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November 12, 2002

Dr. Eric P. Schlaf
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701
Via email: eschlaf@icc.state.il.us

Dear Dr. Schlaf:

The National Energy Marketers Association (NEM) hereby responds to the October 28, 2002, Request for Comments Concerning the Commission's Section 16-120(a) Competition Report to the General Assembly.

The National Energy Marketers Association (NEM) is a national, non-profit trade association representing wholesale and retail marketers of energy, telecom and financial-related products, services, information and related technologies throughout the United States, Canada and the U.K. NEM's Membership includes wholesale and retail suppliers of electricity and natural gas, independent power producers, suppliers of distributed generation, energy brokers, power traders, and electronic trading exchanges, advanced metering and load management firms, billing and information technology providers, credit, risk management and financial services firms, software developers, clean coal technology firms as well as energy-related telecom, broadband and internet companies.

This regionally diverse, broad-based coalition of energy, financial services and technology firms has come together under NEM's auspices to forge consensus and to help resolve as many issues as possible that would delay competition. NEM members urge lawmakers and regulators to implement:

- Laws and regulations that open markets for natural gas, electricity and related products, services, information and technology in a competitively neutral fashion;
- Rates, tariffs, taxes and operating procedures that unbundle competitive services from monopoly services and encourage true competition on the basis of price, quality of service and provision of value-added services;
- Competitively neutral standards of conduct that protect all market participants;
- Accounting and disclosure standards to promote the proper valuation of energy assets, equity securities and forward energy contracts, including derivatives; and

- Policies that encourage investments in new technologies, including the integration of energy, telecommunications and Internet services to lower the cost of energy and related services.

NEM offers the following comments with respect to the questions set forth in the Request for Comments.

General questions about competition issues

- 1. Please describe any barrier to entry or any element constraining participation in the provision of any of the services provided for under Article 16 of the Public Utilities Act. Can and should these barriers be removed?**

As discussed in further detail throughout these comments, barriers to entry in the Illinois market include customer enrollment rules and processes, minimum stay requirements, pricing issues and uncertainty about reciprocity requirements.

- 2. What are the impediments to the establishment of a competitive wholesale power and energy market in Illinois? Can and should these barriers be removed? What is the role of the State and the Commission in such an endeavor?**

The major impediment to the establishment of a competitive wholesale power and energy market in Illinois has been the utilities failure to definitively select the RTO in which they will participate. NEM submits that the Commission should enforce the provisions of Section 16-126 to require the utilities to expeditiously join an RTO.

- 3. What are the impediments to the establishment of a competitive retail market in Illinois? Will full retail competition be possible before these impediments are removed? Can and should these impediments be removed? What is the role of the State and the Commission in such an endeavor?**

As will be discussed more fully in response to subsequent questions, the most significant obstacles to the development of a robust competitive retail electric market are: 1) lack of accurate and timely price signals; 2) artificial rate freezes; and 3) calculation of market values and the related calculation of transition charges. These obstacles and their remedies are mentioned throughout NEM's responses. Lifting price caps and allowing consumers to see and respond to changing prices for commodity and related bundled services is critical. A revision in the methodology for the calculation of market value and the calculation and assessment of the transition charge is also necessary for the development of the Illinois retail market.

- 4. How could the Commission and/or General Assembly encourage competitive retail activity in the service areas that are not being served by Retail Electric Suppliers? Would such policies be appropriate?**

Competitive retail activity will be encouraged by the adoption of NEM's recommendations set forth throughout these comments.

5. Is competition for small-use electric customers feasible? How can the Commission and/or General Assembly encourage competitive activity in the residential electric market?

NEM believes that competition for small-use electric customers is feasible. As a general matter, the solution lies in the unbundling of utilities' rates based on the utilities' fully allocated embedded costs so that consumers can shop for all manner of competitive products, services, information and technology. Providing consumers with unbundled rates and/or shopping credits based on embedded costs is paramount to sending consumers accurate price signals and encouraging the development of the competitive market.

Competitive suppliers must also be able to utilize the most cost-effective and efficient means of acquiring customers. For many competitive suppliers, telephonic enrollment is such a tool. (For further discussion on telephonic enrollment see Question 27). NEM also supports the proposition that market-based solutions such as aggregation can and should be utilized to promote the development of competitive markets. The ability of competitive suppliers to aggregate large groups of customers at low costs is critical to the attainment of economies of scale. In particular, aggregation programs would be useful to address the needs of low-income consumers and to allow low-income consumers access to lower prices in the most efficient way possible.

6. Will retail competition be more likely after the current bundled rate freeze expires in 2007? If so, why?

It is possible that retail competition will be more likely after the current bundled rate freeze expires. This is because rate freezes do not facilitate energy competition and do not permit consumers to modify their consumption levels in response to price. Utility pricing mechanisms must be flexible enough to accommodate and reflect changes in price in the wholesale market. NEM is cognizant of the concern that consumers should be protected from erratic price swings. However, if consumers were permitted to see and respond to real-time pricing signals they could adjust their consumption thereby lessening the impact of price spikes. For example, the FTC Staff explained in their Retail Competition Report that,

It does not necessarily follow, however, that exposing consumers to variable prices and real-time metering is necessarily incompatible with stable customer bills. With variable real-time retail pricing that reflects underlying real-time wholesale prices, retail prices sometimes will be higher than the average price and sometimes will be lower. The aggregate bill rendered under variable pricing could be higher, lower, or the same as the bill for the same individual customers under average pricing. A customer's bill will tend to be lower to the extent that the customer

consumes less electricity than average when the real-time price is high. And some customers may be able to both consume more total power and pay less in total when they shift consumption from high price hours to low price hours. (FTC Staff Report on Retail Competition, issued September 2001, at page 37).

Accordingly, NEM would submit that the more appropriate consumer protection concern is empowering consumers to engage in demand response through variable pricing and access to real-time pricing signals. Price caps are simply incompatible with fostering demand response.

FERC has also indicated its commitment to fostering demand response initiatives in its standard market design. If retail markets are incapable of producing a demand response, due in part to frozen rates, this will thwart FERC's valuable objective.

7. How should the State respond if competitive wholesale and retail markets do not develop in the wholesale and retail electric markets? What options would be appropriate to protect Illinois retail customers?

NEM submits that until all of the artificial constraints hampering the development of the market have been removed (see answer to Question 8 below) that the legislature and the Commission should resist the urge to attempt to definitively evaluate the development of the market. The legislature and the Commission should not succumb to pressures to re-regulate the market based on premature conjecture.

8. How can we measure the intensity of competition in wholesale and retail electricity markets? How can we calculate the benefits from competition in wholesale and retail markets? How competitive are wholesale and retail markets according to these measures? What is the value of benefits from competition so far? What is the value of benefits from further increases in competitive activity?

NEM submits that any measure of whether the market is competitive must recognize the current statutory constraints and requirements that have been imposed. Levels of customer migration for the various customer classes have been impacted by the rate freezes, market values and transition charges. So long as utility rates for bundled service are artificially low and consumer shopping credits do not reflect the full energy supply and commercial costs of serving retail load, customer migration will be inhibited. Taking a static picture of market penetration without examining these factors will not reveal whether a competitive market does in fact exist. With these constraints in mind, one means of measuring whether or not the market is competitive may be to refer to the criteria set forth in Section 5/16-113 for declaration of a competitive service which provides that,

The Commission shall declare the service to be a competitive service for some identifiable customer segment or group of customers, or some clearly defined geographical area within the electric utility's service area,

if the service or a reasonably equivalent substitute service is reasonably available to the customer segment or group in the defined geographical area at a comparable price from one or more providers other than the electric utility or an affiliate of the electric utility, and the electric utility has lost or there is a reasonable likelihood that the electric utility will lose business for the service to the other provider or providers.¹

The first and foremost benefit of competition is providing consumers with the opportunity to choose from a menu of competitive products, services, information and technologies beyond the traditional regulated option. The benefits of competition also include lower prices and/or innovative offerings of products, services, information and technology. It is difficult to quantify these benefits. However, these benefits will increase as the extent of competition increases.

Questions about specific competitive issues

- 9. Should the General Assembly make any changes to the transmission siting and certification provisions of the Public Utilities Act? If so, please describe the changes to Illinois' transmission siting and certification statutes that you would like to see.**

N/A

- 10. Should the ICC make any changes to the current transmission siting and certification practices, policies and procedures? If so, please describe the changes to the ICC's transmission siting and certification practices, policies and procedures that you would like to see.**

N/A

- 11. Should the General Assembly make any changes to the generating plant siting and certification provisions of the Public Utilities Act? If so, please describe the changes to Illinois' generating plant siting and certification statutes that you would like to see.**

N/A

- 12. Should the General Assembly or the ICC adopt a policy for interconnection of large generating plants in Illinois? If so, please describe the policy you favor.**

NEM submits that a major impediment to new generation investments is the lack of national technical standards and uniform business practices for interconnection to the grid. Interconnection experience with utilities is often time consuming and expensive

¹ See Docket No. 02-0479, Initial Brief of the National Energy Marketers Association, for NEM's views on interpretation of this statutory provision.

because each utility has a unique interconnection process. NEM strongly supports the use of a standard application form and process to reduce the administrative costs for investors in large generation plants as well as utilities. NEM also supports the use of a standard application process, including a timeline for the incumbent utility's response to an application for interconnection with penalties for non-performance. NEM directs the Commission to FERC's rulemaking in Docket No. RM02-1-000 on the Standardization of Generator Interconnection Agreements and Procedures.

13. Should the General Assembly or the ICC adopt a policy for interconnection of small generating plants in Illinois? If so, please describe the policy you favor.

NEM submits that state regulatory commissions must adopt uniform interconnection standards policies and practices in order to reduce the cost to install distributed generation. NEM directs the Commission to its "National Guidelines for Implementing Distributed Generation and Related Services."² National, or at a minimum, statewide technical safety and reliability requirements, application procedures, forms, standard agreements, related testing and certification requirements plus the elimination of existing penalties can reduce the costs and risks of investments by consumers in competitive new distributed generation technology. A few states, notably California, New York, Ohio and Texas, have adopted interconnection standards and uniform business practices, but these vary significantly even among these states. The Institute of Electrical and Electronics Engineers (IEEE) is developing a technical interconnection standard. If these processes and requirements are applied uniformly across the country, the "transaction cost barrier" will be reduced, and the economic benefit can be significant. NEM also directs the Commission to FERC's rulemaking in Docket No. RM02-12-000 on the Standardization of Small Generator Interconnection Agreements and Procedures.

14. Should the General Assembly or the ICC modify its existing policy concerning backup rates for generating plants? If so, please describe the policy you favor.

Regulators should implement standby rates that only require investors with distributed generation resources to pay for the actual energy used and only when it is used. Distributed generation customers should also be able to secure standby generation service from other sources where retail choice has been enacted.

NEM urges all regulators to design demand charges and back up standby rates in accordance with Section 292.305 (c)(1) of the PURPA regulations that states:

The rate for sales of back-up power or maintenance power: (1) Shall not be based upon the assumption (unless supported by factual data) that forced outages or other reductions in electric output by all

² NEM's "National Guidelines for Implementing Distributed Generation and Related Services" are available at: <http://www.energymarketers.com/Documents/NEMADistributedGenerationfinal.pdf>.

qualifying facilities on an electric utility's system will occur simultaneously, or during the system peak, or both.³

Demand charges should not be based on a continuous-use model that assumes that a distributed generation unit will never be running and will always be using the utility for its peak demand.

15. Should the General Assembly or the ICC modify its existing policy concerning self-generation or cogeneration? If so, please describe the policy you favor.

As a public policy matter, rates should not penalize, self-generation, and power produced by a self-generator should not be treated as a stranded cost but rather a benefit to the utility system. Some jurisdictions place "exit fees" (payments for electric services that a consumer no longer wishes to buy from the utility) on consumers who decide to invest in their own generation. Charges that directly or indirectly operate as an "exit fee" or penalty are contrary to the public interest, unjust and unreasonable and should not be included in standby rates. Consumers that invest in and install self-generation should not be penalized, forced to pay for services they do not require or charged fees that typical, electricity-consuming customers do not pay.

Such practices and rate designs are inconsistent with today's need to enhance competitive energy options, lower costs and improve both energy security and reliability. Utility tariffs, operating practices and procedures must recognize that self-generation can increase energy supplies, enhance system reliability and lower energy costs to both the utility and the consumer.

16. Should the General Assembly or the ICC take steps to promote increased opportunities for load response to price so as to improve demand elasticity? If so, please describe the steps you recommend.

The role for the Commission in the promotion of demand-side participation lies in the creation of a market whereby consumers are able to see and respond to real-time price signals. This entails creating a standard offer service that reflects the full energy supply and commercial costs of serving no-notice customers and that incorporates changes in wholesale prices. When energy prices rise, consumers on standard offer service will be incented to conserve energy and/or choose a lower cost competitive alternative.

Furthermore, the Commission can play a role in demand response by providing consumers with access to advanced real-time meters and other technology that will help them modulate their energy usage in response to price.

The Commission can also encourage demand response through the facilitation of the use of distributed generation technology. Distributed generation can provide real value as a demand-side management resource as it reduces customer impacts on the distribution

³ Arrangements Between Electric Utilities and Qualifying Cogeneration and Small Power Production Facilities Under Section 210 of the Public Utilities Regulatory Policies Act of 1978, 18 CFR 292.305 (c)(1).

system and enhances system reliability. NEM urges the Commission to unbundle and redesign distribution rates, and eliminate penalties, redundant charges, and barriers to entry for distributed generation. The Commission should also adopt a uniform interconnection standard in order to reduce the cost to install distributed generation.

17. Should the General Assembly or the ICC take steps to promote divestiture of Illinois transmission facilities to entities not affiliated with Illinois generation owners? If so, please describe the steps you recommend.

NEM asserts that the legislature and Commission should require separation between a utility's regulated functions and its energy sales (marketing/merchant) functions.⁴ The lack of formal separation between functions that justify an exclusive franchise monopoly and those functions that are competitive create both the opportunity to abuse market power and significant financial conflicts of interest that often operate to the detriment of competitors attempting to do business within a utility's franchise territory.

18. Should the General Assembly or the ICC take steps to promote load aggregation so as to increase opportunities for customers to participate in retail choice? If so, please describe the steps you recommend.

NEM supports the utilization of load aggregation programs. (See Response to Question Question 5.) However, NEM also urges that if the Commission adopts an aggregation program, it must ensure that the program does not limit consumer choice. In other words, it is critical that consumers be provided adequate notice and the opportunity to "opt out" of an aggregation program and procure energy supply and services from alternative competitive means.

19. Should the General Assembly modify the Public Utilities Act to expand the ICC's merger review and approval authority? If so, please describe the modifications you recommend.

N/A

20. Should the General Assembly modify the ICC's ARES certification authority? If so, please describe the modifications you recommend.

N/A

21. Should the General Assembly modify the Public Utilities Act's provisions with respect to transition charges? If so, please describe the modifications you recommend.

⁴ See NEM's "National Guidelines for Restructuring the Electric Generation, Transmission and Distribution Industries" at: <http://www.energymarketers.com/Documents/FinalElectricityPaper.pdf>.

The transition charge is a significant barrier to entry in the Illinois market. The manner in which the transition charge is calculated and implemented makes it very difficult for competitive suppliers to compete with the utilities.

Section 5/16-108(f) provides that, "[a]n electric utility shall be entitled but not required to implement transition charges in conjunction with the offering of delivery services." Section 5/16-102 sets forth the definition of transition charge.⁵

⁵ Transition charge is defined as:

(1) the amount of revenue that an electric utility would receive from the retail customer or customers if it were serving such customers' electric power and energy requirements as a tariffed service based on (A) all of the customers' actual usage during the 3 years ending 90 days prior to the date on which such customers were first eligible for delivery services pursuant to Section 16-104, and (B) on (i) the base rates in effect on October 1, 1996 (adjusted for the reductions required by subsection (b) of Section 16-111, for any reduction resulting from a rate decrease under Section 16-101(b), for any restatement of base rates made in conjunction with the fuel adjustment clause pursuant to subsection (b), (d), or (f) of Section 9-220 and for any removal of decommissioning costs from base rates pursuant to Section 16-114) and any separate automatic rate adjustment riders (other than a decommissioning rate as defined in Section 16-114) under which the customers were receiving or, had they been customers, would have received electric power and energy from the electric utility during the year immediately preceding the date on which such customers were first eligible for delivery service pursuant to Section 16-104, or (ii) to the extent applicable, any contract rates, including contracts or rates for consolidated or aggregated billing, under which such customers were receiving electric power and energy from the electric utility during such year;

(2) less the amount of revenue, other than revenue from transition charges and decommissioning rates, that the electric utility would receive from such retail customers for delivery services provided by the electric utility, assuming such customers were taking delivery services for all of their usage, based on the delivery services tariffs in effect during the year for which the transition charge is being calculated and on the usage identified in paragraph (1);

(3) less the market value for the electric power and energy that the electric utility would have used to supply all of such customers' electric power and energy requirements, as a tariffed service, based on the usage identified in paragraph (1), with such market value determined in accordance with Section 16-112 of this Act;

(4) less the following amount which represents the amount to be attributed to new revenue sources and cost reductions by the electric utility through the end of the period for which transition costs are recovered pursuant to Section 16-108, referred to in this Article XVI as a "mitigation factor":

(A) for nonresidential retail customers, an amount equal to the greater of (i) 0.5 cents per kilowatt-hour during the period October 1, 1999 through December 31, 2004, 0.6 cents per kilowatt-hour in calendar year 2005, and 0.9 cents per kilowatt-hour in calendar year 2006, multiplied in each year by the usage identified in paragraph (1), or (ii) an amount equal to the following percentages of the amount produced by applying the applicable base rates (adjusted as described in subparagraph (1)(B)) or contract rate to the usage identified in paragraph (1): 8% for the period October 1, 1999 through December 31, 2002, 10% in calendar years 2003 and 2004, 11% in calendar year 2005 and 12% in calendar year 2006; and **elimination of**

(B) for residential retail customers, an amount equal to the following percentages of the amount produced by applying the base rates in effect on October 1, 1996 (adjusted as described in subparagraph (1)(B)) to the usage identified in paragraph (1): (i) 6% from May 1, 2002 through December 31, 2002, (ii) 7% in calendar years 2003 and 2004, (iii) 8% in calendar year 2005, and (iv) 10% in calendar year 2006;

(5) divided by the usage of such customers identified in paragraph (1), provided that the transition charge shall never be less than zero.

NEM urges that the statute should be amended to provide that transition charges are collected in a competitively neutral manner and not only from customers that have elected competitive suppliers. NEM submits that recovering stranded costs solely from departing customers not only punishes migrating customers, thereby slowing migration and the development of functional retail markets, but also encourages utilities to continue to invest in competitive services thereby further increasing future stranded costs. In the end, society will pay a far higher transition cost, the longer utilities remain in competitive lines of businesses.

NEM recognizes that stranded cost recovery is a valid concern for the utilities. However, NEM recommends that any costs that are unavoidable because utilities must incur such costs to perform Provider of Last Related (POLR)-related services should be recovered through adjustments to the rates charged for POLR-related services. Any costs or lost revenues not connected with the utilities' provision of POLR-related services and fully bundled sales service should be added to distribution rates in a competitively neutral fashion.

Providing revenue recovery based the assumption that migration itself rather than the cost of POLR-related services causes the revenue shortfall will under-price POLR-related services and unfairly penalize customers who migrate. Any determination of costs that are truly stranded must necessarily address the issue of whether the "unavoidable" costs at issue are, in fact, costs properly attributable to POLR-related services.

An additional concept that is integral to the calculation of the transition charge is the calculation of market value. NEM's recommendations with respect to the market value calculation are set forth below.

22. Should the ICC modify its practices, policies and procedures with respect to transition charges? If so, please describe the modifications you recommend.

The Commission should modify its practices, policies and procedures consistent with the recommendations set forth in the Answer to Question 21.

23. Should the General Assembly modify the Public Utilities Act's provisions with respect to the market value index? If so, please describe the modifications you recommend.

Section 5/16-112(k) provides that,

In determining the market values to be used for the various customer classes in calculating transition charges as defined in Section 16-102 or for the power purchase options set forth in Section 16-110, an electric utility shall apply the market values that are determined as set forth in subsection (a) to the electric power and energy that would have been used to serve the delivery services customers' electric power and energy requirements, based on the usage specified in Section 16-102 and taking in to account

the daily, monthly, annual and other relevant characteristics of the customers' demands on the electric utility's system.

NEM submits that market values must be priced at retail rates for each customer class. If the market value is subsidized or set artificially low, i.e., if it does not reflect the true costs of providing retail generation and related services, true competition on the basis of price and quality of service will not be possible. If the market value is set artificially low the transition charge will be artificially high. Conversely, if the market value is set artificially low the purchase power option price will also be set artificially low. Competitive suppliers will be challenged to cover their costs and offer products that provide value to customers. If the incumbent utility is permitted to subsidize retail energy services by passing through wholesale price signals and embedding the retail costs of energy-related products, services, information and related technologies in its distribution rate, a competitive marketplace cannot occur. Establishing a market value index in such a fashion not only distorts energy price signals but establishes a significant barrier to effective price competition by forcing customers who switch to competitive suppliers to pay twice for retail energy services. Under these circumstances fewer customers will choose competitive energy service providers, the utility's market share will be maintained, consumers will not benefit to the degree they should, and competitive markets simply won't develop.

NEM notes that Section 5/16-110(b) recognizes that "retail marketing activities" shall be included in the calculation of market value. NEM submits that the market value for electricity should include transmission charges, scheduling and control area services, and distribution system line losses, a share of pool operating expenses, risk management premiums, load shape costs, commodity acquisition and portfolio management, working capital, taxes, administrative and general expenses, the costs of metering, billing, collections, bad debt, information exchange, compliance with consumer protection regulations, and customer care. NEM submits that the statute should be modified to explicitly require that the market value calculation capture the utilities' fully allocated embedded costs of rendering the products, services, information and technologies listed above.

24. Should the ICC modify its practices, policies and procedures with respect to the market value index? If so, please describe the modifications you recommend.

The Commission should modify its practices, policies and procedures consistent with the recommendations set forth in the Answer to Question 23.

25. Should the General Assembly modify the Public Utilities Act's provisions with respect to reciprocity? If so, please describe the modifications you recommend.

NEM submits that the legislature should modify section 5/16-115(d)(5) so as to nullify the decision of the Fifth District of the Illinois Appellate Court in IBEW v. Illinois

Commerce Commission, No. 5-01-0416. The Commission had ruled that the proper standard for application of Section 16-115(d)(5) is whether the Illinois utilities can physically and economically deliver power and energy to the service areas of an alternative retail electric supplier's (ARES's) affiliates. An ARES would not be precluded from receiving a certificate of service authority if it was not economical for the Illinois utilities to deliver electric power and energy to the service areas of an ARES affiliate because said affiliate territory is not open to competition. In IBEW, the Appellate Court reversed the Commission's ruling and found that alternative retail electric suppliers must demonstrate that their utility affiliates' territories are open to competition.

NEM submits that the Appellate Court's interpretation of the reciprocity requirement unnecessarily and arbitrarily prohibits or limits qualified marketers from participating in the Illinois market thus limiting customers' choice of suppliers. For instance, if a marketer is an affiliate of a utility in a state that is not open to competition, the Appellate Court's interpretation of the reciprocity requirement will prohibit the marketer's participation in Illinois. This would prohibit participation from affiliates located in nearby states.

Generally, unregulated marketers have no influence on whether or to what extent a utility or PUC decides to open a service territory to competition. In many instances, it would be contrary to established codes of conduct for an unregulated marketer to discuss or attempt to influence its regulated affiliate in matters concerning the competitive restructuring of its service territory.

NEM supports a competitive market that stimulates participation by all qualified marketers. Qualified marketers should have the ability to provide products and services as contracted by customers and consistent with good business practices and consumer protections. NEM is opposed to regulatory barriers, such as the reciprocity restriction as interpreted by the Appellate Court, which would exclude marketers, who are otherwise qualified, from fully participating in the market.

26. Should the ICC modify its practices, policies and procedures with respect to reciprocity? If so, please describe the modifications you recommend.

See Answer to Question 25.

27. Should the General Assembly modify the Public Utilities Act's provisions with respect to retail customer switching requirements? If so, please describe the modifications you recommend.

A. Minimum Stay Requirements

Section 16-103(d) of the Electric Service Customer Choice and Rate Relief Law of 1997 provides that:

Any residential or small commercial retail customer which elects delivery services is entitled to return to the electric utility's bundled utility tariffed

service offering provided in accordance with subsection (c) of this Section upon payment of a reasonable administrative fee which shall be set forth in the tariff, provided, however, that the electric utility shall be entitled to impose the condition that such customer may not elect delivery services for up to 24 months thereafter.

NEM urges that the two-year minimum stay requirement should be eliminated. As a general matter, NEM asserts that minimum stay requirements unnecessarily restrict customers from exercising the option to choose another supplier.

B. Telephonic Enrollment

Section 16-115A(b) of the Electric Choice law requires that,

An alternative retail electric supplier shall obtain verifiable authorization from a customer, in a form or manner approved by the Commission consistent with Section 2EE of the Consumer Fraud and Deceptive Business Practices Act, before the customer is switched from another supplier.

NEM notes that the Commission recently recognized, "that Internet enrollment is an acceptable method under Section 2EE of the Fraud Act and Section 5/16-115A of the Act." (Docket 02-0290, Order issued October 23, 2002, page 7). The Commission also stated that it, "does not doubt that telephonic enrollment would lower customer acquisition costs to the Marketers," and, "that increased opportunities for new market participants and lower cost of service to the ultimate consumer may be possibilities," stemming from telephonic enrollment. However, the Commission found that telephonic enrollment is not permitted by current state law. Accordingly, NEM strongly urges that the General Assembly adopt specific statutory language permitting the telephonic enrollment of electric choice customers.

28. Are there any changes to the Public Utilities Act that you believe should be made in light of Federal Energy Regulatory Commission's ("FERC's") Order 2000 and FERC's Standard Market Design NOPR? Should Section 16-126 of the Act be updated? If so, please describe the changes you recommend.

N/A

29. Are there any changes to the Public Utilities Act that you believe should be made in light of the Illinois electric utilities' Regional Transmission Operator choices? If so, please describe the changes you recommend.

N/A

- 30. Should the General Assembly modify the Public Utilities Act to provide the ICC with authority to require load-serving entities to maintain a resource adequacy level or reserve margin? If so, please describe the provisions you recommend.**

Inasmuch as FERC is considering the use of a resource adequacy requirement as part of its Standard Market Design, it is unclear what the need for an additional state-level requirement would be. NEM submits that there would be a risk in setting a requirement in Illinois that varies from the FERC standard that could impose compliance difficulties for LSEs.

- 31. Should MAIN alter its standards or practices in light of recent electric industry changes? If so, please explain how those standards or practices should be changed. Would the ICC or the General Assembly have any role in the MAIN changes you recommend? If so, describe that role. Should the ICC modify its current relationship with MAIN? If so, how?**

N/A

- 32. What should Illinois' role be with respect to the North American Electric Standards Board ("NAESB")? Are Illinois statutory or regulatory changes needed to pursue that role?**

The state's role, in particular the Commission, with respect to NAESB and other standards-setting organizations should be to provide a process for judicial recognition of the Uniform Business Practices⁶ and other industry consensus work products. The participants in these standards-setting organizations, generally representing a broad cross-section of industry interests, devote considerable time and resources to development of business practices and standards. The legislature and Commission could greatly aid in this process by providing a formal means of adopting consensus industry standards subject to notice and comment.

- 33. Are you concerned with future generating fuel supply issues such as natural gas availability or natural gas transportation availability? If so, what should the General Assembly or ICC do to address these concerns?**

N/A

- 34. Are you concerned with future generating fuel diversity issues? If so, what should the General Assembly or ICC do to address these concerns?**

N/A

⁶ Uniform Business Practices for the Retail Energy Market, November 2000; for information visit www.ubpnet.org sponsored by the Edison Electric Institute ("EEI"), the National Energy Marketers Association ("NEM"), the Coalition for Uniform Business Rules ("CUBR"), and the Electric Power Supply Association ("EPSA").

35. Are there steps the ICC or General Assembly should take to promote new and advanced technologies for electric generation, transmission, distribution, or usage? If so, please describe the steps you recommend.

NEM believes that technology is the enabler that will allow national economies of scale to be realized quickly. The goals of deregulation are to lower costs, improve the quality of service and provide value-added services to consumers. These goals are attainable if the state and federal governments implement policies that encourage the prompt implementation of uniform, consistent standards, processes, contract terms, and information protocols that allow competitive suppliers to effectively compete in multiple jurisdictions at the lowest cost to consumers.

The U.S. energy supply and delivery systems are among the most efficient, productive and admired in the world. However, as traditional utilities restructure to accommodate the significant new competitive demands on their systems, it is vital for both the federal and state governments to adopt tax and regulatory policies that encourage the most efficient investments to upgrade the U.S. energy infrastructure.

In addition to new generation and transmission investments, there is an entirely new and different type of restructuring investment that must be made and that can have a major impact on the speed and cost savings available from energy price competition. These new and vital investments include the replacement, outsourcing, upgrading and retooling of computer and information systems, metering systems, billing systems and customer care facilities by both regulated and unregulated entities. These new restructuring investments will open the energy market to meaningful price competition and have extremely favorable macroeconomic impacts on both state and national economies.

NEM recommends expansion of existing tax credits and expedited prudence reviews for "Qualified Energy Restructuring Investments." The legislature should encourage investments to upgrade and modernize energy information and delivery systems at the earliest possible date. A number of logical options already exist in the tax code. Either or both the existing energy tax credit contained in Section 48 of the Internal Revenue Code (IRC), or the existing credit for research contained in Section 41 of the IRC, could be expanded to include "qualified energy restructuring investments."

NEM recommends that the definition of "qualified restructuring investments" include, at a minimum, expenses incurred to modernize and upgrade computer and information systems, metering systems, billing systems and customer care facilities to facilitate competitive restructuring. The credit should be available to both regulated and unregulated entities. These system upgrades are so vital to the restructuring of U.S. energy markets, NEM also recommends that prudence reviews for these "qualified investments" be expedited by state PUCs to minimize investment risk and maximize the speed with which these information infrastructure investments will be made by regulated entities. Investments that are not "qualified" should also not qualify for stranded cost recovery.

36. Should the ICC or General Assembly promote consolidation of the multiple electric utility control areas within Illinois? If so, please describe the steps you recommend.

N/A

37. Should the General Assembly modify Section 16-121 of the Public Utilities Act regarding affiliate relations or any other provision of the Act regarding affiliate relations? If so, please describe the modifications you recommend.

N/A

38. Should the ICC modify its affiliate rules? If so, please describe the modifications you recommend.

N/A

39. Should the General Assembly make any changes to the Public Utilities Act in response to the National Governors' Association proposal for creation of multi-state entities ("MSEs") or FERC's Standard Market Design proposal for the creation of regional-state advisory committees ("RSACs")? If so, please describe the changes you recommend.

N/A

40. Section 16-103(e) of the Public Utilities Act apparently limits the ICC's authority to require electric utilities to offer new tariffed services. Should this provision of the Act be changed? If so, how?

N/A

41. Section 16-113 of the Public Utilities Act sets forth standards for ICC declaration of a tariffed service to be a competitive service. Should this provision of the Act be changed? If so, how?

Prior to the ultimate Commission ruling in Docket No. 02-0479 and the ultimate implementation of that decision, NEM submits that it is premature to examine if changes to the statutory language are necessary.

NEM appreciates this opportunity to comment on the facilitation of effective retail and wholesale electric competition in Illinois and reiterates our commitment to working with the Commission and the other stakeholders to devise fair and effective ways to implement competitive restructuring in the state.

Sincerely,

A handwritten signature in blue ink, appearing to read "Craig Goodman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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