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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION :
On its Own Motion :
: Docket No. 15-0512
Amendment of 83 Ill. Adm. Code 412 and :
83 Ill. Adm. Code 453 :

**REPLY BRIEF ON EXCEPTIONS OF PRAIRIE POINT
ENERGY, L.L.C. D/B/A NICOR ADVANCED ENERGY LLC**

Prairie Point Energy, L.L.C. d/b/a Nicor Advanced Energy LLC (“NAE”) submits this Reply Brief on Exceptions to the Briefs on Exceptions (“BOEs”) filed by the Citizens Utility Board (“CUB”), the Coalition of Energy Suppliers (“CES”), Commonwealth Edison Company (“ComEd”), the Environmental Law & Policy Center (“ELPC”), the Illinois Competitive Energy Association (“ICEA”), MidAmerican Energy Services, LLC (“MES”), the Office of Attorney General (“AG”), the Retail Energy Supply Association (“RESA”), and the Staff of the Commission (“Staff”) to the Administrative Law Judges’ (“ALJs”) Proposed First Notice Order dated January 19, 2016 (“Proposed Order” or “PO”) and Attachments A and B thereto – which are the draft rules reflecting proposed revisions to Part 412 (“Part 412 Revisions”) and Part 453 (“Part 453 Revisions”) of 83 Illinois Administrative Code.

I. INTRODUCTION

As noted in NAE’s Brief on Exceptions, NAE supports the Proposed Order with certain limited exceptions. A number of exceptions raised by the AG and CUB primarily rehash arguments previously made that were responded to in prior filings. These exceptions lack merit, are not supported by the evidence or the law, do not raise new matters that were not previously considered, were properly rejected by the ALJ in the Proposed Order, and should be rejected by

the Commission. Certain exceptions proposed by Staff are reasonable and should be accepted, while other exceptions raise previously identified issues or other concerns and should be rejected. NAE urges the Commission to adopt the Proposed Order with the limited revisions proposed by NAE.

NAE will not repeat all of the arguments that were previously made on the issues raised in the BOEs, but instead will rely on its previous arguments where applicable. Hence, the absence of a specific reply to a particular exception should not be interpreted to mean that NAE agrees with such exception. NAE's specific replies are set forth below.

II. USE OF UTILITY NAME AND LOGO

A. Reply to AG and CUB

The AG proposes to insert additional language into the Proposed Order and rule that would further limit any use of a utility name or logo by populating restrictive language in other rule sections. *See* AG BOE at 4-5. CUB similarly proposes to impose additional restrictions on any use of a utility name or logo. CUB BOE at 2-6. The AG's and CUB's proposals in this regard are neither appropriate nor reasonable under the rulings contained in the Proposed Order. The Proposed Order explains why the absolute prohibition on any use of a utility name or logo would be unreasonable. The proposed rule contains reasonable restrictions on any use of a utility name or logo that is deceptive or misleading. Moreover, as explained in NAE's Brief on Exceptions, other proposed limitations on the use of a utility name or logo are not supported by the record or the law. *See* NAE BOE at 2-11. CUB's proposals in particular would constitute an unreasonable and unlawful restriction on constitutionally protected free speech. *Id.* For all these reasons, the AG's and CUB's proposed exceptions lack merit, are contrary to the record and the law, and must be denied.

B. Reply to MES

MES takes exception to the overly broad restrictions on the use of a utility name or logo contained in the Proposed Order consistent with the arguments of NAE. MES BOE at 1-7; *see* NAE BOE at 2-11. MES's BOE provides additional reasons and confirmation that the rule language contemplated by the Proposed Order is too broad and should be limited. While NAE does not oppose MES's proposed exception language, the language proposed by NAE in its Brief on Exceptions is required and should be adopted in addition to or in lieu of the language proposed by MES.

III. SECTION 412.115 UNIFORM DISCLOSURE STATEMENT

A. 12-Month History

1. Reply to AG and CUB

The AG and CUB propose to modify the Proposed Order by inserting an additional requirement in the Uniform Disclosure Statement to provide a 12-month rate history. AG BOE at 2-4; CUB BOE at 8-9. The Proposed Order properly concludes that the AG's proposal should not be adopted. PO at 43. The AG and CUB ignore the practical difficulties the AG's proposal would engender, as well as the added costs. The proposed rule also provides for other disclosures that address the need for consumer information. For all these reasons, the AG's and CUB's exceptions should not be accepted.

IV. SECTION 412.120 IN-PERSON SOLICITATION

A. Section 412.120(c)(3)

1. Reply to Staff

Staff proposed to modify the Proposed Order to reverse its rejection of a requirement that the RES agent wear identification on an outer garment that clearly states the RES agent is not a utility employee. Staff BOE at 6-7. Staff argues that the Proposed Order wrongly concludes that it

would be difficult to understand how to comply with this requirement. *Id.* Staff states that this requirement can be met by a line on a badge identifying the RES the agent represents, but Staff's position is not clearly consistent with the language proposed by Staff. *Id.* at 6. NAE finds the Proposed Order's conclusion to be accurate and reasonable, and further agrees with the Proposed Order that other provisions in the proposed rule provide the desired protection. Moreover, while not discussed in the body of Staff's exceptions, its proposed exceptions language would add an unqualified statement that "the RES agent shall not wear or display any name or logo of the customer's utility." *Id.* at 7. While NAE agrees that no RES should use a utility name or logo in a manner that is deceptive or misleading, the outright prohibition on use of a utility name or logo is improper and unreasonable for the reasons explained in NAE's Brief on Exceptions. See NAE BOE at 2-11. For these reasons, Staff's exception lacks merit and must be rejected.

B. Section 412.120(d)

1. Reply to Staff

Staff seeks to clarify the proposed rule to indicate that the obligation of a RES agent to leave the premises at a customer's request applies where the solicitation takes place at or on premises owned or leased by a customer. This clarification is reasonable and prevents the rule from being interpreted to require a RES to leave its own place of business when an "in-person" solicitation occurs at a place other than the customer's premises. NAE supports Staff's exception, and it should be adopted by the Commission.

C. CUB Proposal for Audio and Video Recording of All In-Person Sales

CUB takes exception to the Proposed Order's rejection of its proposal to audio and video record all in-person sales. CUB BOE at 9-11. The Proposed Order properly rejects this proposal as imposing unnecessary costs for protections already achieved through other provisions. PO at

61. CUB arguments on exceptions add nothing new, and the Commission should reject CUB's exception.

V. SECTION 412.170 RATE NOTICE TO CUSTOMERS

A. Section 412.170(d)

1. Reply to Staff

Staff proposes to add language clarifying the meaning of Section 412.170(d) concerning the inapplicability of the notices set forth in subsections (a) through (c) where a customer can determine his or her variable rate based on a publicly available index. Staff BOE at 13-15. While NAE believes the Proposed Order adopted language having the same effect of the language proposed by Staff, NAE does not object to Staff's exception provided the last sentence of Staff's proposed revised rule language is changed to the following consistent with NAE's Brief on Exceptions:

Unless the RES provides the index or benchmark information to the customer free of charge, the RES shall disclose the charge to obtain the index or benchmark on the UDS and in the contract. Unless the index or benchmark information is available to the customer free of charge from the RES or the publisher of the index, the RES shall disclose on the UDS and in the contract that the publisher of the index charges a fee to obtain the applicable index prices and provide contact information for the publisher of the index or the charge to obtain the index or benchmark.

With the foregoing revision, NAE concurs with Staff that its language will add clarity and be easier to understand.

B. Section 412.170(e)

1. Reply to Staff

Staff proposes to modify the Proposed Order to insert a specific requirement into the rule that the disclosure requirements apply to a contract that converts from a fixed rate to a variable rate after the initial term. Staff BOE at 15-16. Staff's proposed exception is not appropriate or

needed. The Proposed Order included the following language in subsection (e): “If a contract includes a provision that results in a residential customer’s rate plan changing from a fixed rate to a variable rate during the contract, subsections (a) through (c) of this section shall apply on and after the date that the contract changes to a variable rate.” It appears Staff somehow overlooked or misinterpreted this language in preparing its exceptions. The Proposed Order’s language is more precise than Staff’s and makes clear that those subsections apply “on and after the date that the contract changes to a variable rate.” Staff’s exception is not necessary, would cause confusion as to the meaning of the rule, and should not be adopted.

C. Section 412.170(f)

1. Reply to Staff

Staff proposes to modify the Proposed Order to create a threshold before the historical price disclosure requirement is applicable. Staff BOE at 16-22. NAE does not oppose Staff’s proposal to establish a threshold for this requirement.

D. Section 412.170(g)

1. Reply to Staff

Staff proposes to modify the Proposed Order to add a requirement that RESs be required to post offers on the Commission’s website. Staff BOE at 22-25. NAE believes that the Proposed Order achieves a proper balancing of the competing concerns here, and supports the conclusion reached in the Proposed Order.

VI. SECTION 412.175 TRAINING OF RES AGENTS

A. Reply to AG

The AG proposes to insert a number of its proposals that were rejected by the Proposed Order regarding RES agent training. AG BOE at 6-8. Contrary to the AG’s arguments, the

Proposed Order properly rejected these proposals due to various concerns. For instance, if a customer provides a RES with authority to review the customer's utility account information to provide a quote, there is no reasonable basis to require a RES to destroy its records reflecting that authorization. The Proposed Order struck the appropriate balance between the interest of the various stakeholders, giving due and proper consideration to consumer interest that are protected by various provisions in the proposed rule. The AG's exception should not be adopted by the Commission.

VII. SECTION 412.210 RESCISSION OF SALES CONTRACT

A. Reply to AG

The AG proposes to modify the Proposed Order and rule with respect to rescission of a sales contract. AG BOE at 8-9. The Proposed Order properly concludes that the AG's proposal would add unnecessary complexity. The AG's exception should be rejected.

VIII. SECTION 412.230 EARLY TERMINATION OF SALES CONTRACT

A. Reply to AG

The AG proposes to modify the Proposed Order and rule to prohibit early termination fees on in-person solicitation for 6 months. AG BOE at 9-11. NAE supports the conclusion reached in the Proposed Order, which is supported by the record here. Given the other consumer protections included in the proposed rule, the AG's proposal is neither necessary nor supported by the record. Further, the Commission adopted that protection for the proposed Ameren Illinois Company small volume transportation program, which has not been implemented to date. For all these reasons, the AG's exception should be rejected.

IX. SECTION 412.240 CONTRACT RENEWAL

A. Reply to CUB and ELPC

CUB and ELPC take exception to the Proposed Order's rejection of proposals to drastically change the renewal process as allowed by Illinois law to require a telephone notification in connection with all renewals. CUB BOE at 13-14; ELPC BOE at 9-11. As the Proposed Order properly concludes, the provisions of the Illinois Contract Renewal Act already provide adequate protections with respect to renewals. CUB's and ELPC's proposals would also impose unnecessary costs and burdens on RESs and their customers. For all these reasons, CUB's and ELPC's exceptions should be rejected.

X. CONCLUSION

WHEREFORE, for all the foregoing reasons, NAE respectfully requests that the proposed rule be modified as proposed herein and in NAE's Brief on Exceptions.

Dated: February 23, 2016

Respectfully submitted,
Prairie Point Energy, L.L.C. d/b/a
Nicor Advanced Energy LLC

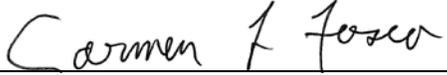
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above Reply Brief on Exceptions of Prairie Point Energy, L.L.C. d/b/a Nicor Advanced Energy has been served upon all parties on the attached service list by electronic mail, on the 23rd day of February, 2016.


Carmen L. Fosco