

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission                    )  
    On Its Own Motion                            )  
  ) Docket No. 15-0512  
Amendment of 83 Ill. Adm. Code 412            )  
and 83 Ill. Adm. Code 453.                     )

**ATTACHMENT A**

**To The**

**VERIFIED INITIAL  
COMMENTS**

**On Behalf Of The**

**ILLINOIS COMPETITIVE  
ENERGY ASSOCIATION**

November 5, 2015

**TITLE 83: PUBLIC UTILITIES**  
**CHAPTER I: ILLINOIS COMMERCE COMMISSION**  
**SUBCHAPTER c: ELECTRIC UTILITIES**  
**PART 412 OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS**  
**SECTION 412.10 DEFINITIONS**

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**Section 412.10 Definitions**

"Act" means the Public Utilities Act [220 ILCS 5].

"Alternative retail electric supplier" or "ARES" means an entity *that offers for sale or lease, or delivers or furnishes electric power or energy to retail customers.* (See 220 ILCS 5/16-102.)

"Commission" means the Illinois Commerce Commission.

"Complaint" means an objection made to an RES, by a customer or other entity, as to its charges, facilities or service, the disposal of which complaint requires investigation or analysis.

"Customer" means:

*a single entity using electric power or energy at a single premises and that either is receiving or is eligible to receive tariffed services from an electric utility or is served by a municipal system or electric cooperative; or*

*a retail customer, defined as an entity that, on December 16, 1997, was receiving electric service from a public utility and was engaged in the practice of resale and redistribution of such electricity within a building prior to January 2, 1957, or was providing lighting services to tenants in a multi-occupancy building, but only to the extent such resale, redistribution or lighting service is authorized by the electric utility's tariffs that were on file with the Commission on December 16, 1997.* [220 ILCS 5/16-102]

"Door to Door Solicitation" means a sales solicitation for electric power and energy at the home of a residential customer or place of business of a small commercial customer that takes place without an appointment and in the absence of a preexisting relationship between the solicitor and the customer.

"Early termination fee" means a ~~fee or penalty for terminating a contract~~ charge or penalty with early termination of a contract for electric service before the end of the contract term [220 ILCS 5/16-119].

"Electric utility" means *a public utility, as defined in Section 3-105 of the Act, that has a franchise, license, permit or right to furnish or sell electricity to retail customers within a service area.* [220 ILCS 5/16-102]

"Inbound Enrollment Call" means when a prospective customer initiates a call to a RES in order to enroll as a customer of the RES for electric power and energy service. [815 ILCS 505/2EE(c)]

~~the customer initiates a call to a RES agent in order to enroll for power or energy service. This includes calls where the customer is transferred to the RES agent.~~

~~“In-person solicitation” means [to be addressed in subsequent ICEA comments] any sale conducted or initiated where the RES agent is physically present with the customer.~~

"Letter of Agency" or "LOA" means the document described in Section 2EE of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE] and referenced in Section 16-115A of the Public Utilities Act.

"Pending enrollment" means a valid direct access service request that has been accepted by an electric utility, for which the meter read switch has not yet occurred.

"Rescind" means the cancellation of a contract with a RES and/or pending customer enrollment to an RES, without the incurrence of an early termination fee.

"Residential customer" means a person receiving gas, electric, water or sanitary sewer utility service for household purposes furnished to a dwelling of one or two units that is billed under a residential rate.

"Retail electric supplier" or "RES" includes both alternative retail electric suppliers and electric utilities serving or seeking to serve retail customers outside their service areas or providing competitive non-tariffed service (see Section 16-116 of the Act).

“Renewable energy resources” means resources as defined in Section 1-10 of the Illinois Power Agency Act.

"RES agent" means any employee, agent, independent contractor, consultant or other person who is engaged by the RES to solicit customers to purchase, enroll in or contract for power and energy service on behalf of an RES.

"Send" or "Sent", when used in this Part to describe the action to be taken by a Retail Electric Supplier of sending a document to a residential customer or small commercial retail customer may include, if agreed to by the receiving customer, transmission of the document to the customer via electronic delivery (e.g., fax or e-mail).

"Small commercial retail customer" means a nonresidential customer of an electric utility consuming 15,000 kilowatt-hours or less of electricity annually in its service area. A RES may remove the customer from designation as a "small commercial retail customer" if the customer consumes more than 15,000 kilowatt-hours of electricity in any calendar year after becoming a customer of the RES. In determining whether a customer is a small commercial retail customer, usage by the same commercial customer shall be aggregated to include usage at the same premises even if measured by more than one meter and to include usage at multiple premises. Nothing in this Part creates an affirmative obligation on an electric utility to monitor or inform customers or RES as to a customer's status as a small retail commercial customer as defined by this definition. Nothing in this Part relieves an electric utility from any obligation to provide

information upon request to a customer, an RES, the Commission or others necessary to determine whether a customer meets the classification of small commercial retail customer.

"Third party verification" or "TPV" means one of three discrete methods a RES may use to confirm[] the request for a change in RES pursuant to the process described in Section 2EE(b) of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE(b)] authorized pursuant to subsection 2EE(b). and required to be used to verify that the customer wants to make a change in electric supplier. The TPV shall not be described as having any other purpose.

"Variable rate Product" means that the contract between the RES and the residential customer where the does not specify a charge for power and energy service that is fixed for at least six three (3) monthly billing periods or longer and where the charge for power and energy service does not change more than once a month.

"Variable Index Product" product means a Variable Product for which price is calculable in whole or in part based on a publicly available index, as modified by a formula disclosed to the customer.

"Variable Non-Index" product means a Variable Product that is not a Variable Index product.

"Written" or "Writing" means either a hard copy or electronic copy, unless it is specifically stated a hard copy must be placed in the U.S. Mail or delivered by other means. Where this Part requires information to be "written" or in "writing", an electronic record satisfies that requirement, so long as both RES and customer have agreed to electronic communication.

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**SECTION 412.30 CONSTRUCTION OF THIS PART**

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*[Staff Note – The January 1, 2013 date is dependent upon the effective date of the revised rule. Thus, which the date will be amended, it is not known what the amended date will be.]*

**Section 412.30 Construction of this Part**

In the event of any conflict between this Part and the requirements provided in electric utility tariffs on file with the Commission as of January 1, 2013, this Part shall control. Electric utility tariffs approved after January 1, 2013 shall comply with this Part. Notwithstanding any provision in this Part to the contrary, any amendments to this Part shall not be applied retroactively to a RES, RES Agent or Electric Utility. In addition, no amendments to this Part shall be applied retroactively to any contract between a RES and a customer of the RES in existence prior to the effective date of the amendment, nor to any marketing materials, solicitations, disclosures, or any other communication, written or oral, between a RES and a customer or prospective customer that occurred prior to the effective date of this Part.

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**SECTION 412.110 MINIMUM CONTRACT TERMS AND CONDITIONS**

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**Section 412.110 Minimum Contract Terms and Conditions**

~~The sales contract must disclose the following information to the customer, regardless of the form of marketing used. The sales contract must use 10 point font or larger, and, if it is a separate document, it must not exceed two pages in length. The sales contract shall include Any contract between a RES and a residential or small commercial customer shall disclose the following information to the customer. The sales contract shall start with the following information in the order presented in this section, printed in 12 point type or larger. Any additional contract language shall be printed in 10 point type or larger:~~

- a) The legal name of the RES and the name under which the RES will market its products, if different;
- b) The RES' business address;
- c) ~~The RES' toll free telephone number for billing questions, disputes and complaints, as well as the Commission's toll free phone number for complaints~~ The charges for service for the length or term of the contract and, if any charges are variable during the length or term of the contract, an explanation of how the variable charges are determined;
- d) ~~The charges for the service for the length of the contract and, if any charges are variable during the term of the contract, an explanation of how the variable charges are determined~~ For any product that includes a fixed monthly charge that does not change with the customer's usage in addition to a per kilowatt-hour charge, and the fixed monthly charge does not include delivery service charges, the RES must provide: (i) an estimated price per kWh hour for the power and energy service using sample monthly usage levels of 500, 1,000 and 1,500 kilowatt-hours; and (ii) The length of the contract, including any possible automatic renewal clause ~~If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, the RES must provide~~ a statement to the customer that the fixed monthly charge is for supply-RES charges only and that it does not include delivery service charges and applicable taxes; therefore, the fixed monthly charge is not the total monthly amount for electric service. The requirements of this subsection (d) do not apply when the total RES charges are

for a fixed dollar amount per month and do not fluctuate with kilowatt-hours consumed;

- ~~fe)~~ The presence or absence of early termination fees or penalties, applicable amounts or the formula pursuant to which they are calculated. The length or term of the contract, including any applicable renewal clause disclosed in a manner consistent with this Code Part;
- ~~gf)~~ Any requirement to pay a deposit for power and energy service, the estimated amount of the deposit or basis on which it is calculated, when the deposit will be returned, and if the deposit will accrue interest. Whether an early termination fee or penalty will be imposed for termination of the contract by the customer prior to the expiration of its term. **If the early termination fee or penalty is not a set amount, the RES shall disclose the amount of such fee** and the manner in which that fee will be calculated;
- ~~hg)~~ Any fees assessed by the RES to a customer for switching to the RES. **If the RES intends at any point during the length or term of the contract to seek a deposit or prepayment from the customer, the RES shall identify whether** ~~Whether~~ and under what circumstances a deposit or prepayment will be required, along with a disclosure of the manner in which the deposit or prepayment will be calculated, and the circumstances in which the deposit or prepayment will be refunded;
- ~~hi)~~ The name of the power and energy service for which the customer is being solicited. Any fees assessed by the RES to a customer for switching to the RES;
- ~~ij)~~ A statement that the customer may rescind the contract, by contacting the RES, before the RES submits the enrollment request to the electric utility. **If a RES represents that thea customer signing up for the RES product identified in the contract will realize savings under any conditions or circumstances, the RES shall provide a written statement, in plain language, describing the conditions or circumstances that must occur in order for the savings to be realized. The statement shall disclose the entity or entities and price(s) to which the RES is comparing its own offer for purposes of assessing or calculating savings;**
- ~~jk)~~ A statement that the customer may rescind the contract and the pending enrollment, within 10 calendar days after the electric utility processes the enrollment request, by contacting the RES, unless the contract provides for a period greater than 10 calendar days for the customer to rescind, in which case the length of that greater period shall be disclosed. Residential customers may rescind the contract and the pending enrollment by contacting either the RES or the electric utility. The statement shall provide both toll-free phone numbers;

- ~~k)~~ \_\_\_\_\_ A statement that the RES is an independent seller of power and energy service certified by the Illinois Commerce Commission and that the ~~agent-RES~~ agent-RES is not representing or acting on behalf of the electric utility or electric utility program(s), governmental bodies or governmental program(s) (unless the RES has entered into a contractual arrangement with the governmental body and has been authorized by the governmental body to make the statements) or consumer groups or consumer group program(s) (unless the RES has entered into a contractual arrangement with a consumer group and has been authorized to make the statements);
- ~~l)~~ \_\_\_\_\_ A statement that the electric utility remains responsible for the delivery of power and energy to the customer's premises and will continue to respond to any service calls and emergencies and ~~that switching to an RES will not impact the customer's electric service reliability~~ that switching to an RES will not impact the customer's electric service reliability and that the customer will receive written notification from the electric utility confirming a switch of the customer's power and energy supplier; and
- ~~m)~~ \_\_\_\_\_ A statement that the customer will receive written notification from the electric utility confirming a switch of the customer's power and energy supplier; The toll-free telephone numbers for the RES, the electric utility, and the Commission's Consumer Services Division.
- ~~n)~~ \_\_\_\_\_ If savings are guaranteed under certain circumstances, the RES must provide a written statement, in plain language, describing the conditions that must be present in order for the savings to occur. In the case of telemarketing and inbound enrollment calls, the statement shall be provided in accordance with Sections 412.130(e) and 412.140(e); and
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- ~~p)~~ \_\_\_\_\_ A price per kilowatt hour (kWh) for the power and energy service. If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, the RES must provide a statement to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore, the fixed monthly charge is not the total monthly amount for electric service. For any product that includes a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, the RES must provide an estimated price per kWh for the power and energy service using sample monthly usage levels of 500, 1000 and 1,500 kWh.

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**SECTION 412.115 UNIFORM DISCLOSURE STATEMENT**

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**Section 412.115 Uniform Disclosure Statement**

- a) All RES ~~product~~ offers for residential and small commercial customers require a one-page Uniform Disclosure Statement (“UDS”) using the form appended to this Part as Appendix A. All text in the UDS shall be printed in a 12-point type or larger. The UDS may include a logo of the RES but the UDS shall not contain any items other than the ones found in Appendix A or described in this section.
- b) The disclosures in the UDS shall conform with Appendix A and include the following in the order shown below:
- 1) Name: The legal name of the RES and the name under which the RES will market its products, if different;
  - 2) Address: The RES' business address ~~or~~ and internet address, ~~or both~~;
  - 3) Phone: The RES' toll-free telephone number and hours of availability;
  - 4) Price (in cents/kWh) and the number of months this price stays in effect: The price in cents per kilowatt hour and the number of months the price stays in effect. If the price is a fixed monthly charge that does not change with the customer's usage, the fixed monthly charge shall be shown in dollar amounts instead. If the price is a custom price, the UDS shall include the word “custom” and the RES shall replace “custom” with the price offered to a particular customer once the RES has determined the custom price for the customer. If the price is tied to a publicly available index or benchmark, the UDS should state the index or benchmark and include the phrase “refer to contract.” If the price is a price that varies more than once a month, the UDS should include the phrase “time of use; refer to contract”;
  - 5) Other monthly charges: If the price includes a fixed monthly charge that does not change with the customer's usage, such charge shall be disclosed in dollar amounts;
  - 6) Total price with other monthly charges: If the price includes a fixed monthly charge that does not change with the customer's usage, the UDS

shall display the total price in cents per kilowatt hour at sample usage levels of 500, 1,000, and 1,500 kilowatt hours;

- 7) Length of the contract: The length of the contract in months;
- 8) Subsequent Price-prices after the initial price (if applicable): If the price after the initial price is a fixed price, the UDS shall state such fixed price in cents per kilowatt hours and the number of months such fixed price will stay fixed. If the price after the initial price is a fixed price that includes a fixed monthly charge that does not change with the customer's usage, the UDS shall display the total price in cents per kilowatt hour at sample usage levels of 500, 1,000, and 1,500 kilowatt hours. If the price after the initial price is a variable rate, the UDS shall include the following: "Variable. The variable rate may go up or down from one month to the next and the rate may be higher or lower than the electric utility's rate during any given month." If the price after the initial price is a variable rate, yet one or both of the statements in the preceding sentence do not apply, the UDS shall include the following: "Variable. Refer to contract";
- 9) Early termination fee: The UDS shall disclose the amount of the early termination fee or penalty, if any. If the early termination fee or penalty is not a set amount, the UDS shall disclose the manner in which the fee or penalty will be calculated;
- 10) Contract renewal: The UDS shall disclose whether and how the contract renews ~~and whether contract renewal requires with or without~~ affirmative action by the customer;
- 11) Rescission: The UDS shall include the following: "You have a right to rescind (stop) your enrollment within 10 calendar days after your utility has received your order to switch suppliers. You may call us at [insert toll-free number] or your utility at [insert toll free number] to accomplish this." If the contract provides for a period greater than 10 calendar days, the length of that greater period shall be disclosed;
- 12) Cancellation: The UDS shall include the following: "You also have the right to terminate the contract without any termination fee or penalty if you contact us at [insert toll-free number] within 10 business days after the date of your first bill with charges from [insert RES name]. However, you remain responsible for any charge incurred for service" If the contract provides for a period greater than 10 business days, the length of that greater period shall be disclosed;

13) The UDS shall include the following: “This is a sales solicitation and the seller is [insert RES name], an independent retail electric supplier. If you enter into a contract with the seller, you will be changing your retail electric supplier and/or the product offering under which you currently take your retail electric supply.” In addition, unless there is a contractual agreement to the contrary, the UDS shall state:- “The seller does not represent, or act on behalf of, your electric utility, an electric utility program, a governmental body, a governmental body program, or a consumer group, or a consumer group program”;

14) The UDS shall include the following: “If you have any concerns or questions about this sales solicitation, you may contact the Illinois Commerce Commission’s Consumer Services Division at 800-524-0795. For information about the electric supply price of your electric utility and offers from other retail electric suppliers, please visit PlugInIllinois.org”;

~~15) The UDS shall state the date the customer was solicited; and~~

~~16) The UDS shall include an agent ID when the UDS is used for in-person solicitations.~~

~~(c) The UDS may at the RES’s sole option include a description of the product, including but not limited to products or services included beyond electric power and energy or additional description of products and services related to the electric power and energy to be supplied. If such a description requires more space than is available on the form on Appendix A, the RES may indicate on the form attached in Appendix A or its equivalent that one additional page is attached with the permissive descriptions described in this subsection.~~

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**SECTION 412.120 DOOR-TO-DOOR IN-PERSON SOLICITATION**

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**Section 412.120 ~~Door-to-Door~~ In-Person-Door to Door Solicitation**

- a) An RES agent shall state that he or she represents an independent seller of power and energy service certified by the Illinois Commerce Commission. An RES agent shall not state or otherwise imply that he or she is employed by, representing, endorsed by or acting on behalf of the electric utility or electric utility program, a governmental body or program run by a governmental body (unless the RES has entered into a contractual arrangement with the governmental body and has been authorized by the governmental body to make the statements), or a consumer group or program run by a consumer group (unless the RES has entered into a contractual arrangement with the consumer group and has been authorized by the consumer group to make the statements). Notwithstanding anything else in this section, a RES may state that it offers power and energy service within a particular utility's service territory and may reference that customers may choose their electricity supplier in the customer's utility service territory.
- 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) ~~RES agents who engage in door-to-door in-person solicitations for the purpose of selling power and energy service offered by the RES must wear identification visible on an outer garment clearly disclosing that the sales agent is not affiliated with the utility.~~ RES agents who engage in door-to-door solicitation for the purpose of selling power and energy service offered by the RES shall display identification. This identification shall be visible on an outer garment at all times and prominently display the following:
- 1) The RES agent's full name in reasonable size font;
  - 2) A photograph of the RES agent; and
  - 3) The trade name and logo of the RES the agent is representing. The RES agent shall not wear or display any logotype, badge or identification stating or implying that the RES agent is a representative of the customer's utility. The RES agent shall wear identification visible on an outer

garment clearly disclosing that the sales agent is not affiliated with representing the customer's utility. If the agent is selling power and energy services from multiple RES to the customer, the identification shall display the trade name and logo of the agent, broker or consultant entity as that entity is defined in Section 16-115C of the Act.

- d) If the solicitation takes place at premises owned or occupied by a customer, tThe RES agent shall promptly leave the premises at the earlier of: (1) the customer's, owner's or occupant's first affirmative verbal request for the RES agent to leave, or (2) the second affirmative verbal statement of no interest by the customer, owner, or occupant.
- e) The RES agent shall ~~ensure that~~, during the sales presentation to the customer, ~~items (d) through (p) of the uniform disclosure statement (Section 412.110(d) through (p)) are verbally disclosed~~ verbally make all disclosures required in subsections (a) and (c) through (m) of Section 412.110 to the customer unless the sales presentation is terminated pursuant to subsection (d) of this Section. An RES agent may disclose the items in any order ~~as long as provided that~~ all applicable items are explained to the customer during the sales presentation.
- f) ~~The RES agent shall require the customer to initial the RES agent's copy of the uniform disclosure statement. A copy of the uniform disclosure statement is to shall be left with the customer at the conclusion of the visit~~ or a unless a customer's verbally or by action refuses to accept a copy of the uniform disclosure statement. Nothing in this subsection (f) prevents a RES agent from providing the UDS electronically instead of in paper form to the customer upon request. The minimum list of items to be included in the uniform disclosure statement is contained in Section 412.110.
- g) In-person solicitations that lead to an enrollment require that a RES confirm[] the request for a change according to one of three methods set forth in Section 2EE of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE]. a Letter of Agency and or a third party verification. The ~~If a customer's enrollment is authorized by third party verification during door to door solicitation, the~~ If a customer's enrollment is authorized by third party verification during the door-to-door solicitation, the third party verification shall ~~require the customer to verbally acknowledge~~ obtain the customer's acknowledgment that he or she understands the ~~applicable items in items (d) through (p) of the uniform disclosure statement. disclosures required by subsections (c) and (e) through (m) of Section 412.110.~~ Each disclosure must be made individually with a sufficient pause between each to obtain clear acknowledgment of each disclosure. The RES agent must be in a location physically separate from the customer while the TPV

is conducted and shall not approach the customer after the TPV for a period of 24 hours unless contacted by the customer.

- h) ~~When it is apparent that a customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the agent in English or when the customer or another person informs the agent of this circumstance, the RES agent shall find another representative fluent in the customer's language, use an interpreter, or terminate the in person contact with the customer. When the use of an interpreter is necessary, a form consistent with Section 2N of the Consumer Fraud and Deceptive Business Practices Act must be completed~~ The RES agent shall not conduct ~~in-person-door-to-door~~ sales solicitations at any building or premises where any sign, notice or declaration of any description whatever is posted which prohibits sales, marketing or solicitations on or at such building or premises.
- i) ~~Upon a customer's request, the RES shall refrain from any further marketing to that customer~~ The RES agent shall obtain consent to enter multi-unit buildings. Consent obtained to enter a multi-unit building from one prospective customer or occupant within the building shall not constitute consent to ~~engage in door-to-door~~ marketing ~~to~~ of any other prospective customers within a multi-unit building without separate consent. ~~Nothing in this subsection prevents building management from authorizing a RES agent to engage in door to door solicitations or to set up a booth or other static display in a common area of a multi-unit building, however such permission alone does not authorize the same RES agent to engage in door-to-door solicitation in violation of this subsection.~~
- j) ~~When it is apparent that a customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the agent in English or when the customer or another person informs the agent of this circumstance, the RES agent shall find another representative fluent in the customer's language, use an interpreter, or terminate the in-person contact with the customer. When the use of an interpreter is necessary, a form consistent with Section 2N of the Consumer Fraud and Deceptive Business Practices Act must be completed.~~
- k) ~~Upon a customer's request, the RES shall refrain from any further ~~door-to-door~~ marketing to that customer. The RES shall maintain a record of the customer's request and shall provide notification of the customer's request to all of its agents. The RES shall retain the record of the request for a minimum of two years.~~
- l) For all door-to-door solicitations of Residential Customers:

(1) RES agents shall not cross the threshold of a residential customer's door, without regard to whether the RES agent is invited inside the residence;

(2) Each RES agent must maintain a records where and who sold door to door on behalf of the RES for the most recent six months. Such list shall include a list of agents or sales persons selling door to door by date, street and zip code. If copies or inspections of lists prepared pursuant to this subsection are furnished to the Commission, the Commission shall not disclose the contents of the lists to any party, including personally identifying information (including name and address) of customers and RES agents. [NOTE TO STAKEHOLDERS: ICEA WILL FURTHER REFINE THIS PROPOSAL IN FUTURE ROUNDS OF COMMENTS]

m) Prior to conducting any door-to-door solicitations, each RES agent shall complete a background check in each state in which the RES agent has lived in the prior 12 months.

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**SECTION 412.130 TELEMARKETING**

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**Section 412.130 Telemarketing**

- a) In addition to complying with the Telephone Solicitations Act [815 ILCS 413], an RES agent who contacts customers by telephone for the purpose of selling power and energy service shall provide the agent's name and, on request, the identification number if the RES has assigned one to the agent. The RES agent shall state that he or she represents an independent seller of power and energy service, certified by the Illinois Commerce Commission. An RES agent shall not state or otherwise imply that he or she is employed by, representing, endorsed by or acting on behalf of the electric utility or an electric utility program, a governmental body or program run by a governmental body (unless the RES has entered into a contractual arrangement with the governmental body and has been authorized by the governmental body to make the statements), or a consumer group or program run by a consumer group (unless the RES has entered into a contractual arrangement with the consumer group and has been authorized by the consumer group to make the statements). Notwithstanding anything else in this section, a RES may state that it offers power and energy service within a particular utility's service territory and may reference that customers may choose their electricity supplier in the customer's utility service territory.
- b) When it is apparent that a customer's English language skills are insufficient to allow the customer to understand a telephone solicitation in English, and the customer or another person informs the agent of this circumstance, the agent must transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call.
- c) An RES agent shall ~~ensure that~~, during the sales presentation to the customer, ~~items (d) through (p) of the uniform disclosure statement (Section 412.110(d) through (p)) are~~ verbally make all disclosures required by subsections (a) and (c) through (m) of Section 412.110 to the customer unless the sales presentation is terminated by the customer before the disclosures are completed. An RES agent may disclose the items in any order so long as all applicable items are explained to the customer during the sales presentation.
- d) ~~If an RES agent engages in telemarketing and third party verification is used to authorize a customer's enrollment, the third party verification must require the customer to verbally acknowledge that he or she understands items (d) through (p)~~

~~of the uniform disclosure statement in Section 412.110. Any telemarketing solicitation that leads to an enrollment must be recorded and retained for a minimum of two years or for the entire period the customer takes service with the RES under the contract solicited, whichever is longer. Telemarketing that does not lead to a completed enrollment must be recorded and retained for a minimum of six months. A statistically significant number of such recordings shall be reviewed by the RES to ensure compliance with all applicable rules and regulations. The recordings and written information on the compliance reviews shall be provided to Commission Staff upon request.~~

- e) ~~For telemarketing that leads to a completed enrollment, a third party verification must be used to authorize a customer's enrollment. The~~ If third party verification is used to ~~confirm[] the request for a change suppliers it must comply with Section 2EE(b) of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE(b)] and it~~ must require the customer to verbally acknowledge that he or she understands the disclosures required by subsections (c) through (m) of Section 412.110. Each disclosure must be made individually with a sufficient pause between each disclosure to obtain clear acknowledgment of each disclosure. A RES agent initiating a 3-way conference call or a call through an automated verification system shall drop off the call and shall not participate in or continue to overhear the call once the 3-way connection has been established.
- f) The uniform disclosure statement and contract ~~must~~ shall be sent to the customer within three business days after the electric utility's confirmation to the RES of an accepted enrollment.
- g) Upon a customer's request, the RES shall refrain from any further marketing to that customer via telemarketing. The RES shall maintain a record of the customer's request and shall provide notification of the customer's request to all of its agents. The RES shall retain the record of the request for a minimum of two years.

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**PART 412 OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS**  
**SECTION 412.140 INBOUND ENROLLMENT CALLS**

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**Section 412.140 Inbound Enrollment Calls**

If a customer initiates a call to an RES agent in order to enroll for service, the agent must:

- a) ~~Follow~~The RES agent shall fully comply with the requirements in Section 2EE of the Consumer Fraud and Deceptive Business Practices Act to confirm[] the request to change [815 ILCS 505/2EE];
- b) ~~The RES agent shall V~~verbally disclose to the customer make the disclosures required by subsections (a) and (c) through (m) items (d) through (p) of the uniform disclosure statement (Section 412.110(d) through (p)) to the customer. An RES agent may disclose the items in any order so long as all applicable items are explained to the customer during the sales presentation; and
- c) All inbound enrollment calls that lead to an enrollment shall be recorded, and the recordings shall be retained for a minimum of two years or the length of the customer's service with the RES, whichever is longer. A statistically significant number of such recordings shall be reviewed by the RES to ensure compliance with all applicable rules and regulations. The recordings and written information on the compliance reviews shall be provided to Commission Staff upon request.
- ~~d) — A third party verification must be used to authorize a customer's enrollment. The third party verification must require the customer to verbally acknowledge that he or she understands the disclosures required by subsections (a) and (c) through (m) of Section 412.110. Each item must be disclosed individually with a sufficient pause between each disclosure to obtain clear acknowledgment of each disclosure. A RES agent initiating a 3-way conference call or a call through an automated verification system shall drop off the call and not participate in or continue to overhear the call once the 3-way connection has been established.~~
- eed) The RES shall Ssend the uniform disclosure statement and contract to the customer within three business days after the electric utility's confirmation to the RES of an accepted enrollment in writing in a manner authorized by the customer.

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**SECTION 412.150 DIRECT MAIL**

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**Section 412.150 Direct Mail**

- a) RES agents contacting customers for enrollment for power and energy service by direct mail shall include items (a) and (c) through (m) of Section 412.110 ~~the items of the uniform disclosure statement (Section 412.110)~~ for the service being solicited in the solicitation. Direct mail material shall not make any statements of representation of, endorsement by or acting on behalf of the electric utility or electric utility program, any governmental body or program run by a governmental body (unless the RES has entered into a contractual arrangement with the governmental body and has been authorized by the governmental body to make the statements) or any consumer group or program run by a consumer group (unless the RES has entered into a contractual arrangement with the consumer group and has been authorized by the consumer group to make the statements). Direct mail shall not utilize the name or logo of the customer's utility in any manner. Notwithstanding anything else in this section, a RES may state that it offers power and energy service within a particular utility's service territory and may reference that customers may choose their electricity supplier in the customer's utility service territory.
- b) If the direct mail solicitation includes a written Letter of Agency, the direct mail solicitation shall include the UDS according to Section 412.115 of this Part. If a written Letter of Agency is being used to authorize a customer's enrollment, it shall comply with Section 2EE of the Consumer Fraud and Deceptive Business Practices Act and shall contain a statement that the customer has read and understood the items each of the disclosures required by subsections (a), (c) and (e) through (m) of contained in the uniform disclosure statement in Section 412.110.
- ~~c) If the direct mail solicitation allows the customer to enroll via telephone or online, Section 412.140 or Section 412.160 shall apply, in addition to this Section 412.150.~~
- ~~edc)~~ A copy of the contract must be sent to the customer within three business days after the electric utility's confirmation to the RES of an accepted enrollment in a manner authorized by the customer.

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**SECTION 412.160 ONLINE MARKETING**

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**Section 412.160 Online Marketing**

- a) ~~Each RES offering power and energy service to customers online shall display clearly and conspicuously make all disclosures required by subsections the items (a) and (c) through (m) of the uniform disclosure statement (Section 412.110) for any services offered through online enrollment before requiring the customer to enter any personal information other than zip code, electric utility service territory, and/or type of service sought. The RES internet and electronic material shall not make any statements of to the effect that it is a representative of, is endorsed~~ ment by or is acting on behalf of the electric utility, or any electric utility program, any governmental body or program run by a governmental body (unless the RES has entered into a contractual arrangement with the governmental body and has been authorized by the governmental body to make the statements) or any consumer group or program run by a consumer group (unless the RES has entered into a contractual arrangement with the consumer group and has been authorized by the consumer group to make the statements). Online marketing shall not utilize the name or logo of the customer's utility in any manner except as follows:
- 1) For a RES that offers products or services in more than one utility service territory within the United States, links, menus, prompts, or similar functionality allowing customers to select their electric utility to be directed to applicable product offers;
  - 2) A statement that the RES offers power and energy service within a particular utility's service territory; or
  - 3) A statement that customers may choose their electricity supplier in the customer's utility service territory
- b) ~~The document containing the items of the uniform disclosure statement must be printable in a PDF format not to exceed two pages in length and shall be available electronically to the customer.~~
- c) If using a customer's electronic signature on a letter of agency, the ~~The~~ RES shall obtain, in accordance with 83 Ill. Adm. Code 453 and Section 2EE(~~ba~~) of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE(a)], an authorization to change RES that confirms and includes appropriate verification data by encrypted customer input on the RES website.

- d) The enrollment website of the RES shall, at a minimum, include:
- 1) ~~All items disclosures required by subsections (c) through (m) of within the uniform disclosure statement (Section 412.110);~~
  - 2) A statement that electronic acceptance of the terms is an agreement to initiate service and begin enrollment;
  - 3) A statement that the customer should review the contract and/or contact the current supplier to learn if any early termination fees are applicable; and
  - 4) An e-mail address and toll-free phone number of the RES where the customer can express a decision to rescind the contract.

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**SECTION 412.170 RATE NOTICE TO CUSTOMERS**

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**Section 412.170 Rate Notice to Customers**

- a) At least 30 days prior to the start of a calendar month, each RES shall publish on its website the variable rate(s) for its residential customers applicable for the billing cycle ~~ealendar month- starting during that calendar month~~in question. In addition, each RES must provide such rate information ~~by telephone~~ to its variable rate customers who request it ~~and may use any means of communication authorized by the customer~~. The customer's contract shall contain the website address and toll-free phone number for the customer to obtain variable rate information in accordance with this section. ~~The Commission may, from time to time, prescribe a shorter advance notice period if changes in statute, regulation, tariff, or operations allow for faster customer switching. [NOTE TO STAKHOLDERS: ICEA WILL FURTHER ADDRESS THIS SUBSECTION IN FUTURE ROUNDS OF COMMENTS]~~
- b) ~~If the RES uses the utility's single bill pursuant to Section 16-118(d) of the Act to bill its residential variable rate customers, the RES shall use the allotted space on the bill to disclose the customer's variable rate that is in effect at the time the bill is received by the customer. Where there is insufficient available allotted space on the bill for the RES to make such disclosures each month, the RES shall ensure that no residential variable rate customer receives consecutive monthly bills which fail to disclose upcoming variable rates in the bill's message section. If the RES bills its residential variable rate customers directly, the RES shall ensure that those customers' bills always contain the variable rate information described in this section. If the electric utility's implementation of Section 16-118(d) prevents a RES from complying with this section, the RES shall be required to include a bill message that contains the toll free phone number and/or website address where the variable rate information can be obtained by the customer.~~
- c) ~~In addition to the information required by Section 412.170(b), the residential variable rate customers' bills shall express the percentage change, if any, of the variable rate from one monthly billing period to the next. If the electric utility's implementation of Section 16-118(d) prevents a RES from complying with this section, the RES shall be required to include a bill message that contains the toll-free phone number and/or website address where this information can be obtained by the customer.~~

- ~~d) If a residential variable rate customer's rate increase by more than 30% from one monthly billing period to the next, the RES shall send a separate written notice to such customer, informing the customer of the upcoming rate change.~~
- ~~e)b Subsections (a) through (d) shall not apply to customers with Variable Non-Index products as defined in Section 412.10. contracts which determine the variable rate, or a component of the variable rate, on a publicly available index or benchmark. For variable index offers where the index price is not available 30 days prior to the start of a calendar month each RES shall publish on its website sufficient information to identify the inputs to the formula used to calculate the price of the Variable Index product, including the timing and location of the index prices and any information necessary to calculate the price.~~
- c) If a contract includes a provision that results in a residential customer's rate plan changing from a fixed rate to a variable rate during the contract, the RES shall send a separate ~~written~~ notice of the upcoming change to a variable rate at least 30 days but no more than 60 days prior to the switch to a variable rate using any means of communication authorized by the customer. The separate written notice shall include:
- 1) A statement printed or visible from the outside of the envelope or in the subject line of the e-mail (if customer has agreed to receive official documents by e-mail) or prominently displayed in the text message or other form of communication that states "Upcoming Switch to a Variable Rate";
  - 2) The bill cycle in which the change to a variable rate will begin; and
  - 3) A statement in bold lettering, in at least 12 point type (if sent by paper mail or in electronic mail form), that the rate will change to a variable rate unless the customer takes a certain action, including the information as to how to take the certain action.
- ~~f) A RES that currently enrolls residential customers on a variable rate and has served at least 200 residential variable rate customers for three consecutive months in any electric utility's service area, must publish on the Commission's PlugInIllinois.org website the monthly variable rate for such customers for the most recent 12-month period, or the period for which the RES had at least 200 residential variable rate customers, whichever is shorter. The RES must publish the most recent monthly residential variable rate, expressed in cents per kWh, within 30 calendar days of the end of the most recent calendar month. When determining the monthly variable rate, the RES shall exclude customers who subscribe to a service offering that exceeds the renewable energy requirements of the renewable portfolio standards applicable to RES under Section 16-115D of the Act. Where a RES has more than one residential variable rate per electric utility~~

~~service area in any given month, the monthly average rate must be weighted by either number of residential customers subject to each variable rate or residential usage subject to each variable rate.~~

- g)d) A RES which has ~~advertised a~~ made available to the public a residential offer within a particular electric utility's service area within the last 30 days, must publish on the Commission's PlugInIllinois.org website at least one residential offer for such electric utility's service area. ~~The RES shall not publish more than three residential offers per electric utility service area at any point in time.~~

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**SECTION 412.1705 TRAINING OF RES AGENTS**

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**Section 412.1705 Training of RES Agents**

- a) A RES agent shall be knowledgeable of the requirements applicable to the marketing and sale of power and energy service to the customer class that he or she is targeting. In addition to this Part, requirements pertaining to the marketing and sales of power and energy service may be found in other rules, the Act and the Consumer Fraud and Deceptive Business Practices Act.
- b) All RES agents should be familiar with power and energy services that they sell, including the rates, payment and billing options, the customers' right to cancel, and applicable termination fees, if any. In addition, the RES 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.
- c) RES agents shall not utilize false, misleading, materially inaccurate or otherwise deceptive language or materials in soliciting or providing services.

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**SECTION 412.180 RECORDS RETENTION AND AVAILABILITY**

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**Section 412.180 Records Retention and Availability**

- a) Except as otherwise provided herein, RES must retain, for a minimum of two years or for the length of the original contract, whichever is longer, verifiable proof of authorization to change suppliers for each customer. Upon request by the Commission or Commission Staff, the RES shall provide authorization records within seven business days.
  
- b) Throughout the duration of the contract, and for two years thereafter, the RES shall retain the customer's contract. Upon the customer's request, the RES shall provide the customer a copy of the contract via e-mail, U.S. mail or facsimile within seven business days. The RES shall not charge a fee for the copies if a customer requests fewer than three copies in a 12-month period.

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**SECTION 412.190 RENEWABLE ENERGY PRODUCT DESCRIPTIONS**

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**Section 412.190 Renewable Energy Product Descriptions**

- a) ~~Only~~ No RES shall state or imply in any marketing or promotional material that any power and or energy service marketed or sold by it is “green”, “renewable” or “environmentally friendly” or any term or descriptor of like or similar import which conveys that such power or energy service has a reduced impact on the environment that includes unless such power and or energy is renewable resources are purchased entirely separate and apart from in addition to, and over and above, power, renewable energy credits renewable resources or alternative compliance payments purchased or made required to satisfy the renewable portfolio standard requirements applicable to RES under Section 16-115D of the Act can be marketed as “green”, “renewable energy” or “environmentally friendly.”. However, nothing in this subsection prevents a RES from making the truthful statement that it complies with the Illinois Renewable Portfolio Standard.
- b) A RES marketing “green”, “renewable”, “environmentally friendly” offers, or other offers of any description whatever which convey the impression that such power or energy service has a reduced impact on the environment shall clearly and conspicuously disclose on all materials used in the marketing of such offers the percentage of renewable energy resources used in supplying power or energy to customers pursuant to each offer type of resources to be procured or services offered to substantiate that claim. A RES making such claim need not identify specific sources of characteristics of the renewable resources to be included in the product, however any claims made about the fuel type or other characteristics of renewable resources procured must be substantiated in the marketing materials.
- ~~c) A RES marketing “green”, “renewable”, or “environmentally friendly” offers, or other offers of any description whatever which convey the impression that such power or energy service has a reduced impact on the environment shall clearly and conspicuously disclose on such marketing materials the percentage of renewable energy resources generated in the State of Illinois used in supplying power or energy to customers pursuant to each offer.~~
- ~~d) The disclosures required in subsections (b) through (d) shall apply to offers posted by a RES on the Commission’s PlugInIllinois.org website.~~
- ~~e) A RES marketing “green”, “renewable”, or “environmentally friendly” offers shall disclose, on its website, the generation sources and the location of such generation sources applicable to each offer. If a particular offer contains a mix of~~

~~renewable energy resources, the RES shall specify the renewable energy resource that makes up the greatest percentage of the portfolio for that offer.~~

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**SECTION 412.210 RESCISSION OF SALES CONTRACT**

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**Section 412.210 Rescission of Sales Contract**

- a) The customer has the ability to rescind the contract with the RES before the RES submits the enrollment request to the electric utility. Within one business day after processing a valid electronic enrollment request from the RES, the electric utility shall notify the customer in writing of the scheduled enrollment and provide the name of the RES that will be providing power and energy service. The written enrollment notice from the electric utility shall state the last day to make a request rescinding the enrollment and provide contact information for the RES.
- b) A residential customer wishing to rescind the pending enrollment with the RES 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.
- c) A small commercial retail customer wishing to rescind the pending enrollment with the RES will not incur any early termination fees if the customer contacts the RES within 10 calendar days after the electric utility processes the enrollment request, unless the contract provides for a longer period during which the customer may rescind.
- d) If the 10th calendar day falls on a non-business day, the rescission period will be extended through the next business day.
- e) In the event the residential customer provides notice of rescission to the electric utility, the electric utility shall notify the RES.

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**SECTION 412.220 DEPOSITS**

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**Section 412.220 Deposits**

Any other provision of this Part 412 notwithstanding, an ~~An~~ RES shall not require a customer deposit if the RES is selling the receivables for power and energy for that customer to the electric utility pursuant to Section 16-118(c) of the Act.

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**SECTION 412.230 EARLY TERMINATION OF SALES CONTRACT**

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**Section 412.230 Early Termination of Sales Contract**

Any contract between an 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. Any early termination fee or penalty shall not exceed \$50 for residential customers and \$150 for small commercial retail customers. The caps shall not apply to charges or fees for devices, equipment, or other services provided by the utility or alternative retail electric supplier. Any contract containing an early termination fee shall provide the customer the opportunity to contact the RES to terminate the contract 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. A customer relying on this provision to avoid an early termination fee shall be precluded from relying upon this provision for 12 months following the date the customer terminated his or her sales contract. The contract shall disclose the opportunity and provide a toll-free phone number that the customer may call in order to terminate the contract. This requirement does not relieve the customer of obligations to pay for services rendered under the contract until service is terminated.

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PART 453 INTERNET ENROLLMENT RULES  
SECTION 453.20 CRITERIA BY WHICH TO JUDGE THE VALIDITY OF AN  
ELECTRONIC SIGNATURE**

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**Section 453.20 Criteria by Which to Judge the Validity of an Electronic Signature**

- a) An electronic signature ~~should~~ shall indicate who signed the LOA.
  - b) An electronic signature ~~should~~ shall be unique to the signer.
    - 1) A security procedure shall ~~require unique and private information from the signer~~ comply with the Illinois Electronic Commerce Act [5 ILCS 175] by (1) verifying that an electronic record is that of a specific person or (2) detecting error or alteration in the communication, content, or storage of an electronic record since a specific point in time. This information may ~~shall include~~ The security procedure may require the use of algorithms or codes, identifying words or numbers, encryption, answer back or acknowledgment procedures, or similar security devices.
      - A) ~~Algorithms or codes; or~~
      - 
      - B) ~~Identifying words or numbers previously established or sent to signer's registered e-mail account; and or~~
      - 
      - C) ~~Credit card verification.~~

~~An internet protocol (IP) address alone will not satisfy the requirements of this section.~~ This information may not include any information that is also necessary to effect a switch of RESs.
  - 2) No party ~~may~~ shall use a signer's unique information disclosed under this Section for any marketing or billing purposes without ~~specific~~ express, separate consent from the signere.
  - 3) The security procedure ~~must~~ shall be provided on a securely encrypted web page; ~~security and encryption shall meet or exceed current industry practices.~~
- c) An electronic signature ~~must~~ shall reliably indicate the date of the signature.
- d) Affixing an electronic signature to a LOA ~~must~~ shall be a separate affirmative act.

- e) The LOA ~~must~~ shall be conspicuously displayed on a separate screen or web page.

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**PART 453 INTERNET ENROLLMENT RULES**  
**SECTION 453.30 METHOD BY WHICH THE AUTHENTICITY OF ELECTRONIC**  
**SIGNATURES MAY BE PROVEN**

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**Section 453.30 Method by Which the Authenticity of Electronic Signatures May Be Proven**

- a) The electronically signed LOA ~~must shall provide~~ include:
  - 1) The unique information used to sign the LOA; and
  - 2) The date signed.
  
- b) The party seeking to prove the authenticity of an LOA must ~~show~~ demonstrate:
  - 1) That the LOA was signed by the customer on the date claimed, by ~~showing~~ demonstrating that the unique identifier used to sign the LOA and the date it was signed is embedded in the LOA; and
  - 2) The electronically signed LOA ~~has~~ was not been altered ~~since the date of signing~~ in any way after having been signed.

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**PART 453 INTERNET ENROLLMENT RULES**  
**SECTION 453.40 ADDITIONAL REQUIREMENTS FOR AN ELECTRONIC LETTER**  
**OF AGENCY (LOA)**

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**Section 453.40 Additional Requirements for an Electronic Letter of Agency (LOA)**

- a) In addition to the ~~requirements set forth in information and structure formal requisites set out required for an LOA in 815 ILCS 505/~~by Section 2EE of the Illinois Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE], by virtue of being in electronic form, an electronic LOA ~~must~~ shall provide the following additional information:
- 1) The means by which any future correspondence between the customer and RES will be sent;
  - 2) Whether the customer has the option to receive correspondence ~~via~~ by the United States ~~Postal Service~~ Mail or electronic means; and
  - 3) ~~That~~ A disclosure stating that the customer may opt to receive a written copy of the contract.
- b) In addition to the ~~requirements set forth~~ ~~procedures set out for a RES established~~ in Section 2EE of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE], the RES also must ~~abide by~~ fully comply with the following ~~procedures~~ when utilizing electronic LOAs:
- 1) Ensure that the customer provides all information necessary to complete the electronic LOA through a securely encrypted input procedure that meets or exceeds current industry practices;
  - 2) Ensure that the customer indicates by a separate affirmative act that ~~it~~ he or she has the authority to execute the electronic LOA;
  - 3) Ensure that the customer understands and assents to the LOA;
  - 4) Include a version number in the body of the electronic LOA in order to permit verification of the ~~particular~~ LOA to which the customer assents;
  - 5) Prompt the customer to print or electronically save a copy of the electronic LOA;

- 6) Immediately send a message to the ~~customer's registered~~ e-mail account provided by the customer to the RES acknowledging receipt of the electronic LOA;
  - 7) Retain the electronic LOA for a period of at least five years after execution; and
  - 8) Provide to the Commission, Commission Staff, or the customer, upon request, a written and/or electronic copy of the LOA including information to support adherence to Section 453.20(b) of this Part ~~to the Commission or its Staff, the customer, or the customer's incumbent RES upon request.~~
- e) ~~In the event of any conflict between this Section and the requirements for RESs and LOAs provided in electric utility tariffs on file with the Commission July 1, 2003, this Section shall control.~~