

Response of U.S. Energy Savings Corp. to the Office of Retail Market
Development's First Request for Comments
October 6, 2008

Section I

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.

The retail market design in Illinois, despite the impending introduction of Purchase of Receivables and Utility Consolidated Billing (POR/UCB), is not an ideal structure to foster retail competition for commercial and residential customers. Residential and small commercial customers are guaranteed a utility default price option supported by long-term physical contracts that were procured through the Illinois Auction and financial contracts for differences between utilities and generating affiliates. The procurement plans recently offered by the Illinois Power Agency would continue the availability of a utility default supply option supported by long-term forward procurements.

Residential and commercial customers are not required to actively choose the IPA-managed utility default supply option. Instead, eligible retail customers automatically default to this utility supply service. The IPA-managed utility default supply option creates challenges for the development of competitive retail markets in Illinois. The utility default supply option fails to provide eligible retail customers with the appropriate market signals to make economic supply purchasing decisions and energy efficiency and demand-response investments.

If administered in a non-discriminatory manner with appropriate cost allocation, retail choice and referral programs have the potential to generate increased consumer interest in competitive energy markets, open new marketing channels for ARES, lower customer acquisition costs, and expose customers to new and innovative products and services that are not available from the incumbent utility. However, retail choice and referral programs will not be the panacea for anemic residential and small commercial customer switching rates Illinois.

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

Quality of service and proper cost allocation are vital to the success of retail choice and referral programs. Proper cost allocation is essential to ensure that, at a minimum, participating suppliers are allocated their fair share of the start-up and administration costs associated with customer choice and referral programs.

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Socialization of the start-up and administrative costs would result in an improper allocation of costs that would ultimately provide participating ARES with an unfair competitive advantage over ARES that choose not to participate. Exclusive subsidization of customer choice and referral programs or any other specific marketing channel should be avoided.

The quality of customer choice and referral programs, including design, marketing, education, and cost are essential to the development of effective customer choice and referral programs. A poorly designed program may generate little interest among suppliers ultimately resulting in the demise of the program. A well-designed referral program will be ineffective if customers are unaware of its existence. Customers must have a clear understanding of program operation; otherwise, customer dissatisfaction may have a negative impact on program participation. Cost minimization is critical to the success of customer referral programs. The program administrator must have an incentive to minimize costs in order to ensure successful participation by interested ARES.

3. What are important characteristics of such programs?

Customer choice and referral programs should be designed to provide long-term value to customers. For many customers, switching to an ARES through such programs will be their first foray into the competitive market. Customer satisfaction with such programs is of paramount importance to the long-term success of the market. Customers should not be enticed into switching through offers with short-term benefits that are not properly disclosed to the customer. Customers should be fully informed on the prices terms and conditions for any introductory period as well as the post-introductory period.

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.

Customer choice and referral programs should be administered by the State of Illinois or through a contract between the State and an independent third party. Illinois electric utilities may exhibit little or no interest in designing and implementing programs and may not have the expertise necessary to design and implement successful programs. Depending on cost allocation and recovery methods employed in the design and administration of the program, cost minimization may not be a priority for Illinois electric utilities. Electric utilities may also face incentives to discourage program participation and prevent retail customers from switching to unaffiliated ARES.

Further, 83 Ill. Adm. Code Part 452.240(a), which applies to Integrated Distribution Companies such as ComEd and Ameren, states, "An Integrated Distribution Company shall not promote, advertise or market with regard to the

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offering or provision of *any* retail electric supply service.” (emphasis added). The transition from regulated service to competitive retail markets for residential and small commercial customers calls for program administration by an independent, unbiased entity with expertise in delivering innovative products and services to customers in deregulated markets.

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?

The preferred manner in which the Commission should establish and approve such programs is through a Commission Staff administered workshop to design customer choice and referral programs. Program administrators should be chosen through a Commission-approved RFP process conducted in accordance with applicable State of Illinois laws and rules.

The design of customer choice and referral programs will require an “outside of the box” approach. A collaborative workshop process, conducted by the Commission Staff and involving parties with experience from other jurisdictions, will foster an open environment that is more likely to result in the development of robust and successful customer choice and referral programs.

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

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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.

[See the response to questions I.1, I.2, I.4, and I.5 above.](#)

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?

[The incentives and/or programs for low income consumers in Illinois should be developed outside of the process adopted to design and implement customer choice and referral programs. Bill payment assistance programs should be administered across the entire market regardless of whether low income customers choose utility default supply service or supply service from an ARES. Non-discriminatory distribution of LIHEAP funds, regardless of choice of supplier, is critical to ensuring that low-income customers are treated fairly and are afforded full access to the benefits of a competitive market. That being said, nothing should prevent an ARES from voluntarily developing innovative programs to assist low-income customers in paying their bills or participating in programs that are designed to provide bill payment assistance to low-income customers.](#)

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.

[See the response to I.2. above.](#)

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Section II

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 95-0481 last 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.

The appropriation of money from the General Revenue Fund by the Commission for education-related costs is critical to the development of an effective and efficient competitive retail electricity market. The lack of an established sunset date is indicative of the General Assembly's expectation that customer education would be an ongoing need as competitive retail electric markets continue to expand.

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.

[See the response to Section II - I.1 above.](#)

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

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Section 16-101A (d) of the Illinois Public Utilities Act ("Act") states, in part, "The Illinois Commerce Commission should act to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers." The Act explicitly charges the Commission with the responsibility of promoting the development of a competitive retail electricity market. An on-going, multi-faceted customer education campaign is an important component in the development of any competitive retail energy market. The Commission and Commission Staff's involvement in the ongoing development and administration of a customer education campaign is critical. The Commission and Commission Staff possess the expertise necessary to conduct workshop processes, gather relevant information, issue requests for comments, develop an appropriate customer education plan, and determine the most effective method of administering a customer education program.

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

The Act does not delineate a post-transition period collaborative process to consider changes and revise customer education materials and administration. As mentioned in the response to Section II, I.(3), above, the Commission Staff should conduct workshop processes with interested parties to revisit the customer education plan already developed during the mandatory transition period and consider possible revisions to the program based on observed changes in the market and the effectiveness of customer education campaigns in other jurisdictions. Electric utilities, ARES, consumer groups and other interested parties should have the opportunity to provide input on any proposed revisions to the customer education campaign.

Sections 16-117(g)(1-3) and Section 16-117(j) of the Act clearly delineate the responsibilities of electric utilities and ARES with regard to customer education. In particular, ARES are required to provide approved customer education materials to a customer prior to executing any contracts or agreements with the customer for electric supply and upon request by a customer. However, Section 16-117(j) states,

"In no event shall any electric utility, alternative retail electric supplier or customer be liable for the costs of printing customer education program material in accordance with [Section 16-117]. The obligations associated with this consumer education program shall not exceed the amounts appropriated for this program pursuant to [Section 16-117]."

Thus, the mandatory customer education-related responsibilities of ARES and electric utilities are contingent on the availability of customer education materials

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prepared through the use of funds appropriated from the General Revenue Fund under Section 16-117. Nothing in this section, however, prevents an ARES, electric utility, or any other party, from voluntarily developing customer education materials for distribution to Illinois retail electric customers.

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

Television, newspaper, and billboard messaging should be considered to the extent that additional funds are available.

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.

The information included on a "Power To Choose" site should be driven by the individual characteristics of the product. The ORMD should avoid trying to explicitly define required information for products that are posted on the site. Defining the type of information that should be included on the site could potentially create customer confusion, prevent ARES from adequately disclosing the prices, terms and conditions of new and innovative products, steer the design of competitive products, limit the number of offerings, and stunt the development of a competitive electricity market in Illinois. The New York Power To Choose website allows suppliers to provide their own explanation of the products offered on the site. This type of flexibility is important and should be expanded upon. Suppliers should be permitted to include their own descriptions of products posted on the Power To Choose website as long as those descriptions comply with applicable rules and laws.

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

Yes, the planned website should display only information for residential customers. If participation was mandatory, including information for commercial customers would be overly burdensome and could potentially require the posting of hundreds of offers. In addition, commercial customers often receive negotiated rates which are treated as confidential and should not be publicly available for inspection.

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c. How often should the information be updated?

The information should be updated by the ARES whenever the posted contracts are no longer in effect or whenever new products are offered. However, posting offers on a Power To Choose website should be optional.

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.

Section 16-117(h) states,

“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.”

USESC interprets this section of the Act as providing the Commission with the authority to adopt a method of uniformly disclosing various terms and conditions of offers and to require ARES to provide such disclosures at the time an electricity product is offered to a retail customer.

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?

An Illinois Power To Choose website should be a marketplace for interested ARES to post all or a subset of offers available in the marketplace at any particular point in time. Posting offers on Power To Choose should be optional and at the discretion of the ARES. An ARES may consider maintenance of offers on Power To Choose to be burdensome or not conducive to the ARES planned growth. Further, regulations requiring mandatory posting of offers is not consistent with deregulation and the operation of competitive markets. Power To Choose should create a voluntary marketplace for ARES and customers to come together. A properly designed and marketed website will create a valuable marketing channel for ARES, which, in turn, will provide an incentive for ARES to participate and eliminate the need for mandatory participation.

ARES should be solely responsible for posting offers on the Power To Choose website and should have full control to add and remove products in real-time. ARES must ensure that offers posted on the Power To Choose website reflect offers that are currently available and must honor any posted offers.

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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?

If the Commission decides to adopt a uniform disclosure form, it is critical that the items to be included on the form do not stifle innovation by unintentionally forcing electricity products to fit into narrow definitions that are based on historical, regulated offerings or a narrow view of the universe of products that could potentially be offered. One approach may be to require ARES to answer a standard set of questions on the form that would reveal pertinent information to the customer such as price, term, exit fees, renewal clauses, etc.

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?

It is likely that the items on the disclosure form would differ from offer to offer. This underscores the problem with requiring a disclosure form for commercial customers. ARES may have tiered or negotiated pricing for commercial customers based on usage characteristics. Further, if ARES are offering a retailer consolidated bill, it would be virtually impossible to provide an estimate for delivery charges because they vary widely based on the demand of the customer. Requiring a disclosure form for commercial customers could literally require the production of hundreds of forms that would need to be generated and revised on a daily basis. Further, significant switching levels in the commercial segment have not resulted in any evidence supporting the need for additional disclosure requirements.

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

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?

The information posted on Power To Choose should not be available in printed form. Key to the success of a Power To Choose website is the real-time nature

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of the posted information. Printed materials would be quickly outdated, create customer confusion, and potentially generate dissatisfaction with competitive markets when advertised offers were no longer available.

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

See the response to 4 above.

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

The product definitions in the proposed rule currently under consideration in Texas Public Utility Commission Project No. 35768 should not be considered as a starting point for definitions applicable to the Illinois electric market if the ICC ultimately decides to initiate a disclosure rulemaking. The proposed product definitions have been widely opposed by market participants and, if adopted, are expected to stifle innovation and provide no valuable information to consumers.

Regardless of the structural differences between the Illinois and Texas electricity markets, regulators should avoid the temptation to regulate rates in a competitive market. Product definitions represent an undesirable step backward in the development of competitive markets and a return to regulated service.

The market for mobile phone calling plans represents a perfect example of a market that was allowed to develop without any regulatory interference in product design. If regulators somehow decided to impose product definitions on providers of mobile phone service, it is unlikely that those product definitions would have accommodated the vast array of calling plans that are currently available and continue to be developed. It is unlikely that product definitions applied to mobile phone calling plans would have anticipated such services as anytime minutes, night and weekend minutes, unlimited mobile-to-mobile, family plans, roll-over minutes, pay as you go, etc.

The same can be said for electricity products. In fact, there are numerous products available in the Texas market that are vastly different from one another

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but all of these products would likely fall into the "variable product" category if they were to fit into any of the categories at all. These products are currently available and enjoyed by hundreds of thousands of customers, yet, depending on the interpretation of the term "variable product", the rule may actually prevent suppliers offering these products in the future.

Another problem is that the product definitions proposed in Texas create an unintentional hierarchy, which places guaranteed fixed-price products at the top. The consequence of this ordering is that customers are discouraged from engaging in demand response and conservation because time-of-day prices and real-time prices are perceived as less desirable than fixed prices. This is just one of many examples of the improper signals that regulated product definitions would send to consumers in a competitive market.

A need for product definitions has not been demonstrated in Illinois. The ICC should avoid the temptation to define products in a deregulated market and, instead, focus on disclosure of relevant pricing, terms, and conditions in residential customer agreements.

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?

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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.

No response.

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.

No response.

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.

No response.

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.

No response.

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.

No response.

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 [...]"

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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.

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

No response.

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.

The provision of customer-specific information is vital to the development of a well-functioning competitive electricity market in Illinois. There is more than one way to manage supplier access to customer specific information. The approach adopted by the Commission in the Final Order in Docket No. 07-0241/0242 is a reasonable approach but would likely need to be adjusted based on individual utility operations. The rule adopted by the Pennsylvania Public Utility Commission represents another workable approach that should be given serious consideration.

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

No response.

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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?

No response.

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.