STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	)	
On Its Own Motion	)	
	)	Docket No. 17-0267
Amendment of 83 Ill. Adm. Code 455	)	

VERIFIED INITIAL COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION

On June 1, 2017, the Illinois Commerce Commission (the "Commission") entered its order in this proceeding adopting emergency rules amending 83 Ill. Admin. Code Part 455 and authorizing the publication of proposed First Notice Rules to amend Part 455 on a permanent basis. On June 6, 2017, the Commission issued a Notice of Administrative Law Judge's ("ALJ") Ruling establishing June 21, 2017, as the date for the filing of Verified Initial Comments and June 28, 2017, as the date for the filing of Verified Reply Comments. Pursuant to the ALJ's Ruling, the Retail Energy Supply Association[1] ("RESA") submits these Verified Initial Comments.

The Proposed First Notice Rules do an excellent job of revising existing Part 455 to incorporate the changes made to the Renewable Portfolio Standards ("RPS") provisions of the Public Utilities Act by the Future Energy Jobs Act ("FEJA"), Public Act 99-0906. However, RESA proposes the following revisions to the draft First Notice Rules

[1] The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

attached to the Commission's June 1, 2017, Order to make those rules more workable and to reflect the realities of the marketplace for Renewable Energy Credits ("RECs").

Section 455.120, Annual Report of Compliance with Renewable Energy Portfolio Standard

Section 16-115D (a) 3.5 of the Public Utilities Act, as amended by FEJA, states: "The renewable energy resources procured under this paragraph (3.5) shall not include any resources from a facility whose costs were being recovered through rates regulated by any state or states on or after January 1, 2017." In response to this revision, the proposed First Notice Rules would add a Subsection 455.120 (b) (4) which states:

> For compliance periods ending on or after May 31, 2018, a certification that RECs used for compliance for the compliance period were not produced by facilities whose costs were being recovered through rates regulated by any state or states on or after January 1, 2017.

RESA has two concerns with this subsection.

First, as discussed at length in workshops conducted by the Commission Staff prior to the Commission's June 1, 2017 Order, there is currently no designation criteria within MRETS and PJM GATS for a "facility not recovering costs through utility rates". While apparently there are efforts to work out a solution to this problem, it is not clear when such a solution would be available, if ever. Until there is a solution to this problem, RESA proposes adding the following language to the end of Subsection 455.120 (b) (4):

> A RES shall make its certification in good faith based on the best information available from the PJM GATS and the MISO M-RETS data bases at the time of the certification and shall not be subject to any penalty if subsequent information indicates that certain RECs were produced by facilities whose costs were being

recovered through rates regulated by any state or states on or after January 1, 2017.

Other parties also expressed concerns, during the workshops, regarding proposed Subsection 455.120 (b) (4) and may offer proposals in their Initial Comments. RESA will address such proposals in its Reply Comments.

Second, Subsection 455.120 (b) (4) fails to take into account that RESs may have purchased forward RECs prior to the effective date of FEJA—June 1, 2017. If such RECs are deemed to be ineligible, RESs will be left holding RECS that they cannot use, but have paid for. The proposed First Notice Rules should be revised to provide that forward RECs purchased before June 1, 2017 shall continue to be considered eligible. Accordingly, the following language should be added to the subsection:

For purposes of this section, forward RECs purchased prior to June 1, 2017, shall be considered to be eligible RECs.

With RESA's proposed changes, Subsection 455.120 (b) (4) would read:

For compliance periods ending on or after May 31, 2018, a certification that RECs used for compliance for the compliance period were not produced by facilities whose costs were being recovered through rates regulated by any state or states on or after January 1, 2017. A RES shall make its certification in good faith based on the best information available from the PJM GATS and the MISO M-RETS data bases at the time of the certification and shall not be subject to any penalty if subsequent information indicates that certain RECs were produced by facilities whose costs were being recovered through rates regulated by any state or states on or after January 1, 2017. For purposes of this section, forward RECs purchased prior to June 1, 2017, shall be considered to be eligible RECs.

During the workshops conducted by the Commission Staff, there were discussions regarding a due diligence process for compliance with Section 455.120 (b)

(4), however, there was insufficient time for the parties to agree to such a process. RESA believes that some other parties may be proposing revisions to Section 455.120 (b). RESA reserves the right to comment on such proposed revisions in its Reply Comments in this proceeding. Moreover, RESA recommends that consideration be given to holding a workshop in this proceeding on the Section 455.120 (b) (4) matter.

In addition, during the workshops conducted by the Commission Staff, stakeholders expressed a concern about the filing date of September 1, for the annual report required by Section 455.120. MISO settlements are not finalized until September 15. RESA recommends that the following language be added at the end of the first paragraph of Section 455.120 to provide that RESs may file a supplemental report by October 1 based on finalized settlements: "By October 1 of each year through October 1, 2019, a RES may file with the Chief Clerk of the Commission an updated compliance report based on finalized settlements with MISO."

CONCLUSION

For the reasons stated in these Initial Comments, RESA respectfully requests that the Commission modify its proposed First Notice Rules as set forth herein.

Respectfully submitted,

/s/ GERARD T. FOX
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An Attorney for the Retail Energy Supply Association

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NOTICE OF FILING

Please take note that on June 21, 2017, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Verified Initial Comments of the Retail Energy Supply Association in this proceeding.

/s/GERARD T. FOX
Gerard T. Fox

CERTIFICATE OF SERVICE

I, Gerard T. Fox, certify that I caused to be served copies of the foregoing Verified Initial Comments of the Retail Energy Supply Association upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for the instant docket via electronic delivery on June 21, 2017.

/s/ GERARD T. FOX
Gerard T. Fox

STATE OF ILLINOIS)
) **SS**
COUNTY OF WILL)

VERIFICATION

Gerard T. Fox, being first duly sworn, on oath deposes and says that he is an attorney for the Retail Energy Supply Association, that he has read the foregoing Verified Initial Comments of the Retail Energy Supply Association, that he knows of the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

/s/Gerard T. Fox
Gerard T. Fox

Subscribed and sworn to me
21st day of June, 2017

RYAN EDWARDS
Official Seal
Notary Public - State of Illinois
My Commission Expires Aug 3, 2020

NOTARY PUBLIC