

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motions)	
)	No. 09-0592
)	
Adoption of 83 Ill. Adm. Code 412 and 453)	

**VERIFIED REPLY COMMENTS OF
THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION**

The Illinois Competitive Energy Association (“ICEA”),¹ by and through its counsel, DLA Piper LLP (US), respectfully submits the following reply comments in the above captioned proceeding regarding the Staff of the Illinois Commerce Commission (the "Commission") First Notice Rules for 83 Ill. Adm. Code Part 412 and 453 Rules ("Staff Proposed Rules" or “Proposed Rules”). ICEA welcomes and appreciates the opportunity to comment on certain proposals made by parties in their Initial Comments. ICEA’s failure to address any given proposals in these reply comments does not necessarily signify ICEA's acceptance or rejection of any such proposal.

INTRODUCTION

ICEA is an Illinois not-for-profit corporation established as an Illinois-based trade association that represents the interests of competitive energy suppliers, including licensed Alternative Retail Electric Suppliers (“ARESS”), and others interested in preserving and enhancing opportunities for customer choice and competition in the electric and natural gas industries in Illinois. ICEA’s members include some of the largest competitive energy suppliers in Illinois, such as Ameren Energy Marketing, Champion Energy, LLC, Constellation NewEnergy Inc., Direct Energy Services, LLC, Exelon Energy Company, Integrys Energy

¹ The comments expressed in this filing represent the position of ICEA as an organization but may not represent the views of any particular member of ICEA.

Services, Inc., MC2 Energy Services, LLC, Midwest Generation, and Nordic Energy Services, LLC. ICEA's members serve residential, commercial, industrial, and public sector customers, including companies involved in the manufacturing industry, retail businesses, local units of government, cultural, sporting, and educational institutions, as well as hospitals, hotels, and restaurants throughout the state of Illinois.

In reviewing the various Initial Comments submitted by the parties, ICEA reiterates its view expressed in its own Initial Comments that the Staff's Proposed Rule represents a balancing effort. As a reading of the Initial Comments aptly demonstrates, as with any such balancing effort, the end product may not necessarily reflect the preferred outcome sought by any one party.

ICEA believes that appropriately tailored consumer education and protection provisions are the foundation upon which well-functioning robust competitive retail markets must rest. As the Commission further refines the text of the Proposed Rules, ICEA agrees with a principle set forth by Dominion Retail, Inc. that changes to the proposed rule should involve "a proper evaluation of the costs and benefits of the rules. Customers will be harmed by burdensome rules that impose significant costs on ARES with little benefit to consumers." (Init. Comments of Dominion Retail, Inc. at 1.) Like a figurative "Christmas-tree bill" in the legislature, at some point the addition of one more seemingly well-intentioned innocuous new requirement sends what was once an appropriately tailored, well-balanced proposed rule crashing down to the ground.

In these Reply Comments, ICEA addresses recommendations made in the Initial Comments of the Citizens Utility Board ("CUB") and the Illinois Attorney General's Office ("AG") (together, "CUB/AG"), Dominion Retail Energy, Inc. ("Dominion"), the Illinois Industrial Energy Consumers ("IIEC"), Commonwealth Edison ("ComEd"), and the Retail

Energy Supply Association ("RESA"). ICEA reserves the right to respond via further verified comments to the Reply Comments filed by other parties in this proceeding if such an opportunity is made available and/or to respond via brief to any subsequent drafts of the Proposed Rules.

REPLY COMMENTS AND RECOMMENDATIONS

I. Reply to Comments of the Citizens Utility Board and Illinois Attorney General's Office²

A. Section 412.120. Waiver

ICEA agrees with CUB/AG that requests for a waiver of Part 412 be made through a petition filed at the Commission. (*See* Init. Comments of CUB/AG at 5.)³ However, the language proposed by CUB and the AG should more closely match the wording of Section 412.20(a) and (b). Accordingly, ICEA recommends that CUB and the AG's language be modified as set forth below:

CUB/AG proposed language:

"(c) A petition for exemption or modification shall be filed pursuant to 83 Ill. Adm. code 200 and shall include specific reasons and facts in support of the requested exemption or modification, explaining why the RES is unable to comply with these rules."

ICEA proposed language:

"(c) A waiver petition ~~for exemption or modification~~ shall be filed pursuant to 83 Ill. Adm. Code 200 and shall include specific reasons and facts in support of the requested waiver ~~exemption or modification, explaining why the RES is unable to comply with these rules.~~"

² Attachment A to the CUB/AG Initial and Corrected Comments includes a new proposed definition for "material terms." In their Initial and Corrected Comments, CUB/AG propose adding two additional terms to the definition section of Part 412, neither of which is the definition of "material terms." Given the discrepancy between CUB/AG's comments and their Attachment A, it is unclear to ICEA whether CUB/AG meant to pursue their definition of material terms in this proceeding.

³ Unless otherwise indicated, all citations to the Initial Comments of CUB/AG herein are to the "Corrected Verified Initial Comments" of CUB/AG filed on March 16, 2010.

B. Section 412.110. Uniform Disclosure Statement

(i) Per kWh pricing mandate. Proposed 412.110(p)

The CUB/AG proposal that suppliers provide as part of their uniform disclosure statement "a price-per-kilowatt hour (kWh) for the power and energy service" is fundamentally flawed, contrary to the best interests of consumers, and contrary to the Office of Retail Market Development's charge to promote retail electric competition. (*See* 220 ILCS 5/20-110.) Accordingly, the Commission should reject the CUB/AGs proposal for per kWh pricing.

- First, the CUB/AG proposal reflects a fundamental misunderstanding about the products ARES offer in competitive markets. The practical effect of the CUB/AG quest for ease of price comparability is to strip away from the marketplace a hallmark and desired attribute of competitive markets -- product differentiation and innovation. Some ARESs may offer customers a product with a set monthly fee and a lower per kWh rate; others may offer customers a fixed monthly charge product with no per kWh rate; still others may offer a variable product tied to an index that fluctuates with the market, or offer nights and weekends free. In contrast, the CUB/AG requirement would essentially mandate that all suppliers offer the same product in the same way to all customers. Such an outcome is not consistent with the vision set forth by the General Assembly for retail electric competition in Illinois. The General Assembly desired that all consumers receive the "full benefits of competition" -- i.e. the ability for all consumers to shop among products, prices and terms tailored to meet their needs. (*See* Retail Electric Competition Act of 2006, 220 ILCS 20-102(a) (Findings and intent).)

Recognizing that variety of choice is a hallmark of robust competition, the General Assembly did not see fit to mandate a similar per therm pricing mandate on the service offerings of alternative gas suppliers. The Commission is not and should not be in the businesses of regulating the particular products and services that an ARES may or may not offer.

- Second, the CUB/AG approach places unnecessary barriers to developments in the energy sector. For instance, as customers become more aware of environmental issues, they may choose to have a larger percentage of their energy supply mix come from renewable resources. Or customers may have an individual preference for one type of renewable resource over another, which necessarily affects price. Additionally, as advanced metering and Smart Grid are being developed in the State, ARESs may offer equipment, devices, or services that allow customers to manage their energy needs. Adopting a “one size fits all” mandate for pricing disclosure may eliminate a customer’s ability to obtain the products and services she desires, and would potentially thwart development of new products and services.
- Third, to ICEA’s knowledge, no other state with competitive retail electric markets mandates that a supplier’s retail electric products must be designed solely on a per kWh basis. As noted by CUB/AG in their initial comments, a set price per therm is not required on the natural gas side. There is no explanation as to why different, and very limiting, requirements should be imposed on electric suppliers. CUB/AG suggest that even though neither the General Assembly nor the Commission has established a similar

requirement for alternative gas suppliers, "it is an important protection that should be implemented on the electric side as UCB/POR is unique to the electric side." (CUB/AG Init. Comments at 6.) CUB/AG provide no further elaboration as to why the mere existence of UCB/POR "on the electric side" would warrant the imposition of such a mandate. ICEA respectfully suggests that the presence or absence of UCB/POR is irrelevant to an analysis of the merits of CUB/AG's recommendation.

- Fourth, the CUB/AG proposal fails to acknowledge that suppliers have certain fixed costs, regardless of the amount of energy that is consumed. This fact is recognized on the utility side, in which the Commission has in recent orders permitted the "decoupling" of certain charges, or allowing for fixed costs that are calculated on something other than a usage basis. The CUB/AG proposal to mandate per kWh pricing would essentially freeze ARESs in time from a regulatory policy development standpoint and would potentially place them at a competitive disadvantage when consumers look to compare prices against such decoupled utility offerings.

(ii) Force Majeure Disclosure. Proposed 412.110(q)

The CUB/AG's proposal that ARESs provide customers with a statement of "whether or not" they have "declared force majeure within the past ten years in relation to any contractual obligations to deliver power and energy service" should be rejected by the Commission. Force majeure provisions are triggered when circumstances beyond the control of the supplier arise that prevent the fulfillment of a contractual obligation -- circumstances such as natural disasters, wars, riots, or, as CUB/AG put it "major, unexpected circumstances". (CUB/AG Init. Comments

at 7.) by definition, suppliers have no control over these situations, so informing a customer of past force majeure events provides the customer with little to no predicative value as to whether that supplier will be able to fulfill its contractual obligations in the future. The premise that publication of the number of previous force majeure events is somehow indicative of future activities is absolutely unproven. In addition, CUB/AG fail to place language limiting their proposal to force majeure events in Illinois. For example, if a hurricane forces a wholesale provider to an ARES to declare a force majeure event that triggers the retail energy supplier to declare a force majeure event for its contracts in Texas, how does that have any bearing on quality of service expected to Illinois customers? ICEA respectfully submits that it has no bearing whatsoever. To the contrary, it may actually be misleading, causing a customer to choose a supplier with no history of force majeure events over a supplier that has declared an event having absolutely no Illinois connection or impact.

The ten year reporting horizon is also troubling. That requirement could unduly disadvantage a supplier that has declared a historic force majeure event but that may have provided customers with excellent service for the past decade, as against a supplier without any such declarations that may be new to the market, with no history or experience in providing excellent service to customers.

ICEA also has concerns with the time it would take to explain the term "force majeure" to customers in what is an already lengthy disclosure statement. The legalistic nature of the term has the potential to cause customer confusion without offering any real customer benefit.

If CUB/AG are concerned that a supplier might develop a pattern of declaring questionable force majeure events, there are tools available to correct such market misbehavior via the Circuit Court, the Commission's customer complaint process and/or an investigation by

the Commission on its own motion. ICEA is aware of only two force majeure controversies in the Illinois energy marketplace and those controversies centered around one alternative gas supplier. The CUB/AG proposal mandating the disclosure of force majeure events represents an overreaction to this potential for force majeure abuse and an equally overblown mandate that provides customers with little to no guidance in choosing a supplier. Accordingly, it should be rejected by the Commission.

C. Section 412.120. Customer Solicitation⁴

CUB/AG propose a new section 412.120 “to ensure that ARES marketing and solicitation practices mirror those that are required by ARGSS.” (CUB/AG Init. Comments at 8.) This new proposed section, which appears to be redundant in many respects, is unnecessary. In addition, ICEA has a number of specific concerns with regard to CUB/AG's new Section 412.120:

- Section 412.120(c)(iii) of the CUB/AG proposal would require ARES to clearly and conspicuously disclose their logo to all customers. The counterpart language in Section 2DDD of the Consumer Fraud Deceptive Business Practices Act (“CFDBPA”) does not include logos. While such a requirement presumably would further a supplier’s branding campaign to make sure its logo was clearly and conspicuously displayed, without more explanation ICEA is unclear why such a requirement should find its way into the Commission final rule.
- The CUB/AG Section 412.120(c)(v) proposed language references a ten business days rescission window when the Proposed Rule Section 412.210

⁴ ICEA notes that although not underlined, subsections (f), (g), and (h) of CUB/AG proposed Section 412.120, in both the original and corrected versions of CUB/AG Attachment A, appear to reflect language new to Staff's Proposed Part 412.

references a ten calendar day proposed rescission window for the same rescission period.

- Section 412.120(vi) would cap termination fees at \$50. For the reasons described more fully below, ICEA opposes any such cap.
- Section 412.120(h) would add restrictions on sweepstakes, contests, and drawings presumably implementing a similarly worded restriction contained in the CFDBPA. CUB/AG do not provide a reference, however, to a CFDBPA provision on this topic applicable to electric suppliers.

D. Section 412.160 Customer Authorization

CUB/AG propose that the Commission adopt authorization rules that "mimic the language provided in both Section 19-115(c) of the [Alternative Gas Supplier] Act and Section 2DDD of the Consumer Fraud statute . . ." (CUB/AG Init. Comments at 8.) The Public Utilities Act ("Act") provides 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." (220 ILCS 5/16-115A(b).) Section 2EE and 2DDD, while similar in many respects, are not identical in substance. For example, Section 2DDD(3) of the natural gas authorization rules specifically references electronic authorization via telephone (e.g. via a voice response unit). Section 2EE does not contain this language.⁵ In addition, the Internet enrollment language found in 2DDD(5) does not appear in 2EE, nor does the in-person solicitation limitation found in 2DDD(6) appear in 2EE. ICEA respectfully suggests that if the Commission desires to place authorization rules into Part 412, it will need to make a

⁵ To the best of the recollection of ICEA members who were active in the legislative negotiations leading up to the passage of 2DDD(3), there seemed to be general agreement that voice response units were permissible under section 2EE but the language was added to 2DDD(3) to avoid any suggestion that voice response units were not permissible.

determination that whatever authorization rules it places into Part 412 are consistent with Section 2EE.

E. Section 412.210 Product Descriptions

The AG/CUB propose that power and energy procured by an ARES to meet its statutorily mandated renewable portfolio standard requirements cannot be marketed by an ARES as "green", "renewable energy" or "environmentally friendly" even though such energy must meet the Illinois Power Agency Act's definition of "renewable energy resources" which includes:

energy and its associated renewable energy credit or renewable energy credits from wind, solar thermal energy, photovoltaic cells and panels, biodiesel, crops and untreated and unadulterated organic waste biomass, trees and tree trimmings, hydropower that does not involve new construction or significant expansion of hydropower dams, and other alternative sources of environmentally preferable energy.

(20 ILCS 3855/1-10.)

Such a result is nonsensical and should be rejected by the Commission outright. In addition, such a requirement displays a lack of understanding of how ARESs may try to differentiate themselves in the marketplace. For example, not every ARES will use the same approach to meet the Illinois RPS requirement.

ICEA is not opposed to the development of reasonable rules regarding the marketing of green energy. ICEA notes that the Federal Trade Commission has undertaken work in this area.⁶ ICEA also notes that Section 16-115A(e)(iii) of the Act requires that an ARES marketing to residential and small commercial customers shall "provide documentation to the Commission and to customers that substantiates any claims made" by the ARES "regarding the technologies and fuel types used to generate the electricity offered or sold to customers."

⁶ The FTC held a series of workshops in 2008 to review its Guides for the Use of Environmental Marketing Claims (also known as the FTC's "Green Guides"). One of the FTC workshops focused on carbon offsets and renewable energy certificates. (See <http://www.ftc.gov/bcp/workshops/carbonoffsets/index.shtml>.)

F. Section 412.210 Rescission of sales contract⁷

CUB/AG's proposed additional language to this section is superfluous and should be rejected by the Commission. In addition, the rescission period suggested by the CUB/AG revision (10 "business" days) does not track the rescission period found either in the first paragraph of CUB/AG proposed Section 412.210 or in the rule as proposed Staff – both of which explicitly refer to 10 "calendar" days.

G. Section 412.230. Early Termination Fee Cap

CUB/AG's proposal to cap early termination fees at "\$50 total regardless of whether or not the agreement is a multiyear agreement" should be rejected by the Commission. CUB/AG posit that a cap is needed to prevent an ARES from substituting cancellation fee revenue in exchange for "good, quality service and low product price." (CUB/AG Init. Comments at 10-11.)

ICEA agrees with CUB/AG that ARESs should be in the business of providing power and energy and related services, not in the business of "farming" cancellation fees. That being said, CUB/AG's proposed \$50 cap on termination fees is misguided on several fronts and should be rejected by the Commission.

First, the General Assembly has not seen fit to cap termination for electric providers. Specifically, Section 16-115A(c) of the Act allows for "arms-length agreement[s] between a supplier and a retail customer that sets . . . provisions governing early termination through a . . . contract as allowed by Section 16-119." (220 ILCS 5/16-115A(c).) Section 16-119 of the Act states that an ARESs "may establish . . . provisions governing early termination through a . . . contract." (220 ILCS 5/16-119.) Section 16-119 further states that "Any . . . charge or

⁷ ICEA notes that CUB/AG's Section 412.210 Rescission of sales contract provision contains new language beginning with subsection (1) until the end of the text which does not appear in Staff's draft Part 412 and which is not underlined.

penalty with early termination of a contract; shall be conspicuously disclosed in any . . . contract." (*Id.*) Simply put, if the General Assembly had wanted to express a limit on early termination fees for electric providers, it could have, and presumably would have, in Article 16 of the Act. No such limitations exist. To the contrary, as set forth above, the General Assembly clearly contemplated an environment where early termination fees could be arrived at through arms-length negotiations so long as conspicuously disclosed.

Second, Staff's proposed rule provides customers with unprecedented opportunities to leave their agreement without being subject to a termination fee. Specifically, Section 412.210 of Staff's proposed rule provides that "[i]f the customer wishes to rescind its enrollment with the supplier, the customer will not incur any early termination fees if the customer contacts either the electric utility or the RES within ten calendar days after the electric utility's acceptance of the enrollment request." And, Section 412.230 of Staff's proposed rule provides that "any agreement that contains an early termination fee shall provide the customer the opportunity to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES." These two provisions, coupled with the disclosure provision in the Act and the proposed rule, essentially provided consumers with substantial time to reconsider without penalty (if one applied) their decision to enter into an agreement with an ARES.

Third, CUB/AG posit that a cancellation fee cap is needed because without such a cap suppliers will "substitute good, quality service and low product price" for the revenue that cancellation fees provide. (CUB/AG Init. Comments at 10-11.) To the contrary, early termination fees can provide customers with a lower per kWh price than they might have

with a cap on termination fees in place. Somewhat like a higher deductible can lower a consumer's annual insurance premium, a higher termination fee can at times mean a lower per kWh price than might otherwise apply. Indeed, in ICEA's experience, some customers prefer a higher penalty for termination in exchange for a lower rate.

In addition, there are differences in the way gas and electricity is procured by retail energy suppliers. For example, an ARES cannot store electricity for future resale the way an AGS can store natural gas. Also, an ARES likely would enter into longer term wholesale arrangements to supply longer term fixed price retail contracts. As RESA explained in detail in its Initial Comments, these arrangements have a cost associated with them and that cost may very well overwhelm a \$50 cap.

Fourth, as ICEA understands it, the early termination complaints in the Illinois natural gas market largely involved the actions of one alternative gas supplier. Although the level of retail electric marketing to residential and small commercial customers is quite limited at the moment, the overall retail electric market in Illinois just recently celebrated its 10th anniversary. Over half of the electric load in the State is served by retail electric suppliers. ICEA is not aware of any significant level of complaints during this time frame focused on early termination fees.

Fifth, the \$50 early termination fee cap contained in the Alternative Gas Supplier law was, as ICEA understands it, the product of extended negotiations with alternative gas suppliers, the Attorney General's office, CUB, and the ICC Staff to arrive at a comprehensive agreed-upon set of marketing rules applicable to alternative gas suppliers. While universal agreement was not always achieved in the Part 412 workshops, many of the provisions of Staff's Proposed Rule were arrived at in similar, negotiated fashion. As noted in its Initial

Comments, ICEA has approached its review of Staff's Proposed Rule looking at the rule as a whole, recognizing that the rule as a whole reflects an attempt to balance the various positions of all the parties in an attempt to arrive at a set of appropriately tailored consumer education and protection provisions. For ICEA, the imposition of an early termination fee cap added to the Proposed Rule's already unprecedented opportunities for consumers to leave their agreement without being subject to a termination fee, would upset the balance that the Proposed Rules have achieved and create an environment for retail electric competition detrimental to both consumers and retail electric suppliers. Specifically, ICEA would not support the proposed rescission period, Section 412.210, and the proposed right to terminate after receipt of the first bill, Section 412.230, if a cap on termination fees were also thrown into the mix.

In sum, quite the opposite of what CUB/AG claim, an arbitrary limit on termination fees would not ensure good, quality service and lower prices but would instead limit product offerings and likely raise prices, particularly for longer-term contract offerings. Such a result is inconsistent with the Act's mandate to foster retail electric competition as well as the Act's recognition that there is a place for arms-length early termination fees.

For the reasons stated above, the Commission should reject CUB/AG's proposal to cap early termination fees.

H. Section 412.320 Dispute Resolution and Call Centers⁸

(i) Dispute Resolution

CUB/AG propose that ARESs respond to complaints within five days⁹ to ensure that complaints are investigated "more efficiently" and ensure that "customers could move forward with informal or formal complaints procedures at the ICC in a timely fashion." (CUB/AG Init. Comments at 11.) CUB/AG provide no evidence to suggest that the Proposed Rule's 14 calendar day deadline results in inefficient complaint investigations or provides a hardship or barrier to consumers in filing informal or formal complaints at the Commission. Accordingly, ICEA recommends that the Commission reject CUB/AG's recommendation.¹⁰

(ii) Call Centers

ICEA notes that the CUB/AG proposal is already contained in Part 410, Section 45 and need not be duplicated in Part 412.

II. Reply to Comments of Dominion Retail, Inc.

A. Section 412.120. Door-to-door Solicitation

Dominion proposes extensive additions to the Proposed Rule's door-to-door solicitation requirements. In arriving at its list of added requirements, Dominion does not appear to have relied on any knowledge it may have gained in actually performing door-to-door sales as an ARES. Indeed, it is unclear from its comments whether Dominion actually uses the door-to-door sales channel. Rather, Dominion appears to have arrived at its list of added requirements from

⁸ CUB/AG's corrected Initial Comments also makes reference to a "Section 412.410" call center reporting requirement but no such requirement exists in CUB/AG's corrected Attachment A. ICEA assumes that the reference is to CUB/AG's proposed part 412.320.

⁹ ICEA notes that CUB/AG's corrected Attachment A calls for ten calendar days, down from the proposed rule's 14 calendar days.

¹⁰ ICEA also notes that Part 410 addresses complaints. (*See* 83 Ill. Adm. Code 410.) Section 410.440 does not provide a time frame for a supplier to investigate a complaint.

its experience in the market as a competitive retail electric supplier competing for customers in the retail electric market.

Since some ICEA members have experience using the door-to-door sales channel, ICEA's comments below are informed in part by that experience. For the reasons set forth below, ICEA respectfully recommends that the Commission reject Dominion's proposed subsections (i), (j), (k), (l), (n), (o) and (p) to Section 412.120. Further, ICEA supports the intent of Dominion's subsection (q) but notes without more detail the proposed requirement offers little protection to consumers.

With regard to Dominion's proposed:

- Subsection (i): The substance of Dominion's proposed subsection (i) is largely covered by the Uniform Disclosure Statement requirements contained in Staff's proposed 412.110. In addition, Dominion's "first item" prioritization conflicts with Staff's subsection (c) that "[a] sales agent may disclose the items in any order as long as all applicable items are explained to the customer during the sales presentation."
- Subsection (j): Dominion's subsection (j) requirement that each door-to-door employee "leave a business card that reflects their identity and the identity of the electric supplier or suppliers they represent" is unnecessary and impractical in application. The requirement is unnecessary in that as a result of the customer disclosure requirements and local ordinances, homeowners and municipalities will know who is conducting door-to-door sales. The requirement in this subsection is impractical in that it would have a door-to-door salesperson leave a business card whether a person was home or not and regardless of whether the information was desired by the customer. ICEA does not see how forcing an unwanted business card upon a homeowner who has told the salesperson to leave or

leaving such a card at an unattended house only to possibly blow away and litter the street is in the best interests of customers or the municipalities in which they live. In addition, adding a requirement that door-to-door sales agent be supplied with business cards will increase supplier costs.

- Subsection (k): Dominion's subsection (k) would prohibit door-to-door employees of an ARES from wearing similar colors as the local utility. What happens if the local utility switches to a color scheme used by an existing ARES? Is the ARES forced to abandon its pre-existing color scheme? If the Commission were to incorporate subsection (k) into the Proposed Rule, the words "or colors" should be dropped from this requirement.
- Subsection (l): Dominion's subsection (l) would have suppliers¹¹ "notify the local utility of its locations and schedule of door-to-door selling activities." Utilities do not regulate or otherwise oversee door-to-door sales activities of ARESs, and this proposed requirement would be inappropriate and unnecessarily burdensome, and would fail to provide any benefit to customers.
- Subsection (n): Dominion's subsection (n) would essentially limit week day door-to-door sales to times when most people are away from home at work. In addition, as Dominion notes in its comments, many municipalities have local ordinances that set out specific requirements for persons marketing products through door-to-door sales." (Dominion Init. Comments at 3.) These municipalities will have their own rules as to hours when door-to-door sales may occur.
- Subsection (o): In subsection (o) Dominion would require suppliers and utilities to implement EDI changes at unknown expense in order for the supplier to inform the utility

¹¹ Dominion in this part of its Initial Comments uses the term "EGS" which is roughly a Pennsylvania equivalent of an ARES.

(i) that a sale was made via door-to-door versus some other channel and (ii) the identity of the salesperson. Such a reporting requirement is unnecessary because, as noted above, utilities do not oversee or regulate an ARES using door-to-door marketing.

- Subsection (p): In subsection (p), Dominion would require that all door-to-door sales agents be employees of the ARES. ICEA is not aware of any evidence or analysis, nor is any offered by Dominion in its initial comments, to support the claim that employee door-to-door sales agents are associated with "less serious problems" than those sales agents who have some other relationship with the ARES.

With regard to Dominion's proposed subsection (q), while ICEA agrees that criminal background checks and drug tests should be conducted, Dominion's proposed rule provides no standards or requirements as to how such information should be used. Presumably, for example, the circumstance that gave rise to an applicant's criminal history should relate to an applicant's suitability to perform door-to-door sales. Any such standards or requirements would also need to be consistent with Illinois law.

B. Section 412.320. Dispute resolution; Complaints to the Commission

(i) Dispute Resolution

Dominion proposes that the utility be the primary entity that receives complaints. ICEA disagrees. If a customer has a complaint with an ARES-provided service, the customer should contact the ARES in the first instance. To suggest otherwise, simply invites delay and customer dissatisfaction. Accordingly, ICEA recommends that the Commission reject this proposed change.

(ii) Complaints to the Commission

ICEA agrees with the concerns raised by Dominion regarding the lack of clarity regarding exactly how "complaint" is defined and the problem with merely listing number of complaints. Although it is not entirely clear how Dominion's proposed language would be implemented, ICEA is concerned that Dominion's "percentage of complaints per customer approach" could be used by competitors if publicly reported to derive a suppliers' customer count as of the date of the report. Supplier customer counts should remain confidential. ICEA would respectfully suggest that any complaint reporting provided to consumers regarding ARESs be conducted and presented in a similar fashion as that provided by the Commission to consumers regarding AGSs.¹²

III. Initial Verified Comments of the Illinois Industrial Energy Consumers

ICEA agrees with the Illinois Industrial Energy Consumers ("IIEC") that ARES that primarily serve themselves or entities located on their plant or refinery sites and which are integrated into their electrical system do not require the types of protections contemplated by the rule. (*See* IIEC Init. Comments at 3.) Accordingly, ICEA supports the IIEC's proposed modifications to Section 412.100.

¹² Section 19-125(d) of the Act requires that "[t]he Commission shall maintain a summary by category and provider of all formal and informal complaints it receives pursuant to this Section, and it shall publish the summary on a quarterly basis on its World Wide Web site. Individual customer information shall not be included in the summary." (220 ILCS 5/19-125(d).)

IV. Initial Comments of Commonwealth Edison

A. Section 412.10. Definitions

ComEd proposes a definition for "Do Not Market List." ICEA suspects that different utilities may have different ideas of what the contents of a "do not market list" include. ICEA does not believe that a definition of "do not market list" is necessary but if one is used in the rule, ICEA would respectfully suggest it should be broad enough to allow for future revision and refinement.

B. Section 412.40. Determination of Small Commercial Customer

ComEd proposes to create a new Section 412.40 in order to avoid having an ARES "obligation" appear in a rule definition. (ComEd Init. Comment at 2.) ICEA agrees with ComEd that it makes sense to separate the obligation out into a new rule section. However, ICEA disagrees with ComEd's conclusion that simply breaking the obligation apart from the definition makes the following sentence redundant: "Nothing in this Part relieves an electric utility from any obligation to provide information upon request to a customer, a RES, the Commission, or others necessary to determine whether a customer meets the classification of small commercial customers as that time is defined herein." ICEA respectfully suggests that the above sentence be added as subsection (d) to ComEd's proposed Section 412.40.

C. Section 412.410. Do Not Market List

With regard to ComEd's proposed "do not market list" provision, care should be taken to afford customers as much future flexibility as possible with regard to whether and how they wish to be solicited. Accordingly, the following sentence should be added to the end of Section 412.410: "Any such do not market list should provide customers an option to choose which if any forms of marketing by the RES (telephone solicitation, direct mail, e-mail, and or home

visit) are unacceptable to the customer." In addition, ICEA suggests that if the Commission is inclined to pursue ComEd's suggested Section 412.410, that it may want to consider adding an exception for utility bill inserts designed to highlight electric choice in general (for example, where the names of all certified suppliers are listed on the bill insert) or promote referral programs.

D. Section 412.30. Waiver

ICEA supports the changes made by ComEd to Staff's proposed Part 412.30.

E. Section 412.110. Uniform Disclosure Statement

ComEd suggests that a new subsection (n) be added to the uniform disclosure statement. Under new subsection (n), the ARES would be required to provide the customer with "a statement that the RES has been certified by the Commission to provide power and energy service, that the Commissions (sic) has been informed that the RES is seeking to enroll customers, and providing a phone number and website of the Commission upon request." ICEA is loath to support adding additional requirements -- even seemingly well intentioned ones as this -- to an already heavily burdened uniform disclosure statement. ICEA suspects that in meeting subsection (k) of the uniform disclosure statement, many suppliers may well insert that they are a "certificated" or "ICC licensed" (or words to this effect) independent seller of power and energy service without the prodding of yet another disclosure statement requirement. Presumably, if an ARES is licensed or certified, the Commission is aware that it may be making use of its certification by seeking to gain customers.

In addition, Staff's proposed 412.170 provides that ". . . the sales agents shall have the ability to provide the customer with a toll-free number for billing questions, disputes, and complaints, as well as the Commission's toll-free phone number for complaints." Accordingly,

this proposal seems likely to be met without the need for a mandate as well as somewhat redundant of existing provisions. Accordingly, ICEA respectfully suggests that ComEd's proposed addition to Section 412.110 be rejected by the Commission.

V. Initial Comments of the Retail Energy Supply Association

A. Section 412.110(n). Guaranteed Savings Disclosure

ICEA agrees with the deletion of the word "written" from Section 412.110(n).

B. Section 412.310(b). Required RES information

ICEA supports RESA's proposal to require any changes to be "material changes" before the Proposed Rule's filing requirement would be triggered.

C. Section 412.320. Disputed RES Charges

(i) Subsection (c)(1)(B):

ICEA supports RESA's proposal to clarify the instances in which the ARES would have to notify the utility of an informal complaint.

(ii) Subsection (c)(3): Complaint Reporting

ICEA supports RESA's suggestion that a collaborative process be established, facilitated through the ORMD, to further discuss the issue of complaint reporting.

CONCLUSION

ICEA's recommendations in response to parties' Initial Comments appropriately balance the need for adequate consumer protections with the equally important goal of preserving and developing retail market competition.

WHEREFORE, ICEA respectfully requests that the Commission modify the Part 412 and 453 Rules in accordance with the foregoing Reply Comments.

Respectfully Submitted,

THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION

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DATED: April 22, 2010

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) SS
COUNTY OF COOK)

VERIFICATION

Christopher N. Skey, being first duly sworn, on oath deposes and says that he is one of the attorneys for the Illinois Competitive Energy Association (“ICEA”); that he has read the above and foregoing Verified Reply Comments of ICEA, knows of the contents thereof and that the same is true to the best of his knowledge, information and belief.

Christopher N. Skey

Subscribed and sworn to me
this ___ day of April 2010.
