

1 AN ACT concerning utilities.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Utilities Act is amended by changing
5 Section 16-115C as follows:

6 (220 ILCS 5/16-115C)

7 Sec. 16-115C. Licensure of agents, brokers, and
8 consultants engaged in the procurement or sale of retail
9 electricity supply for third parties.

10 (a) The purpose of this Section is to adopt licensing and
11 code of conduct rules in a competitive retail electricity
12 market to protect Illinois consumers from unfair or deceptive
13 acts or practices and to provide persons acting as agents,
14 brokers, and consultants engaged in the procurement or sale of
15 retail electricity supply for third parties with notice of the
16 illegality of those acts or practices.

17 (a-5) All third-party sales representatives engaged in the
18 marketing of retail electricity supply must, prior to the
19 customer signing a contract, disclose that they are not
20 employed by the electric utility operating in the applicable
21 service territory.

22 (b) For purposes of this Section, "agents, brokers, and
23 consultants engaged in the procurement or sale of retail

Clerk of the House

Mark Mahony

Originated in the House of Representatives

PUBLIC ACT 16-1385

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1 electricity supply for third parties" means any person or
2 entity that attempts to procure on behalf of or sell retail
3 electric service to an electric customer in the State. "Agents,
4 brokers, and consultants engaged in the procurement or sale of
5 retail electricity supply for third parties" does not include
6 the Illinois Power Agency or any of its employees, any entity
7 licensed as an alternative retail electric supplier pursuant to
8 83 Ill. Adm. Code 451 offering retail electric service on its
9 own behalf, any person acting exclusively on behalf of a single
10 alternative retail electric supplier on condition that
11 exclusivity is disclosed to any third party contracted in such
12 agent capacity, any person acting exclusively on behalf of a
13 retail electric supplier on condition that exclusivity is
14 disclosed to any third party contracted in such agent capacity,
15 any person or entity representing a municipal power agency, as
16 defined in Section 11-119.1-3 of the Illinois Municipal Code,
17 or any person or entity that is attempting to procure on behalf
18 of or sell retail electric service to a third party that has
19 aggregate billing demand of all of its affiliated electric
20 service accounts in Illinois of greater than 1,500 kW.

21 (c) No person or entity shall act as an agent, broker, or
22 consultant engaged in the procurement or sale of retail
23 electricity supply for third parties unless that person or
24 entity is licensed by the Commission under this Section or is
25 offering services on their own behalf under 83 Ill. Adm. Code
26 451.

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1 (d) The Commission shall create requirements for licensure
2 as an agent, broker, or consultant engaged in the procurement
3 or sale of retail electricity supply for third parties, which
4 shall include all of the following criteria:

5 (1) Technical competence.

6 (2) Managerial competence.

7 (3) Financial responsibility, including the posting of
8 an appropriate performance bond.

9 (4) Annual reporting requirements.

10 (e) Any person or entity required to be licensed under this
11 Section must:

12 (1) disclose in plain language in writing to all
13 persons it solicits (i) before July 1, 2011, the total
14 anticipated remuneration to be paid to it by any third
15 party over the period of the proposed underlying customer
16 contract and (ii) on or after July 1, 2011, the total price
17 per kilowatt-hour, and the total anticipated cost,
18 inclusive of all fees or commissions received by the
19 licensee, to be paid by the customer over the period of the
20 proposed underlying customer contract;

21 (2) disclose, if applicable, to all customers, prior to
22 the customer signing a contract, the fact that they will be
23 receiving compensation from the supplier;

24 (3) ~~(2)~~ not hold itself out as independent or
25 unaffiliated with any supplier, or both, or use words
26 reasonably calculated to give that impression, unless the

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1 person offering service under this Section has no
2 contractual relationship with any retail electricity
3 supplier or its affiliates regarding retail electric
4 service in Illinois;

5 (4) ~~(3)~~ not utilize false, misleading, materially
6 inaccurate, defamatory, or otherwise deceptive language or
7 materials in the soliciting or providing of its services;

8 (5) ~~(4)~~ maintain copies of all marketing materials
9 disseminated to third parties for a period of not less than
10 3 years;

11 (6) ~~(5)~~ not present electricity pricing information in
12 a manner that favors one supplier over another, unless a
13 valid pricing comparison is made utilizing all relevant
14 costs and terms; and

15 (7) ~~(6)~~ comply with the requirements of Sections 2EE,
16 2FF, 2GG, and 2HH of the Consumer Fraud and Deceptive
17 Business Practices Act.

18 (f) Any person or entity licensed under this Section shall
19 file with the Commission all of the following information no
20 later than March of each year:

21 (1) A verified report detailing any and all contractual
22 relationships that it has with certified electricity
23 suppliers in the State regarding retail electric service in
24 Illinois.

25 (2) A verified report detailing the distribution of its
26 customers with the various certified electricity suppliers

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1 in Illinois during the prior calendar year. A report under
2 this Section shall not be required to contain
3 customer-identifying information.

4 A public redacted version of the verified report may be
5 submitted to the Commission along with a proprietary
6 version. The public redacted version may redact from the
7 verified report the name or names of every certified
8 electricity supplier contained in the report to protect
9 against disclosure of competitively sensitive market share
10 information. The information shall be afforded proprietary
11 treatment for 2 years after the date of the filing of the
12 verified report.

13 ~~(3) A copy of its verified financial statement.~~

14 (3) ~~(4)~~ A verified statement of any changes to the
15 original licensure qualifications and notice of continuing
16 compliance with all requirements.

17 (g) The Commission shall have jurisdiction over
18 disciplinary proceedings and complaints for violations of this
19 Section. The findings of a violation of this Section by the
20 Commission shall result in a progressive disciplinary scale.
21 For a first violation, the Commission may, in its discretion,
22 ~~shall~~ suspend the license of the person so disciplined for a
23 period of no less than one month. For a second violation within
24 a 5-year period, the Commission shall suspend the license for
25 the person so disciplined for a period of not less than 6
26 months. For a third or subsequent violation within a 5-year

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1 period, the Commission shall suspend the license of the
2 disciplined person for a period of not less than 2 years.

3 (h) This Section shall not apply to a retail customer that
4 operates or manages either directly or indirectly any
5 facilities, equipment, or property used or contemplated to be
6 used to distribute electric power or energy if that retail
7 customer is a political subdivision or public institution of
8 higher education of this State, or any corporation, company,
9 limited liability company, association, joint-stock company or
10 association, firm, partnership, or individual, or their
11 lessees, trusts, or receivers appointed by any court whatsoever
12 that are owned or controlled by the political subdivision,
13 public institution of higher education, or operated by any of
14 its lessees or operating agents.

15 (Source: P.A. 95-679, eff. 10-11-07.)

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.

Michael G. Madigan
Speaker, House of Representatives

John J. Cullerton
President of the Senate

APPROVED

this 29th day of JULY, 20 10 A.D.,

Pat Quinn
GOVERNOR