

COMMENTS OF LIBERTY POWER TO ORMD STRAW MAN RULE VERSION 1.2
Submitted March 23, 2009

Introduction

Liberty Power is certified as an Alternative Retail Electric Supplier (“ARES”) in Illinois. Originally licensed in 2007, Liberty Power serves all customer classes. The company is currently actively serving customers in Illinois and serves tens of thousands of small, medium, and large businesses as well as residential customers and government entities in 12 states.

Liberty Power thanks the Office of Retail Market Development (“ORMD”) Staff and the other working group participants that have put so much time, effort, and thought into developing this straw man proposal. The company appreciates the opportunity to provide comments and questions as it relates to the straw man and the further development of a robust competitive marketplace in Illinois.

Our comments and questions can be reviewed below. Absence of a comment on any particular section should not be viewed as a lack of interest or position by Liberty Power. Liberty Power reserves the right to amend, revise, or otherwise add to any comments and questions provided herein after further discussion and consideration.

Applicability

Section I.1 – Liberty Power has some concerns of Section I.1 (Training of ARES sales agents) applying to all customer classes as currently contemplated. Many ARES have sales teams that are dedicated to one customer class versus another. Due to its application to all customer classes, as drafted, the language suggests that all sales agents have knowledge of all products and services. In the opinion of Liberty Power, it is unreasonable and inefficient for a sales agent that is dedicated to sales and marketing of large commercial and industrial customers to have thorough knowledge of all products (including terms and conditions) of residential products and vice-versa (for example). Liberty Power suggests that Section I.1 applies only to residential and small commercial customers or alternate language is drafted in order to remedy this issue. Alternative language has been provided below.

Section I : Marketing Practices / Enrollment

1. Training of ARES Sales Agents

All sales agents engaged in sales activity in Illinois (whether directly employed by the ARES or otherwise exclusively selling the ARES's service) shall be knowledgeable of these Retail Electricity Requirements and other relevant requirements contained in The Public Utilities Act, The Consumer Fraud and Deceptive Business Practices Act and Illinois Administrative Code 410 that pertain to the marketing and sales of electric supply service. All sales agents should be familiar with the ARES's products and services [offered in Illinois, as they pertain to the customer class that the sales agent is actively marketing to](#), including the rates, applicable termination fees if any, payment options and the customers' right to cancel. In addition, the sales agents shall have the ability to provide the customer with a toll-free number for billing questions, disputes, and complaints, as well as the Commission's toll-free phone number for complaints. An ARES and its sales agents shall not utilize false, misleading, materially inaccurate, or otherwise deceptive language or materials in soliciting or providing services.

2. Do Not Contact List

Liberty Power concurs with comments provided by Integrys Energy Services, Inc. ("Integrys") to version 1.1 of the ORMD straw man. Those comments are provided here with slight modifications:

Integrys would like to clarify that the requirement to obtain the Do Not Contact List each month applies only if the [ARES](#) is actively telemarketing to [residential](#) customers. If the [ARES](#) is not doing outbound calling they are not required to obtain the list.

3. Records and Retention Availability

Section I.3(ii) – Liberty Power believes the language should be modified to ensure that a customer cannot request an unlimited amount of copies of their sales

contracts as this would be costly and administratively burdensome to the ARES. Liberty Power is providing the following suggested language:

Throughout the duration of the contract, and for two years thereafter, the ARES shall retain and, within seven business days of the customer's request, provide the customer a copy of the sales contract via e-mail, U.S. mail, or facsimile. [The customer's first request during a calendar year will be free of charge. The ARES is permitted to charge a nominal fee for any additional requests during the same calendar year.](#)

4. In-person Marketing

Section I.4(ii) – Liberty Power does not believe sales agents should be required *to read* to the customer all the items within the uniform disclosure statement. Many customers, particularly business owners whose time is very limited, will actually be annoyed by this process. Most, if not all of the items in the uniform disclosure statement would have already been covered during the course of the sales presentation. To require another separate process where these items would once again be disclosed is both duplicative and time consuming. The Commission Staff should focus on requirements that ensure important contractual information is included as part of the sales presentation and provided to the customer (as already contemplated in the proposal), but not require a separate process where all the items would have to be read to the customer.

The language clarifies when a “fixed bill product” is being offered, the sales agent must explain that the “fixed bill” (where a “fixed bill” refers to a fixed supply charge that does not change regardless of usage levels) is for supply charges only and does not include delivery service charges and applicable taxes. Liberty Power agrees with the spirit and intent of this rule – to ensure the customer understands the disclosed rate and how it applies to their bill. Liberty Power believes this concept should clearly apply to any circumstance where a rate is being marketed that only reflects supply charges – whether a “fixed bill”, “fixed rate”, “variable rate”, etc. It should not be assumed that all ARES market their products in the same way. In marketing their products some ARES may use a price that reflects only supply charges, others may market a “bundled price” (that reflects both supply and delivery charges). Even

in the case where all ARES were consistent in disclosing prices that reflect only supply charges, this still would not alleviate the need or desire to clearly explain this to customers.

Liberty Power is recommended the proposed language be modified to the following:

If a customer elects to enroll with the ARES, the sales agent must ~~read~~ [provide](#) to the customer all items within the uniform disclosure statement [as contemplated in this section](#). The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure requirements section below. If a ~~fixed bill product~~ [the rate that](#) is being offered [applies to supply charges only and does not include delivery service charges and applicable taxes](#), the sales agent must explain to the customer that the ~~fixed bill amount~~ [rate disclosed](#) is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the ~~fixed bill amount~~ [rate disclosed](#) is [does](#) not [reflect](#) the total ~~monthly~~ amount [due](#) for electric service. If a customer enrolls by signing a Letter of Authorization, the sales agent must require the customer to initial the written uniform disclosure statement, of which a copy is to be left with the customer at the conclusion of the sales visit. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document. If a customer's enrollment is authorized by a third party verification as a result of in-person marketing, the third party verifier must require the customer to verbally acknowledge that he or she understands the uniform disclosure statement, and that a copy of the uniform disclosure statement was left with the customer. If the customer's enrollment is authorized on-line, the requirements of Section 1.7 shall apply.

5. Telemarketing

Section 1.5(i) – Liberty Power believes there may be an improper citation of the Telephone Solicitation Act. We believe the proper citation to be 815 ILCS 413 (and not 815 ILCS 15).

Section I.5(iii) – Please see comments provided above in Section I.4(ii). Liberty Power is providing the following suggested language:

If a customer elects to enroll with the ARES, the sales agent must read to the customer all items within the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure requirements section below. If a ~~fixed bill product~~ the rate that is being offered applies to supply charges only and does not include delivery service charges and applicable taxes, the sales agent must explain to the customer that the ~~fixed bill amount~~ rate disclosed is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the ~~fixed bill amount~~ rate disclosed is does not reflect the total ~~monthly~~ amount due for electric service. If third party verification is used to authorize a customer's enrollment, the third-party verifier must require the customer to verbally acknowledge that he or she understands the uniform disclosure statement. The written disclosure statement and sales contract must be ~~mailed~~ sent to the customer within 3 business days of the utility confirmation of accepted enrollment. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document. If a customer elects to enroll on-line as a result of an outbound telemarketing call, the requirements of Section I.7 shall apply.

Section I.5(iv) – Liberty Power is suggesting the following modified language to a portion of this section to be consistent with the modifications proposed in the previous section:

The written disclosure statement and sales contract must be ~~mailed~~ sent to the customer within 3 business days of the utility confirmation of accepted enrollment.

Section II: Rescission/Deposits/Early Termination and Automatic Renewal of Contract

3. Early Termination Fee

Liberty Power is very concerned with the drafted language of this subsection. Allowing a customer to cancel a contract without early termination fees being applicable up to ten (10) business days after the date of the first bill issued is unreasonable, would harm customers due to higher prices, and cause undue harm on the competitive market.

One of the attributes of a robust competitive market is the number of product types available to customers, so that each may select an electric product that fits his or her particular needs. Many customers prefer the budget certainty that can be achieved through a fixed-rate product. This language would effectively eliminate the offering of long-term, fixed-rate contracts in the market. Most ARES have prudent, conservative hedging practices to ensure the long-term viability of the company. Conservative hedging practices dictate that an ARES pre-purchases 100% (or nearly 100%) of the estimated usage for the contract term within a few days of contract execution. To allow a customer to cancel a fixed-price contract without penalty for as many as 87 days¹ after signing the contract, would preclude an ARES from recovering actual incurred damages, and will have a huge detrimental effect on the market's access to products that promote and support budget certainty.

First and foremost, many ARES will simply not take on the added risks of offering a fixed-price contract. Those that do, will offer prices at significantly higher rates due to the added risks associated with the possibility of a customer canceling their contract so many days after originally being contracted. Secondly, ARES that continue to offer long-term contracts will do so at a great risk to the overall financial viability of the company. If not well managed, subsequent decisions may ultimately force many ARES to go out of business. Aside from the immediate negative effects on customers caused by their electric provider going out of business, fewer retail competitors in the market will ultimately lead to less competitive pricing offers being made available, causing further harm to customers.

¹ 87 day scenario: 1 day to contract with customer + 2 days for processing contract and submission of EDI transaction to utility + up to 37 days for switch to occur (if date of switch request is less than 7 days prior to the customer's next meter read date) + 31 day billing cycle + 2 days to process invoice + 14 calendar days for rescission (assumes first bill issued on a Friday)

Customers are already afforded a sufficient period of time (ten days, potentially more if the tenth day falls on a non-business day) to review their terms and conditions and rescind their contract, if they desire.

Liberty Power is in favor of fair and competitive markets and establishing rules that are designed to provide customers a wide-ranging portfolio of products to choose from. This proposed rule is a huge step back from achieving that goal. For all the reasons mentioned above, Liberty Power is suggesting the following language:

Any agreement that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the [early](#) termination fee. It must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described above. ~~In addition, any agreement that contains an early termination fee shall provide the customer the opportunity to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the ARES.~~

4. Contract expiration and renewal offers

Section II.4(i)(3) – Liberty Power is concerned with language that would eliminate the use of early termination fees during the last 31 days of any contracts greater than six (6) months in length. Liberty Power assumes the intent of this rule is to allow customers that are on fixed-price contracts sufficient time to switch electric providers (which can take up to 45 days) - without a) rolling onto an automatic renewal product or b) being subjected to early termination fees.

Again, this places additional risk on any ARES offering a fixed-price contract. Limiting this to contracts over six (6) months seems to give the impression that the ARES can offset any costs related to damages incurred by a customer canceling a contract during the last 31 days of a contract through profits earned in the prior six (6) months of the term. This is a false and dangerous assumption, which deters an ARES from offering a fixed-price contract greater than six months, further harming customers by severely limiting their access to products that offer the budget

certainty many customers desire. Even if such a product is offered, this requirement would cause undue harm on customers through higher prices due to the increased risks associated with the possibility of a customer canceling a contract in the last 31 days of the term.

Rather than create a so-called “grace period” for early termination fees, the efforts of the ORMD and ICC should focus on reducing the amount of time it takes to expedite a switch, including, but not limited to low-cost off-cycle meter reads and the implementation of smart metering technology that would allow for immediate and zero-cost switching between ARESs.

Alternatively, and/or in concert with a shorter switching timeline, Liberty Power would be open to considering other ways to ensure a customer can switch ARES providers and still:

- a) fulfill the full term of their contract (avoiding early termination fees)
- b) prevent automatic renewal
- c) avoid utility default service (which currently has a 12 month minimum stay requirement)

One option to consider would be to ensure that customers are aware of their contract end dates with their current ARES as early as possible and provided a reminder of the expiration dates as contemplated in this section. As an example, Liberty Power sends customers “welcome kits” with contract details including the length of term. Customer contract end dates are usually in sync with the account’s meter read cycle date, or at the very least with meter read cycles within the contract’s end month. This should provide the customer with an initial idea of the ending billing cycle. This information, combined with the expiration notice requirement, will provide the customer with the relevant information they need to properly time a switch. By having advanced knowledge of the current contract end dates a customer can work with their next ARES provider to ensure the subsequent contract start dates are in the same month. It is also customary for customers to ask their supplier to switch service “on the first available meter read after X date”. This will both prevent the

triggering of an automatic renewal and allow customers to fulfill their full contractual obligation with the ARES - avoiding any early termination fees. Liberty Power believes the Commission Staff should consider creating a bill insert that clearly explains the procedures the customer needs to follow to ensure their switch is executed in this fashion.

Other than Texas, Liberty Power is unaware of any competitive electric market that has a "grace period" (not to be confused with rescission periods) for the application of early termination fees. These rules in Texas were only recently adopted, and have yet to go into effect in the marketplace. Therefore, the impacts of these new rules on customers and the competitive marketplace are still not known. In Texas, after careful contemplation, this "grace period" was reduced to the last 14 days of a contract's initial term. Rather than a longer "grace period", the Public Utility Commission of Texas (PUCT) is focusing its efforts on expediting the amount of time it takes a customer to switch electric providers to six (6) days.

Section II.4(ii)(2) – Liberty Power suggests the language be modified to be consistent with language provided by Integrys. This modification allows the language to be consistent with the utilities' tariffs which can change. Suggested modified language is provided below:

A statement in bold lettering no smaller than 12 point font that establishing service with another ARES can take up to 45 days, and failure to renew their existing contract or switch to another ARES by the specified date will result in the customer being reverted to the utility default service ~~for 12 months~~ [and provide in the statement the length of the utility tariff minimum stay period if applicable.](#)

Section IV: Dispute Resolution/Customer Complaint Reports

2. Dispute Resolution

Liberty Power echoes remarks made by many of the stakeholders in their comments to version 1.1 of the ORMD straw man. There needs to be a clear understanding of

what constitutes a complaint since this will ultimately have an impact on the individual ARES' complaint ratio that is contemplated in Section IV.3. As previously stated by Integry's, "this section [should be] clarified to mean only those complaints within the supplier's services. For example, complaints related to incorrect meter reads, high usage, or other items not part of a supplier service should not become a supplier complaint".

Section IV.2(iii)(2) – Liberty Power believes the timeframe contemplated in the proposed rule is too long and offers the following modified language:

If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the Commission within ~~two years~~ six months of the date on which the Commission closes the informal complaint.

3. Disclosure of ARES' level of customer complaints

As referenced above there needs to be a clear indication of what constitutes a complaint. Any complaint made against the ARES that is found to be false or unjustified should not be included in the ARES complaint ratio.

Liberty Power wants to clarify and ensure that the "ARES-wide complaint ratio" is disclosed to the ARES. This enables each ARES to have a clear and quantifiable goal that needs to be achieved in order to reach and outperform the "ARES-wide complaint ratio".

Additionally, Liberty Power suggests that a disclaimer is included with the associated ranking methodology that is posted to the Commission's website that explains to the customer that such a ratio is statistically biased against ARES that may not have a large number of customers. For example, an ARES may have only 1 complaint, but if that ARES is only serving 100 customers their complaint ratio is 1% which could potentially be ten times (10x) greater than the "ARES-wide complaint ratio".

Section V: Enforcement

Section 5 provides for an expedited complaint procedure. The Commission Staff ties the need for such a procedure to the quantity of prior violations that the ARES has been accused of. The timeframes outlined in the proposal are excessively expedited.

Liberty Power believes that the need for any expedited procedure should not be based on the prior violations of an ARES, but rather an evaluation of the critical and urgent nature of a situation which may require quick resolution.

Section IV(viii)(c) – Liberty Power seeks clarification on the intent of the Commission Staff in regards to the potential “imposition of a requirement to record *all telephonic marketing presentations*” [emphasis added]. Since the term “telephonic marketing presentations” is not defined, Liberty Power wants to ensure the intent is to not force the recording of an unscripted call between an in-house account manager and a current or potential medium or large commercial customer.

Reply Comments

Although not currently proposed in the latest version of the straw man, Liberty Power feels compelled to address certain comments previously made by other stakeholders as it appears these issues will continue to be discussed and debated.

Early Termination Fees

Both the Ameren Illinois Utilities (“Ameren”) and the Citizens Utility Board (“CUB”) have advocated that “early termination fees do not exceed \$50”. To put it simply, such a proposal would eliminate the availability of fixed-price contracts. One of the main purposes of a competitive retail electric market is to provide customers with choice. One of the fundamental choices that a customer can make is whether they prefer to “lock-in” a rate and avoid any risks associated with a volatile energy market, or prefer to “ride the market” (taking advantage of prices that may lower in real time). Any cap on early termination fees that would not allow for the ARES to collect actual damages effectively eliminates the customers’ right to choose a risk-adverse, fixed-price product. If any ARES do continue to offer fixed-price contracts,

under such a requirement, these products will carry a very significant price premium. The Commission Staff should encourage regulatory policies that apply downward pressure on prices rather than increase them. Liberty Power recommends the Commission Staff focus their efforts on adequate disclosure of early termination fees rather than capping them to some arbitrary amount, which ultimately harms customers.