

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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| Illinois Commerce Commission | : | |
| On Its Own Motion | : | Docket No. 10-0109 |
| | : | |
| Adoption of 83 Ill. Adm. Code 455. | : | |

BRIEF ON EXCEPTIONS OF THE STAFF OF
THE ILLINOIS COMMERCE COMMISSION

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Now comes the Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned attorney, and pursuant to Section 200.830 of the Commission's Rules of Practice, 83 Ill. Adm. Code Section 200.830, respectfully submits this Brief on Exceptions to the Proposed Order issued by the Administrative Law Judge ("ALJ") on May 7, 2010 ("Proposed Order" or "PO").

I. INTRODUCTION

The Proposed Order reviews the issues in a clear and concise manner, accurately summarizes the positions of Staff and the parties, and is well written. With one minor exception noted below, Staff supports the Proposed Order's conclusions regarding amendments and modifications to proposed Part 455. Staff's support of the resolutions adopted or accepted in the Proposed Order should not be viewed as or considered to mean that Staff agrees with or accepts all arguments advanced by intervenors in favor of their proposed changes and modifications.

II. EXCEPTIONS

A. RPS Compliance Report Spreadsheet

With respect to the issue of an RPS compliance report spreadsheet, the PO concludes:

The Commission agrees with Staff and the ICEA that a spreadsheet is useful but need not be part of the rule. In further regard to the development of an appropriate spreadsheet, we expect that use of a collaborative process will ensure the best product. While we do not intend to prejudge the discussions, suffice it to say that the methodology provided by the ICEA appears to have merit and does not appear to be effectively or meaningfully challenged by Staff. To move the matter along, we direct Staff to engage the parties fully and promptly in the collaborative process and to maintain a current “informal/sample” compliance spreadsheet on the Commission’s website that is to be posted well in advance of the September 1 annual compliance deadline.

PO, p. 17. Staff does not take issue with the PO’s conclusion. In fact, in this Brief on Exceptions, and Attachment A to this Brief on Exceptions, Staff goes two steps further toward ultimate resolution of the issues involving an RPS compliance report spreadsheet, by presenting just such a spreadsheet for illustrative purposes. First, Attachment A is an Excel spreadsheet file that provides a simple and straightforward way for Alternative Retail Electric Suppliers (“ARES”) to compute and report the alternative compliance payments (“ACPs”) and renewable energy credits (“RECs”) required for full compliance at the end of each compliance period. Second, it adopts a methodology with all the merits of the ICEA’s proposal, but without the flaws or deficiencies that were identified by Staff in its reply comments. In particular, as Staff noted in its reply comments,

In essence, ICEA is contending that alternative compliance payments (“ACPs”) count as super-RECs and that the remaining requirement (after ACPs) need not involve 60% wind. The statute, however, does not say anything directly about this issue. The proposed rule uses a more straightforward interpretation of the Act, requiring that RECs always be

provided with the minimum percentage of wind and solar RECs specified in the Act. The ICEA's less straightforward approach is a bit more complicated and the reporting form that they provided as an exhibit shows that they do not explain how they would compute the wind and solar requirements, once the solar requirements begin. ICEA's proposal should be rejected.

Staff Reply Comments, April 23, 2010, p. 20. Staff does not have any fundamental objection to what it dubbed the "super-REC" concept for counting ACPs, but found the ICEA's proposal overly complex and incomplete. As demonstrated in the attached illustrative spreadsheet, Staff has overcome both of these problems. In essence, the methodology reflected in Staff's illustrative spreadsheet allows an ARES to choose the MWH-equivalent of ACPs that it wants to attribute toward meeting the wind and the solar requirement, with any remaining requirements being automatically computed by the spreadsheet.

While Staff believes the PO's proposed second-notice rule, shown in the PO's Appendix A, is perfectly consistent with the above methodology, greater clarity in the rule could be obtained by appending the following to the end of Section 455.130 (a):

For determining the number of megawatt-hours of renewable energy credits that must be purchased for compliance, an ARES may convert alternative compliance payment dollar amounts into megawatt-hour equivalents, by multiplying the payment by the total RPS percentage requirement and then dividing by the applicable alternative compliance payment rate (the latter expressed in dollars per megawatt-hour), at which point an ARES may allocate in any manner desired the megawatt-hour equivalents of its alternative compliance payments toward satisfying the wind, solar photo-voltaic, and non-specific renewable energy requirements for the compliance period.

Given the foregoing, Staff does not believe there is a contested issue between the ICEA and Staff on an acceptable methodology for counting and crediting ACPs against applicable wind and the solar requirement. As such, the collaborative process contemplated by the Proposed Order does not appear necessary in terms of arriving at

an acceptable methodology, although Staff is open to meeting with stakeholders if there are questions or concerns regarding the mechanics or details of the spreadsheet.

Proposed Language Changes

Consistent with the foregoing, Staff proposes the following changes to the Proposed Order at pages 16-17:

The comments show that ICEA and Staff do not agree on a methodology for the REC/ACP compliance calculations. Staff contends that the proposed rule uses a more straightforward interpretation of the Act, requiring that RECs always be provided with the minimum percentage of wind and solar RECs specified in the Act, and that ICEA's proposed approach was less straightforward and more complicated. Further, Staff explained that the reporting form provided by ICEA did not explain how they would compute the wind and solar requirements, once the solar requirements begin. The ICEA contends that it has provided strong reasons showing that any "informal" spreadsheet issued by Staff should reflect the ICEA's proposed REC/ACP methodology. At the same time, ICEA recognizes that the compliance issues involved are somewhat complex. Accordingly, to ensure that the compliance reporting process runs as smoothly and efficiently as possible, the ICEA asks the Commission to direct Staff to meet with suppliers and other stakeholder and finalize a Year 1 Compliance Spreadsheet that incorporates ICEA's methodology expeditiously after the issuance of the Order in the instant proceeding. In its Brief Brief on Exceptions, Staff advised that it did not have any fundamental objection to the ICEA's proposed REC/ACP methodology, but rather objected to the ICEA's overly complex and incomplete proposal. Staff attached an illustrative spreadsheet to its Brief on Exceptions, and contends that the spreadsheet is consistent with ICEA's proposed methodology but remedies the deficiencies identified by Staff. Staff's illustrative spreadsheet allows an ARES to choose the MWH-equivalent of ACPs that it wants to attribute toward meeting the wind and the solar requirement, with any remaining requirements being automatically computed by the spreadsheet.

Analysis and Conclusion

The Commission agrees with Staff and the ICEA that a spreadsheet is useful but need not be part of the rule. In further regard to the development of an appropriate spreadsheet, ~~we expect that use of a collaborative process will ensure the best product. While we do not intend to prejudge the discussions, suffice it to say that the methodology provided by the ICEA appears to have merit and does not appear to be effectively or meaningfully challenged by Staff. To move the matter along,~~

~~we~~ The Commission finds Staff's proposed implementation of ICEA's proposed methodology to be fair and reasonable, including Staff's proposed modification to Section 455.130 (a), and we hereby adopt same. We further direct Staff to engage the parties fully and promptly in a the collaborative process if requested by any party to address the details or mechanics of Staff's illustrative spreadsheet, and to maintain a current "informal/sample" compliance spreadsheet on the Commission's website that is to be posted well in advance of the September 1 annual compliance deadline.

B. Technical Corrections

At page 2 of the Proposed Order the citation under Section 455.100 should be corrected and changed from "[220 ILCS 5116-115D(h)]" to "[220 ILCS 5/16-115D(h)]".

At page 16 of the Proposed Order, Staff proposes the following correction:

At the early outset and in its initial comments, the ICEA proposed that the Rule include a formal compliance spreadsheet. Staff made known ~~know~~ that it recognizes the advantage to having some type of compliance spreadsheet, but would prefer an "informal" compliance spreadsheet.

Finally, at page 8 of the Proposed Order, the references to "Section 544.120 (c)" should be corrected and changed to "Section 455.120 (c)."

C. Section 455.20

The Proposed Order agrees with Staff's response to Blue Star's request for clarification regarding electronic records, but questions whether a rule change would be appropriate to clarify this understanding. PO, p. 5. Staff is not opposed to adding the following sentence to the end of paragraph (a) of Section 455.20: "The requirement to maintain original records pursuant to this Section may be satisfied by the retention of electronic rather than paper records, provided they are electronic business records that would otherwise be admissible under Illinois law."

D. Section 455.140

Staff does not oppose the language changes to the various paragraphs of Section 455.140 accepted by the Proposed Order. See PO, pp. 9-16. However, Staff notes that IIEC's proposal to insert the June 1, 2010, effective date for some of the provisions of 18 CFR 292.20 should be contingent on the rule being presented to JCAR after June 1, 2010. Staff's understanding is that JCAR will not accept incorporation of other rules or standards effective as of a date certain that is in the future.

III. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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May 14, 2010

**ICC Part 455 Renewable Portfolio Standard Compliance Worksheet for Determining and Reporting
Renewable Energy Credits (RECs) and Alternative Compliance Payments (ACPs) for the Compliance Period**

Instructions: Respondent fills in the bright yellow-highlighted cells

| | | | |
|----------------------------|--|------------------|---|
| Name of Respondant: | ABC Retail Electric Supply Company, Inc. | | |
| Compliance Period: | From 06/01/2015 to 05/30/2016 | ← drop-down menu | All tests must be TRUE for compliance: |
| Report Date: | | | Are all tests true? YES |

| Worksheet to Plan Compliance | | | | Tests | Proposed Compliance | | |
|--|---------------|----------------|--|-------|--|------------------------|-------------|
| Service Territory | Ameren | ComEd | Totals | | | | |
| Usage (MWH) | 65,000 | 200,000 | | | | | |
| Total RPS Requirement (%) * | 10% | 10% | | | Retired RECs used for the Compliance Period | | |
| Total RPS Requirement (MWH) | 6,500 | 20,000 | | | | | |
| Wind Requirement (%) * | 60% | 60% | | | | | |
| Solar PV Requirement (%) * | 6% | 6% | | | 10,000 | PJM-GATS Wind | |
| Wind Requirement (MWH) | 3,900 | 12,000 | | | 0 | PJM-GATS Solar PV | |
| Solar PV Requirement (MWH) | 390 | 1,200 | | | 3,250 | PJM-GATS Other | |
| Min ACP (MWH equivalent) = Max RECs = Total RPS * 50% (MWH) | 3,250 | 10,000 | | | + | | |
| ACP (MWH equiv) for Wind Requirement | 2,860 | 8,800 | | | 0 | M-RETS Wind | |
| ACP (MWH equiv) for Solar Requirement | 390 | 1,200 | | | 0 | M-RETS Solar PV | |
| ACP (MWH equiv) for Other Requirement | 0 | 0 | | | 0 | M-RETS Other | |
| Total ACP (MWH equiv) | 3,250 | 10,000 | | | = | | |
| Total RECs needed (MWH) | 3,250 | 10,000 | 13,250 | ≤ | 13,250 | Total RECs | TRUE |
| Min Wind RECs needed | 1,040 | 3,200 | 4,240 | ≤ | 10,000 | Total Wind | TRUE |
| Min Solar PV RECs needed | 0 | 0 | 0 | ≤ | 0 | Total Solar PV | TRUE |
| Max Other RECs needed | 2,210 | 6,800 | 9,010 | | 3,250 | Total Other | |
| ACP Rate (cents/kwh of Usage)** | 0.0645 | 0.0764 | | | | | |
| ACP Rate (\$/MWH of Usage) | \$0.645 | \$0.764 | | | | | |
| Computed ACP (\$) | \$20,963 | \$76,400 | \$97,363 | ≤ | \$97,363 | Actual ACP (\$) | TRUE |
| Total ACP (MWH equiv) ≥ Min ACP (MWH equiv) | TRUE | TRUE | Total ACP (MWH equiv) ≥ Min ACP (MWH equiv) for both ComEd and Ameren | | | | TRUE |