

**DIRECT ENERGY SERVICES, LLC
RESPONSE TO REQUEST FOR COMMENTS
FROM ICC OFFICE OF RETAIL MARKET DEVELOPMENT**

Monday, October 6, 2008

Direct Energy Services, LLC (“Direct Energy”) appreciates the opportunity to provide input on the questions presented by the Office of Retail Market Development (“ORMD”). Our understanding is that the questions presented by the ORMD are not meant to be all-inclusive but rather to provide a starting point for further discussions. Similarly, the answers provided herein are not meant to be all-inclusive but rather to provide a starting point for further discussions. Direct Energy looks forward to participating in those further discussions and reserves the right to amend or supplement our answers at a later date as well as to respond to comments filed by others.

Section 1

I. Public Act 95-0700 authorizes the Commission “ to establish retail choice and referral programs to be administered by an electric utility or the State in which residential and small commercial customers receive incentives, including, but not limited to, discounted rate introductory offers for switching to participating electric suppliers.”

1. Please state the benefits you anticipate from establishing retail choice and referral programs.

Answer

Retail choice and referral programs (hereinafter, for simplicity, “referral programs”) play an important role in the development of competitive energy markets for residential and small commercial customers. For generations, residential and small commercial electric customers in Illinois have never had a choice of electric suppliers. As a result, as the market opens in Illinois, customers may be unaware of their choices and/or hesitant to try a new supplier.

Referral programs:

- Offer consumers a convenient and easy way to “try out” competitive energy supply;
- Depending on how they are structured, can offer consumers discounts or other incentives; and
- Help educate consumers on the competitive energy market and their opportunities to switch suppliers without incurring penalties and fees.

In New York, referral programs have helped thousands of consumers explore their competitive options. The New York programs are utility run and facilitate retail access enrollment generally through a two-month price discount funded by the alternative retail electric supplier. A utility customer who contacts the utility call center for a service initiation, high bill inquiry, or other type of question is asked by a utility representative if he or she is interested in participating in this program. If the customer agrees, the customer then selects a specific supplier from a pool or agrees to be assigned at random to one of the participating suppliers, and the customer receives for two months, a discount off the commodity portion of its bill. At the end of the two-month period, the customer may choose to stay with the alternative retail electric supplier starting in month three based on affirmatively agreed-to terms and conditions, or return to the utility with no penalty or fees.

Orange and Rockland Utilities (ORU) was the first utility in New York to implement this type of program, and its residential and small commercial customer electric and gas migration levels are the highest in New York. Describing its efficacy, ORU states that 50% of the gas customers and 55% of the electric customers were enrolled through their customer referral program called PowerSwitch, and only about one per thousand of those customers chose to return to utility service in any given month during calendar year 2004. Additional information on Orange and Rockland's referral program is included in this transmittal, as is information on two other NY utilities' referral programs: Consolidated Edison and National Grid.

2. What are your concerns relating to the creation of such programs?

Answer

Direct Energy does not have any concerns regarding the creation of referral programs. Indeed, they are a proven "best practice" for fostering the development of competitive retail energy markets. Where the ORMD and interested parties will need to be watchful is in the implementation of such programs. To be effective, referral programs should be simple and convenient for customers to use. In addition, the costs placed upon alternative retail electric suppliers to use referral programs need to be reasonable and at a level that makes the programs economically viable.

3. What are important characteristics of such programs?

Answer

- See answer to (2) above. To be effective, referral programs must be economically viable from a supplier perspective, simple and easy for new and existing customers to access, and be structured with the same features (e.g., discount rate, initial term, no penalty or fee to return to the utility) for ease of marketing by the utility, supplier, and Commission, and ease of understanding by the consumer.

4. **Would you prefer these programs to be administered by an electric utility or the State? Please describe your preferred administration of these programs as detailed as possible.**

Answer

Section 20-130 of the Public Utilities Act permits both administrative constructs. Direct Energy sees value in having both constructs available for potential use.

5. **From a procedural standpoint, what is the preferred manner in which the Commission would establish and/or approve such programs? Should these programs be part of an electric utility's tariff?**

Answer

Section 20-130(c) of the Public Utilities Act establishes that the Office of Retail Market Development shall serve as the clearinghouse for the development of retail choice and referral programs and shall work with electric utilities and interested parties on a continuous basis to implement and improve upon the programs. The same Section notes that "nothing in this Section, however, shall prevent an electric utility on its own accord from implementing retail choice and referral programs. It is also clear from this language that the development of referral programs is not a one-time event.

Whatever process is used to establish and/or approve referral programs should provide early and meaningful opportunities for parties to review proposals and provide commentary. The Office of Retail Market Development's existing informal workshop process is well suited for such an early and thoughtful review process. Through this informal process, Direct Energy's preference and hope would be that the parties can reach consensus on as many issues as possible.

II. The statute describes three possible retail choice and referral programs as follows:

(1) An introductory fixed discount program in which suppliers participating in the program offer customers a fixed percentage discount off of the electric utility's supply rate for a set number of billing periods. Customers would be able to enroll in the program by using an online enrollment form, completing an enrollment card found in their monthly electric utility bill, or by calling a toll-free number. Customers would be free to withdraw from the program at any time and select another alternative retail electric supplier or return to the electric utility.

(2) A new customer program in which electric utilities would offer consumers initiating new electric service a choice of offers from participating electric suppliers to provide the consumer's electric supply service. Customers

expressing a preference for a specific electric supplier would be enrolled with that supplier. Customers not expressing a preference for a specific electric supplier would be offered the opportunity to enroll with an electric supplier selected randomly on a rotating basis.

(3) A customer service call center referral program in which customers calling an electric utility's call center would be offered enrollment with an alternative retail electric supplier and informed that they have the option to receive immediate savings or introductory offers by participating in the referral program. Customers choosing to participate would be transferred to a customer service representative for the program and would either select the electric supplier from which they would like to take service or be placed with a participating electric supplier chosen at random on a rotating basis.

- 1. Please comment on the desirability of having any of these three programs implemented and what the role of the electric utilities, the participating suppliers, the Commission, and others, if any, should be.**

Answer

All three programs are desirable. As noted above, per Section 20-130(c) of the Public Utilities Act, the Office of Retail Market Development shall serve as the clearinghouse for the development of retail choice and referral programs and shall work with electric utilities and interested parties on a continuous basis to implement and improve upon the programs.

- 2. Are there other retail choice and/or referral programs that you would like the Commission to consider? If so, please describe the characteristics of such programs in detail. For example, do you believe there should be other incentives and/or programs offered to low income consumers in Illinois? If so, should these be based on LIHEAP qualifications and what funding mechanism should be used?**

Answer

The three programs outlined in Section 20-130 of the Public Utilities Act should all be considered by the Commission. Two possible programs aimed directly at low income consumers could be:

- A referral program—utility or State administered—in which suppliers pay a referral fee that goes into a fund to help low income consumers pay their electric bills.
- An aggregation program designed to aggregate low-income customer load. Through such an aggregation, low-income customers could have the potential to access lower cost energy services and alternative energy products offered by alternative retail electric suppliers. A similar proposal is currently pending before the Maryland

Public Service Commission. (See, Direct Testimony of Frank Lacey, included with this transmittal, beginning at page 28, In the Matter of the Commission's Investigation of Investor-Owned Electric Companies Standard Offer Service for Residential and Small Commercial Customers in Maryland, Case Number 9117.)

III. The law further states that “reasonable costs associated with the implementation and operation of customer choice and referral programs may be recovered in an electric utility's distribution rates, except that any costs associated with any introductory discount for switching to a supplier shall be assumed by that supplier. Reasonable costs associated with the implementation and operation of a customer choice program may also be recovered from retail electric suppliers participating in a customer choice and referral program.”

1. Please describe your preferred cost recovery mechanism in detail.

Answer

Direct Energy's preference is that reasonable costs associated with the implementation and operation of customer choice and referral programs be recovered in an electric utility's distribution rates due to the societal benefits of these types of choice programs. Direct Energy is open to discussing other cost recovery mechanisms. Regardless of the cost recovery method chosen, attention must be paid to the sum total of charges assessed on retail electric suppliers to participate in a referral program. These total charges must be transparent, based on the ICC staff and interested party review of the utilities estimated incremental costs. If the sum total of costs associated with a referral program is above the acquisition costs associated with other customer acquisition methods, suppliers are not likely to participate in the program.

Section 2

I. Section 16-117 (b) of the PUA requires the Commission to “implement and maintain a consumer education program to provide residential and small commercial retail customers with information to help them understand their service options in a competitive electric services market, and their rights and responsibilities.”

While the initial implementation of the program was required to be done in the 1999-2002 time frame, Staff is interested in the possibility of re-focusing the education program. Section 16-117(j) states that “each year the General Assembly shall appropriate money to the Commission from the General Revenue Fund for the expenses of the Commission associated with this Section.”

Given that Section 16-117(k) requires the Commission to study the effectiveness of the consumer education program and complete such study “by January 31st of each year during the mandatory transition period”, Staff is interested in the parties’ assessment regarding the program’s continued statutory support.

Staff is encouraged by the fact that the General Assembly did not establish a sunset date for Section 16-117 when it originally enacted the Section as part of the Electric Service Customer Choice and Rate Relief Law of 1997 and that this Section was not modified or eliminated at any time subsequent to the end of the mandatory transition period, including the passage of Public Act 95-0481last year.

- 1. Please explain whether the General Assembly should appropriate money to the Commission from the General Revenue Fund for the expenses of the Commission associated with Section 16-117.**

Answer

Direct Energy believes that Section 16-117’s consumer education mandate remains operative.

- 2. If you do not believe Section 16-117 is a funding source for any type of a Commission consumer education program, please describe other potential funding sources.**

Answer

See answer to (1) above.

- 3. Please describe the preferred Commission involvement in any consumer education program.**

Answer

The ORMD should take the lead in coordinating any consumer education program. Specifically, the ICC could develop:

- Printed materials.
- A “Power-to-Choose” type Web site.
- Public service messages.
- A media outreach campaign.
- A plan to staff market expos, trade shows, housing fairs, etc.
- A consumer education council comprised of ARES, utilities, the Attorney General’s office and the Citizens Utility Board. Such a council could leverage the efforts already underway to educate consumers as well as the resources available for such efforts.

In October of 2005, the NY PSC's ORMD launched its "Power to Choose" web site, where customers could receive comprehensive competition related information and would only have to enter their zip code to receive geographically-specific information updated at least monthly, on utility and supplier price and service offerings.

- 4. Aside from any potential financial responsibilities, please also describe the preferred involvement of electric utilities, alternative retail electric suppliers, and others.**

Answer

Consumer education is a critical component for the development of retail energy choice. A sustained and coordinated effort between the utility, suppliers, and the ICC is needed to increase the awareness and understanding levels of customers. There are numerous vehicles to assist the residential and small commercial customer in their understanding of competitive choices, including the utilization of media, regional energy fairs where suppliers, utilities, energy efficiency providers, and public utility commission staff are in attendance to assist them in their understanding of their energy choices, utility sponsored bill inserts and dedicated web site information, and the development of a web site where customers can obtain specific information on there choices available to them and facilitated enrollment if the customer so chooses.

- 5. Besides printed materials and information published on public websites, what other specific mediums would you like to see used in such a campaign?**

Answer

Please see answer (3) and (4) above.

- 6. The Office of Retail Market Development is interested in creating an online place for consumers to compare offers of electric suppliers. The type of information displayed by the "Power To Choose" websites of Texas and New York as well as other sites such as the Pennsylvania Office of Consumer Advocate seem to be a good starting point.**

- a. Please describe what type of additional information not found on those sites you would like to see for the Illinois market.**

Answer

Direct Energy does not have any specific recommendation for additional information at this time.

- b. Should the planned website display information for residential customers only?**

Answer

Depending on the complexity of the small commercial offers, it may or may not make sense to have small commercial information on the website.

- c. How often should the information be updated?**

Answer

The information should be updated at least once on the same day each month per product offering, and the site should have the ability for suppliers to update their pricing at their discretion. Suppliers should have a contact where they can forward pricing and other information changes. Lastly, customers should be reminded that they should always contact the supplier to ascertain the most up-to-date pricing options.

- d. Does the Commission have the authority to require suppliers to provide their relevant service offerings on such a website? If you believe the Commission currently does not have such authority, please explain why Section 16-117(h) of the PUA would not give the Commission the authority to do so.**

Answer

If the information to be posted related to prices, terms and conditions and was part of a uniform disclosure form adopted by the Commission, Section 16-117(h) of the PUA would appear to require electric suppliers to provide such information.

For information on how the New York PSC addressed price reporting requirements and enforcement mechanisms, *see* Order Adopting ESCO Price Reporting Requirements and Enforcement Mechanisms, Case 06-M-0647 and Case 98-M-1343, Order Issued November 8, 2006. This order has been included with this transmittal for your convenience.

- e. **In the event the information displayed on such a website is out of date, should the Commission (and does the Commission have the authority to) require the supplier to provide requesting customers the opportunity to sign up for a service offering displayed on the website even if the supplier has subsequently modified or eliminated such an offering?**

Answer

No. Every effort should be taken to make sure the information is as current as possible, but suppliers should not be forced to provide service at a price or under terms and conditions that are no longer available. A pattern of repeatedly posting lower prices than actually available on the mandated day they were posted should be treated as a false, deceptive and misleading practice and subject the posting supplier to loss of use of the web site as well as sanctions available via any other applicable statute.

- II. Section 16-117(h) of the PUA states that “the Commission may also adopt a uniform disclosure form which alternative retail electric suppliers would be required to complete enabling consumers to compare prices, terms, and conditions offered by such suppliers.” Assuming you agree that Section 16-117’s legal standing has not changed following the end of the mandatory transition period, please comment on the following:**
- 1. If the Commission were to adopt such a uniform disclosure form, what specific items should be on the form?**

Answer

A uniform disclosure form should include at a minimum:

- The identity and contact information for the ARES.
- Pricing information related to the specific product offering.
- Any applicable fees associated with the specific product offering not included in the price.
- The term of the contract and whether any early termination fees apply.
- Environmental disclosure (composition of the generation sources) information if it is a renewable product.

- 2. Do you agree, given that the items on the disclosure form would differ from offer to offer, that an ARES will have to complete such form for each product it offers at the time?**

Answer

Possibly, depending on how the overall disclosure requirement is structured. Direct Energy notes that in considering additional requirements to be placed solely on suppliers, the ORMD should be mindful of the potential for a cost-to-serve disparity to arise between the supplier and the utility as a result of the cumulative effect of each additional mandate. Absent specific details, Direct Energy has no further comment at this time.

- 3. Should this disclosure form be completed for residential offerings only?**

Answer

Yes.

- 4. In addition to the planned website mentioned above, do you believe the Commission should make this type of information available in printed form and how should the material be made available?**

Answer

The Commission should create a toll-free number where customers who do not have access to the website can access this comparison information. The Commission could make this material (essentially a screen shot of the Web site) available in printed form and mail it to customers upon request.

- 5. If so, how often should this printed material be updated?**

Answer

If the Commission uses a screen shot of the Web site, the printed information would be as current as that found on the Web site. See also answer to Section II, I (6)(c) above on page 8.

- 6. The Texas PUC recently adopted proposed changes to its requirements for information disclosures by retail electric providers.¹ Among other changes, it proposed to create definitions for different types of contracts and proposed to prohibit retail electric**

¹ <http://tinyurl.com/595jhn>

providers from using the term “fixed” when marketing products that do not meet the two approved fixed price product definitions.

If the ICC were to adopt similar requirements, do you believe the proposed definitions of the Texas PUC are a workable starting point for definitions applicable to the Illinois market? If not, what changes would be appropriate? In particular, please comment on ways to reflect the structural differences when it comes to the manner by which transmission and distribution service charges are billed and collected in Texas.

Answer

Direct Energy understands the appeal of standardized product definitions as a means of furthering comparisons among competing company offerings. Such standardization, however, comes with a real risk—the risk that creative and innovative offerings will be hampered or stopped in their development tracks altogether because they do not neatly fit a narrowly drawn, administratively fixed definition. Accordingly, any proposed product definition should be broadly tailored so as to not unduly constrain the introduction of innovative products. As noted in the question, the Texas Public Utility Commission has proposed various product definitions and has sought comment from interested parties. Those comments are due Monday, October 6, 2008—the same day as these comments. Given the pending filing regarding the Texas proposed definitions, Direct Energy respectfully defers any commentary on the proposed Texas rules and their adaptability to Illinois at this time.

III. Section 16-115A(e) of the PUA requires ARES to ensure that “any marketing materials which 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 the alternative retail electric supplier is offering or selling to the customer.” It further states that “before any customer is switched from another supplier, the alternative retail electric supplier 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.”

In addition, Section 505/2EE of the Consumer Fraud and Deceptive Business Practices Act states, among other things, that “an electric service provider shall not submit or execute a change in a subscriber's selection of a provider of electric service unless and until the provider first discloses all material terms and conditions of the offer to the subscriber [...]” and it further states that “[...]the terms, conditions, and nature of the service to be provided to the subscriber must be clearly and conspicuously disclosed, in writing, and an electric service provider must directly establish the rates for the service contracted for by the subscriber [...]”

- 1. Does Section 16-115A(e) and/or Section 505/2EE of the Consumer Fraud and Deceptive Business Practices Act give the Commission authority to require ARES to comply with disclosure obligations similar to Texas’ Terms of Service document, the Electricity Facts Label, and the Your Rights as a Customer document?**

Answer

The Texas Public Utility Commission has proposed revisions to the regulations requiring these various documents. Comments on the revised rule are due Monday, October 6, 2008—the same day as these comments. Given the pending filing regarding the Texas proposed rule, Direct Energy respectfully defers any commentary on the proposed Texas rules and their adaptability to Illinois at this time.

- 2. If you believe the Commission has the authority to create similarly detailed disclosure requirements, please indicate how they should differ from the Texas rules.**

Answer

Please see answer to (1) above.

- 3. Given that Section 16-115A of the PUA does not give the Commission explicit rulemaking authority pursuant to that Section, please state where such requirements could be incorporated or created.**

Answer

Please see answer to (1) above.

- IV. 83 Ill. Adm. Code §451.60 allows applicants or ARES to request that the Commission enter an order to protect the confidential, proprietary or trade secret nature of any data, information or studies pursuant to 83 Ill. Adm. Code 200.430 if the applicant or ARES believes any of the information to be disclosed by an applicant or ARES is privileged or confidential. Typically, an ARES uses Code Part 451.60 to request confidential treatment for its annual call center report (filed pursuant to Code Part 410.45).**

- 1. Please explain whether you believe that the Commission should generally grant such requests for confidential treatment of annual call center reports.**

Answer

Code Part 410.45(c) states: “On or before March 1 of every year, each entity shall file a report with the Chief Clerk of the Commission for the preceding calendar year on its answer time and abandon call rate for its call center as described in subsection (a). A copy of the report shall be sent to the Manager of the Consumer Services Division or its successor.” If

the report to be made public is limited to answer time and abandoned call rate as set forth in Code Part 410.45(c), and the information is made public for all ARES and utilities in a similar format and location, then Direct Energy sees no need to keep this information confidential.

2. **If you do not believe such requests should be granted, please indicate and explain whether you think all of the items in the call center reports should be disclosed or only a subset of those reported.**

Answer

As Direct Energy understands the current call center reports, they contain additional information other than answer time and abandoned call rates. That additional information is competitively sensitive (for example, total number of calls received) and should not be disclosed publicly.

3. **Aside from the existing reporting requirements, is there any other type of periodic report that you believe would be beneficial in a competitive retail electricity market? If so, please indicate the Commission's authority to require such a report.**

Answer

Direct Energy does not have a proposal at this time of any necessary additional periodic reports.

- V. **Section 16-122(b) of the PUA states that "upon request from any alternative retail electric supplier and payment of a reasonable fee, an electric utility serving retail customers in its service area shall make available generic information concerning the usage, load shape curve or other general characteristics of customers by rate classification. Provided, however, no customer specific billing, usage or load shape data shall be provided under this subsection unless authorization to provide such information is provided by the customer [...]"**

On the issue of providing a mass customer list to assist in retail market development, the Pennsylvania PUC adopted the following rule:

(a) An EDC or EGS may not release private customer information to a third party unless the customer has been notified of the intent and has been given a convenient method of notifying the entity of the customer's desire to restrict the release of the private information. Specifically, a customer may restrict the release of either the following:

- (1) The customer's telephone number.**
- (2) The customer's historical billing data.**

(b) Customers shall be permitted to restrict information as specified in subsection (a) by returning a signed form, orally or electronically.

(c) Nothing in this section prohibits the EGS and EDC from performing their mandatory obligations to provide electricity service as specified in the disclosure statement and in the code.²

1. **Please explain whether Section 16-122 of the PUA would allow for a similar rule to be adopted by the Commission.**

Answer

Direct Energy is supportive of using a process for customer authorization of release of private customer information similar to that outlined in the Pennsylvania rule above. Direct Energy takes no position at this time as to whether Section 16-122 would allow for a similar rule.

2. **In Docket No. 07-0241/0242 Consol., the Commission recently directed Peoples Gas and North Share Gas to provide alternative gas suppliers access to customer information. The Commission's February 5, 2008 Order (starting at page 298) creates three different tiers of reports, with the type of information provided and the customer consent required varying across the three tiers.**

- a. **Please explain whether you believe a similar structure should be implemented for the retail electricity market.**

Answer

Direct Energy would like a clearer explanation of exactly what is required to be provided by the utility as a result of the ICC's February 5, 2008 Order before answering this question.

- b. **Please explain whether Section 16-122 of the PUA would allow for a similar rule to be adopted by the Commission.**

Answer

See (a) above.

² 52 Pa. Code § 54.8., Privacy of customer information. EDC stands for Electric Distribution Company and EGS stands for Electric Generation Supplier.

VI. What provisions related to the operation of a competitive retail electricity market currently not found in the statute, in administrative code parts, utility tariffs, or other regulations would you like to see created?

For each proposed provision, please provide proposed language and the preferred mechanism to create such provisions.

For example, if you propose that all contracts for electricity service be printed on blue paper, please provide the proposed wording of such a requirement and indicate whether such a requirement should be part of a utility's tariff (if so, which tariff section?), an existing or new administrative code part, or some other mechanism.

For each proposed requirement please state the Commission's source of authority for doing so.

In addition, if you propose that certain requirements be part of a utility's tariff, please also state whether you view that to be a permanent place for such requirements or if you propose that these tariff requirements be temporary until a permanent placement has been created.

Answer

Direct Energy does not have any proposals per Section VI to share at this time.