

**COMMENTS OF THE  
ILLINOIS COMPETITIVE ENERGY ASSOCIATION ON  
THE REVISED ORMD CONSUMER PROTECTION STRAWMAN**

The Illinois Competitive Energy Association (“ICEA”) and its members continue to be active participants in the collaborative workshop process administered by the Office of Retail Market Development (“ORMD”) to implement Public Act 95-0700. The ICEA appreciates the efforts of the ORMD to adopt measures that will help advance the development of competition for residential and small commercial customers as envisioned in Public Act 95-0700.

ICEA was formed as an Illinois-based trade association whose mission is to foster the development of competitive retail energy markets in Illinois in order to bring the benefits of competitive supply to all customers, regardless of their energy supplier. The ICEA is an Illinois not-for-profit corporation organized under the laws of the State of Illinois. The President of ICEA is Kevin K. Wright, a former Chairman and Commissioner of the Illinois Commerce Commission (“ICC” or “Commission”).

As indicated in earlier Comments submitted by ICEA member companies, and as will be discussed below, the ICEA supports the efforts of all stakeholders to develop an appropriate level of consumer protections. However, ICEA believes that **the focus of any new or enhanced consumer protections, including marketing rules, commercial legal or contractual requirements, dispute resolution, reporting requirements, and enforcement mechanisms should be limited to measures to protect residential and small commercial customers that are served by Alternative Retail Electric Suppliers (“ARES”) or retail electric suppliers (“RES”).**<sup>1</sup>

ICEA incorporates by reference the previously submitted Comments of Constellation NewEnergy, Inc., Direct Energy Services, LLC, and Integrys Energy Services, Inc. Below, ICEA provides its Comments regarding the Revised ORMD Strawman distributed on March 6, 2009. The absence of a Comment on any one specific section or issue should not be construed as a lack of interest or concern related to such question.

**APPLICABILITY**

ICEA recommends that the scope of any new or enhanced consumer protections should use the existing statutory definition of “small commercial customer” in the Public Utilities Act (“PUA”) (someone who consumes no more than 15,000 kWhs of electricity annually)<sup>2</sup> as the “cut-off” for the proposed enhanced consumer protections so that they would only apply to ARES or RES seeking to serve or actually serving residential and small commercial customers (with certain limited exceptions).

Again, the reasons for applying the proposed new and enhanced consumer protections, marketing rules, commercial legal or contractual requirements, dispute

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<sup>1</sup> A RES is an electric utility providing competitive retail electric service outside of their franchised service territory.

<sup>2</sup> 220 ILCS 5/16-102.

resolution, reporting, and enforcement mechanisms to residential and small commercial segments can be summed up as follows:

- Will not upset the well-developed competitive retail electric marketplace that currently exists in Illinois, especially for commercial and industrial customers;
- Consistent with the existing regulatory and consumer protection regime that differentiates from the level of certification, marketing, and other requirements based upon the size of the customers that the ARES seeks to serve; and
- Consistent with a recently completed legislative package that was adopted for the retail natural gas industry.

Any proposed amendments to the PUA and/or the Consumer Fraud and Deceptive Business Practices Act (“Consumer Fraud Act”) should be properly tailored to protect residential and small commercial customers that are being solicited for electric power and energy service and/or served by ARES and RES. To do otherwise would not only add unnecessary costs to other market segments, but would also add requirements that could very well jeopardize the current well-functioning competitive retail electric industry that exists for commercial and industrial customers.

**The ICEA supports the revised definition of “Small commercial customer” contained in the Strawman which is designed to track SB171.** The revision adds an appropriate level of additional clarity to the definition.

Below are brief comments on certain revised provisions in the Strawman:

### **Section I, 1. Training of Sales Agents**

The term “relevant sales agents” still needs to be defined. Also, the scope of the “intimate knowledge” needs to be properly tailored. For instance, it makes no sense to have non-lawyer sales agents explaining legal terms (such as any “right” to cancel or terminate), and interpreting statutes, rules, and regulations.

### **Section I, 2. Do Not Contact List**

Any rules adopted implementing this provision should reflect commercial and operational realities regarding the competitive retail electric industry. The rule should reflect the fact that these lists are subject to change, the lag in time between the sending and receipt of mail, and other similar commercial realities. As a result, there should not be any retroactive applicability and resulting penalty or other legal right created due to those commercial realities. For example, what would happen if an ARES or RES sent a letter to a potential customer on the 14<sup>th</sup> of the month and on the 15<sup>th</sup> of the month found out that this potential customer is now on the Do Not Contact List? Similarly, certain ARES or RES may utilize the services of outside sales agents or sales channels. Any rules adopted pursuant to these rules should provide a commercially reasonable amount of time for the ARES or RES to distribute such lists after receipt from the electric utility.

#### **Section II, 4. Contract Expiration and Renewal Offers**

The ICEA supports the revised language on contract expiration and contract renewals that appears highlighted in green.

#### **Section II, 5. Assigning Customers to a Different Supplier**

The ICEA supports the revised language regarding the process for assigning customers to a different ARES as a more appropriate reflection of commercial realities.

#### **Section IV, 2. Dispute Resolution**

The ICEA supports the new language that is based on the recently-enacted SB 171.

#### **Section IV, 3. Disclosure of ARES' level of customer complaints**

ICEA is concerned about the purpose and specific type of reporting that is sought here, as no additional clarity or language has been offered. For example:

- What is meant by the term “complaints”? For example, would a call inquiring about a specific charge on a bill be considered a complaint? Similarly, would a call inquiring about the distribution portion of the bill be considered a complaint? Would the answer be different if the ARES was or was not an SBO supplier?
- Is the requirement seeking to substitute a monthly customer call center report in the place of the current annual call center requirement?

In any event, with greater specificity, such a reporting requirement may have some value for ARES seeking to serve or serving residential and small commercial customers. However, based upon the fact that there have been virtually no complaints against ARES or RES since the advent of retail competition over 9 years ago, there has been no demonstrated need or value for that type of enhanced consumer protection for larger commercial and industrial customers and reporting obligation on the part of ARES and RES. No similar requirements are imposed in the natural gas or telecommunications industries in Illinois, especially for competitive providers serving or seeking to serve commercial and industrial customers.

#### **CONCLUSION**

ICEA appreciates the opportunity to comment on the ORMD’s Strawman proposal and looks forward to working with all stakeholders in developing an appropriate level of consumer protections and other rules as we work towards the development of competition for residential and small commercial customers.