

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission :
On Its Own Motion :
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 :
Consideration of the federal standard : 06-0526
on time-based metering and commu- :
nications in Section 1252 of the :
Energy Policy Act of 2005 :

ORDER

By the Commission:

On August 8, 2005, the Energy Policy Act of 2005 ("EPAAct") (Pub. L. 109-58) was signed into law. Certain provisions of EPAAct amend the Public Utility Regulatory Policies Act of 1978 ("PURPA") to mandate certain considerations by state regulatory agencies. Section 1252 of EPAAct amends Section 111(d) of PURPA (16 U.S.C. 2621(d)) by adding the following language:

(14) TIME-BASED METERING AND COMMUNICATIONS-

(A) Not later than 18 months after the date of enactment of this paragraph, each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others--

(i) time-of-use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year, based on the utility's cost of generating and/or purchasing such electricity at the wholesale level for the benefit of the consumer. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall;

(ii) critical peak pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and/or purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption;

(iii) real-time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis, reflecting the utility's cost of generating and/or purchasing electricity at the wholesale level, and may change as often as hourly; and

(iv) credits for consumers with large loads who enter into pre-established peak load reduction agreements that reduce the planned capacity obligations of a utility.

(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

(D) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

(E) In a State that permits third-party marketers to sell electric energy to retail electric consumers, such consumers shall be entitled to receive the same time-based metering and communications device and service as a retail electric consumer of the electric utility.

(F) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall, not later than 18 months after the date of enactment of this paragraph conduct an investigation in accordance with section 115(i) and issue a decision whether it is appropriate to implement the standards set out in subparagraphs (A) and (C).

Section 1252(b) of EPAAct amends Section 115 of PURPA (16 U.S.C. 2625) in two ways. First, it adds language to subsection (b) essentially reflected in the following:

(b) Time-of-day rates

In undertaking the consideration and making the determination required under section 2621 of this title with respect to the standard for time-of-day rates established by section 2621(d)(3) and the standard for time-based metering and communications established by [Section 2621(d)(14)] of this title, a time-of-day rate charged by an electric utility for providing electric service to each class of electric consumers shall be determined to be cost-effective with respect to each such class if the long-run benefits of such rate to the electric utility and its electric consumers in the class concerned are likely to exceed the metering and communications costs and other costs associated with the use of such rates.

Second, it adds the following subsection (i) at the end of PURPA Section 115 (16 U.S.C. 2625):

(i) TIME-BASED METERING AND COMMUNICATIONS- In making a determination with respect to the standard established by section [2621(d)(14)], the investigation requirement of section [2621(d)(14)(F)] shall be as follows: Each State regulatory authority shall conduct an investigation and issue a decision whether or not it is appropriate for electric utilities to provide and install time-based meters and communications devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs.

Subsection (g) of Section 1252 of EAct requires that "[n]ot later than one year after the enactment of [the legislation][August 8, 2006], each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) . . . shall commence the consideration referred to in [PURPA] section 111 [16 U.S.C. 2621], or set a hearing date for consideration, with respect to the standard established by paragraph (14) of section 111(d)[on time-based metering and communications]." Each State regulatory authority must complete the consideration, and must make the determination referred to in PURPA Section 111 (U.S.C. 2621) not later than two years after the date of the enactment of the new legislative provision (August 8, 2007). There is an apparent conflict between the two years permitted under subsection (g) of Section 1252 and the eighteen months permitted under subsection (a) of Section 1252 of EAct, which amends Section 111(d) of PURPA (16 U.S.C. 2621(d)) by creating new Section 111(d)(14)(F) (16 U.S.C. 2621(d)(14)(F)), which imposes an 18-month deadline as quoted above.

The above requirements may not apply if the state has undertaken certain prior state actions before the enactment of the legislation. For example, if the state has implemented for such utility the standard concerned (or a comparable standard), the state regulatory authority for such state has conducted a proceeding to consider implementation of the standard concerned (or a comparable standard) for such utility within the previous three years, or the state legislature has voted on the implementation of such standard (or comparable standard) for such utility within the previous three years, then subsections (b) and (c) of PURPA Section 112 (16 U.S.C. 2622(b) and (c)) do not apply to the standard created in new subsection (14) of PURPA Section 111(d) (16 U.S.C. 2621(d)(14)).

In a Staff Report dated July 17, 2006, the Staff of the Energy Division indicates that the application of the federal standards is intended for electric utilities with total sales of electric energy for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year (16 U.S.C. 2612(a)). On the basis of the annual reports submitted to the Commission for calendar year 2005, the Illinois utilities subject

to this sales threshold are Commonwealth Edison Company, Central Illinois Public Service Company, Central Illinois Light Company, Illinois Power Company, and MidAmerican Energy Company.

Based upon the foregoing, and upon the recommendation in a Staff Report dated July 17, 2006, the Commission determines that it is now appropriate to begin the investigation contemplated by Section 1252 of EPAct.

The Commission, being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the subject matter of this proceeding;
- (2) it is appropriate to take administrative notice of the amendments to PURPA contained in Pub. L. 109-58;
- (3) the Staff Report dated July 17, 2006 should be made part of the record in this proceeding;
- (4) the statements of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (5) it is appropriate to issue public notice and institute a rulemaking proceeding to consider and make a determination concerning whether or not this Commission will adopt or decline to adopt the standard on time-based metering and communications set forth in Section 111(d)(14) of PURPA (16 U.S.C. 2621(d)(14), as created by EPAct) for each electric utility whose retail sales of electricity exceed the amount specified in PURPA;
- (6) all electric utilities whose retail sales of electricity exceed the amount specified in PURPA and all other electric utilities for which the Commission has ratemaking authority should be made parties to this proceeding;
- (7) a determination concerning whether or not this Commission will adopt the standard set forth in Section 111(d)(14) of PURPA (16 U.S.C. 2621(d)(14)) for each electric utility whose retail sales of electricity exceed the amount specified in PURPA should be rendered through the issuance of an interim or final order in this rulemaking proceeding no later than February 8, 2007.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that a rulemaking proceeding is instituted to consider, and make a determination concerning, whether or not this Commission will adopt the policies prescribed in the standard established under new Section 111(d)(14) of PURPA (16 U.S.C. 2621(d)(14)) for the electric utilities that meet the retail sales criteria in PURPA.

IT IS FURTHER ORDERED that a determination concerning whether or not this Commission will adopt the standard established under new Section 111(d)(14) of PURPA (16 U.S.C. 2621(d)(14)) shall be made through the issuance of an interim or final order no later than February 8, 2007.

IT IS FURTHER ORDERED that the Staff Report dated July 17, 2006 is made a part of the record of this proceeding.

IT IS FURTHER ORDERED that this Order is not final; it is not subject to the Administrative Review Law.

By Order of the Commission this 26th day of July, 2006.

(SIGNED) CHARLES E. BOX

Chairman