

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)
On its Own Motion)
) **Docket No. 12-0213**
Implementation of Section 16-128A)
of the Public Utilities Act)

**VERIFIED REPLY COMMENTS OF LOCAL UNION 51, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO**

Local Union 51, International Brotherhood of Electrical Workers, AFL-CIO (IBEW), by and through its undersigned counsel, respectfully submits its Verified Reply Comments (“IBEW Comments”) concerning a proposed Illinois Commerce Commission (“Commission”) rule establishing certification requirements for entities installing distributed generation facilities.

I. Procedural Issues

Before addressing the substance of the other parties’ comments, the IBEW must first point out that several parties have failed to comply with both the ALJ’s November 5, 2012 Order concerning submission of comments and the rules of procedure before the Commission.

The Illinois Administrative Procedure Act gives the Commission the authority to establish, within the First Notice Period, the “time, place, and manner in which interested persons may present their views and comments concerning the proposed rulemaking.” 5 ILCS 100/5-40(b)(5). In his November 5 order, Judge Albers set the dates for submitting comments and reply comments and stipulated that they “must be verified or accompanied by a supporting affidavit.” Despite this clear guidance, several parties failed to provide verification or affidavit support for their comments. Others failed to timely file or serve their comments. The Chicago Regional Council of Carpenters submitted its Petition to Intervene on December 18, the day after initial comments were due, and attached to its petition two documents that purported to be

comments on the proposed rule. These documents were not designated as comments in e-docket or, apparently, through any channel at the Commission; they were untimely as to the deadline for submitting comments; they were not verified or supported by affidavit; and as of the date of this filing they have not been served on the IBEW or, as far as the IBEW knows, any party, as required by the Commission's rules of procedure. The IBEW is aware of their existence only because it took the affirmative step of visiting e-docket and searching the record for comments. These omissions are more than technical; they deprived the other parties of notice of the existence and substance of the Carpenters' "comments" and, thus, any meaningful opportunity to respond in the fashion clearly contemplated by the rules. For these reasons, the "comments" submitted by the Carpenters and attached to their Petition to Intervene should be stricken from the record and disregarded.

Others' failures to comply with Judge Albers' November 5 Order and the Commission's Rules of Procedure did not rise to the level of depriving other parties of notice but have unduly complicated the process of generating reply comments nonetheless. The Illinois Solar Energy Association does not appear to have filed its comments until December 19, although they were circulated to the electronic service list on December 17. Further, although ISEA submitted a new draft of the rule that contained its proposed changes, those changes were not highlighted in a manner that allowed the other parties to easily identify them. A request for a red-line version of ISEA's proposed rule elicited a red-line version that did not actually reflect all changes made by ISEA. Although ISEA's Counsel promised to provide a complete red-line version, he has not done so to date. SoCore Energy filed both its Petition to Intervene and its Comments on December 18; the Comments were not verified or supported by any affidavit although they were circulated to the electronic service list on December 17. Although the Electronics Technicians

Association served Verified Comments on December 17 and provided a notice that they had been filed that day, they do not appear on e-docket and appear not to have been filed to date, contrary to the certification of ETA's attorney. The Illinois Chamber of Commerce failed to serve its Comments, which were not verified or supported by affidavit, until December 18; apparently they were not filed until December 19. The Associated Builders and Contractors of Illinois also failed to verify or otherwise support its comments, which were served on December 18 and not filed until December 20.¹ Although these failings, unlike those of the Carpenters, did not deprive the other parties of notice, they have unnecessarily complicated this process, imposing a burden on others. The IBEW respectfully requests that the Commission take such action in response as it deems proper, including striking non-compliant Comments.

II. Reply Comments

The comments submitted by other parties and members of the public tend to address three areas: the proposed rule's definition of "qualified person", its definition of "install" and the proposed fee structure.² Many commenters seem confused about the role of the Commission and the latitude accorded to it by the General Assembly in this instance. These commenters' positions run the gamut from suggestions that any regulation of installers of DG facilities would have an adverse effect on the industry to proposals for criteria that bear little relation to the statutory mandate supplied by the GA. As the IBEW observed in its initial comments in this docket, the statutory mandate is both clear and unequivocal about the minimum qualifications for

¹ Some commenters who submitted "public comments" also failed to do so timely and did not serve them on the service list, although some "public commenters" appear to have been added to the service list. The North American Board of Certified Energy Practitioners filed its "public comments" on December 21, 2012. As with untimely filed Verified Comments of parties to this docket, the Commission should disregard untimely public comments.

² The IBEW believes Staff has already committed to amending the fee structure and takes no position on that issue.

installers of DG facilities. The Commission is bound to give effect to these standards. A departure from these clearly articulated qualification standards, as proposed by several commenters and as contained within Staff's proposed rule, would render the rule in violation of the statute.

A. Certification or training programs that are not apprenticeship programs do not satisfy the requirements of Section 16-128(a).

In Section 16-128(a), the GA established a minimum threshold in order to ensure that employees performing work on the electrical grid would “have the requisite skills, knowledge, training, experience, and competence to provide reliable and safe electrical service under this Act.” That threshold demands either “completion or current participation and ultimate completion by the employee of an *accredited or otherwise recognized apprenticeship program* for the particular craft, trade or skill, *or specified and several years of employment* performing a particular work function that is utilized by an electric utility.” 220 ILCS 5/16-128(a) (emphasis added). Illinois law is replete with references to apprenticeship programs and in particular to programs registered with the United States Department of Labor's Bureau of Apprenticeship and Training. *See, e.g.*, 30 ILCS 500/30-22 (responsible bidder requirements); 225 ILCS 312/45 (licensing of elevator mechanics); 23 Ill. Adm. Code 254.990 (standards for apprenticeships supported with vocational education funds and offered by local educational agencies). The Illinois Department of Employment Security (IDES) describes an apprentice as “a paid worker who is enrolled in a special training program administered by an employer together with a labor organization or trade association.”³ Such legislative and administrative references indicate that

³ *See* Illinois Department of Employment Security description and listing of apprenticeship programs, available at: <http://www.ides.illinois.gov/page.aspx?item=38> (last visited December 26, 2012). IDES notes that “[m]ost apprenticeships take three to five years to complete” and “[t]he typical program includes 2,000 hours of on-the-job training plus at least 144 hours per year of related classroom instruction.” *Id.*

when the GA used the term “apprenticeship” in Section 16-128(a), it did so advisedly. Most, if not all, electric utility employees in 2007 had completed or were enrolled in DOL-registered electrical apprenticeship programs,⁴ either through the IBEW in conjunction with the National Electrical Contractors’ Association (IBEW-NECA apprenticeships) or through another entity such as the Associated Builders and Contractors’ (ABC) electrical apprenticeship program.⁵ The IBEW-NECA DOL-registered apprenticeship programs are 5-year programs that involve a total of 8000 hours of training—1200 hours in the classroom and lab and another 6800 hours of hands-on training in the workplace. This training covers the full range of subjects and skill sets necessary to provide reliable and safe service. This was the minimum qualification standard that existed and upon which the GA relied in drafting the statute.

To the extent other commenters have proposed the Commission should accept as proof of the requisite “knowledge, skill, training, experience, and competence levels...consistent with those required of or by the electric utilities,” certification or training programs that are not apprenticeship programs, such proposals simply do not satisfy the statutory mandate. While these certifications or training regimes may have value and the Commission may wish to require their completion *in addition to* a DOL-registered apprenticeship program,⁶ they cannot replace the training provided by an electrical apprenticeship program.

⁴ In its Verified Reply Comments filed December 27, 2012, Ameren Illinois Company confirmed that IBEW’s proposed revisions to Staff’s proposed rule “reflect changes consistent with the knowledge, skill, training and competence levels required by the Ameren Illinois legacy companies in 2007.”

⁵ Contrary to one commenter’s assertion that apprenticeship programs are “union-dominated”, there are non-union electrical apprenticeship programs in Illinois, including those sponsored by the ABC. *See, e.g.*, Illinois Department of Employment Security description and listing of apprenticeship programs, available at: <http://www.ides.illinois.gov/page.aspx?item=38> (last visited December 26, 2012).

⁶ As discussed below, the IBEW believes a DOL-registered electrical apprenticeship provides sufficient training for DG installers and no additional certifications are necessary. However, the IBEW has partnered with one of the entities whose certifications were put forward by other commenters (Underwriters Laboratories) to help develop curriculum for IBEW-NECA apprentices. A copy of the testing guidelines for this certification are attached hereto as IBEW Exhibit 1.0.

B. Because Illinois has no consistent state-wide standards for licensing electricians, the Commission cannot rely on licensing by local AHJs as proof of qualification for DG installers.

Some commenters have proposed that the Commission should leave determinations concerning minimum qualifications for installers of DG facilities to local authorities having jurisdiction (AHJs), generally by making any individual who has been licensed as an electrical contractor by any Illinois AHJ a “qualified person” to install DG facilities. The ISEA, completely without evidentiary support, asserts that “licensed electricians are trained to perform the AC connections necessary to interconnect the DG system to the utility” and observes that “the majority of AHJs require a licensed electrician to pull a permit” to install a DG system. There are two major problems with this approach, espoused by both ISEA and SoCore. First, as other commenters have noted (*see, e.g.*, Comments of Craig Pals), AHJs across the state do not have consistent standards for obtaining electrical contractor licenses; some municipalities have no licensing at all. Thus, while some jurisdictions may require training as described by ISEA in order to obtain a license, others have no such requirements. The patchwork of regulation provided by Illinois AHJs only highlights the importance of establishing, through this rule, a uniform statewide standard. Second, and more importantly, the Commission initiated this docket in response to a statutory mandate to establish just such a statewide uniform standard. If the Commission were to simply “punt” and leave such standards to the local AHJs, it would be ignoring the directive of the GA.

C. Existing DOL-registered apprenticeship programs yield sufficient numbers of well-qualified DG installers.

Certain commenters have raised questions concerning the sufficiency of currently available DOL-registered electrical apprenticeship programs, either in terms of the number of individuals who participate in and graduate from such programs or in terms of the training they

offer.⁷ SoCore, again without evidentiary support, claims that there are only seven DOL-registered electrical apprenticeship programs in the state of Illinois, six of which are operated by the IBEW.⁸ In fact, the IBEW, together with NECA, operates seventeen (17) electrical apprenticeship programs in Illinois.⁹ One of these seventeen programs, the Chicago Electrical JATC, graduates approximately 200 apprentices each year. Other programs are generally smaller but still graduate 20-30 apprentices each year. These figures demonstrate that there is an ample and steady supply of individuals throughout the state who would meet the definition of “qualified person” proposed by the IBEW and consistent with the statute.¹⁰

Other commenters have suggested that existing DOL-registered apprenticeships do not provide sufficient training in the installation of DG facilities. This is also a fallacy without any evidentiary support. In fact, the National Joint Apprenticeship and Training Committee for the

⁷ One commenter, ISEA, asserted that “testimony” was provided at the December 10, 2012 public hearing about whether DOL-registered electrical apprenticeship programs could provide enough qualified installers to meet demand. In fact, there was no “testimony” provided at that hearing; the only “witnesses” who were sworn were the members of the Commission Staff who were on hand to answer questions from the public, as required by 5 ILCS 100/5-40(b)

⁸ Given SoCore’s lack of citation to evidentiary support and its failure to verify or otherwise support its Comments, it is not clear where SoCore formed this mistaken impression.

⁹ Those seventeen programs are as follows: Electricians Joint Apprenticeship IBEW 649, Alton, IL; NECA-IBEW Local Union 461 JATC, Aurora, IL; Bloomington Electrical JATC, Bloomington, IL; Champaign-Urbana JATC Champaign, IL; Chicago Electrical JATC, Alsip, IL; Southwestern Illinois JATC, Collinsville, IL; Danville NECA-IBEW Electrical JATC, Danville, IL; Midstate Electrical Training Center, Decatur, IL; IBEW LU 117 NECA JATC, Crystal Lake, IL; Dupage County Electrical JATC, Warrenville, IL; IBEW JATC Local 176, Joliet, IL; Peoria Electrical JATC, Peoria, IL; Northern Illinois Electrical JATC, Rockford, IL; Quad City Electrical JATC, Moline, IL; NECA-IBEW 193 JATC, Springfield, IL; Lake County JATC, Libertyville, IL; So IL Div Ch NECA-IBEW LU 702 JATC, West Frankfort, IL. See <http://www.njatc.org/training/find.aspx>.

¹⁰ The Carpenters have proposed that the definition of “Qualified Persons” should be expanded to include “members of the Chicago Regional Council of Carpenters who are either current participants in or who have received training in the Chicago Regional Council of Carpenters Apprentice Training Program.” Setting aside the obvious problems with requiring union membership as part of the installer qualification, this request is completely unnecessary if the Carpenters’ apprenticeship program is a DOL-registered electrical apprenticeship program that would already satisfy the proposed definition. However, there is no evidence that the Carpenters’ apprenticeship program is an electrical apprenticeship that would provide the necessary skills and training to satisfy the statutory mandate, i.e., the knowledge, skill, training, experience, and competence levels...consistent with those required of or by the electric utilities” in 2007.

Electrical Industry provides training in photovoltaic systems¹¹ to all of its fifth-year apprentices. Certain IBEW-NECA apprenticeship programs have developed their own photovoltaic curriculum. For example, the Chicago JATC has its own curriculum that builds on the NJATC curriculum but also prepares apprentices to sit for and pass the NABCEP Entry Level Certification Exam.¹² In those regions where wind is a viable alternative power source, IBEW-NECA apprenticeships offer training in wind generation. For example, fourth-year apprentices at the Lake County JATC installed its first wind tower in 2011 to allow for training apprentices on the technology.¹³ In 2009, IBEW Local 364 in Rockford spearheaded an effort to erect a wind turbine to provide training opportunities to apprentices in that region.¹⁴

The IBEW, without opining on the merits of each, believes that some of the certifications and training courses put forward by other commenters as alternatives to participation in and completion of a DOL-registered electrical apprenticeship program may offer valuable training. If true, that does not alter the fact that only an apprenticeship program will satisfy the statutory requirement. The IBEW believes that existing DOL-registered electrical apprenticeship programs provide ample training in the skills required to safely and reliably install DG facilities. However, the Commission is privileged to establish more stringent

¹¹ See, e.g., IBEW Exhibit 2.0, December 14, 2012 letter from Marty Riesberg, Director of Curriculum Development, National Joint Apprenticeship and Training Committee for the Electrical Industry, with attached NJATC Photovoltaic Systems curriculum outline.

¹² See Photovoltaic Systems Installation I and II Syllabus, attached hereto as IBEW Exhibit 3.0. The Chicago JATC's record of preparing apprentices for the NABCEP entry level exam is impressive. For example, of the 33 apprentices who sat for the exam on May 27, 2010, 31 achieved passing scores. In addition to the many apprentices who have attained NABCEP entry-level certification, 5 of the 21 Illinois electricians who have achieved NABCEP Installer certification are graduates of the Chicago JATC apprenticeship program. See Search Results for NABCEP Certified Professionals in Illinois at <http://www.nabcep.org/installer-locator?state=IL> (last visited December 27, 2012).

¹³ See photo gallery of the installation at: <http://www.lakecountyjatc.org/windtowerphotogallery.htm> (last visited December 26, 2012).

¹⁴ See *Illinois Local Lobbies for Wind Power Zoning*, Nov. 9, 2009, available at: http://www.ibew.org/articles/09daily/0911/091106_ILWindPower.htm (last visited December 26, 2012).

requirements (but not less stringent ones) and it may consider whether to require additional certification(s) or training over and above the DOL-registered apprenticeship that sets the statutory threshold. In the event the Commission determines that such additional certification could be desirable, the IBEW urges the Commission to establish a schedule for receiving evidence on that subject that would enable the Commission to identify appropriate certifications and/or trainings.¹⁵ In the absence of such evidence, the Commission has no way of gauging the effectiveness or desirability of the several available certification and training options put forward by various parties.

D. None of the proposals for grandfathering or alternate certification paths satisfy the requirements of Section 16-128(a).

In addition to suggesting certification programs as alternatives to a DOL-registered apprenticeship program, some commenters addressed the proposed rule's "grandfathering" of individuals who have satisfactorily completed at least twenty installations of distributed generation technologies prior to effective date of the rule. As the IBEW pointed out in its initial verified comments, Section 16-128(a) does provide for an alternative means by which an individual may establish that he or she possesses the requisite skills, knowledge, training, experience, and competence to provide reliable and safe electrical service. However, contrary to the grandfather provision contained in Staff's proposed rule, that alternative path requires the Commission to establish a standard based on "*specified and several years of employment performing a particular work function that is utilized by an electric utility*"—not, as the proposed rule currently provides, a number of installations untethered to any number of years of employment. To the extent some commenters have suggested that the grandfathering provision

¹⁵ The Commission may not, as proposed by the ISEA in its definition of "qualified person", leave the rule open-ended and leave for another day the designation and approval of such a "certified and/or accredited training course or program." To do so would be to fail to fulfill the command of Section 16-128A.

should be relaxed to allow qualification by those who have installed as few as three (3) DG facilities (See ETA Comments), those proposals ignore altogether the statutory mandate, a luxury the Commission does not share. Additionally, the proposed rule's reliance on "satisfactory completion" of any number of installations raises interpretation and enforcement issues as outlined in the Verified Reply Comments of the Ameren Illinois Companies, whose concerns on this point the IBEW shares.

E. The rule's definition of "install" must acknowledge that the electrical work of installing DG facilities consists of more than just wiring and connections.

Several commenters have addressed the proposed rule's definition of "install." The ISEA's draft rule would make amendments to that definition despite the fact that the ISEA utterly failed to address that section of the rule in its comments and provided no explanation whatsoever for its proposed changes. Interestingly, the ISEA's amended definition would exclude from the definition of "install" (and, thereby, from the coverage of the rule) all work except for interconnection itself. As far as the IBEW can tell in the absence of any explanation, this change would essentially render the rule a nullity as interconnection is generally performed by utility workers and thus subject to separate regulation.

Aside from the ISEA, most other commenters seem to recognize that the rule's definition of install is too narrow rather than too broad, although some also assert that the broad scope of work actually associated with the installation of DG facilities is not properly characterized as "electrical work" requiring the "knowledge, skill, training, experience, and competence levels...consistent with those required of or by the electric utilities." This view is contradicted by the provisions of the National Electrical Code that govern solar photovoltaic systems (Article 690—attached hereto as IBEW Exhibit 4.0). Article 690.2 of the NEC defines a "Solar Photovoltaic System" as "[t]he total components and sub-systems that, in combination,

convert solar energy into electric energy suitable for connection to a utilization load.” One component of such a system is an array, which the NEC defines as “[a] mechanically integrated assembly of modules or panels with a support structure and foundation, tracker, and other components, as required, to form a direct-current power-producing unit.” It is the installation of these “total components and sub-systems” (among other things) that the GA has sought to address in Section 16-128A and which the Commission is tasked with regulating in this rule-making. These provisions of the NEC demonstrate that installation of a DG facility is far more than simply wiring and connections and that the “bible” of electrical work views all of these tasks as part of an integrated whole. The training provided by Illinois DOL-registered electrical apprenticeship programs further supports the conclusion that “electrical work” extends far beyond mere wiring and connections. As Harry Ohde explained at the December 10, 2012, public hearing in this matter, electrical apprentices are trained in Conduit Bending, Math and Theory, Electrical Code and Blueprint, Circuits, Construction Shop, AC/DC Theory, Fire Alarm, Motor Controls, Advanced Electrical Code, Advanced Conduit Bending, Communications, Transformers, Instrumentation, Motors, Variable Frequency Drives, Programmable Controllers, Photovoltaics, OSHA 10, NFPA 70E, First Aid/ CPR, Scaffolding, Lock out/tag out, Meter use and more. Apprentices are also trained in mechanics—roof penetrations, concrete coring, bracketing (conduit and supports)—as well as welding. *See* Public Hearing Exhibit 1. All of these are skills that electricians bring to bear on installation of DG facilities. The definition of “install” must be broad enough to encompass this full range of work and ensure that it is performed safely and reliably, consistent with the statutory mandate.

III. Conclusion

For all of the foregoing reasons and those articulated in its Initial Verified Comments, the IBEW respectfully requests that the Commission adopt the IBEW's proposed changes to Staff's draft rule. If the Commission wishes to establish an alternate "years-of-employment" qualification standard, or to consider additional certifications or training programs that would be required in addition to DOL-registered electrical apprenticeship, the IBEW respectfully requests that the Commission establish a schedule to permit the submission of evidence concerning these topics. The IBEW further requests that the Commission disregard and strike from the record any "comments" provided in a manner inconsistent with Judge Albers' November 5 order or the Commission's rules of practice and procedure. Finally, the IBEW requests that the Commission grant such other relief as is warranted under the circumstances.

Respectfully submitted,

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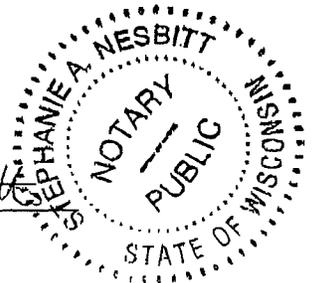
VERIFICATION

I, Harry Ohde, first being duly sworn upon my oath, depose and state that I am familiar with the facts and matters set forth in the foregoing Verified Reply Comments and that same are true and correct to the best of my knowledge, information and belief. I also verify that the copies of documents attached to the Verified Reply Comments as IBEW Exhibits are true and accurate.

Harry Ohde
 Harry Ohde

Subscribed and sworn to before me this 27th of December, 2012.

Stephanie A. Nesbitt
 Notary Public



My Commission Expires: 4/12/2015