

Illinois Commerce Commission On Its :
Own Motion :
: **ICC Docket No. 06-0703**
Revision of 83 Ill. Adm. Code 280 :
Illinois Commerce Commission On Its :

DRAFT PROPOSED ORDER

ON BEHALF OF THE

RETAIL GAS SUPPLIERS

COMPRISED OF:

**INTERSTATE GAS SUPPLY OF ILLINOIS, INC.
JUST ENERGY ILLINOIS CORP.**

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OCTOBER 14, 2011

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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DRAFT PROPOSED ORDER OF THE RETAIL GAS SUPPLIERS

The Retail Gas Suppliers (“RGS”), consisting of Interstate Gas Supply of Illinois, Inc. (“IGS Energy”) and Just Energy Illinois Corp. (“Just Energy”), by and through its attorneys, DLA Piper LLP (US), pursuant to Section 200.810 of the Rules of Practice of the Illinois Commerce Commission (“Commission”) (83 Ill. Admin. Code 200.810), respectfully submits its Draft Proposed Order in the instant proceeding addressing the proposed revisions to 83 Ill. Admin Code 280 (“Part 280”).

RGS proposes the following language:

SECTION 280.60(E)

RGS is comprised of IGS Energy and Just Energy. IGS Energy is a retail natural gas supply company that focuses on both residential and commercial natural gas customer supply needs, and is a certified ARGS and ARES in Illinois. (*See* RGS Initial Brief at 3-4.) Just Energy also is a retail natural gas supply company. (*See* RGS Initial Brief at 4.)

RGS argues that the Part 280 Rules should support the Commission’s long-standing policy supporting development of competitive retail energy markets. (*See* RGS Initial Brief at 4.) RGS highlights provisions of the Public Utilities Act as well as Commission Orders and Commission publications that demonstrate both the long-standing policy of both the General Assembly and the Commission favoring competition and competitive markets. (*See* RGS Initial Brief at 4-5.) RGS submits that the Part 280 Rules generally, and in particular proposed Section

280.60(e), should reflect that pro-competitive policy. (See RGS Initial Brief at 5.) As RGS explains, Section 280.60(e) covers allocation of partial payments between an alternative supplier and the utility, which -- depending on the rules in place -- can severely hamper the competitive marketplace. (See, e.g., RGS Initial Brief at 5-6.)

RGS set out the three of the options presented in the record: RGS's two proposals -- purchase of receivables and *pro rata* allocation of partial payments -- and Staff's final proposal - - to delete proposed Section 280.60(e) from the Rule, as proposed in Staff's Surrebuttal Testimony. (See RGS Initial Brief at 5-7.) RGS emphasized that, short of establishing a Purchase of Receivables program, there will be competitive imbalances as long as the utility (which can recover its uncollectables from its customers through a rider) lacks financial motivation to take the necessary steps to collect on behalf of alternative suppliers. (See RGS Initial Brief at 5-8.) RGS stated that implementation of a Purchase of Receivables program would be the best solution, but short of that, the approach presented by RGS witness Vincent Parisi allocating partial payments *pro rata* to the utility and alternative supplier was the next best alternative. (See RGS Initial Brief at 8-9.)

However, in its Initial Brief RGS also stated that, in the spirit of compromise, it supported Staff's proposal to delete proposed Section 280.60(e) entirely from the Rule. (See RGS Initial Brief at 9; see also Staff Initial Brief at 41 (setting out Staff's proposal).) RGS clarified that in the absence of a specific provision on allocation of partial payments in the Part 280 Rules, the *status quo* for partial payment allocation should govern. (See RGS Initial Brief at 7.)

RGS also explained the anti-competitive effects of a GCI proposal, which would require full payment of utility charges before an alternative supplier could receive the first dollar in

partial payments. (See RGS Initial Brief at 10.) Consistent with the RGS discussion that detailed the potentially harmful effects on the competitive market from the GCI proposal, no party (including GCI) ultimately recommended the GCI approach in respective Initial Briefs or Reply Briefs. (See, e.g., Staff Reply Brief at 66 (noting no party objected to Staff's proposal); GCI Initial Brief at 47-49 (discussing proposed Section 280.60 without mention of proposed Section 280.60(e)); GCI Reply Brief at 50-51 (same).)

COMMISSION ANALYSIS AND CONCLUSIONS

We adopt Staff's proposal to strike Section 280.60(e), subject to the RGS clarification that striking this Section preserves the *status quo* for allocation of partial payments. We find this to be a reasonable solution to an issue that Staff points out does not lend itself to a one-size-fits-all approach. As Staff pointed out in its Reply Brief, no party opposed Staff's recommendation to strike Section 280.60(e) in Initial Briefs, and it appears that no party registered opposition for the first time in Reply Briefs.

We note that the payment priority system impacts competitive market development, and further note that RGS submitted testimony and arguments discussing proposals such as purchase of receivables and *pro rata* allocation of partial payments that are sensible suggestions consistent with pro-competitive policies. In this instance, based on the consensus of the parties, we adopt Staff's position to delete Section 280.60(e), but in so doing we do not intend to communicate an anti-competitive position; on the contrary, the Commission reiterates its policy and the policy of the General Assembly as set forth in the Public Utilities Act that favors competition and competitive markets.

We further find RGS's clarification that striking Section 280.60(e) leads to the maintenance of the *status quo* for partial payment allocations to be reasonable; the record does not provide a viable alternative and RGS's clarification ensures continuity in the absence of new

rules. Accordingly, consistent with Staff's recommendation, proposed Section 280.60(e) is stricken and we reaffirm that the *status quo* will remain in place.

Respectfully submitted,

THE RETAIL GAS SUPPLIERS

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