

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SmartEnergy Holdings, LLC :
 :
Application for Certificate of Service : **15-0557**
Authority under Section 16-115 of the :
Public Utilities Act. :

ORDER

By the Commission:

I. PRELIMINARY MATTERS

On October 6, 2015, SmartEnergy Holdings, LLC (“Applicant” or “Smart”) filed a verified application with the Illinois Commerce Commission (“Commission”) requesting a certificate of service authority to operate as an alternative retail electric supplier (“ARES”) in Illinois pursuant to Section 16-115 of the Public Utilities Act (“Act”), 220 ILCS 5/10-115 et seq., and 83 Ill. Adm. Code 451 (“Part 451”). Applicant submitted its certificate of publication showing that on October 8, 2015, proper notice of the application was published in the official State newspaper. The Administrative Law Judge requested clarification of certain matters contained in the application. Applicant filed a verified response to the Administrative Law Judge on October 27, 2015. In the response to the Administrative Law Judge, the Applicant clarified that it is only seeking a certificate of service in the service territory of Commonwealth Edison Company (“ComEd”), and that it has had no formal complaints filed against it for its provision of services as an ARES in any other jurisdiction.

II. BACKGROUND AND AUTHORITY SOUGHT BY APPLICANT

Applicant requests authority to offer the sale of electricity and power to eligible residential and non-residential retail customers in the ComEd service territory. Applicant indicates that it is not seeking authority to provide single-billing services under subpart F of Part 451.

Finally, Applicant has requested confidential treatment of certain information attached to its application as well as to its response to its response to the Administrative Law Judge's request for additional information and clarification.

III. REQUIREMENTS FOR ALL APPLICANTS UNDER SECTION 16-115(d) OF THE ACT

Applicant is a Delaware limited liability company, headquartered in New York City, New York, and has not been previously certificated as a retail electric supplier in Illinois. Applicant indicates it is currently licensed to provide similar services in Ohio, Pennsylvania, Delaware, New Jersey, New York and Massachusetts. Applicant states that it does not and will not have employees that will be installing, operating, and maintaining generation, transmission, or distribution facilities within the State of Illinois. Applicant indicates that it has not contracted with any other entity to perform these functions. No demonstration of compliance with the requirements of Section 451.20(f)(2) has been made and Applicant's employees are not permitted to perform such functions, and other entities are not permitted to perform such functions pursuant to contractual arrangements with Applicant.

Applicant has certified that it will comply with all applicable regulations; that it will provide service only to retail customers eligible to take such services; that it will comply with informational and reporting requirements established by Commission rule; that it will comply with informational and reporting requirements pursuant to Section 16-112 of the Act; and that it will comply with all other applicable laws, regulations, terms, and conditions required to the extent they have application to the services being offered by an ARES. Additionally, Applicant has agreed to submit good faith schedules of transmission and energy in accordance with applicable tariffs. Applicant has agreed to adopt and follow rules relating to customer authorizations, billing records, and retail electric services and agrees to retain requests for delivery services transmitted to utilities for a period of not less than two calendar years after the calendar year in which they are created. Applicant has agreed to adopt and follow rules and procedures to preserve the confidentiality of its customers' data.

Pursuant to the requirements of Subpart D of Part 451, Applicant certifies that any marketing materials that make statements concerning prices, terms and conditions of service shall contain information that adequately discloses the prices, terms and conditions of the products or services that it is offering or selling to the customer. Applicant also certifies that before any customer is switched from another supplier, it shall give the customer written information that adequately discloses, in plain language, the prices, terms and conditions of the products and services being offered and sold to the customer. Applicant further certifies that it will provide documentation to the Commission and to customers that substantiates any claims made regarding the technologies and fuel types used to generate the electricity offered or sold to customers. Applicant commits to provide to its customers itemized billing statements that describe the products and services provided to the customer and their prices; and an additional statement, at least annually, that adequately discloses the average monthly prices, and the terms and conditions, of the products and services sold to the customer.

Applicant certifies that it will include materials comprising the consumer education program pursuant to Section 16-117 of the Act with all initial mailings to potential

residential and small commercial retail customers and before executing any agreements or contracts with such customers. Applicant certifies that it will provide consumer education program materials pursuant to Section 16-117 of the Act at no charge to residential and small commercial retail customers upon request. Applicant certifies that it will provide to residential and small commercial retail customers on a semi-annual basis information on how to obtain a list of alternative retail electric suppliers that have been found in the last three years by the Commission to have failed to provide service in accordance with the terms of their contracts pursuant to Section 16-117(g)(4)(C) of the Act.

Pursuant to the requirements of Section 451.50 of Part 451, Applicant provided a License or Permit Bond in the amount of \$300,000 issued by a qualifying surety authorized to transact business in Illinois. Attachment "I" to the response to the Administrative Law Judge is a copy of the required License or Permit Bond.

IV. FINANCIAL, TECHNICAL, AND MANAGERIAL REQUIREMENTS OF SECTION 16-115 OF THE ACT

Applicant asserts that it meets the financial qualifications set forth in Section 16-115(d)(1). Included in Attachment F to the application is information intended to demonstrate that Applicant meets the criteria set forth in Sections 451.320(a)(2) of the currently applicable emergency rules. Specifically, Applicant indicates that it maintains one or more lines of credit with an unaffiliated wholesale supplier for electric energy for delivery to the utility service territories of the utilities for which it seeks certification. Applicant states that pursuant to subsection 451.320(a)(2)(A), the amount of credit available to it under the credit agreements is in the aggregate no less than 10 percent of the amount of Applicant's revenue for the most recently completed 12-month fiscal year. Applicant also provided documentation intended to verify that it meets the financial requirements of Part 451.

Applicant represents that it meets the technical and managerial qualifications set forth in Section 16-115(d)(1) of the Act and Sections 451.330 and 451.340 of Part 451 by utilizing a combination of its employees and GP Renewables & Trading, LLC, a contracted agent.. Applicant asserts that it meets the requirements of Part 451.330 by designating contact information for where its staff can be directly reached at all times. Attachment F, as well as the response to the Administrative Law Judge to the application contains information regarding the technical qualifications of Applicant's employees. Attachment G and the response to the Administrative Law Judge contain a corporate organizational chart, which indicates the positions of those persons used to meet the requirements of Part 451.340. Applicant identified an individual, telephone number and facsimile number that can be reached at all times.

In Attachment G to the application, Applicant provided information intended to demonstrate that it meets the managerial qualifications set forth in Part 451.340, as well as a corporate organizational chart, which indicates the positions of those persons used to meet the requirements. Applicant certifies that all of its agents or contractors will

comply with all Sections of Part 451 applicable to the function or functions to be performed by the respective agent or contractor.

Applicant agrees to maintain a 24-hour manned energy desk for coordination with control centers of scheduling changes, reserve implementation, curtailment orders, and interruption plan implementation. Applicant provided a telephone number and facsimile number where its staff can be directly reached at all times. Having reviewed the information submitted by Applicant, the Commission concludes that Applicant meets the financial, technical, and managerial qualifications set forth in Section 16-115(d)(1) of the Act and Subpart D of Part 451.

The Applicant further certifies in the response to the Administrative Law Judge, that it certifies in the event that the applicant bills any residential customer directly for supply, the applicant shall ensure that when marketing to residential customers who receive any type of low income energy assistance, the applicant has entered into the necessary agreements to allow low-income customers to receive Low Income Home Energy Assistance Program ("LIHEAP") benefits and Percentage of Income Payment Program ("PIPP") benefits.

V. REQUIREMENTS OF SECTION 16-115(d)(5) OF THE ACT

On January 12, 2009, Public Act 095-01027 ("PA 95-1027") was signed into law in Illinois. Among many other things, PA 95-1027 amends Section 16-115 of the Act. Section 16-115(d)(5) requires, in part:

That the [ARES] applicant will procure renewable energy resources and will source electricity from clean coal facilities, as defined in Section 1-10 of the Illinois Power Agency Act, in amounts at least equal to the percentages set forth in subsections (c) and (d) of Section 1-75 of the Illinois Power Agency Act.

Applicant states that it intends to fully comply with Subsection 16-115(d)(5) of the Act and the specific requirements to procure renewable energy resources as defined in the Illinois Power Agency Act ("IPA Act"). Applicant says it will procure renewable energy sources in accordance with Sections 16-111.5(d)(5) and 16-115D of the Public Utilities Act and will source electricity from clean coal facilities, as defined in Section 1-10 of the Illinois Power Agency Act, in amounts at least equal to the percentages set forth in subsections (c) and (d) of Section 1-75 of the Illinois Power Agency Act. Applicant indicates it is not a generator of electric power and energy (renewable or otherwise) and therefore contemplates that it will either purchase the required portion of its electric supply requirements from qualified renewable power generation sources directly, or more likely, purchase sufficient Renewable Energy Credits and/or make alternative compliance payments to meet the requirements of the Acts and related Commission requirements.

Having reviewed the information submitted by Applicant, the Commission concludes that Applicant meets the requirements set forth in Section 16-115(d)(5) of the

Act. The Commission notes that it is responsible for enforcing the requirements of Section 16-115(d)(5) of the Act, as well as certain referenced requirements in the IPA Act, and Applicant must fully comply with all requirements contained therein.

VI. REQUEST FOR CONFIDENTIAL TREATMENT

Applicant further seeks confidential treatment of certain information contained in Attachments "C" and "D," which were filed with the Application. Applicant indicates that these documents contain highly proprietary and confidential commercial and financial information, the disclosure of which to competitors would likely be detrimental to Petitioner given the highly competitive nature of the electric industry. The Commission has reviewed the request for confidential treatment and finds that it is appropriate to grant a two-year period of confidential treatment for Attachments "C" and "D" to the original Application, as well as the GP Renewables & Trading, LLC contract provided in the response to the Administrative Law Judge. The Commission concurs with Applicant that disclosure of the redacted information and use by a competitor is apt to cause the Applicant competitive harm. Applicant's confidential information in the Commission's possession should, therefore, be accessible only by the Commission and Commission Staff, unless such information is or becomes publicly available from another source.

VII. COMMISSION CONCLUSION AND CERTIFICATE OF SERVICE AUTHORITY

The Commission has reviewed the application and attachments along with the supplementary information provided by Applicant regarding the technical, financial, and managerial requirements and all other requirements of the Act and Part 451 and finds that the Applicant sufficiently demonstrates compliance with the requirements.

The Commission concludes, therefore, that Applicant's request for a certificate of service authority to operate as an ARES in Illinois should be granted and should include the following authority:

CERTIFICATE OF SERVICE AUTHORITY

IT IS CERTIFIED that SmartEnergy Holdings, LLC is granted service authority to operate as an Alternative Retail Electric Supplier as follows:

SERVICES TO BE PROVIDED: The sale of electricity and power.

CUSTOMERS TO BE SERVED: All eligible residential and nonresidential retail customers.

GEOGRAPHIC REGION(S) SERVED: The service territory of Commonwealth Edison Company.

VIII. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having reviewed the entire record, is of the opinion and finds that:

- (1) Applicant, SmartEnergy Holdings, LLC, a business organized under the laws of Delaware and licensed to do business in Illinois, seeks a certificate of service authority to operate as an alternative retail electric supplier under Section 16-115 of the Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (3) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact, as required by Section 16-115(d)(1) of the Act;
- (4) Applicant has demonstrated that it possesses sufficient financial, managerial and technical resources and abilities to provide power and energy to eligible residential and non-residential retail customers throughout the areas certified herein;
- (5) Applicant has complied with Section 16-115(d)(1) through (5) and (8) of the Act and 83 Ill. Adm. Code 451;
- (6) Section 7(g) of the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., exempts from disclosure:
 - Trade secrets and commercial or financial information obtained from a person or business where such trade secrets or information are proprietary, privileged or confidential, or where disclosure of such trade secrets or information may cause competitive harm;
- (7) as stated in the verified application, Petitioner's documents falls within the exemption stated in Finding (6);
- (8) the documents and portions of documents for which Applicant seeks proprietary treatment, which include Attachments "C" and "D" to the Application, and the GP Renewables & Trading, LLC contract provided in the response to the Administrative Law Judge, should be exempt from public disclosure under Section 7(g) of the Illinois Freedom of Information Act and Section 5-109 of the Act for a period of two years from the date this Order is entered; and

- (9) SmartEnergy Holdings, LLC should be granted a certificate of service authority to operate as an alternative retail electric supplier as specified in Section VII of this Order.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that SmartEnergy Holdings, LLC is hereby granted the Certificate of Service Authority as set forth in Section VII of this Order.

IT IS FURTHER ORDERED that SmartEnergy Holdings, LLC shall comply with all applicable Commission rules and orders now and as hereafter amended.

IT IS FURTHER ORDERED that the documents filed by SmartEnergy Holdings, LLC and identified above are afforded proprietary treatment and are exempt from public disclosure and will be accessible only by the Commission and the Commission Staff until two years from the date of this order.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 18th day of November, 2015.

(SIGNED) BRIEN SHEAHAN

Chairman