

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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

**INITIAL BRIEF OF THE  
CITIZENS UTILITY BOARD AND  
PEOPLE OF THE STATE OF ILLINOIS**

**CITIZENS UTILITY BOARD**

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NOW COME the Citizens Utility Board (“CUB”) and the People of the State of Illinois ,by Lisa Madigan, Attorney General of the State of Illinois (“AG” or “the People”), pursuant to Section 200.800 of the rules of the Illinois Commerce Commission (“the Commission” or “ICC”), 83 Ill. Adm. Code Part 200.800, and pursuant to the Administrative Law Judge’s order of January 19, 2010, to file this Initial Brief regarding the rules proposed by Staff of the Illinois Commerce Commission (“Staff”) for the obligations of retail electric suppliers (Part 412) and internet enrollment rules (Part 453). For the reasons discussed herein, CUB/AG recommend the Commission incorporate several modifications to Staff’s Proposed Rule, Appendix A to Staff’s Rebuttal Comments (“Proposed Rule”) in order to ensure, at a minimum, that residential and small business consumers, who are unfamiliar with offers to purchase their energy from an entity other than their electric delivery service provider, enjoy the same consumer protections as provided by the General Assembly for alternative retail gas supply (“ARGs”) customers. These proposed the modifications are included in Attachment A to this Initial Brief<sup>1</sup>.

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<sup>1</sup> These modifications were made, as per agreement amongst the parties, to the Proposed Rule attached to Staff’s Rebuttal Comments as Appendix A. Where CUB/AG support modifications in Staff’s Proposed Rule, those modifications are reflected in Appendix A to this Initial Brief.

## **I. INTRODUCTION**

The General Assembly has stated that it is “in the best interests of Illinois energy consumers to promote fair and open competition in the provision of electric power and energy and to prevent anticompetitive practices in the provision of electric power and energy.” 220 ILCS 5/16-118(a). This rulemaking is the result of a series of workshop discussions and tariff filings implementing the Retail Electric Competition Act of 2006 (P.A. 95-0700), which provided alternative retail electric suppliers (“ARESS”) with the ability to leverage the existing infrastructure of the incumbent utility, including billing, credit and collection practices through Utility Consolidated Billing (“UCB”) and the Purchase of Receivables (“POR”). 220 ILCS 5/16-118(a)-(e). These programs are designed to facilitate the growth of competition for power and energy supply amongst residential and small commercial consumers. 220 ILCS 5/16-118(a) .

As the Commission considers the proposals for consumer protection, the interest in creating a competitive retail electric supply market must be balanced with the fact that electricity is an essential service. The General Assembly has declared it as such, and the fact that consumers can now be disconnected for charges placed on their bill by unregulated retail electric suppliers further supports the CUB/AG-sponsored consumer protections described herein and in previous comments. 220 ILCS 5/1-102. To stand true to the General Assembly’s vision, and maximize the benefits to both RES and consumers, it is imperative that proper consumer protections be in place at the time that all utilities come into compliance with Public Act 95-0700. Competition is better served and more successful if robust consumer protections exist, creating an orderly market for suppliers to do business and protecting consumers who will be experimenting with choice for possibly the first time. The Commission should take into account in this docket the experience of Illinois in the transition to competitive retail natural gas markets

for residential customers. Though electricity and natural gas are two different commodities, there is no reason to believe the manner in which they are sold and marketed will be drastically different. Consumer protections were not added in the natural gas market for several years, to the detriment of both the market and consumers. In April of 2009, the General Assembly responded by amending both the PUA and the Consumer Fraud and Deceptive Business Practices Act through Public Act 95-1051. These legislative amendments were crafted in the wake of numerous complaints received by both CUB and the AG from alternative retail gas supplier (“ARGS”) customers who believed they had been misled or deceived about the product they had purchased (such as believing it was a utility product) and/or the savings they would achieve by purchasing their natural gas commodity from ARGS. When customers attempted to cancel their supply contracts, they found themselves subject to egregious cancellation fees, even as ARGS invoked *force majeure* clauses to change the customers’ contract terms. PA 95-1051 modified the obligations, marketing and solicitation practices of ARGS operating in Illinois. The obligations, marketing and other practices of RES operating within the State should be guided by no less than the requirements outlined for ARGS. For this Commission, it is a simple matter of equity: electric consumers should be afforded the same protections as natural gas consumers. Moreover, as the UCB/POR programs do not exist in natural gas supply competition, the implementation of which is to kickstart the development of retail electric competition, electric consumers may well be even more vulnerable to confusion.

The ICC has already stated it agrees with CUB/AG that “consumer education and protection are both very important in any program implementing customer choice, particularly for smaller customers.” See *In re Ameren Illinois Utilities UCB-POR*, ICC consolidated Docket

No. 08-0619, Final Order at 47-49, August 19, 2009.<sup>2</sup> The Commission concluded that areas of consumer education and protection not appropriate for AIU's tariffs, such as a possible requirement that RES disclose any *force majeure* declarations, may be more appropriately addressed in a rulemaking proceeding based upon a series of workshop discussion amongst interested parties, a proposed Staff Report and First Notice Rule. *Id.* at 47-48. Specifically, the ICC asked the Office of Retail Market Development ("ORMD") to examine the following issues: (1) what information should be included on the Commission's website; (2) what information should be included on a disclosure form to be provided to customers at the time of enrollment; (3) the appropriate length of a penalty-free cancellation period for contracts between a RES and a customer; (4) appropriate rules governing uniform terminology in RES product offerings; (5) appropriate rules governing "green" products; (6) use of a "do not market" list; (7) the possibility of presenting charges on a per kWh basis; and (8) any requirement of RES to disclose declarations of *force majeure* within the past ten years. *Id.* The Commission further noted that these directives were not to limit the scope of workshop discussions but provide direction on topics the ICC would like addressed. *Id.*

CUB and the AG participated in the workshop discussions held by Staff, and appreciate the good faith effort put forth by many of the participants to ensure that the transition to a competitive retail electric market for residential customers is as smooth as possible. However, Staff's Proposed Rule fails to take into account several of the issues raised by the ICC, as listed above. CUB and the AG here recommend modifications to the Proposed Rule that will fill in those gaps and align the Proposed Rule with the ARGS standards enacted by the General Assembly. For the Commission's convenience, the relevant sections of the referenced ARGs marketing provisions in the Public Utilities Act and the Consumer Fraud and Deceptive

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<sup>2</sup> "Ameren Illinois Utilities" refers to the Central Illinois Light Company d/b/a AmerenCILCO, the Central Illinois Public Service Company d/b/a AmerenCIPS and the Illinois Power Company d/b/a AmerenIP, collectively the "Ameren Illinois Utilities" or "AIU."

Trade Practices Act (220 5/19-115 and 815 ILCS 505 2DDD, respectively) are attached as CUB/AG Attachments B and C.

## II. PROPOSED CHANGES

### A. Section 412.10, Definitions: Terms undefined but used elsewhere in the rule should be included.

CUB/AG initially proposed adding three additional terms to the definitions provided in this Section: “Material Terms,” “Residential Customer” and “Retail Customer”. Each of these terms are used elsewhere in the Proposed Rule but undefined at this time, and are defined here in reference to existing definitions otherwise found in the Commission’s Rules or the Public Utilities Act. In Staff’s Proposed Rule, a definition of “Residential Customer” was included to which CUB/AG have no objection. The only modification therefore proposed here is to include a definition of “Material Terms” and “Retail Customer” to ensure that the term, used throughout the rule, is properly defined. CUB/AG recommend the Commission include the following definitions in Section 412.10 of the Proposed Rule:

“Material terms” means the information included in the Uniform Disclosure Statement, defined in Section 412.110 of this Part.

“Retail Customer” means the same as that term is defined in Section 16-102 of the Act [220 ILCS 5/16-102].

### B. Section 412.20, Waiver: Parties seeking a waiver should make a formal request based on specific facts and reasons.

Staff’s Proposed Rule appropriately limits the circumstances under which a waiver from these consumer protections could be granted only to those circumstances in which no party will be injured by granting the waiver. However, the Proposed Rule does not specify how a request for a waiver is to be made. Given the importance of these consumer protections to the development of any retail electric market activity, CUB/AG propose that requests for a waiver be

made through a petition filed at the ICC similar to other requests for waivers of Commission rules, e.g. Part 285.140(b). As with other waivers, petitions for a waiver from the consumer protections contained in these rules should not be given lightly. Such petitions should include specific facts and reasons that the Commission can use in evaluating whether the waiver is appropriate on the limited grounds provided in the Proposed Rule. CUB/AG propose the Commission modify the Proposed Rule to include the following language in Section 412.20:

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.

**C. Section 412.110, Uniform Disclosure Statement: Contents should be modified to promote transparency in the marketplace and disclose as much relevant information to customers as possible.**

***1. New Section 412.110(o): Pricing Should Be On a Price Per kWh Basis***

Staff's Proposed Rule includes a requirement that any RES presenting customers with offers based on a fixed monthly charge (e.g. \$30 per month) must disclose to customers that this fixed monthly charge does not include delivery charges and applicable taxes, and "therefore the fixed monthly charge is not the total monthly amount for electric service." Proposed Rule Section 412.110(o). CUB/AG assume here that Staff, when referring to a "fixed monthly charge," is referring to what CUB/AG refers to as a "fixed bill" product; for example, a flat \$30 per month charge for power and energy which is assessed without regard to usage. Such a price would be in contrast to a "variable price," which refers to a product that offers a set price per kWh which might change during the term of the contract (for example, the per kWh charge for the first month is 8 cents which then escalates to 10 cents in subsequent months) or a "fixed price" which refers to a price that does not change throughout the contract term (for example, 8 cents per kWh for a year). While CUB/AG believe this an important disclosure, such disclosure

would not be necessary if RESs were required to price their products on a price per kilowatt-hour basis. Moreover, given the potential for confusion as customers compare such product offerings, CUB/AG recommend the Commission require disclosure to customers considering a RES product of the price on a per kWh basis.

The General Assembly intends for all consumers to receive sufficient information to make informed choices among suppliers and services. 220 ILCS 5/16-101(A)(e). CUB/AG's proposal to require disclosure of per kilowatt hour ("per kWh") charge for power and energy services offered by a RES is the simplest way to ensure this objective is met. See CUB/AG Corrected Ver. Init, Comments at 5-7; Corrected Attachment A at 6. A price per kWh requirement provides transparency to the market. Such transparency is essential to developing a functioning market since it will help ensure all parties can accurately evaluate the value of a potential product offering. Comparison of a utility supply product with the price of a RES supply product – as accurately as possible – must be possible in order for a functioning competitive market to emerge.

Although BlueStar supports the disclosure of a RES product on a price per kWh for the power and energy service, Staff and other RES intervenors are concerned that such a restriction would unnecessarily limit potential product offerings. BlueStar Reply Comments at 11; Staff Reply Comments at 20-21; RESA Reply Comments at 14; ICEA Reply Comments at 4-6. ICEA, RESA and Dominion all claim that such a rule would stifle "product innovation." ICEA Reply Comments at 4; RESA Reply Comments at 14; Dominion Reply Comments at 2. RESA claims that for a fixed bill product it is "impossible to provide a price on a kWh basis." RESA Reply Comments at 15. Staff argues that RES should be allowed to market products with a fixed monthly charge as is done in the telecommunications industry. Staff Reply Comments at 20-21

Staff believes the proposed rule addresses CUB/AG's concern about customer confusion while leaving the RES's pricing flexibility and innovation intact. In addition, Dominion points out that the fact that all three of the utility's supply charges (supply charge, transmission charge, Purchased Electricity Adjustment) are volumetric charges does not necessarily mean they are more easy to compare to a particular RES service offer. Staff Surreply Comments at 9-10; Dominion Reply Comments at 3.

Most of the stakeholders agree that an effort to ensure that consumers understand what they are purchasing is essential. Some parties, for example, recommended that "the Commission try to facilitate, to the extent possible, apples-to-apples comparison of products through other avenues outside of a formal rulemaking, such as a price-comparison web site that could facilitate a per-kWh disclosure by using predetermined usage-proxy levels." BlueStar Surreply Comments at 13; RESA Reply Comments at 15-16. Consumers must understand, Dominion pointed out, how to compare volumetric charges between RES services and the utility service. CUB/AG anticipates that many residential and small commercial consumers might well have problems comparing types of product offerings with their utility service. For that reason, ensuring that power and energy products are priced on a per-kWh basis will more easily enable comparison. In CUB/AG Reply Comments, CUB/AG discussed how a RES could comply with such a requirement. The RES could, however, use average usage data to estimate the per kWh price in order to provide some context for consumers to compare a fixed bill offer to the price they are paying their regulated utility for power and energy supply. CUB/AG Surreply Comments at 4. A consumer can add the volumetric charges on their existing utility bill, and then compare those avoided costs with the power and energy prices offered by the RES.

In Surreply Comments, RESA proposes to require an “electricity facts label,” or “EFL,” offering this as a means to accommodate CUB/AG concerns on consumer confusion and RESA product development. RESA Surreply Comments at 5. CUB/AG understand RESA to be suggesting that prices be presented to customers inclusive of delivery, transmission or other known charges that customers would be subject to even if power and energy service was taken from an RES. If so, RESA’s proposal is a welcome one, and, as always, CUB/AG agree that additional information, presented to consumers to enable product offering comparisons, is a useful step towards developing a functional competitive market. However, RESA’s label does not include a comparison between the utility supply price and the RES supply price. An essential addition to this proposal would be to include the kWh comparison to enable consumers to compare prices and usage from each utility to the RES.<sup>3</sup>

CUB/AG realize that a similar requirement does not exist on the natural gas side. Yet, the Commission has the benefit of experience with the ARGs market; consumers have lacked the necessary information to ensure that the choices they are making between an alternative supplier and their utility provider are the best for them. The provision of this comparison is an important protection that should be implemented on the electric side as UCB/POR is unique to the electric side. These recommendations are grounded in the experience many customers have had with fixed bill products such as utility budget billing plans. CUB/AG Surreply Comments at 5. Since the inception of these plans<sup>4</sup>, customers have been trained to “pay a certain dollar amount per

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<sup>3</sup> RESA recommends the utilities be responsible for the calculation of the delivery or utility charges, stating that RES are not always “intimately familiar” with utility delivery charges and the frequency of changes to various tariff sheets.” CITE. CUB/AG believe that since this information is publicly available, should an RES wish to calculate the inclusive per kWh price for a consumer, the RES could do so.

<sup>4</sup> Utility budget plans are designed to provide customers with the option of reducing sharp variances in monthly bills associated with weather-related usage by averaging the amount paid to the utility on a monthly basis over a 12-month period.

month” for the budget. *Id.* Many customers contracted for a fixed bill plan with an ARGS without understanding the difference between a fixed product offering and the utility budget plan. *Id.* Not only were customers angry and confused about fixed bill plans, but in some cases, as a result of the confusion (and, in some instances, as the result of outright fraud), customers paid hundreds and sometimes thousands of dollars more for their natural gas costs than they would have had they stayed with the regulated utility as commodity provider. *Id.* One simple way to address such confusion is to require disclosure of the price on a per kWh basis so that customers are clear on the distinction. RESA’s proposed EFL, while enabling consumers to compare product offerings, stops short of addressing this problem.

The problem of consumer confusion is not unique to Illinois. Indeed, CUB/AG found several other public utility commissions which have adopted pricing rules similar to the one proposed here:

- Montana requires that the “effective price for supply service, in cents per kilowatt hour for electricity, or for gas, price per either dekatherm or mcf, whichever billing unit is used by the distribution services provider, for various levels of consumption typical for the customer’s customer segment.” Admin. R. Mont. 38.5.6004 (1999).
- New Jersey requires that RESs calculate the average price per kWh for electric generation service over the term of the contract for the service being offered, exclusive of any charges for any optional services. N.J. Admin. Code § 14:4-7.4.
- Ohio requires that each competitive retail electric service (“CRES”) provider provide “sufficient information for customers to make intelligent cost comparisons against offers they receiver from other CRES.” Ohio Admin. Code § 4901:1-21-5. For fixed-rate

offers, this information must at minimum include the cost per kilowatt hour for generation service. *Id.*

Additionally, requiring an RES to price on a per kWh basis encourages energy efficiency, a goal of the General Assembly when electric retail choice was created. 220 ILCS 5/16-101(A)(e). Customers who receive a fixed-bill, or flat monthly energy charge, have little incentive to reduce their consumption because their monthly costs do not vary with the amount of energy they use. This would send the incorrect message to consumers that efficiency is unimportant. Pricing on a per-kWh basis would provide more accurate usage information to customers, and encourage them to reduce their consumption by rewarding them with lower bills in the months they consume less energy.

The Commission should follow these examples and adopt the CUB/AG's proposal to require RESs to present their charges for fixed and variable price contracts for power and energy on a price per kWh basis by including the following requirement in Part 412.110:

o) A price-per-kilowatt hour (kWh) for the power and energy service.

## **2. *New Section 412.110(p): Disclosure of Force Majeure***

CUB/AG proposed in their initial comments that any RES that has declared *force majeure* in the past 10 years must disclose that to a customer. This proposal was attacked by a number of parties to the case: ICEA and RESA both oppose such a disclosure (ICEA Reply Comments at 6-8; RESA Reply Comments at 7) and Dominion would accept it if a utility must also make the disclosure (Dominion Reply Comments at 4). Staff indicates in their Reply comments that they are receptive of the CUB/AG proposed modification, but believe the appropriate disclosure is to the Commission as part of a RES certification application. Staff Reply Comments at 22-23. CUB/AG agree that the Commission should be informed of such an event. However, CUB/AG believe that full disclosure of the type of catastrophic events the RES claims prevent it from honoring contract terms is vital information for customers to be made

aware of when determining whether to contract with the RES. Sharing this information will help potential customers decide if that RES manages risk well enough for them to want to be a customer of that RES.

By definition, *force majeure* is a circumstance outside of a contracting party's control that makes it impossible for the contracting party to perform. Black's Law Dictionary (6<sup>th</sup> ed. 1990). As noted by ICEA (ICEA Reply Comments at 8), there is precedent in Illinois for a competitive retail supplier to use a *force majeure* declaration to cancel Illinois customers' fixed price contracts, replacing them with variable rate contracts which were almost always higher than the original fixed price offering. CUB Surreply Comments, Attachment A. Indeed, complaints of steep monthly bill increases because a particular supplier declared *force majeure* necessitated the filing by the Attorney General of a formal complaint in the Circuit Court of Cook County. See, e.g., *People of the State of Illinois v. Santanna Natural Gas Corp. d/b/a Santanna Energy Services*, 05 CH 17512 (Circuit Court of Cook County).<sup>5</sup> If, as RESA notes, *force majeure* is rarely declared, then such a disclosure will be unlikely to be necessary. RESA Reply Comments at 7. The suggestion that a declaration of *force majeure* is an indication of "past unsuccessful business dealings" is, in fact, appropriate. At its most literal level, *force majeure* renders the business deal unsuccessful since one party cannot perform. This is not a suggestion of intention, or fault, but rather a suggestion of potential supply risk.

Information exchange must be symmetrical when a contract is being evaluated and a customer is making important decisions regarding the purchase of energy. The RES will have information on the likelihood of the customer's ability to perform the obligation of payment. Customers should have information on the RES' likelihood of performance to deliver the stated product.

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<sup>5</sup> This case was settled by the parties.

Thus, CUB/AG recommend the Commission adopt the following modification to the Proposed Rule in Part 410.110:

- p) A statement of whether or not the RES has declared force majeure within the past ten years in relation to any contractual obligations to deliver power and energy service.

**3. New Section 412.110(q): ICC Certification Disclosure**

CUB/AG support ComEd's recommendation that RESs should inform customers that the RES has been approved by the Commission to provide power and energy service, and the Commission should be made aware that the RES is actively marketing and soliciting customers. ComEd Init. Comments at 5. ComEd recommends RESs be required to provide customers with information about how to contact the ICC for additional information and notify the utility when an RES is marketing in the utility's service territories. *Id.* CUB/AG agree that such information would be helpful in avoiding – and allaying – customer concerns on being contacted by RESs. Moreover, such disclosures will help consumers understand the role of the ICC, where to obtain additional information, and facilitate customer service from the utilities in order to better address customer questions and concerns about the competitive retail market. CITE: CUB/AG Reply Comments at X. For those reasons, CUB/AG support the modification of the Proposed Rule to include the following in Section 412.110:

- q) A statement that the RES has been certified by the Commission to provide power and energy service, that the Commission has been informed the RES is seeking to enroll customers, and providing a phone number and the website of the Commission upon request.

**D. (New) Section 412.115, Customer Solicitation: Solicitation practices should, at a minimum, mirror the requirements established under Illinois law for alternative retail gas suppliers.**

Staff's proposed Part 412 marks a good first-step at preventing marketing and solicitation abuses in the promotion and sale of RES products. In some instances, however, the Proposed

Rule falls short of ensuring that the same protections that are provided to potential and existing ARGs customers are afforded potential RES customers. CUB and the AG propose adding a new section to Staff's Proposed Rule entitled, "Customer Solicitation." This section mirrors, for the most part, the language added to the aforementioned changes to the Consumer Fraud statute and Section 19-115 of the PUA enacted by the General Assembly last year. Again, the point of these additions is to ensure that RES marketing and solicitation practices mirror those that are required for ARGs. For those reasons, CUB/AG recommend the Commission modify the Proposed Rule at Section 412.115 as follows:

**Section 412.115 Customer Solicitation**

- a) A RES and all of its sales agents shall affirmatively represent that it is not affiliated with the electric utility, governmental bodies, or consumer groups.
- b) If any sales solicitation, agreement, contract, or verification is translated into another language and provided to a customer, all of the documents must be provided to the customer in that other language.
- c) A RES shall clearly and conspicuously disclose the following information to all customers:
  - 1) The prices terms, and conditions of the products and services being sold to the customer;
  - 2) Where the solicitation occurs in person, including through door-to-door solicitation, the salesperson's name;
  - 3) The alternative retail electric supplier's contact information, including the address, logo, phone number, and website;
  - 4) Contact information for the Illinois Commerce Commission, including the toll-free number for consumer complaints and website;
  - 5) A statement of the customer's right to rescind the offer within 10 business days of the date on the utility's notice confirming the customer's decision to switch suppliers, as well as phone numbers for the supplier and utility that the consumer may use to rescind the contract; and

- 6) The amount of the early termination fee, if any. Said termination fee shall not exceed \$50.
- d) Except as provided in paragraph (e) of this subsection, a RES shall send the information described in paragraph (c) of this subsection to all customers within one business day of the authorization of a switch.
- e) A RES engaging in door-to-door solicitation of consumers shall provide the information described in paragraph (c) of this subsection during all door-to-door solicitations that result in a customer deciding to switch their supplier.

**E. Section 412.120, Door-to-Door Solicitation: Solicitation practices should, at a minimum, mirror the requirements established under Illinois law for alternative retail gas suppliers.**

Dominion likewise argues that restrictions are necessary on the practice of door to door marketing. CUB/AG Verified Reply Comments at 7-9; Dominion Ver. Init. Comments at 3-4. Generally, CUB/AG support the proposed modifications of Dominion with the few exceptions noted in CUB/AG's Reply Comments. RESA continues to object to Dominion's proposals on the grounds that such requirements will harm consumers by imposing significant costs on RESs with little customer benefit. RESA Reply Comments at 11-14. CUB/AG continue to believe restrictions and requirements for those RESs seeking to solicit customers at their homes are beneficial to customers and ultimately help to protect the integrity of the market. As noted before, CUB/AG have received thousands of complaints regarding various door to door marketing practices of ARGSSs. Indeed, both CUB and the AG have taken formal legal action in response to these complaints at both the Commission and Cook County Circuit Court. *See, e.g. Citizens Utility Board, et al v. Illinois Energy Savings Corp. D/B/A U.S. Energy Savings Corp.*, ICC Docket No. 08-0175, Verified Original Complaint; *People of the State of Illinois v. Illinois Energy Savings Corp. d/b/a U.S. Energy Savings Corp.*, 08 CH 04913 (Circuit Court of

Cook County).<sup>6</sup> These complaints, and the formal litigation, were much of the impetus behind P.A. 95-1051, which governs the marketing and sale of natural gas and which CUB/AG have used as a model for their Corrected Proposed Rule. CUB/AG Corrected Ver. Init. Comments, Corrected Attachment A. The nature of door to door marketing, which entails face-to-face contact at the consumer's residence, and the experience in Illinois in the gas market, fully supports requiring additional consumer protections. Therefore, CUB/AG recommend that the Commission accept Dominion's proposals on this point, and the Proposed Rule should be modified as follows at Section 412.120:

- i) The first item a door-to-door employee must communicate to a prospective customer is that they do not work for the local utility, a governmental office or a consumer organization and also provide them with a written statement stating the same. Further, the door-to-door employee shall not state or imply that they are working on behalf of the utility's Choice program (i.e. implying that they are acting for the utility) and they must clearly state the retail electric supplier or suppliers that they work for and purpose of the contact.
- j) Each door-to-door employee shall leave a business card that reflects their identity and the identity of the electric supplier or suppliers that they represent.
- k) The door-to-door employee may not dress in uniforms that contain any branding elements (including similar logo or colors) as the local utility.
- l) The EGS performing door-to-door marketing must notify the local municipality of its locations and schedule of door-to-door selling activities and shall comply with all local ordinances regarding door-to-door solicitations.
- m) The EGS performing door-to-door marketing must notify the local utility of its locations and schedule of door-to-door selling activities.

**F. (New) Section 412.145, Customer Authorization: RES customer enrollment practices should mirror those required for ARGS.**

CUB and the AG are very concerned that Staff's proposed rule does not make clear that either a Letter of Agency, signed by the customer, or Third Party Verification is required before

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<sup>6</sup> This case was settled by the parties.

a contract between the RES and customer is considered valid. CUB and the People believe the ARGS law provides an excellent model to address customer enrollment. There is no need to re-create the wheel with regard to this language or process. In fact, enrollment processes for alternative gas suppliers and electric suppliers should be identical. As noted earlier, a number of suppliers are registered as both an ARGS and an RES. Requiring identical enrollment rules for both ARGS and RES will be of benefit to suppliers as well.

CUB and the People propose that the Staff Rule be reconfigured to set clear customer authorization standards that mimic the requirements for ARGS. To that end, CUB and the People propose adding a new section in Part 412 that spells out specific customer authorization standards that must be satisfied before a customer is switched from the bundled electric delivery/supply offering to an RES product. The provisions in this new section mimic the language provided in both Section 19-115(c) of the Act and Section 2DDD of the Consumer Fraud statute, and incorporate Staff's proposed requirement that verbal disclosures mirror those provided in the Uniform Disclosure Statement. 220 ILCS 5/19-115(c); 815 ILCS 505/2DDD(c)(5).

These provisions would require RES, like ARGS, to refrain from executing a change in a customer's electric supply provider until (1) the RES first verbally discloses all material terms and conditions of the offer to the customer, as defined in the CUB/AG proposed Uniform Disclosure Statement; (2) the RES has obtained the customer's express agreement to accept the offer after the disclosure of all material terms and conditions of the offer, as provided in the CUB/AG proposed Uniform Disclosure Statement; and (3) the RES has confirmed the request for a change in accordance with one of the procedures listed in 220 ILCS 5/19-115(c) and 815 ILCS 505/2DDD(c)(5).

For these reasons, CUB/AG recommend the Commission modify the Proposed Rule at Section 412.145 as follows:

### **Section 412.145 Customer Authorization**

A RES shall not submit or execute a change in a customer's selection of a electric supply provider unless and until (i) the RES first discloses all material terms and conditions of the offer to the customer; (ii) the RES has obtained the customer's express agreement to accept the offer after the disclosure of all material terms and conditions of the offer; and (iii) the RES has confirmed the request for a change in accordance with one of the following procedures:

- a) The RES has obtained the customer's written or electronically signed authorization in a form that meets the following requirements:
  - 1) A RES shall obtain any necessary written or electronically signed authorization from a customer for a change in electric service by using a letter of agency as specified in this Section. Any letter of agency that does not conform with this Section is invalid.
  - 2) The letter of agency shall be a separate document (or an easily separable document containing only the authorization language described in item (E) of this paragraph (1)) whose sole purpose is to authorize a electric supply provider change. The letter of agency must be signed and dated by the customer requesting the electric supply provider change.
  - 3) The letter of agency shall not be combined with inducements of any kind on the same document.
  - 4) Notwithstanding items (1) and (2) of this paragraph (a), the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in item (5) of this paragraph (a) and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold face type on the face of the check, a notice that the consumer is authorizing a electric supply provider change by signing the check. The letter of agency language also shall be placed near the signature line on the back of the check.
  - (5) At a minimum, the letter of agency must be printed with a print of sufficient size to be clearly legible, but no smaller than 12 point typeface, and must contain clear and unambiguous language that confirms:
    - i) the customer's billing name and address;

- ii) the decision to change the electric supply provider from the current provider to the prospective RES;
    - iii) the terms, conditions, and nature of the service to be provided to the customer, including, but not limited to, the rates for the service contracted for by the customer; and
    - iv) that the customer understands that any electric supply provider selection the customer chooses may involve a charge to the customer for changing the customer's electric supply provider.
  - 6) Letters of agency shall not suggest or require that a customer take some action in order to retain the customer's current electric supply provider.
  - (7) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language.
- b) An appropriately qualified independent third party has obtained, in accordance with the procedures set forth in this paragraph (b), the customer's oral authorization to change electric supply providers that confirms and includes appropriate verification data. The independent third party must (i) not be owned, managed, controlled, or directed by the RES or the RES's marketing agent; (ii) not have any financial incentive to confirm provider change requests for the RES or the RES's marketing agent; and (iii) operate in a location physically separate from the RES or the RES's marketing agent. Automated third-party verification systems and 3-way conference calls may be used for verification purposes so long as the other requirements of this paragraph (b) are satisfied. A RES or RES's sales representative initiating a 3-way conference call or a call through an automated verification system must drop off the call once the 3-way connection has been established. All third-party verification methods shall elicit, at a minimum, the following information:
  - 1) the identity of the customer;
  - 2) confirmation that the person on the call is authorized to make the provider change;
  - 3) confirmation that the person on the call wants to make the provider change;
  - 4) the names of the providers affected by the change;
  - 5) the service address of the service to be switched; and
  - 6) the price of the service to be provided and the material terms and conditions of the service being offered, including whether any early

termination fees apply. Third-party verifiers may not market the RES's services. All third-party verifications shall be conducted in the same language that was used in the underlying sales transaction and shall be recorded in their entirety. Submitting alternative retail electric suppliers shall maintain and preserve audio records of verification of customer authorization for a minimum period of 2 years after obtaining the verification. Automated systems must provide customers with an option to speak with a live person at any time during the call.

- c) The RES has obtained the customer's electronic authorization to change in electric service via telephone. Such authorization must elicit the information in paragraph (a) of this subsection. RESs electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number or numbers shall will connect a customer to a voice response unit, or similar mechanism, that makes a date-stamped, time-stamped recording of the required information regarding the RES change. The RES shall not use such electronic authorization systems to market its services.
- d) When a consumer initiates the call to the prospective RES, in order to enroll the consumer as a customer, the prospective RES must, with the consent of the customer, make a date-stamped, time-stamped audio recording that elicits, at a minimum, the following information:
- 1) the identity of the customer;
  - 2) confirmation that the person on the call is authorized to make the provider change;
  - 3) confirmation that the person on the call wants to make the provider change;
  - 4) the names of the providers affected by the change;
  - 5) the service address of the service to be switched; and
  - 6) the price of the service to be supplied and the material terms and conditions of the service being offered, including whether any early termination fees apply. Submitting RESs shall maintain and preserve the audio records containing the information set forth above for a minimum period of 2 years.
- e) In the event that a customer enrolls for service from an RES via an Internet website, the RES shall obtain an electronically signed letter of agency in accordance with paragraph (a) of this subsection and any customer information shall be protected in accordance with all applicable statutes and rules. In addition, an RES shall provide the following when marketing via an Internet website:

- 1) The Internet enrollment website shall, at a minimum, include:
  - i) a copy of the RES's customer contract, which clearly and conspicuously discloses all terms and conditions; and
  - ii) a conspicuous prompt for the customer to print or save a copy of the contract.
- 2) Any electronic version of the contract shall be identified by version number, in order to ensure the ability to verify the particular contract to which the customer assents.
- 3) Throughout the duration of the RES's contract with a customer, the RES shall retain and, within 3 business days of the customer's request, provide to the customer an e-mail, paper, or facsimile of the terms and conditions of the numbered contract version to which the customer assents.
- 4) The RES shall provide a mechanism by which both the submission and receipt of the electronic letter of agency are recorded by time and date.
- 5) After the customer completes the electronic letter of agency, the alternative retail electric supplier shall disclose conspicuously through its website that the customer has been enrolled and the RES shall provide the customer an enrollment confirmation number.
- f) When a customer is solicited in person by the RES's sales agent, the RES may only obtain the customer's authorization to change electric service through the method provided for in paragraph (b) of this subsection.

**G. (New) Section 412.190, Affiliate Name and Logo Use: An affiliate should not be permitted to use the name and/or logo of an existing electric utility.**

The Proposed Rule requires that a RES disclose to the customer that it is “not representing or acting on behalf of the electric utility.” Proposed Rule Section 412.110(k). This disclosure is a necessary one, but allowing an affiliate of an electric utility to use the name and logo of the utility company gives the impression to the customer that they are in fact dealing with the utility company. Many of the problems CUB/AG observed in the retail gas market relate to consumer confusion where consumers assume an ARGS is affiliated with the utility, a problem magnified where the utility and affiliate share a similar name and/or logo. See CUB/AG

Surreply Comments at 9. *See also, Citizens Utility Board, et al v. Illinois Energy Savings Corp. D/B/A U.S. Energy Savings Corp.*, ICC Docket No. 08-0175, Verified Original Complaint While the Proposed Rule would require disclosure of a RES status as an “independent seller of power and energy service,” it would not reach the most obvious and initial potential source of customer confusion: using a name and logo similar to that of the regulated utility to capitalize on the relationship the customer has with that utility. *Id.* Moreover, a ban on the affiliate use of utility name and logo would eliminate competitive barriers that are created by the RES affiliate’s use of the existing utility brand. *Id.* Disallowing RES use of the utility name and logo would create a truly level playing field among the energy marketers.

BlueStar supports CUB/AG’s proposal to ban the use by an affiliate RES of a name and logo associated with a regulated utility. BlueStar Reply Comments at 14-15. Staff believes such a rule in the market would be “problematic” since it would be difficult for the Commission to determine if something is “similar.” Staff Reply Comments at 31-32. Dominion and RESA point out that the CUB/AG proposal does not specify that RES may not use the name and logo of an Illinois utility. Dominion Reply Comments at 6; RESA Reply Comments at 22-23. Staff proposes a disclosure and restrictions prohibiting RES marketing efforts that would utilize false or misleading language which mirror restrictions found in the ARGS law. Staff Reply Comments at 32, citing 220 ILCS 5/19-105.

One simple clarification to the rule, proposed here based on the comments of other parties, is that the name of the affiliate RES not contain any portion of the name of the Illinois regulated utility. Moreover, since in practical terms, determinations on what constituted a “similar” name and logo will be made by the Commission only when a customer has alleged a complaint under these rules, the ICC can use not only its own expertise and knowledge of the

entire energy supply industry, but criteria such as whether similar colors, fonts, or icons were used.

For these reasons, CUB/AG recommend the Commission modify the Proposed Rule at Section 412.190 as follows:

**Section 412.190 Affiliate Name and Logo Use**

A RES shall not be permitted to market power and energy service to residential customers using a similar name (where any part of the RES name contains any part of the utility name) or logo to that of an existing electric utility.

**H. (New) Section 412.195, Product Descriptions: The use of “green” products should be restricted to renewable energy purchased separate and apart from the renewable portfolio standard.**

The General Assembly has made it clear that promotion of renewable energy products is in the public’s interest in Illinois. For example, RESs are already subject to a renewable portfolio standard which requires the purchase of qualified renewable energy resources or alternative compliance payments. See 20 ILCS 3855/1-75; Public Acts 96-0159; In Re Alternative Compliance Payments, ICC Docket No. 09-0342, Final Order, July 29, 2009. Customer interest in “green” products continues to grow, and CUB/AG recognize that many consumers are likely to be interested in purchasing renewable power sources. See CUB/AG Verified Initial Comments at 10. However, consumers could be easily misled on what constitutes a “green” product. It is important for the Commission to address what could be a potentially confusing product description for consumers. In order to promote product transparency and consumer education, CUB/AG initially recommended that the Commission adopt language limiting the product description of a “green,” “renewable energy,” or “environmentally friendly” product to that which is purchased separately and apart from the

renewable portfolio standards (“RPS”) applicable to RESs under Public Act 96-0159. CUB/AG Initial Comments Appendix A pgs.16-17.

In their Reply Comments, RESA asks, “if a customer wanted to purchase a product that was 100% green, how could this be accomplished under the proposed restrictions? Would a RES then be compelled to purchase R[enewable] E[nergy] C[redits]s 100% above the proposed restrictions?” RESA Reply Comments at 22. As discussed in CUB/AG’s Surreply Comments, CUB/AG do not believe a RES could necessarily have to purchase RECs. CUB/AG Surreply Comments at 11. A RES could purchase wind, solar, or any product that fits the definition of renewable under the RPS. *Id.* Moreover, such a requirement will encourage the use of renewable resources, one of the primary policy objectives of the General Assembly in the transition to a competitive market. *Id.*, citing 220 ILCS 5/16-101(A)(e) (“use of renewable resources and energy efficiency resources should be encouraged in competitive markets”). The language proposed by CUB/AG will prevent such confusion without limiting the products RES can offer to customers. The Commission should adopt the proposed modification to the Proposed Rule at Section 412.195 as follows:

**Section 412.195 Product Descriptions**

Only power and energy service that includes power and energy purchased entirely separate and apart from the renewable portfolio standard requirements applicable to RESs under Public Act 96-0159 can be marketed as “green,” “renewable energy” or “environmentally friendly.”

- I. Section 412.210, Rescission of Sales Contract: Staff’s originally Proposed Rule describes an appropriate process for handling rescission of a sales contract, and should be adopted by the Commission.**

CUB/AG support the ten calendar day rescission period provided for in Staff’s originally Proposed Rule, and continue to support Staff’s interpretation of the enrollment procedures as discussed in Staff’s comments throughout this proceeding. Without repeating all of Staff’s

arguments on these points which CUB/AG support, CUB/AG will note only that the rescission period must be tied to the utility enrollment process. CUB/AG Reply Comments at 12. It is the utility enrollment process that generates the letter to customers from their utility informing them of a change of supply, and their right to contact either utility or the RES within ten calendar days to rescind their contract. *Id.* Both ComEd and Ameren, entities that will likely receive the lion's share of the consumer complaint calls, apparently recognize this to be an important consumer protection as consumers deal with electric choice. ComEd Init. Comments at 1-3; Ameren Init. Comments at 1-2. This ten-day rescission period is intended to help consumers navigate the transition to retail electric competition for residential and small commercial customers that will occur over the next several decades. CUB/AG Init. Comments at 12-13. It cannot be overstated that residential and small commercial customers have no experience in purchasing their electric energy supply. The limited exposure to retail energy competition has been on the gas side, and both CUB and the AG can report that that experience has been fraught with deceptive marketing, unreasonable contract termination fees and higher bills in general, necessitating the filing of formal complaints against certain ARGs. *See, e.g. Citizens Utility Board, et al v. Illinois Energy Savings Corp. D/B/A U.S. Energy Savings Corp.*, ICC Docket No. 08-0175, Verified Original Complaint; *People of the State of Illinois v. Illinois Energy Savings Corp. d/b/a U.S. Energy Savings Corp.*, 08 CH 04913 (Circuit Court of Cook County).<sup>7</sup> *People of the State of Illinois v. Santanna Natural Gas Corp. d/b/a Santanna Energy Services*, 05 CH 17512 (Circuit Court of Cook County).<sup>8</sup> Moreover, at the heart of this matter are rules governing the provision of an essential service – electricity – which carry the potential for disconnection should a customer taking RES supply be unable to keep an account current. Allowing consumers ten days

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<sup>7</sup> This case was settled by the parties.

<sup>8</sup> This case was settled by the parties.

wherein they can reconsider a decision to switch their electric supply is a necessary transition period to a competitive retail market.

RESA maintains that a call from a customer to the utility in the first rescission period cancels only the change of supplier request, not the underlying contract between RES and customer. RESA Reply Comments at 16-17. It is unclear to CUB/AG, however, what the remaining contractual obligations of either party would be under such a proposal since, if the utility cannot, or does not, execute a change of supplier, the RES cannot perform its contractual obligations and the contract is rescinded. CUB/AG Surreply Comments at 12. RESA's proposal places unnecessary burdens on the utility and the customer.

Staff notified parties by email that they intend to propose an additional modification to their Proposed Rule which would eliminate the ability of a small commercial customer to contact the utility during this period to rescind the contract. CUB/AG strongly disagree with this proposal. This suggestion appears to CUB/AG to stem from the problems in classifying a "small commercial customer" for the purposes of both this rule, and utility delivery service classes. For example, a customer might well be considered a small commercial customer for the purposes of Part 412, but the utility will not be able to determine whether that customer is in fact "small commercial" at the time a small commercial customer would contact the utility to rescind a contract. Given this problem, CUB/AG understand that the utilities have traditionally accepted rescission requests from a broader category of commercial customers than to which Part 412 might apply. CUB/AG recommend that a more appropriate solution might be for the utility to tell customers in this situation through the utility-generated letter that those customers must determine whether they fall into the definition of "small commercial" as described in Part 412, and take responsibility for contacting either the utility or RES to rescind the contract.

For these reasons, Staff's originally Proposed Rule should be accepted by the Commission (as filed with Staff Rebuttal Comments).

**J. Section 412.230, Early Termination of Sales Contracts: Any fees for early termination of a sales contract should be capped at \$50 and the customer should have ten business days from the receipt of the first bill with RES charges on it to cancel their contract.**

Probably no section of the Proposed Rule has attracted more comment than Section 412.230, which includes two proposals: first, Staff's proposal that any early termination fees be waived if the customer cancels the contract within ten business days, and second, CUB/AG's proposal that any early termination fees be capped at \$50. CUB/AG support Staff's 10-day rescission proposal, which mirrors the ARGs statute. Staff's proposal, however, does not go far enough to protect consumers. As noted previously, most residential and small business customers are unaccustomed to shopping for and determining the value of electric commodity products. The ability to exit a RES contract without incurring significant termination fees is essential to retaining access to essential electric utility service, and has been recognized as a necessary right by the General Assembly in both the ARGs statute and the Consumer Fraud and Deceptive Practices Act. 220 ILCS 19-115(g)(5)(A); 815 ILCS 505/2DDD(e). Electric RES customers should be entitled to that same right. It is essential that the Commission, therefore, mirror the provisions of the ARGs law, particularly on the issue of termination fees. Both provisions mirror the rescission protections provided to ARGs customers under the Consumer Fraud and Deceptive Business Practice Act (815 ILCS 505/2DDD(c)(E), (e)(2)) and the Public Utilities Act (220 ILCS 5/19-155(g),(7), (g)(5)(A)(B)). Not only would disparate treatment between electric and natural gas consumers be inequitable but it would cause unnecessary

confusion among consumers, who of course often are customers of both a natural gas and an electricity supplier.

1. *Customers should have ten business days to cancel a contract after they receive the first bill with RES charges on it without any early termination fee applying.*

Contrary to ARES arguments, Staff's proposal to preclude the assessment of termination fees if a customer terminates the contract within 10 days of receiving the first bill does *not* "create two distinct rescission periods." See RESA Init. Comments at 2. CUB/AG in fact agree with BlueStar: No part of proposed Section 412.230 provides that a customer may rescind the contract after receipt of the first bill. See BlueStar Surreply Comments at 7. The Proposed Rule in fact does explicitly provide that the customer is not relieved of its obligations for services rendered (e.g., if the customer terminates its contract within 10 business days of receipt of the first bill, it owes for electricity provided under the first bill). *Id.* The provision simply prohibits the assessment of an early termination fee if the termination occurs within 10 days of utility issuance of the first bill. CUB/AG Reply Comments at 11. This period, as well as the rescission period described in Section 412.210, are modeled after the rescission periods included in P.A. 95-1051, which in turn were developed in response to the problems that arose in the transition to a competitive retail market for natural gas supply. CUB/AG Reply Comments at 3. ARGs Consumers often found themselves locked into long-term contracts, the true price of which only became clear to them after the first bill was received. *Id.* These rescission periods are an additional protection measure for residential consumers, many if not all of whom are unfamiliar with the distinction between natural gas supply and delivery operations. Allowing consumers a safety valve to reconsider a contract avoids false starts and consumer frustration, both of which could result in negative consumer experiences which could slow the development of the market.

Both Central Illinois Light Company d/b/a AmerenCILCO, (“CILCO”), Central Illinois Public Service Company d/b/a AmerenCIPS, (“CIPS”), and Illinois Power Company d/b/a AmerenIP, (“IP”) (collectively “Ameren”) and ComEd support the proposed cancellation period. Both ICEA and Dominion Retail, Inc – other representatives of ARES – support Staff’s Proposed Rule on this point. . The support for this provision by these ARES dispels the notion that the ability to offer attractive, competitive service offerings will be compromised by these basic consumer protections. Moreover, as BlueStar recognizes, these same issues were discussed in the Ameren filing implementing UCB/POR<sup>9</sup>, ICC Dockets No. 08-0619 through 08-0620, which were concluded after the ORMD workshops at which many of the topics addressed in this rule – including this one –were discussed by many of the very intervenors in this case. BlueStar Surreply Comments at 3-4.

The ten-day cancellation period is not “overly-paternalistic and ham-fisted” attempt at protecting consumers from themselves without showing any such protection is necessary. See BlueStar Init. Comments at 8. Such comments assume that residential consumers will be sophisticated enough to “game” the system assumes a level of sophistication that CUB/AG believe is simply not yet present in the Illinois market. See CUB/AG Reply Comments at 5. These kind of assumptions are not a sound basis for public policy. Instead, a sound basis is found in the concerted effort amongst a wide variety of stakeholders to create consumer protection rules based on the most recent experience available to Illinois policy makers – the transition to competitive natural gas markets for residential consumers. *Id.*

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<sup>9</sup> Certain components of Public Act 95-0700, the Retail Competition Act of 2006, provide RES with the ability to leverage the existing infrastructure of the incumbent utility, including billing, credit and collection practices through Utility Consolidated Billing (“UCB”) and the Purchase of Receivables (“POR”). See 220 ILCS 5/16-118.

CUB/AG agree that if a customer cancels a change of supply after the customer receives the initial bill, the customer is obligated to pay the charges for power and energy that were incurred to that point. Under the Proposed Rule, cancellation at this point waives application of early termination fees and cancels the underlying contract: “If the customer wishes to rescind the pending enrollment with the RES, the customer will not incur any early termination fees if the customer contacts either the electric utility or the RES within 10 calendar days after the electric utility processes the enrollment request.” Staff Reply Comments at 36. The fact that Staff notes that early termination fees should not apply if the customer contact the RES or the utility demonstrates that the contract between the customer and the RES is in fact rescinded, or cancelled, if the customer calls either the utility or the RES during that time period to rescind the contract. CUB/AG continue to support Staff’s Proposed Rule on this point as drafted.

*2. Any early termination fees should be capped at \$50.*

Retail competition was enacted by the General Assembly with the express goal of providing lower costs to consumers: “All consumers must benefit in an equitable and timely fashion from the lower costs for electricity that result from retail and wholesale competition and receive sufficient information to make informed choices among suppliers and services.” 220 ILCS 5/16-101(A)(e). CUB and the AG have both received many complaints from customers who switched natural gas supply service only to find themselves locked into long-term contracts which carried termination fees that were often tied to a customer’s expected usage over the length of the contract -- fees which amounted to hundreds or even thousands of dollars. CUB/AG Corrected Verified Initial Comments at 10-11. These fees fueled a great deal of the customer anger which led to the passage of Public Act 95-1051, and ultimately, to the capping of early termination fees in the natural gas market because consumers faced a Hobson’s choice:

either pay high termination fees or continue with a contract that locked in their natural gas supply at high prices for an extended period of time. CUB/AG Surreply Comments at 13. In addition to the obvious consumer protections of limiting consumers' exposure to high termination fees, capping early termination fees also facilitates competition by making it easier for customers to switch among suppliers and encourages discipline to supplier pricing in the market. *Id.*

Staff, BlueStar, ICEA, and RESA all object to CUB/AG's proposed capping of cancellation fees to \$50 for RES contracts which, again, mirror the requirements contained in the AGS Law. Staff Reply Comments at 43; BlueStar Reply Comments at 12; ICEA Reply Comments at 11; RESA Reply Comments at 3. Blue Star, for example, opines that the cap might necessitate higher contract rates to offset any losses associated with its pre-purchasing of estimated usage. Blue Star Reply Comments at 12. This argument rings hollow. Certainly, RESs retain the ability to estimate both usage *and* possible early terminations as they go about the business of purchasing commodity. The only solution offered by Staff is a disclosure of the "amount of the termination fee, if any" exists and the allowance of a customer to "cancel within 10 days of the first bill once a year." Staff Reply Comments at 42-43. There is no policy justification, however, for providing customers of ARGSSs with the \$50 cap protection and not providing it to customer of RESs.

As noted earlier, the General Assembly has declared that electricity is an essential service, and the fact that consumers can now be disconnected for charges placed on their bill by unregulated retail electric suppliers further supports CUB/AG's recommended cap on termination fees. 220 ILCS 5/1-102. Consumers should not be faced with significant barriers to exit contracts that are harmful to their interests and a flat cap on cancellation fees across all RESs is a simple way to put all RESs on an equal playing field while preserving customer choice. The

Commission should therefore adopt CUB/AG's proposal to modify Section 412.230 of the Proposed Rule as follows:

**Section 412.230 Early Termination Fee of Sales Contract**

Any agreement between a RES and a customer that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee, provided that any early termination fee or penalty shall not exceed \$50 total regardless of whether or not the agreement is a multiyear agreement. ~~Any such agreement must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described in Section 412.210. In addition, a~~Any agreement that contains an early termination fee shall provide the customer the opportunity to contact the RES 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. ~~one time per 12-month period.~~ The agreement shall disclose the opportunity and provide a toll-free phone number that the customer may call in order to terminate the agreement. This requirement does not relieve the customer of obligations to pay for services rendered under the agreement until service is prior to termination-terminated.

**K. Section 412.320(b), Dispute Resolution: The time period allowed for responses to customer complaints should be shortened to five business days.**

In order to respond to several parties' concerns about the CUB/AG proposal delineating the time a RES has to respond to a customer complaint, CUB/AG propose that a RES should have 5 business days to investigate and respond to a customer complaint. Allowing 14 days as Staff proposed, (Staff Reply Comments at 48) would draw out the timeline for a response to a customer complaint to up to 28 days. See CUB/AG Surreply Comments at 15. Such a lengthy time period could result in customers being assessed at energy rates that they are no longer interested in for another full monthly billing cycle. For this reason, CUB/AG recommend the Commission modify the Proposed Rule at Section 412.230(b) as follows:

- b) A customer or applicant for power and energy service may submit a complaint by U.S. mail, facsimile transmission, e-mail, or by telephone to a RES. The RES shall promptly investigate and advise the complainant of the results within 14 five calendar days. If the RES ~~does not~~ responds to the customer's complaint ~~in~~ verbally, the RES shall inform the customer of the ability to request and obtain the RES's response in writing ~~upon request~~. A customer who is dissatisfied with

the RES's response shall be informed of the right to file a complaint with the Commission and the Office of the Illinois Attorney General.

**L. Section 412.320, Complaints: The Commission should include both formal and informal complaints in its reporting.**

CUB/AG support Staff's proposed definition of a complaint to include objections made to any RES by a customer or other entity. Staff Reply Comments at 4. The more information that the Commission collects regarding customer experience with retail choice, the better the Commission can monitor the development of the market. CUB/AG believe the existing definition of "complaint" in Staff's Proposed Rule is sufficient. "Complaint," whether formal or informal, is an objection that requires investigation or analysis. In short, unlike an inquiry, a complaint requires some action on the part of the RES to address the objection. CUB/AG believe that gathering, and reporting, this information will help the Commission – and more importantly, potential customers – understand how the retail market functions. See CUB/AG Surreply Comments at 15. For those reasons, CUB/AG support proposals from Dominion, RESA and ICEA to include in Commission reports the rate of complaints should be included in any complaint reporting requirements. Dominion Init. Comments at 6, RESA Init. Comments at 28-32, ICEA Reply Comments at 19. Electric utility ratepayers have supported the development of this market through their distribution rates and should therefore be entitled to receive the most complete picture of the market they paid to develop possible. CUB/AG Surreply Comments at 16. For those reasons, CUB/AG propose that the Proposed Rule at Section 412.320(c)(3) as follows:

- 3) Disclosure of RESs' level of customer complaints. The Commission shall, on at least a quarterly basis, prepare a summary of all formal and informal complaints received and publish it on its web site. The summary shall be

in an easy-to-read and user friendly format, and shall include publication of the ratio of complaints to customers for a RES as well as total complaints reported.

**M. Section 412.400, Ongoing Reporting Requirements: RESs should be required to update the Commission on material changes to their operations.**

As discussed in the introduction, the transition to a retail market should be accompanied by rules promoting efficient market operation and transparency. Section 16-115 of the PUA addresses RES certification requirements. 220 ILCS 5/16-115. As with the transition to competitive natural gas markets, the ICC oversees and certifies alternative energy suppliers for operation in Illinois. Staff's Proposed Rule should be modified to incorporate the ongoing reporting requirements put in place by the General Assembly to ensure that the ICC, ORMD and consumers are continually informed about the RES delivering their power and energy. CUB/AG have proposed in this proceeding a series of ongoing reporting requirements that will help the Commission stay informed of current RES product offerings and business practices. CUB/AG Corr. Init. Ver. Comments at 12. CUB/AG agree with BlueStar that clarification on what constitutes a "change" in a contract document or information required would be helpful. BlueStar Reply Comments at 19-20. To that end, CUB/AG accept, and recommend the Commission adopt, the following language for Part 412.310(b):

The RES must file updated information within 10 business days after any material changes in any of the documents or information required to be filed by this section.

To the extent that the Commission finds CUB/AG's suggestions here to be duplicative of the final Part 451 rules, CUB/AG's proposals should be modified accordingly to avoid duplication. The most important thing is that the Commission stay abreast of RES activities so that the Commission can ensure the best products and services are offered to Illinois consumers.

**III. Conclusion**

For these reasons, CUB and the AG request the Commission modify the rules proposed by Staff in this proceeding by adopting the proposed changes recommended by CUB and the AG, as shown in Attachment A to this Initial Brief.

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Respectfully Submitted,  
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