electricity used by the customer during that billing period ..." 220 ILCS 5/16-107.5(d)(2) (emphasis added). Therefore, the statute requires electricity providers to compensate customers at avoided cost only for their net excess generation – *i.e.* the amount of electricity produced during the billing period that exceeds the amount of electricity used during the billing period. Any attempt to assign an avoided cost rate to the entire gross output of a customer-generator would violate the intent and plain language of the statute.

Moreover, if avoided cost is offered for all gross generation rather than for "excess kilowatt-hour credits" (as required by the statute), then the new net metering law will not create

any change in the status quo. Charging at the tariffed rate and compensating at the avoided cost rate is not “net metering” – in fact it is no different than what is already required by PURPA. The statute should not be interpreted to be a nullity.

Finally, the only argument that was offered by the utilities and Staff against including the AG’s proposed language in Section 465.50(b)(1)(i) is that it may be an administrative challenge to determine which avoided cost rate to apply to a customer’s excess kilowatt-hour credits. *See, e.g.,* Staff Reply Comments at 3-4 (recognizing that “the AG’s suggestion appears to track the statute,” but that it might be “problematic for the utilities” to comply). Even assuming that such administrative problems may exist, that is not a valid legal argument that would excuse compliance with the plain language of a statute.

Accordingly, we do not suggest any changes to the ALJ’s Proposed Section 465.50(b)(1)(i) at this time.

(i) The electric utility shall determine whether the customer is a net purchaser of electricity or a net seller of electricity during the billing period. If the customer is a net purchaser of electricity during the billing period, the electricity provider shall apply the applicable tariffed or contract rate, as applicable, to the net amount purchased. If the customer is a net seller of electricity, the electricity provider shall compensate the customer at the electricity provider’s avoided cost of electricity supply, multiplied by the net amount of electricity sold to the electricity provider. For purposes of calculating the customer’s electricity bill, any credits may be used to offset other charges assessed by the electricity provider.

The ALJ’s Proposed Order, however, should be amended as follows:

Analysis and Conclusions

~~—— We decline to adopt the language offered by the AG and the language offered by the ELPC. This language creates unnecessary confusion and it does not address the situation described by ComEd, where it is not possible to determine what cost is avoided. Moreover, the ELPC offers no evidence establishing that “true” net metering requires electricity providers to bill in the manner it describes. We accept the~~

language offered by the AG because it makes clear that electricity providers are to compensate customers at avoided cost only for the net amount of electricity sold to the electricity provider, as required by the plain language of the net metering statute, 220 ILCS 5/16-107.5(l), and because the alternative would not result in any changes to the status quo program already available under the federal Public Utility Regulatory Policies Act (PURPA).

II. The Commission should ensure compliance with 220 ILCS 5/16-107.5(l) by requiring electricity providers to report the results of their “consideration” of meter aggregation.

The Commission has a duty to ensure that electricity providers comply with all of the provisions of the net metering statute, including the requirement that electricity providers “consider whether to allow meter aggregation for the purposes of net metering on:

(1) properties owned or leased by multiple customers that contribute to the operation of an eligible renewable electrical generating facility, such as a community-owned wind project or a community methane digester processing livestock waste from multiple sources; and

(2) individual units, apartments, or properties owned or leased by multiple customers and collectively served by a common eligible renewable generating facility, such as an apartment building served by photovoltaic panels on the roof.”

220 ILCS 5/16-107.5(l).

ELPC’s comments suggested reporting as a simple and easy method for the Commission to determine whether electricity providers have complied with this requirement. ELPC Comments p. 5; ELPC Reply Comments p. 4. However, the ALJ’s Proposed Order concludes that utilities should not be required to report the results of their consideration of meter aggregation because there is no statutory provision that specifically requires such reporting. *See* ALJ Proposed Order at 10. If the Commission does not intend to require reporting, it should specify how it intends to determine whether electricity providers have actually performed this required consideration.

ELPC maintains that the easiest way to determine whether electricity providers have actually considered meter aggregation is simply to require them to report the results of their consideration. Moreover, a reporting requirement would generate some valuable information for the General Assembly, the Commission and the public to determine whether meter aggregation is a viable policy option in Illinois. Accordingly, ELPC request that the following underlined language be included in Section 465.60 of the Net Metering Rule:

The report required by Section 16-107.5 (k) of the Act shall be filed with the Manager of the Energy Division of the Illinois Commerce Commission by April 1st of each year beginning in 2009. The report shall include all information required under Section 16-107.5 (k) of the Act, including, but not limited to, the following information: the total peak demand supplied by the electricity provider during the previous year; the total generating capacity of its net metering customers; whether the electricity provider intends to limit total generating capacity of its net metering customers to 1%; and, the electricity provider's total number of net metering customers. The report shall also include the results of the electricity provider's consideration of meter aggregation pursuant to Section 16.107.5(l) of the Act.

Respectfully submitted this 26th day of February, 2008.

/s/ Brad Klein_____

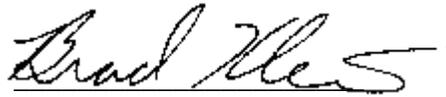
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NOTICE OF FILING

PLEASE TAKE NOTICE that on this date, February 26, 2008, I caused to be filed with the Chief Clerk of the Illinois Commerce Commission via e-docket the foregoing Brief on Exceptions of the Environmental Law & Policy Center.



Bradley D. Klein
One of the Attorneys for the
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CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that on this date, February 26, 2008, I hereby certify that I did electronically file with the Illinois Commerce Commission the foregoing Brief on Exceptions of the Environmental Law & Policy Center and electronically served the same upon the persons identified on the attached Service List.



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