

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
	:	15-0512
Amendment of 83 Ill. Adm. Code 412 and	:	
83 Ill. Adm. Code 453.	:	

PROPOSED FIRST NOTICE ORDER

January 19, 2016

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By the Commission:

I. PROCEDURAL HISTORY

On September 10, 2015, the Illinois Commerce Commission (“Commission”) initiated a rulemaking to examine Code Parts 412 and 453, the Code Parts governing obligations of retail electric suppliers (“RESs”). 83 Ill. Adm. Code 412; 83 Ill. Adm. Code 453. This docket seeks to amend the existing rules based on information received during the Commission’s workshops and comments on its Notice of Inquiry, NOI-01-2014 (“NOI”). The NOI, initiated in 2014, sought to address the marketing practices of RESs, which are governed by Part 412 of the Commission's Rules, Obligations of Retail Electric Suppliers. Other pertinent Rules include Part 453, Internet Enrollment Rules, which establish rules governing online enrollment procedures. On September 10, 2015, Staff of the Commission (“Staff”) filed a Staff Report detailing the results of the NOI. The Staff Report is a part of the record in this proceeding.

Pursuant to notice given in accordance with the law, a status hearing was held on September 28, 2015, before a duly authorized Administrative Law Judge (“ALJ”) of the Commission. At the status hearing, the parties agreed to waive an evidentiary hearing and to conduct the proceeding through paper.

On October 9, 2015, Staff filed a Summary of Changes Made to Existing Rule By Staff Proposed Rule (“Staff Summary”), which included Staff’s proposed amendments to Part 412 and Part 453. On November 3, 2015, Staff filed an Errata to its Summary of Changes, which is proposed Appendix A to Part 412, the Uniform Disclosure Statement (“UDS”). On November 5, 2015, the following parties filed Initial Comments: Staff, the Illinois Competitive Energy Association (“ICEA”); the Environmental Law and Policy Center (“ELPC”); Prairie Point Energy, LLC d/b/a Nicor Advanced Energy LLC (“NAE”); the Retail Energy Supply Association (“RESA”); Commonwealth Edison Company (“ComEd”); Ameren Illinois Company (“Ameren”); the Citizens Utility Board (“CUB”); and the People of the State of Illinois (“AG”).

On November 19, 2015, the following parties filed Reply Comments: Staff (Staff filed an Errata on November 20, 2015.); Starion Energy PA, Inc. (“Starion”) (Starion’s Comments merely indicate agreement with RESA); RESA; Ameren; ComEd; ICEA;

ELPC; CUB; NAE; and the AG. On December 3, 2015, Ethical Electric, Inc. (“Ethical”) filed its Reply Comments, which had been served on the parties pursuant to the agreed to schedule on November 19. On December 3, 2015, the following parties filed Surreply Comments: Staff; ICEA; RESA; Ameren; ComEd; Ethical; ELPC; CUB; the AG; and NAE.

Pursuant to the Initiating Order, a First Notice Order must be presented to the Commission by March 8, 2016.

II. STAFF REPORT

The Staff Report highlights several areas of concern involving marketing practices of retail electric suppliers. Specifically, Staff recommends, at a minimum, that rules be drafted or amended to define and require additional disclosures for variable rate offers, for fixed rate offers, and for renewable or "green" energy offers. Staff believes that establishing standard terms and greater uniformity for the different types of offers will be beneficial to retail customers. In addition, Staff proposes that the rulemaking address a number of other topics, such as requiring comparisons to utility supply rates, broadening the definition of "door-to-door" sales to include all in-person sales, providing for verification and additional guidelines for in-person sales, requiring that all sales over the telephone be recorded and those records retained, clarifying that the sales person may not be present for third-party verification (“TPV”) of in-person sales, clarifying the intent of 83 Ill. Adm. Code 412.110 in conjunction with the remaining contractual terms and conditions, defining the term "introductory rates," requiring that RESs post their residential offers on the Office of Retail Market Development (“ORMD”) website at PlugInIllinois.org, restricting the use of utility names and logos, and incorporating the termination fee limits imposed by recent legislation in Public Acts 99-103 and 99-107, both effective July 22, 2015. In addition, Staff recommends that rules found in Code Part 453.20(b)(1) be amended to make the use of unique identifiers mandatory. Initiating Order at 1-2.

The Staff Report notes that a number of other matters may initially be addressed on a collaborative basis outside the rulemaking process. These additional topics include modifying the PlugInIllinois.org website to increase its use, developing a webpage with links to all the laws and regulations applicable to retail electric suppliers, and conducting periodic workshops to discuss the governing laws and regulations. *Id.* at 2.

III. COMMISSION AUTHORITY TO MODIFY PART 412

The Commission has the authority to modify Part 412. Part 412 was originally adopted in Docket No. 09-0592 in 2012. In that docket, the Commission also amended Part 453. In that Initiating Order, the Commission cites to Section 16-118 of the Public Utilities Act (“Act” or “PUA”), which states:

It is in the best interest 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). When Part 412 was originally promulgated, there was no active energy market in this State. Now, over three years later, Commission Staff notes that the residential retail market is dynamic, with almost 70% of residential customers receiving supply service from a RES, or approximately 3 million customers. Staff states that the

Commission's Consumer Services Division ("CSD") has seen an increase in customer complaints about RESs, and the majority of the complaints are from customers who do not take RES service pursuant to a municipal aggregation program; therefore, customers who contact CSD to raise a question or concern about a RES were actively marketed by suppliers. According to Staff, its suggested revisions to Part 412 attempt to respond to recurring problems that it has seen. Staff states: "the existing rules have not been entirely effective in ensuring that customers are fully informed regarding their rights and responsibilities in the marketplace, in preventing misunderstanding and mistake, in protecting customers from misrepresentation, abuse and fraud, or in making RESs and their agents, employees and representatives fully aware of their obligations." Staff Initial at 2.

The Commission is authorized by Section 10-101 of the Act, which states that it "shall have the power to hold investigations concerning any matters covered by the provisions of this Act...subject to such rules and regulations as the Commission may establish." Further, "[a]ny proceeding intended to lead to the establishment of policies, practices, rules or programs applicable to more than one utility may, in the Commission's discretion, be conducted pursuant to...rulemaking...provisions..." 220 ILCS 5/10-101. Finally, Section 8-501 provides that:

Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rules, regulations, practices, equipment, appliances, facilities or service of any public utility, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the Commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed and it shall fix the same by its order, decision, rule or regulation. The Commission shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility.

220 ILCS 5/8-501. Staff states in its Initial Comments that the phrase "of the character" requires the Commission to regulate non-utilities like RESs to the extent they provide service "of the character" supplied or furnished by utilities. Staff Initial at 3-5. The Commission agrees with Staff that these three provisions establish a basis for the Commission to promulgate Part 412.

Moreover, several provisions in Section 16-117 indicate the General Assembly desired the Commission to establish rules like Part 412 when the retail market opened in Illinois. Specifically, Section 16-117(a) states:

The restructuring of the electricity industry will create a new electricity market with new marketers and sellers offering new goods and services, many of which the average consumer will not be able to readily evaluate. It is the intent of the General

Assembly that (i) electricity consumers be provided with sufficient and reliable information so that they are able to compare and make informed selections of products and services provided in the electricity market; and (ii) mechanisms be provided to enable consumers to protect themselves from marketing practices that are unfair or abusive.

220 ILCS 5/16-117(a). Certainly the most effective way to create “mechanisms” which protect consumers from “marketing practices that are unfair or abusive” is a rulemaking which directs the manner in which a RES should interact with those consumers. It is important to note that the General Assembly recognizes in the statute that the average consumer is unable to readily evaluate this new electricity market.

The Commission has explicit authority over RESs in Sections 16-115, 16-115A, 16-115B and 16-115D of the Act. Specifically:

- 16-115A(e)(i): “Any marketing materials which make statements concerning prices, terms and conditions of service shall contain information that adequately discloses the prices, terms and conditions of the products or services that the alternative retail electric supplier is offering or selling to the customer.”
- 16-115A(e)(ii): “Before any customer is switched from another supplier, the alternative retail electric supplier shall give the customer written information that adequately discloses, in plain language, the prices, terms and conditions of the products and services being offered and sold to the customer.”
- 16-115A(e)(iii): “An alternative retail electric supplier shall provide documentation to the Commission and to customers that substantiates any claims made by the alternative retail electric supplier regarding the technologies and fuel types used to generate the electricity offered or sold to customers.
- 16-115A(e)(iv): “The alternative retail electric supplier shall provide to the customer (1) itemized billing statements that describe the products and services provided to the customer and their prices, and (2) an additional statement, at least annually, that adequately discloses the average monthly prices, and the terms and conditions, of the products and services sold to the customer.”
- 16-115B(a)(ii): The Commission has jurisdiction over complaints “that an alternative retail electric supplier serving retail customers having maximum demands of less than one megawatt has failed to provide service in accordance with the terms of its contract or contracts with such customer or customers.”

Also, Section 16-115(f), RES certification, expressly states that the Commission shall have authority to promulgate rules and regulations to carry out this Section, which led to Part 451. Notably, the Retail Electric Competition Act of 2006 states:

[T]he Illinois Commerce Commission should promote the development of an effectively competitive retail electricity market that operates efficiently and benefits all Illinois consumers.

220 ILCS 5/20-102(d). Further, the Retail Electric Competition Act established the Commission's ORMD:

The [ORMD] shall monitor existing competitive conditions in Illinois, identify barriers to retail competition for all customer classes, and *actively explore and propose to the Commission and to the General Assembly solutions to overcome identified barriers...* Solutions proposed by the Office to promote retail competition must also promote *safe, reliable, and affordable electric service.*

220 ILCS 5/20-110. As charged in Section XX of the Act, the ORMD drafted and proposed Rules 412 and 453 with the input of stakeholders over a period of three years.

ComEd, CUB and the AG all agree with Staff's position that the Commission has the authority to modify the existing Part 412. See, ComEd Reply at 4-5; CUB Reply at 4-5; AG Reply at 2-6. CUB points out that the Appellate Court has upheld Commission-ordered consumer protections for a mass market natural gas small volume transportation program. That Court held that the Commission need not be purely reactive, and never proactive, in the practices, rules and regulations it requires in tariffs, nor do consumers need to be "exploited in sufficient numbers before measures can be taken to protect them." *Ameren Illinois Co. v. Ill. Comm. Comm'n*, 2015 IL App. (4th Dist.) WL 140173 at ¶134 ("*Ameren*"). RESA admits that the Commission has "substantial authority to regulate "important aspects of the operations of RESs." RESA Initial at 5-6. RESA urges the Commission, to use the enforcement authority it has instead of rewriting Part 412. The Commission points out that since 2014, it has brought three formal complaint proceedings against specific RESs for violations of Part 412. But as Staff notes, there has been widespread issues of abuse.

ICEA challenges the Commission's authority and implies that the proposed rule turns RESs into regulated utilities with none of the financial benefits. The General Assembly cannot have meant that RESs would not be subject to some oversight in terms of marketing, or it would not specifically have noted in Section 16-117(a) that "mechanisms be provided to protect [customers] from marketing practices that are unfair or abusive." The Commission disagrees that these Rules, which mandate the disclosures and marketing practices of RESs, in any way regulate price or what products the RES can offer. The Commission interprets Section 16-117 as a directive to ensure customers "be provided with sufficient and reliable information so that they are able to compare and make informed selections of products and services provided in the electricity market" and the best way to accomplish this is through an amendment of Part 412. While ICEA claims that "Article XVI of the Act is full of language directing RES, utilities and other entities to take positive steps," the Commission finds ICEA's position unreasonable that the directives of 16-117(a) do not allow the Commission to revise existing rules, especially when confronted by evidence that there are indeed ongoing marketing practices that are

unfair and abusive by RESs. Parties can always take “positive steps” but the Commission lacks the very enforcement authority that ICEA urges it to use if those steps are not codified into a Rule.

RESA cautions the Commission against micromanaging RESs’ products, prices and services. The Commission finds that the Proposed Rule strikes the appropriate balance described in Section 16-117 of allowing a robust, competitive marketplace while also ensuring that customers receive adequate protections against fraud and abuse. The Commission need only look at the rapidly increasing number of Illinois’ citizens enrolling in alternative supply to see that the first prong of this goal has been met. It is up to the Commission to ensure the second is also achieved.

IV. COMPETITIVE PARITY

A. RESA

RESA opines that when considering additional requirements for Illinois retail electric markets, the Commission should consider the effect such requirements have on the competitive parity between RES products and default supply service from utilities. RESA points out that regulatory requirements that apply to all RES products often do not apply to default supply service. Moreover, the costs of regulatory requirements that apply to utilities are recovered by them through their distribution rates, not their supply charges. In contrast, RESs must recover their costs through their supply prices. RESA Initial at 4.

In response to ComEd, RESA points out that utilities have virtually no customer acquisition costs, but RESs have substantial customer acquisition costs and must recover these costs through supply charges. Also, regardless of whether ComEd markets its products or has its wholesale costs developed through a competitive bid structure, RESs must compete with utility default service. RESA Surreply at 3-4.

B. ComEd

ComEd states that RESA’s concerns regarding parity between RESs and utilities are outside the scope of this rulemaking. ComEd notes that it does not market its supply service and has nothing to gain by marketing in competition with RESs. ComEd points out that its charges for power and energy are fixed by a Commission-approved Illinois Power Agency (“IPA”) procurement plan and procurement auction, and are further regulated through Commission-approved tariffs establishing the resulting supply charges. ComEd Reply at 8.

C. CUB

CUB states that there is no reasonable analogy to be made between RES supply and utility supply. CUB notes that the Rules at issue in this rulemaking largely surround disclosure of contract provisions and protections against marketing abuses; issues not relevant to utility supply, which is clearly published, does not require a contract, and is comprehensively regulated. CUB Reply at 6.

D. Commission Analysis and Conclusion

RESA complains that the cost to comply with regulations applicable to utilities are recovered by them through their distribution rates, not their supply charges. RESs, on the other hand, because they only offer supply, must recover the costs to comply with

regulations through their supply rates. Thus, RESA reasons, there is not competitive parity and utilities have an unfair advantage. The thrust of RESA's argument is that because any new Commission rule imposes costs on RESs, the Commission should consider the costs and benefits of any proposed amendments to the rule.

The Commission considers the costs to RESs whenever it has been specifically raised. For example, the Commission does not adopt the AG's proposal to require that a Uniform Disclosure Statement ("UDS") be sent with every direct mailing and the requirements for the recordings of telephone solicitations are not as extensive as proposed by Staff. The Commission also declines to mandate recording of in-person solicitations, in large part due to cost.

To the extent that RESA is suggesting that not enough of the utilities' supply costs are recovered through their supply rates, the Commission agrees with ComEd that this is beyond the scope of the docket.

V. UTILITY LOGO OR NAME

A. AG

The AG proposes to add a section entitled "Use of Utility Name or Logo Prohibited." The AG notes that several sections in Staff's proposed Rule require RESs to disclose that they are not affiliated with a utility company: Part 412.110(1); Part 412.115(b)(13); Part 412.120(a) and (c); Part 412.130(a); Part 412.150(a); and Part 412.160(a). The AG cites to a holding in a case that recognized that RESs that claim an affiliation with a regulated utility company have a marketing advantage. *Illinois Power Co. v. Ill. Commerce Comm'n*, 316 Ill. App.3d 254, 260-61 (5th Dist. 2000) ("*Illinois Power*"). The AG states that Staff's proposed Rule does not go far enough, because it still allows RESs to use statements like "we partner with Edison" or to address marketing materials to "ComEd Customer." The AG, therefore, proposes a new section of the Rule which prohibits using the name of any regulated utility in any manner whatsoever. AG Initial at 15-16.

In Surreply Comments, the AG notes that it agrees with other parties' statements that there may be practical reasons for RESs to use utility names and proposes revised language. AG Surreply at 19.

B. RESA

RESA states that the additional requirements suggested by Staff in its Proposed Rules and the AG's proposal to prohibit the use of utility name and logo are "overkill and unnecessary." RESA Reply at 20.

C. ComEd

ComEd supports the addition of a new, standalone section prohibiting RES marketing materials from using utility names and logos. ComEd cites to *Illinois Power* and states that "the use by a RES of a utility's name or logo in its marketing materials creates 'the likelihood of confusion and deception.'" ComEd Reply at 6, citing *Illinois Power* at 260.

D. ICEA

ICEA opposes the "Use of Utility Name or Logo Prohibited" Section because it will cause customer confusion and was previously rejected by the Commission in the original Part 412 Rulemaking. *Illinois Commerce Comm'n*, Docket No. 09-0592, Post Prohibition Order at 44 (Oct. 3, 2012). ICEA does not object to a ban on the use of the utility's logo, but objects to a wholesale ban on the use of the utility name. Specifically, ICEA notes that there are many documents that may have legitimate, non-marketing uses of the utility name, such as who to call in case of an outage. ICEA Reply at 51-52.

ICEA proposes language for the specific circumstances under which it would be acceptable to use the utility company logo or name. ICEA Initial at 31 and Attachment A. ICEA states that use of the utility name should be allowed to provide customers with identifying information on eligibility including: 1) targeted marketing at customers whose utilities allow for retail choice; and 2) direct potential customers (particularly anonymous viewers of a website) to the appropriate offers that are specific to a particular utility. ICEA Surreply at 43.

ICEA recommends common "no endorsement" language across Sections 412.110, 412.130, 412.150, and 412.160. Also, although ICEA supports a ban on use of the electric utility's logo and most instances of the utility name, ICEA recommends commonsense exceptions where use of the utility name in marketing would reduce consumer confusion. For subsection 412.130(a), ICEA recommends that during telemarketing calls RESs be allowed to make truthful statements that the RES is licensed to sell power and energy in a particular utility service territory and that customers within a utility's service territory may choose suppliers. ICEA Reply at 23. ICEA maintains that there are a number of situations where consumers and RESs have a legitimate interest in referencing the utility's name in a way that does not cause confusion or falsely (or misleadingly) imply endorsement. ICEA Surreply at 38-39.

ICEA notes that Staff's language also appears to be consistent with the AG's concerns expressed in Reply Comments except the recommendation that the Section apply to any utility, not just the customer's own electric utility. See AG Reply Comments at 10-11. If the Commission believes that "the electric utility" should be changed to "a utility," then ICEA does not object as long as the language in each Section is consistent. ICEA Surreply at 36.

E. CUB

CUB supports the AG's proposal to include a provision prohibiting RES marketing materials from displaying or utilizing the name, logo, or any other identifying insignia, graphics or wording of a public utility company. The practice of certain utility energy supply affiliates using the utility's name and logo to identify and represent themselves has been problematic for years in both the retail gas and electric markets. The use of the utility name and logo does nothing to aid in consumer understanding of the ramifications of choosing a supplier, and only serves to confuse consumers about the entity with which they are contracting for service. CUB Initial at 4.

CUB states that the circumstances described by ICEA where this information would assist the customer or the RES are unlikely to occur. ICEA's proposed language

could be interpreted to allow for a RES agent to implicate the utility in the context of the sale, which is exactly what the proposed rule is designed to eliminate. Furthermore, the scenarios identified by ICEA where use of a utility name in a website listing of offers may be appropriate would not violate the existing letter of the proposed rule, so no changes are necessary to Staff's proposed language. CUB Reply at 14-15.

CUB points out, in response to statements by Ethical, that there is no purpose to repeatedly emphasizing the name of the utility in a RES marketing solicitation if it is not to confuse customers into believing the offer is a utility program. CUB Surreply at 11. CUB attaches to its Surreply Comments two examples of Ethical's marketing that it has received from consumers and which CUB finds to be particularly misleading.

Further, in response to NAE, CUB points out that this revision is most directly relevant to NAE because NAE is an affiliate of Nicor Gas Company and NAE uses Nicor's name and logo in all of its marketing. CUB avers that these provisions are needed to avoid misleading customers into thinking they are dealing with the utility because this is an obvious attempt at exploiting the utility's brand recognition. CUB states that it has observed from its dealings with tens of thousands of Illinois consumers each year that significant customer confusion still exists as to retail energy choice and RES use of the utility name and logo only serves to amplify that confusion. CUB Reply at 13.

F. NAE

NAE states that the "Use of Utility Name or Logo Prohibited" Section goes too far because according to Part 412.110(m), a RES is required to advise customers that their 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. NAE Reply at 11-12. NAE opines that the *Illinois Power* case does not support this argument, because in that case the court allowed an "affiliated ARES to use the utilities' corporate name and logo." *Illinois Power* at 261.

NAE points out that the Commission rejected similar language in Docket 09-0592. *Illinois Commerce Commission*, Docket No. 09-0592, Post Prohibition Order at 44 (Oct. 3, 2012). NAE also states that: (i) any revisions need to recognize that a RES may be an affiliate of a utility or may be legitimately authorized to use the name or logo of its affiliate; (ii) there is no basis to prohibit a RES from operating under an authorized name or logo; and (iii) any revisions addressing utility name or logo must make clear that such revisions are limited to the name or logo of the customer's electric utility. NAE Surreply at 18. NAE states that the AG's proposal conflicts with Section 450.25 of the Commission's rules.

G. Staff

Staff also agrees that the new Section which prohibits utility name and logo has merit, but may be better incorporated into existing Sections rather than a stand-alone Section. Staff Reply at 83-85.

Staff urges the Commission to be cautious regarding language proposed by ICEA which would permit a RES to state or represent that it offers power and energy service within a particular utility's service territory and state or represent that the customer may choose their electricity supplier in the customer's utility service territory. Staff Reply at 57. Misrepresentations and misunderstandings regarding the identity of RESs, the

identities of RES agents, the relationship between RESs and utilities, are among the common complaints regarding RESs filed with CSD. Accordingly, Staff opposes this inclusion. Staff Reply at 46-47.

H. Ethical

Ethical agrees that a RES should not use the utility name and logo in any way that is deceptive or misleading, and states that use of the utility name should not be prohibited. Ethical cites a self-commissioned poll which it states found that 19% of ComEd customers cannot correctly identify their electricity provider, or named another utility. Ethical states that this trend is more pronounced among younger populations. Ethical Reply at 20. Because of this misunderstanding of the marketplace, Ethical maintains that a RES needs to be able to use the utility name to properly inform customers about the price to compare, how to compare the environmental offers to that of the utility, or just to answer general questions from the customer. Ethical does agree with the AG that a RES should not be able to use the logo of a utility. Ethical Reply at 21-23.

In Surreply Comments, Ethical proposes a process for Staff to review in advance any direct mail or online marketing materials to ensure that the use of utility name is not deceptive. Ethical offers to pay a nominal fee for each review requested. Ethical Surreply at 3-4.

I. Commission Analysis and Conclusion

The Commission finds that an outright ban on the use of a regulated utility's name is overly restrictive. RESs are required to have specific relationships with the regulated utilities in the marketplace, pursuant to the Act and the Commission's Rules. The Commission finds Staff's proposal, which requires a RES or its agent to communicate to the prospective customer that it does not represent or act on behalf of a utility company, is important. The Commission notes that a RES cannot completely avoid use of the electric utility's name, and RESs are required to state that the utility still provides delivery services and is responsible for outages. The Commission can also surmise other reasonable uses of the electric utility name during or after a solicitation, such as a statement that the customer will still receive a bill from ComEd or Ameren after switching to a RES for power supply.

ICEA proposes language that would allow a RES to 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. The Commission is concerned that other appropriate uses of the electric utility's name may exist. The Commission finds that there could be a rational reason to use an electric utility's name during a solicitation, but RESs should not in any manner utilize the electric utility's name to mislead consumers. Ethical proposes language that would ban fraudulent or misleading use of a utility's name and it is included in the attached Rule.

The attached Rule prohibits the use of a public utility name in any manner that is deceptive or misleading. This prohibition applies to any public utility, not just an electric utility, because the use of any public utility name can be very misleading to customers. In the Commission's view, not all customers are aware of the distinction between gas or

electric utilities. Even more importantly, the Commission is convinced that customers are not aware of the distinction between RESs and public utilities – whether gas or electric.

The attached Rule further prohibits RESs from misrepresenting that the product they are offering is in any manner related to a public utility. This is intended to prohibit suggestions that the power or energy the RES is offering is from a utility – whether a gas or electric utility. The Commission notes that the attachments to CUB’s Surreply Comments are marketing materials from Clean Energy Option, which is one of the assumed names of Ethical Electric. The Commission finds that these materials use ComEd’s utility name in a manner that makes it appear that the product being offered is part of a utility program; the amendments adopted throughout the attached Rule seek to address this sort of marketing.

To ensure compliance, Ethical proposes that Commission Staff in the ORMD review all RES marketing materials prior to their use in the marketplace for deceptive or misleading uses of the utility name. The Commission recognizes the immense undertaking that such a process would be, notwithstanding Ethical’s suggested seven day turnaround time. The ORMD simply does not have the personnel or resources to review marketing materials for every RES currently licensed to operate in Illinois.

In the attached Rules, the Commission prohibits the use of a utility logo. The Commission agrees with CUB that there is no legitimate business need for RESs to use a utility logo in its marketing. NAE opposes this prohibition. According to CUB, NAE is an affiliate of Nicor Gas Company, and NAE uses Nicor’s name and logo in all of its marketing. CUB Reply at 13. The Commission finds NAE’s reliance on the Post Prohibition Order in Docket No. 09-0592 to be unpersuasive. The Commission stated:

The Commission will delete Section 412.190 in its entirety. While it is within the Commission’s authority and discretion to determine whether a RES may use an electric utility’s name or logo, the Commission agrees with the view of Staff and several of the other parties that Section 412.110(l) and 412.170(c) serve to achieve similar goals contemplated by this section, such as to render this provision redundant.

Docket No. 09-0592, Post Prohibition Order at 44. This is hardly a complete acceptance of NAE’s position. In addition, the language under consideration in that docket was different and arguably ambiguous, because it sought to prohibit the use by RESs of a name similar to that of a utility. *Id.* at 43. An outright ban on the use of a public utility logo is not ambiguous.

NAE also argues that a ban on the use of a logo would conflict with Section 450.25(b) of the Commission’s Rules, which state that:

Nothing in subsection (a) shall be construed as prohibiting an affiliated interest in competition with ARES from using the corporate name or logo of an electric utility or electric utility holding company.

83 Ill. Admin. Code 450.25 (b). Unlike Section 450.25(b), Part 450 pertains to “Non-Discrimination in Affiliate Transactions for Electric Utilities” and are generally prohibitions

on utilities from discriminating in favor of customers of their affiliates. Part 450 was in effect prior to the practices being addressed in this rulemaking. Marketplace developments since its enactment convince the Commission that it is no longer appropriate. Thus, rather than finding Part 450.25(b) to support NAE's position, the Commission finds that a limited rulemaking addressing the repeal of Part 450.25 should be conducted and Staff is so directed. The Commission finds a ban on the use of any utility's logo to be an appropriate consumer protection, and it is adopted.

Rather than including a separate section, language addressing the utility name and logo is included in subsections 412.110(l), 412.115(b)(13), 412.120(a), 412.120(c)(3), 412.130(a), 412.140(a), 412.150(a), and 412.160(a).

VI. SECTION 412.10 DEFINITIONS

A. Staff

Staff proposes several modifications to existing definitions as well as some new definitions. Staff notes that this section should contain not only the meaning of the terms defined but also guidance on how the Rule will function. Staff's proposed definitions strive for internal consistency both within the Rule and where the Rule reflects statutory requirements. It is Staff's desire that this Rule as amended will be useable by persons unfamiliar with this regulatory environment as well as customer service personnel at the Commission, utilities, and RESs. Staff Initial at 9-10.

"Early termination fee." Staff's proposed addition of the definition of "early termination fee" reflects the recent change to Section 16-119 of the Act, limiting such fees to \$50 for residential customers and \$150 for small commercial customers. Specifically, Staff's proposed definition incorporates the word "penalties" within the definition, because, in CSD, such fees are perceived as penalties by customers. Staff also incorporates language from Section 2EE of the Illinois Consumer Fraud and Deceptive Business Practices Act ("CFDBPA"). See 815 ILCS 505/1 *et seq.*

Staff does not support Ameren's addition to this definition to include the time period of pending enrollment. In Staff's view the assessment of penalties during this period would be considered "rescission", and is unlikely to occur. Staff Reply at 4-5.

"Fixed rate." Staff notes that Ameren recommends a definition be added to address fixed rates, as that term is used in the Draft Rule but is undefined. Staff notes that Ameren's suggested definition is "any supply product that does not meet the definition of variable rate." Staff is concerned this definition is overly broad. Staff Reply at 5.

"Inbound enrollment call." Staff proposes a new definition which refers to customers who initiate calls to RESs looking to enroll in power or energy services. Staff does not object to the AG's proposal to add "or change provision of their" to make the definition consistent with the language in Part 412.140(c). Staff notes that CUB seeks to remove Staff's proposed language defining transferred calls as inbound calls because CUB maintains these calls should be treated as telemarketing. Staff is not opposed to this change but including "transferred calls" in this definition was intended to make them subject to Section 412.140 requirements, such as TPV. Staff Reply at 5-6. In its Reply, Staff recommends removing that component from this definition and adding a new "Transferred call" definition, described below, which states that those calls are subject to

Section 412.130. Staff states that NAE's proposed changes to the definition which requires the customer "initiate the call" are reasonable. *Id.*

"In-person solicitation." Staff proposes a new definition which refers to any sale conducted or initiated where the RES agent is physically present with a customer. Staff notes that any attempt to describe each different in-person marketing type within the definition, or even the Rule, as ICEA asserts, might fail to capture all the possibilities. Staff states that NAE's concerns, that RESs cannot comply with the requirements of the TPV if all in-person solicitations, are unfounded, because the TPV need not happen immediately on conclusion of the face-to-face interaction between the RES and the potential customer. Staff opposes RESA's suggestion of a "mobile data application." Staff Reply at 7-8. Staff also opposes ICEA's suggestion to work on a definition collaboratively and states that simply because a customer is solicited at a location other than his or her front door does not negate the need for protections. Staff Surreply at 9-10.

"Renewable Energy Credit" or "REC." Staff states that its proposed definition of "renewable energy resource" includes renewable energy credits ("RECs"), so Staff objects to the AG's proposal to add this new definition. Staff Reply at 8.

"Renewable energy resource." Staff proposes a new definition which refers to Section 1-10 of the IPA Act. 20 ILCS 3855/1-10.

"Third Party Verification" or "TPV." Staff's proposed change to this definition includes the abbreviation and includes a sentence stating that the TPV "shall not be described as having any other purpose" than the one stated in the definition. Staff disagrees with NAE's contention that the definitions should not contain "directives and requirements." Like Part 280, this Rule involves consumers more directly than other Commission rules, and should therefore be useful and provide direction and clarity to consumers. Staff Reply at 8-9.

"Time of Use rates." Staff sees no need for this definition, proposed by RESA. The term is not used in the Draft Rule, and it is not clear that those rates change in what a customer might consider to be "a predictable manner." Staff Reply at 9.

"Transferred call." Initially, Staff sought to protect customers who do not actively contact RESs on their own by including transferred calls in the definition of "Inbound enrollment call." In its Reply, Staff proposes to remove the reference to transferred calls from "Inbound enrollment call" and create a new definition to ensure that transferred calls are considered telemarketing within the meaning of Part 412.130. In Staff's view, this proposed definition satisfies both the AG's and CUB's concerns, while also alleviating ICEA's, NAE's and RESA's objections that the original definition was too burdensome on RESs. Staff Reply at 9-11.

"Variable rate." Staff proposes a definition which requires any contract in which the fixed rate term is less than six months to be described as "variable", limiting the word "fixed" to that extent. Staff notes that many RESs describe their offers on PlugInIllinois.org as "fixed" despite the fact that the rate changes after three months. Staff opines that this leads to customer confusion and notes that when customers cancel these contracts and return to utility service, it can take as long as two billing cycles from the

date of the request. Staff Initial at 13-14. Staff opposes ICEA's proposal to add two new definitions regarding Index and Non-Index Products to this definition because there is already an exception for index-based products in its proposed Section 412.170(a)-(d). Staff also disagrees with ICEA's recommendation to lower the time period from six months to three months. Staff disagrees with NAE's and RESA's recommendations regarding this definition for substantially the same reasons. Staff Reply at 12-13.

"Written" and "Writing." Staff extends the definition of "written communication" to include electronic means when both parties have agreed to the use of that method. The definition covers all communications not specifically required to be sent by U.S. mail. Staff Initial at 14.

B. ICEA

"Alternative retail electric supplier." ICEA proposes adding "electric" to the definition to mirror the language from Section 16-102 of the Act. ICEA Initial at 18.

"Customer." ICEA proposes noting that Section 16-102 of the Act defines "retail customer" not "customer." ICEA Initial at 19.

"Inbound enrollment call." ICEA proposes that the definition specifically refer to Section 2EE(c) of the CFDBPA. ICEA Initial at 19.

"In-person solicitation." ICEA disagrees with Staff's proposed definition because it is overbroad and could potentially regulate any conversation that could result in a sale. ICEA Initial at 17. ICEA states that this definition goes beyond regulating unsolicited interactions between vendors and potential customers in door-to-door sales meetings. ICEA states that this broad definition could include conversations between family and friends that do not include suppliers, and the requirements of Staff's proposed definition are highly problematic. *Id.* Instead, ICEA proposes deleting the definition of "in-person solicitation" and offers a proposed definition for door-to-door sales. *Id.* The proposed definition includes multi-level marketing and solicitations that occur at booths and kiosks. ICEA proposes a collaborative process to discuss the definition. ICEA Reply at 15.

"Renewable energy resource." ICEA supports Staff's proposed definition referencing Section 1-10 of the IPA Act. ICEA states that a narrower definition of "renewable" would fail to capture renewable energy products beyond RECs. ICEA Initial at 18.

"RES Agent." On Exceptions, ICEA argues that clarification of the dinner table conversation scenario discussed below regarding Section 412.120 is alternatively resolved by modifying the definition of RES Agent to exclude participants in a friends and family program or equivalent that do not involve the RES paying Federal or Illinois taxable income. The Commission agrees that this definition is consistent with the principle espoused by the Proposed Order but removes certain gray areas and unintended consequences.

"Third Party Verification." ICEA proposes that this definition also refer to the specific section of the CFDBPA. *Id.* at 19.

"Variable rate." ICEA supports Staff's proposed definition of "variable rate" that does not appear to cover dynamic or time of use rates, but instead only applies to month

to month or less frequently-changing rates. ICEA suggests a separate definition for variable rates that rely on a publicly available index or benchmark and a definition that does not. ICEA recommends that the definition should shorten the number of billing periods from six to three. This change means that seasonally-priced products are considered “fixed”. ICEA points out that utility bundled service offers summer and non-summer pricing, which considers a four-month period “fixed”. *Id.* at 18.

C. RESA

“Inbound enrollment call.” RESA states that Staff’s current proposal is ambiguous. To provide further clarity, RESA suggests modifying the definition to include calls made to the RES for another reason but where the customer is transferred to the RES agent. RESA Initial at 8. RESA opposes the AG and CUB’s proposals for this definition. RESA Reply at 14.

“In-person solicitation.” RESA proposes deleting this definition. RESA states that the definition is overly broad and would apply requirements that may be appropriate for door-to-door solicitation, but not for other face-to-face interactions. RESA states that it makes no sense to apply protections for door-to-door solicitation where a customer proactively seeks to enroll with a RES. RESA notes there are numerous examples of face-to-face interactions which do not, in RESA’s view, warrant the same treatment as unsolicited door-to-door solicitation, such as: permanent store locations operated by RESs; temporary or seasonal kiosks, at a shopping mall or airport; RES booths at trade shows or fairs; pre-scheduled appointments; and in home meetings through friends and family networking. RESA states that the new Rule should not be revised to make it more difficult to sign up with a RES, and many of RESA’s marketing practices, which include an “enroll from your wallet” capability, protect potential customers such that they should not be considered “door-to-door”. RESA Initial at 9-10. In response to the AG’s contention that these are unlikely scenarios, RESA states that the AG’s rhetoric is illogical because if these scenarios are unlikely, there is no purpose to expanding the rule beyond door-to-door sales. RESA proposes a new definition in its Surreply Comments to cover in-person solicitations other than door-to-door. In response to Staff, RESA discusses the mobile data application concept and how the energy shopping experience is moving into the mainstream of consumerism. RESA states that customers are inconvenienced by the need to provide an account number and should be allowed to provide another identifier in order to enroll, so the excessive protections that Staff proposes for these solicitations are unnecessary. RESA Surreply at 13-16.

“Time of Use product.” RESA proposes this new definition to distinguish such products from variable rates. The pricing of time of use products is a variable rate structure, but the price of energy is dependent on the time of day and season used. Despite this variation, the pricing is predictable in combination of hourly, peak or seasonal time periods and should not be considered to be “variable rates”. RESA Initial at 11.

“Variable rate.” RESA proposes to revise the definition of “variable rate” to change the six month demarcation to three months. Staff does not justify this cut-off number. Specifically, RESA’s proposed definition of variable rate would exclude retail products “the rate for which is fixed for three months or longer.” RESA Initial at 11.

D. Ameren

“Early termination fee.” Ameren proposes adding language to Staff’s suggested definition which informs customers that in some circumstances a fee or penalty may be charged to them prior to supplier electric service commencing. This would ensure customers are fully aware that the Pending Enrollment Rescission window may close prior to receiving supplier service. Ameren Initial at 2.

“Fixed rate.” Ameren notes that the Staff’s Proposed Rule uses the term “fixed rate” in several places, but that term is undefined. Ameren suggests that the definition could be as simple as “any rate or supply product that does not meet the definition of ‘variable rate.’” *Id.*

“RES agent.” Ameren proposes amending this definition, replacing “an” with “a”. *Id.*

E. CUB

“Early termination fee.” CUB agrees with Ameren’s proposal to add language including the time period of pending enrollment. CUB Reply at 5.

“Inbound enrollment call.” CUB states that the definition of “inbound enrollment call” should be modified to state that the term does not include calls where the customer is transferred to the RES agent. CUB notes that it has observed utilities transferring inbound calls to RESs, but the customer does not understand with whom she is speaking. CUB states that these transferred calls are akin to telemarketing because the customer did not proactively place a call to a RES. CUB supports the AG’s changes to this definition, adding “or change provision of their” before “power and energy service,” as described below. According to CUB, this would cover requirements for when customers call to cancel their service but get pitched a new product. CUB Initial at 3. CUB opposes RESA’s suggested changes to this definition which do not adequately describe the call. CUB Reply at 8.

“In-person solicitation.” CUB rejects RESA’s suggestion to delete the proposed definition of “in-person solicitation” because some customers may go to the RESs’ place of business to enroll. CUB states that this justification is an unrealistic phenomenon. CUB Reply at 9. CUB rejects ICEA’s proposals for similar reasons. *Id.* at 14. CUB states that the in-person marketing interaction, regardless of whether it is at a doorstep or a mall kiosk, can be confrontational and intrusive. Moreover, these interactions are not recorded. CUB agrees with Staff that it is not sensible to create a definition describing each type of in-person solicitation, and the proposed standard definition provides clarity. CUB Surreply at 5.

“Transferred call.” CUB supports Staff’s recommendation to create a new definition for “transferred call.” CUB states that the definition alleviates CUB’s concerns about customers understanding the entity with whom they are speaking. CUB Surreply at 5.

“Variable rate.” CUB opposes ICEA’s revisions to this definition. CUB states that a price that changes at any time during the pendency of the contract is “variable.” CUB Reply at 14. CUB does not support Staff’s proposed definition and proposes a new

definition in its Surreply Comments consistent with a price that changes during the contract. *Id.*

F. AG

“Inbound enrollment call.” The AG proposes to include the phrase “or change provision of their” prior to “power and energy service” in Staff’s proposed definition. This ensures that the record keeping provisions later described in Staff’s proposed Section 412.140(e) apply as well to inbound calls made by current customers seeking to change provisions of their service. AG Initial at 5.

“In-person solicitation.” The AG states that RESA and ICEA’s objections to Staff’s proposed definition provide concocted scenarios that are hypothetical and are insufficient to reject what Staff has demonstrated to be necessary consumer protections. AG Reply at 7. The AG finds Staff’s rationale for including this definition persuasive because, like the AG and CUB, Staff has substantial experience dealing with consumer complaints. *Id.* at 8.

“Renewable energy credits” or “RECs.” The AG recommends including a definition of RECs because RESs that market green energy or green power use RECs to claim that their power comes from renewable resources. The AG has received complaints that at least one RES’s marketing materials improperly imply that the power that the RES supplies comes directly from renewable resources, which is impossible. AG Reply at 8. In Surreply Comments, the AG states that it prefers its proposed definition but does not object to ICEA’s contention that if “REC” is included in the definition, the IPA Act definition is used. AG Surreply at 8.

“Transferred call.” The AG accepts Staff’s proposed definition. AG Surreply at 8.

G. NAE

“Fixed rate.” NAE agrees with Staff that Ameren’s proposed definition for “fixed rate” may be too broad and proposes an alternative definition:

“Fixed Rate Product” means a product in which the price for power and energy does not change for a period of at least 3 months, other than for legal, regulatory, utility or non-market based changes, after power and energy flow under the product.

NAE Surreply at 3.

“Inbound enrollment call.” NAE states that Staff’s proposed definition is both too narrow and too broad, incorporates a state of mind standard that is too difficult to apply, excludes some customer-initiated calls contrary to applicable law, and includes customer initiated calls that are not verified in accordance with the customer-initiated call provisions of the CFDBPA. Where the phrase “in order to enroll for power or energy service” is used in the proposed definition, NAE notes this requires the RES agent to understand the state of mind of the caller. Additionally, a customer could be calling about exploring gas service but later explore electric service offerings. These calls should be included under the definition of “inbound enrollment call.” NAE states that the definition should be expanded to refer to the caller as a “potential customer” or “consumer” for clarity and accuracy. NAE

states that the proposed definition borrows the phrase “in order to enroll” from Section 2EE(c) of the CFDBPA, whereas that statute is clear that the language only requires the caller “initiate the call”. NAE’s proposed definition removes that requirement. NAE Initial at 22-24. NAE opposes the AG and CUB’s suggestion to expand this definition to include situations where a RES is contacted by its existing customers to change provision of their power or energy service. NAE states that Section 16-115A(b), which governs inbound enrollment calls, applies only when a customer will be “switched from another supplier.” 220 ILCS 5/16-115A(b). Further, NAE states that there is no basis to exclude calls transferred to a RES where the customer authorizes the transfer. NAE Reply at 2-3.

“In-person solicitation.” NAE states that Staff’s proposed definition is overbroad and treats in-person encounters the same when certain protections need only apply to door-to-door solicitations. Specifically, Staff’s Rule 412.120(g) would require a RES agent to be physically separate from a customer while the TPV is conducted. NAE states that this would be impossible for some non-door-to-door scenarios, such as a kiosk in a mall, because a RES agent cannot “abandon their kiosk.” NAE Reply at 25. NAE states that Staff ignores the difficulties its proposal imposes on the standard business practice of completing a sale at the point of sale. NAE Surreply at 6.

“Third Party Verification.” NAE recommends that Staff’s proposal, which adds language to the existing definition of TPV stating “the RES agent shall not describe the TPV as having any other purpose,” be contained in the substantive portion of the Rule, not in the definitions section. NAE Reply at 25.

“Transferred call.” NAE maintains that the recording of inbound calls is reliable verification of a customer’s consent to enrollment, and a customer-initiated call that is transferred to a RES agent with the customer’s consent is an inbound enrollment call, not telemarketing. NAE Surreply at 6. If the Commission includes this definition, however, NAE suggests adding a sentence to the end of Staff’s proposed definition stating: “A transferred call shall not include any call received by a RES that otherwise meets the definition of a transferred call but for which the RES has no knowledge that the call was transferred from another party.” NAE Surreply at 4, 6.

“Variable rate.” NAE claims Staff’s proposed definition is unclear and confusing because “rate” is not “the contract.” Also, a RES may offer products that include a fixed and variable component. NAE states that it is unclear why a rate that is fixed for six months or less is not a “fixed” rate. NAE also points out that variable rates could change only once a month, but real time pricing rates or a daily index-based rate could change more than once a month but would not be captured by this definition. NAE suggests two definitions to replace “variable rate”: “Index Variable Product” and “Non-Index Variable Product.”

“Index Variable Product” means a product in which the price changes more frequently than every 3 months other than for legal, regulatory, utility or non-market based changes and the price changes are wholly in direct and formulaic correlation to an index.

“Non-Index Variable Product” means a product in which the price changes more frequently than every 3 months other than

for legal, regulatory, utility or non-market based changes and which price is not formulaically tied directly to an index.

NAE Initial at 25-26.

H. Ethical

“Renewable energy credits” or “RECs.” Ethical supports a definition of “renewable energy credit” that is defined in Section 1-10 of the IPA Act. 20 ILCS 3855/1-10. Ethical states that comments from the AG, Staff and others leave the door open to a renewable energy product being substantiated without an accompanying REC. Ethical does not believe that Alternative Compliance Payments or wholesale power purchases without RECs should be permitted to be described as renewable or green in any manner without the accompanying RECs. Ethical references Federal Trade Commission guidelines in support of its position. Ethical Reply at 4.

“Renewable energy resources.” Ethical proposes a definition for “Renewable energy resources.” Ethical believes the Commission should go beyond the definition that is defined in Section 1-10 of the IPA Act to ensure that customers are not confused or misled. Ethical states that some of the technologies described in Section 1-10 of the IPA Act are not commonly viewed by consumers as “green” or “environmentally friendly.” 20 ILCS 3855/1-10. For example, Ethical states that the benefits of large-scale hydropower are minimal, and landfill gas is a poor way to manage waste. Ethical, therefore, recommends a definition that limits renewable energy resources to all solar, all wind, and low-impact hydro. Ethical cites a self-commissioned survey which asked ComEd customers which technologies they consider “renewable.” Solar and wind were chosen as a renewable technology over most other choices including some technologies that may create a REC like industrial waste heat, biomass, landfill gas and biodiesel. Ethical Reply at 4-6.

I. ELPC

“Renewable energy credit” or “REC.” ELPC recommends a definition for “renewable energy credit” or “REC” which references Section 1-10 of the IPA Act.

J. Commission Analysis and Conclusion

The Commission adopts ICEA’s proposal to modify “Alternative retail electric supplier” to include the term “electric.” This definition is consistent with Section 16-102 of the Act. 220 ILCS 5/16-102.

The Commission adopts ICEA’s recommendation that the definition of “customer” be revised to note that Section 16-102 refers to “retail customer.” This is consistent with the statute and the current Section 412.110.

The Commission adopts Staff’s proposed definition for “early termination fee”, which is consistent with Section 16-119 of the Act and the CFDBPA. The Commission declines to adopt Ameren’s proposed definition, supported by CUB, as it overcomplicates the definition; as Staff points out, such instances are considered “rescission” and are not likely to occur.

The Commission declines to adopt the definition of “Fixed rate” as proposed by Ameren, which Staff did not support because it was too simplistic. The Commission does

not adopt NAE's proposed definition of this term, as it is unnecessarily confusing. The Commission does not understand what "after power and energy flow under the product" means. Despite the fact that the Rule refers to "fixed rate", the Commission is of the opinion that this term is self-explanatory within those Sections of the Rule. See Section 412.115(b)(4) and (b)(8).

The Commission adopts Staff's proposed definition of "Inbound Enrollment Call." This definition is clear and concise. NAE states that the phrase "enroll[]...power and energy service" is too limiting, because the individual may call for a different reason and then explore supply service. The Commission agrees that if the customer does not initially contact the RES for enrollment purposes, then the call would not be considered an "Inbound enrollment call" and the call would fall under the Telemarketing provisions of the Rule. Staff seeks to differentiate between individuals who proactively contact a RES and others who are transferred to a RES from a third party, possibly a utility, or are contacted by a RES. The Commission agrees with this distinction, and Sections 412.130 and 412.140 address the differences in these customer contacts accordingly. NAE's, ICEA's and RESA's fundamental objections to Section 412.140 of the Rule are discussed in that Section accordingly.

The Commission adopts Staff's proposed definition for "In-person solicitation." The proposed definition is simple, concise, and covers all types of face-to-face interactions contemplated in Section 412.120. The Commission does not agree with RESA and ICEA that in-person solicitations that are not door-to-door need fewer protections. Additionally, the Commission agrees with Staff that a narrow definition of door-to-door that fails to address other forms of sales where the RES agent is making a sales pitch in front of a customer is problematic. Contrary to ICEA's assertions, the Commission finds that customers solicited at tents, farmer's markets, airport kiosks, fairs, parks, concerts, and the like need protections just like those in a door-to-door environment. A definition that defines in-person solicitation as a discrete set of specific interactions fails to cover the entire spectrum of sales. Staff's proposed definition appropriately addresses all interactions where the RES agent and customer are in the same physical presence. This is also discussed at length within Section 412.120.

Staff states that no definition of "renewable energy credit" or "REC" is needed because REC is contemplated by Section 1-10 of the IPA Act. However, the Commission notes that REC is referenced in Section 412.190 of the Rule. To be consistent with "renewable energy resource", the definition of "renewable energy credit" or "REC" will reference Section 1-10 of the IPA Act. 20 ILCS 3855/1-10. This is similar to the definition proposed by ELPC. Accordingly, the AG's proposed definition is rejected. The Commission finds it important to maintain consistency between Rules and statutes where possible.

The Commission adopts Staff's proposed definition of "Renewable energy resources" which refers to Section 1-10 of the IPA Act, but adds a citation to that statute. This is similar to the current definition of "Letter of Agency" ("LOA"), which references the CFDBPA and includes the citation. The Commission rejects Ethical's suggestion to limit the definition of "renewable energy resources" to all solar, all wind and low-impact hydro because the General Assembly has recognized additional technologies as renewable

energy resources. Again, the definitions in this Rule should be consistent with those used in the PUA and other statutes.

The Commission adopts Ameren's proposal to remove the "an" when describing "a RES agent."

The Commission adopts Staff's revisions to "Third party verification." The Commission agrees with Staff that the TPV shall not be described as having any other purpose. The Commission also agrees with Staff that this statement is appropriate in the definition versus every time TPV is mentioned within the Rule. The Commission disagrees with NAE that a directive should not be in a definition. In the Commission's view, this eliminates repetitive language from the Rule.

The Commission declines to add RESA's proposed definition for "Time of Use" because that is a specific type of variable rate, and is already described in Section 412.115(b)(4). Further, "Time of Use" is not used elsewhere in the Rule.

The Commission adopts Staff's definition of "Transferred call." This definition appears to cover any call where the customer did not affirmatively contact a RES in order to enroll. The Commission declines to add NAE's qualifying language that the call is not a transferred call if the RES does not know the genesis of the call. If the RES is unaware how the individual was connected to the RES, then that individual should be assumed to require the disclosures described in Section 412.130, Telemarketing versus merely those described under Section 412.140, Inbound Enrollment Calls. The AG initially proposed a Section which prohibited utility-transferred calls, but withdrew its recommendation upon Staff's suggestion that "Transferred call" be defined in Section 412.10 and require the disclosures in Section 412.130. These calls are further discussed in Section 412.140 and the Section describing the AG's Proposed New Sections, below.

One of the main goals of the 2014 NOI and this subsequent rulemaking is to clarify a RES's responsibilities in disclosing any variable rates used in its offers. Staff Report at 2-5. The Commission adopts portions of Staff's definition for "variable rate". The Initiating Order states "Staff recommends at a minimum that rules be drafted to define and require additional disclosures for variable-rate offers." Initiating Order at 1. The determination that a variable rate is one where the terms change in the first six months is reasonable. The Commission agrees with Staff that a three month set price should not be considered "fixed," as ICEA suggests. The Commission declines to adopt NAE's proposed definitions for index variable product and non-index variable product as they are too confusing and are both encapsulated in Staff's proposed definition. The Commission agrees with NAE, however that "variable rate" should not be described as "the contract" because that is too limiting. Where "variable rate" is used in Section 412.115, it may only refer to an offer, not a firm contract. The Commission also opposes CUB's proposed definition that if a rate changes at any point during the pendency of the contract, it is variable. The Commission finds CUB's suggestion a too stringent and limiting definition, and may frustrate RESs from entering into longer-term contracts with customers.

ICEA proposes two definitions in lieu of simply "variable rate." ICEA proposes "Variable Index Rate" and "Variable Non-Index Rate." The Commission declines to further define "variable rate." As Staff points out, this Rule is meant to be used by customers, RESs, Staff and others. It is important to keep definitions clear and easily-

understood by persons unfamiliar with the energy market. Further, NAE suggests two definitions which include the phrase “other than for legal, utility, or non-market based changes” which is also confusing. Using “Index” and “Non-index” does not add clarity. Further, “index” is undefined and does not tell individuals where to seek such information. In the Commission’s opinion, ICEA’s and NAE’s suggested definitions only add confusion to a topic already heavily contested.

Staff’s proposed definition for “Written” or “Writing” includes both hard copy and electronic copies, provided the RES and customer have agreed to electronic communications. It appears no party objects to Staff’s proposed definition. The Commission modifies this definition for clarity and simplicity, as the second clause in the definition does not appear to add anything of substance.

VII. SECTION 412.15 COMPLIANCE

A. RESA

In Surreply Comments, RESA recommends that a new section be added. RESA states that if Staff’s proposed revisions are adopted by the Commission, such revisions will require that RESs modify documents and information technology (“IT”) programs, as well as retrain personnel. RESA recommends that RESs be given one year from the date of the Commission’s Order adopting a new Rule in this proceeding to comply. RESA notes that the Commission gave public utilities over 18 months to comply with its amendments to Part 280. RESA Surreply at 11-12.

B. Commission Analysis and Conclusion

No party appears to respond to RESA’s proposed Section 412.15. The Commission includes Section 412.15 as proposed by RESA, but modifies the Section to require implementation in six months, not twelve. The Commission notes that parties discussed many of these issues in workshops related to the NOI over the course of 2014. Additionally, Staff conducted a workshop after this docket was initiated where parties discussed proposals prior to the filing of Comments. RESA notes that it participated in the NOI and that parties also shared informal comments with each other prior to filing formal comments pursuant to the schedule. For the most part, parties knew what Staff and the other parties’ positions were on many of these issues. While the RESs will certainly need to modify their contracts, marketing materials, procedures, protocols, and training, RESs should be able to comply within six months. As the Section states, a RES can ask for an extension should it need additional time to comply.

The Commission disagrees with RESA’s comparison to Part 280. The Part 280 proceeding was an extensive rewrite of a Rule that had not been modified in several years. The rulemaking took place over a period of eight years and required significant work on behalf of the utilities to comply. In fact, the Initiating Order in that case described the rulemaking as an “overhaul.” *Illinois Commerce Comm’n*, Docket No. 06-0703, Initiating Order at 1 (Oct. 31, 2006). In the Part 280 docket, there were workshops for almost four years prior to any testimony. On the contrary, the modifications to Part 412 are not on the same scale: the Commission directed the ALJs to deliver a First Notice Order to the Commission within 180 days of the date of the Initiating Order. Initiating

Order at 2. The Commission finds six months to be an appropriate time period for RES compliance.

VIII. SECTION 412.30 CONSTRUCTION OF THIS PART

A. ICEA

ICEA recommends that all proposed amendments apply only to solicitations and contracts going forward. ICEA Initial at 19. In Reply Comments, ICEA agrees with NAE's argument made in Section 412.110 regarding retroactive application, but asserts that this issue is better addressed in Section 412.30. ICEA Reply at 16.

B. Commission Analysis and Conclusion

The Commission agrees with ICEA's argument that the amendments to Part 412 (and presumably Part 453) should not be applied retroactively. Similarly, NAE proposes in Section 412.110, that the provisions of that section should not be applied retroactively. Although the Commission agrees with this general premise, the Commission declines to adopt ICEA's proposed amendment because the Commission, like Staff, is unaware of any basis for retroactive application of administrative rules. The amendment is unnecessary. Staff Reply at 21.

IX. SECTION 412.100 APPLICATION OF SUBPART B

There are no proposed revisions, but the Commission notes that it should be revised to be consistent with the renumbering of Sections adopted in this Order.

X. SECTION 412.110 MINIMUM CONTRACT TERMS AND CONDITIONS

A. Staff

Staff explains that Section 412.110 prescribes disclosure requirements for sales contracts. Staff's proposal also prescribes that the information is to be presented in the order listed in Staff's proposed subsections (a) through (n). Based on Staff's review of sales contracts and interactions with consumers and suppliers, Staff is of the opinion that customers would benefit, and be better able to make informed decisions, if the required disclosures were made in a prescribed sequence, and with a prescribed degree of prominence. Staff Initial at 14. Accordingly, Staff proposes requiring disclosures to be in 12-point type or larger, with other contract language in 10-point type or larger. Staff further proposes eliminating the two page contract length requirement to allow for the larger font size. Staff Initial at 14.

Staff does not object to ICEA's revision to 412.110(c) which clarifies that the charges apply to the length or term of the contract. Staff Reply at 15.

According to Staff, certain RESs doing business in Illinois sell supply products that provide for a specific rate per kilowatt hour ("kWh"), as well as for an additional fixed fee that does not change with the customer's usage. To address this, Staff proposes to delete the current Subsection 412.110(p) and create two new Subsections 412.110 (d) and (e). Staff states that the requirements are the same, but are codified in two separate parts for clarity. Staff Initial at 15.

Subsection 412.110(d) applies to 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. Under this subsection, the RES must provide an estimated price per kWh for the power and energy service using sample monthly usage levels of 500, 1,000 and 1,500 kWhs.

Subsection 412.110(e) applies, like subsection 412.110(d), 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. Under this subsection, 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. Staff Summary at 3. The proposed revisions, in Staff's opinion, will provide consumers an opportunity to make an "apples-to-apples" comparison with other supplier offers as well as the default utility price. Staff Initial at 15.

Staff disagrees with ICEA's revisions to subsection 412.110(d) because they improperly combine two concepts together again in one subsection and reduce clarity. Similarly, Staff disagrees with NAE's proposed revision to include the words "all supply" because certain offerings which should be within the scope of the rule may include all supply charges and customers would not benefit from the "apples to apples" comparisons that the usage intervals would provide. Staff Reply at 16. Staff also opposes NAE's proposal to completely remove Section 412.110(d), because the contract and the disclosure relate to different steps in the sales process. Staff Reply at 17.

Subsection (f) requires that disclosure be made of any applicable renewal clause. In response to CUB's proposed modification to Section 412.110(f) that would require customers to take affirmative action to renew a contract, Staff is of the opinion that such a requirement would be unlawful. Staff notes that the Illinois Automatic Contract Renewal Act requires certain disclosures in cases where consumer contracts automatically renew. 801 ILCS 601/1 *et seq.*

Subsection (g) requires disclosure of early termination fees. Staff finds ICEA's proposed revision to Section 412.110(g) regarding disclosure of an early termination fee to be unclear because it requires disclosure of a fee which is not set. Staff Reply at 17.

Staff does not oppose ICEA's modification to Section 412.110(h) which changes Staff's wording regarding deposits and prepayment. Staff Reply at 18.

Staff explains that under the current Rules, if a supplier guarantees savings as part of its solicitation, it must disclose the conditions that must exist in order for the savings to occur. In Staff's experience reviewing complaint records and RES responses to those complaints, it is often difficult for consumers to differentiate between savings that are potential and those that are guaranteed. To clarify the issue of what precisely constitutes an offer of savings, Staff proposes to eliminate the word "guarantee" in Subsection 412.110(j) and require that any representation that a customer will realize savings must describe the conditions under which those savings will occur. Staff Initial at 16. Also, Staff proposes an amendment requiring RESs to specify the price to which it is comparing its own prices in any solicitation or product offering that represents that customers will save money. Staff asserts that identification of the price to compare for savings should reduce confusion and misunderstanding in sales solicitations, as well as limit misleading solicitations. Staff Reply at 18.

Initially, Staff proposed that subsection 412.110(k) require 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 or the electric utility, 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. In response to Ameren's proposed revisions to subsection 412.110(k) to retain the current Enrollment Rescission window, Staff agrees that it is not up to the RES to determine the length of Rescission window. Staff does not agree with Ameren's language addressing this and proposes its own modified language. Also, this subsection is modified to strike the requirement to provide toll-free telephone numbers because the telephone numbers will be required elsewhere. Staff Reply at 19.

In subsection 412.110(l), Staff proposes to require a statement disclosing that the RES is an independent seller of power and energy service, and that the agent is not representing or acting on behalf of the electric utility, any 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 such statements) or any consumer group. This proposal retains a requirement of the current 412.110(l). ICEA and ComEd both propose language for subsection 412.110(l), to which Staff proposes further modifications. Staff Reply at 20. These changes are intended to reduce consumer confusion regarding the identity of the entity making the offer. Staff Reply at 30.

Staff proposes modified language for subsection 412.110(m), which will require a statement that the electric utility will continue to respond to any service calls and emergencies and that the customer will receive written notification from the electric utility confirming a switch of the customer's power and energy supplier. Staff explains that this combines the requirements of the current 412.110 (m) and (n).

Staff notes that ICEA proposes to require that a RES state that switching to a RES will not impact the customer's electric reliability. Staff does not object, but states that it does not see how switching would negatively impact reliability and notes that inclusion of this statement will be valuable for the RES. Staff Reply at 21.

For subsection 412.110(n), Staff proposes language requiring that the contract shall include the toll-free telephone numbers for the RES, the electric utility, and the Commission's CSD.

In response to NAE's proposal to add Section 412.110(o), Staff does not object but also thinks it is unnecessary. Staff states that it is unaware of any basis for retroactive application of administrative rules. Staff Reply at 21.

B. ComEd

Subsection (l) of Section 412.110 was not revised by the Proposed Amendments, and therefore continues to require that retail electric supplier contracts include "[a] statement that the RES is an independent seller of power and energy service certified by the Illinois Commerce Commission and that the agent is not representing or acting on behalf of the electric utility, governmental bodies ... or consumer groups." 83 Ill. Admin. Code Part 412.110(l). While ComEd supports the disclosures embodied in this provision, it argues that this provision should be revised and strengthened in conformance with a

parallel provision in Section 412.120. ComEd Initial at 2. In Surreply Comments, ComEd accepts Staff's proposed changes to ComEd's language. ComEd Surreply at 6.

C. AG

The AG disagrees with RESA's proposal to delete the requirement that the disclosures be made in the order required by the Section 412.110. The AG agrees with Staff's reasoning that customers would benefit if contract terms are presented in a consistent manner.

The AG agrees with ComEd's proposal to modify subsection (l) to make it consistent with the parallel provision in Section 412.120. AG Reply at 9.

D. CUB

CUB agrees with Staff that uniform use of 12-point font for the identified minimum contract terms and conditions is beneficial to customers. The value of maintaining the same level of prominence to these important terms and conditions supersedes the ability to accommodate all the contract terms in two pages. Similarly, the sequence of the disclosures should be uniform to allow customers the ability to easily identify key terms of the agreement and to be able to more easily compare offers. CUB Surreply at 6.

CUB does not oppose ICEA's revisions to Section 412.110(c) which clarify that the charges apply to the length or term of the contract.

CUB argues that ICEA's proposed revision to Section 412.110(d), which would exclude charges that do not fluctuate based on volume from the required per kWh price disclosure requirement, is unnecessary and would undermine the very purpose of the requirement. CUB states that the point of requiring a per kWh price disclosure is to allow consumers to compare offers in a consistent form and to understand the impact non per-kWh charges have on the rate customers will pay. CUB supports Staff's proposed language in this section. CUB Surreply at 7.

CUB supports ComEd's proposed revision to Section 412.110(l) to make more explicit the disclaimers that RESs must make to inform customers that they are not affiliated with a utility. CUB Reply at 5. CUB opposes ICEA's proposal to allow RESs to state that they are acting on behalf of a consumer group if the RES is authorized by the consumer group to make the statement. CUB states that the use of the term "consumer group" proposed by ICEA is far too broad and would allow a RES to insinuate that it is endorsed by a regulator or some other entity. CUB Reply at 15.

CUB observes that many RES products convert customers from a fixed rate to a month-to-month variable rate if they do not affirmatively contact the RES to negotiate a new rate. CUB therefore proposes that additional language be included in subsection 412.110(f) regarding contract renewals to require that customers must take affirmative action to renew the contract by the end of the initial contract term, or the customer will be returned to utility supply. CUB Initial at 4-5. CUB, in its Surreply Comments, withdraws its proposal to require a customer's affirmative action to renew a contract. CUB maintains that the standard practice of renewing fixed rate contracts with variable rate contracts, and the unpredictability and risk associated with variable rate contracts, justifies the additional disclosures in Staff's proposed Section 412.170, Rate Notice to Customers, and CUB recommends that section be adopted in its totality. CUB Surreply at 7.

E. ELPC

ELPC supports CUB's proposal regarding contract renewals. In the case of electricity marketed as "renewable" or "green" a renewal clause may allow the RES to change the percentage of renewable electricity. According to ELPC, whether a customer signs up with a RES because they want electricity from renewable energy sources, or because of the price, the RES should not be able to make material changes without the customer's active consent. ELPC recommends that, in the alternative, the Commission should only allow a RES to renew a customer automatically at the same terms and conditions as the current contract, but that under no circumstances should a RES be permitted to require a customer to cancel a contract in writing. ELPC Reply at 10.

F. RESA

RESA recommends that the requirement that "the sales contract shall start with the following information in the order presented in this section" contained in the first paragraph of Section 412.110 of Staff's proposal be deleted. RESA opines that as long as the information required for sales contracts is included and clearly articulated, a RES should be able to put information in the order it sees fit for several reasons. RESA notes that RESs already have contracts that they have submitted to the Commission's CSD and these contracts may already meet the proposed requirements of Staff's Proposed Rules or require very little revision to do so. Therefore, subjecting those contracts to major revisions, simply to put them in the order that Staff desires, is an expensive undertaking, with no benefit to customers. Also, RESA states that many RESs operate in different states and attempt to make their sales contracts as uniform as possible for efficiency purposes. Staff's proposed requirement would defeat this purpose, again without any customer benefit to justify it. RESA Initial at 12. In addition, RESA questions how it is helpful to customers to have the contracts of all RESs consistent. RESA Surreply at 17.

RESA opposes CUB's proposal to eliminate the ability of RESs to offer automatic renewal of contracts to customers. RESA asserts that CUB's proposal violates the Illinois Automatic Contract Renewal Act (801 ILCS 601/1 *et seq.*) and Section 16-119 of the Act. RESA Reply at 14.

G. ICEA

ICEA does not object to RESA's and NAE's recommendation that a RES may put terms in any order rather than in the prescribed order of the statute.

ICEA recommends changes to Staff's proposed subsection (c) and proposes to combine subsections (d) and (e) mostly for clarity. ICEA believes its changes do not alter the basic thrust of those sections, but do make them easier to understand. For subsection 412.110(e), ICEA urges the Commission to remove the rate comparison requirement where supply services are truly fixed. ICEA Reply at 16-17.

ICEA explains that its proposed language in subsection 412.110(g) regarding disclosing the termination fee if it is not set would require the RES to disclose the methodology for calculating the termination fee. ICEA explains that an early termination fee, while capped by statute, may not be static, and may decline over time. Thus, the RES should disclose if the early termination fee will be reduced and how it will be reduced.

ICEA Surreply at 22. ICEA proposes new language in Surreply Comments to address Staff's concerns.

For subsection (j), ICEA proposes to clarify that savings claims are limited to a particular customer on a product. ICEA believes that a particular customer will be interested in his or her own savings, not those of similarly (or differently) situated peers. ICEA further explains that within a single "product" there may be significant customization of offers at the customer level depending on factors including usage patterns, capacity costs, and transmission costs. Thus, ICEA recommends that the customer-specific opportunities for savings be explained. According to ICEA, if Staff's approach of disclosing opportunities for savings of an average customer is adopted, a particular customer outside of the average will either not achieve the expected savings or the RES could make truthful claims about greater savings potential. ICEA Reply at 23.

For subsection (l), ICEA recommends allowing a truthful, authorized statement about RES affiliation with a governmental body's program or consumer group's program. ICEA notes that a "consumer group" could be any organization, affiliation, or trade association that caters to residential or small commercial customers. ICEA proposes parallel language in Sections 412.120, 412.130, 412.150, and 412.160. ICEA Initial at 20. ICEA also does not object to the principle behind ComEd's recommended clarifications to subsection 412.110(l) regarding the RES-utility relationship, but states that ComEd's language should be added only to the extent it is consistent with the language proposed by ICEA. ICEA further states that the Commission should not regulate the ability of an entity (except perhaps a utility) to endorse a particular RES, product or service. ICEA Reply at 17.

ICEA disagrees with CUB's proposal to eliminate the ability of a RES to have an automatic renewal provision in a contract. ICEA asserts that such a change would be beyond the Commission's authority to modify the Illinois Automatic Contract Renewal Act (815 ILCS 601/10), which allows for automatic renewal of a contract provided that certain consumer protections are met. ICEA Reply at 18.

ICEA also recommends reinstating text Staff deletes in subsection (m) regarding reliability, because ICEA believes it is a useful disclosure so that a customer knows to call the electric utility in case of service interruptions. ICEA Initial at 20.

H. Ameren

Ameren is opposed to Staff's proposal in subsection 412.110(k) that would alter the length of the Enrollment Rescission window, because Staff does not fully consider the effect of this provision on Ameren's processes. Ameren believes that having a standardized Enrollment Rescission window contributes to consistent customer service, reduces both employee and customer confusion, minimizes customer complaints, and allows for standard switching rules between RES supply and the utility's default supply options. Further, if Staff's proposal is adopted, Ameren will incur costs associated with EDI enhancements, billing system enhancements, tariff changes and retraining personnel. Therefore, Ameren requests that its proposed amendment to Section 412.110(k) be included in the final Rule. Ameren Initial at 4-5.

I. NAE

NAE disagrees with Staff's proposal that the minimum contract terms and conditions be in 12-point type, and suggests 10-point type. NAE argues that Staff's proposal will add costs and is not necessary. Also, NAE states that the current 10-point font size is common in the energy sector and other industries as well. NAE Initial at 11. NAE opines that some RESs desire to present a "short" contract that is easy for the customer to review and to avoid the negative perceptions that may be associated with a "long" contract. NAE Surreply at 7.

NAE also complains that Staff's proposal to require the minimum contract terms to be included in a specific order will not allow RESs to develop a contract form that can be utilized in multiple jurisdictions. NAE Initial at 12. RESs should be free, in NAE's view, to formulate the precise order and language of their own contracts so long as the required disclosures are included. NAE Surreply at 7.

With respect to Staff's proposal in subsection 412.110(d) to disclose the estimated price per kWh using sample monthly usage levels of 500, 1,000, and 1,500 kWh, NAE points out that this is also included in Staff's new uniform disclosure statement and is not a true term or condition of the contract. Thus, NAE states Staff's proposal is duplicative and adds unnecessary costs.

NAE proposes that if this disclosure is not removed, it should at least be clarified to specify that the disclosure is required for: 1) products where the price is a fixed monthly charge (for supply only) that does not change with usage and 2) products where the price includes a fixed monthly charge that does not change with usage. NAE Initial at 13. In response to Staff's position regarding subsection (d) and the words "all supply and," NAE states that the language is creating an exception to the disclosure requirement for products that include delivery service charges in the fixed monthly charge. NAE's language is intended to clarify that the exception or exclusion from the disclosure requirement is limited to situations where both supply and delivery service charges are included in the fixed monthly charge. Use of the conjunction "and" rather than "or" indicates that both supply and delivery service charges must be present for the exclusion to apply. NAE Surreply at 8.

NAE suggests that Staff's proposed Subsection 412.110(e) should be clarified to distinguish products where the price is a fixed monthly charge for supply only from products where the price includes a fixed monthly charge. NAE Initial at 14.

In response to CUB's proposal to require customers to take affirmative action to renew a contract, NAE argues that it is contrary to the Illinois Automatic Contract Renewal Act, 815 ILCS 601/1 *et seq.*, that it would have a detrimental effect on the competitive marketplace, and that it would undermine customer choice. NAE Reply at 3.

NAE proposes that Staff's Rule be modified to provide that the new contract requirements do not apply to contracts that were entered into prior to the effective date of the new provisions. NAE cites both the Illinois and U.S. Constitutions.

J. Commission Analysis and Conclusion

The Commission agrees with Staff that the information required to be disclosed by this Section of the Rule is vital to the consumer's understanding of the contract. Because

it is so important that consumers see and understand this information, the Commission adopts Staff's requirement that the disclosures be in 12-point type or larger. Staff, in its proposal, also drops the maximum two page length for contracts. It is reasonable to assume that contracts will increase in length with the increased type size for the required disclosures, but the Commission does not agree that there should be no maximum contract size. Indeed, NAE opines that some RESs desire short contracts to avoid negative perceptions associated with long contracts. NAE Surreply at 7. Accordingly, the Commission adopts a maximum contract length of three pages to allow for the larger font size, but also to recognize that long contracts can lead to customer confusion.

The Commission rewrites Staff's language in the opening paragraph. Staff changes the Section to apply to "any" contract rather than "sales" contract. It is not clear why this Section would apply to any contract other than the sales contract; the Commission retains the language "sales contract." Also, pursuant to Section 412.100, Subpart B only applies to residential or small retail commercial customers, so restating this in the first paragraph in Section 412.110 is unnecessary and also confusing because Staff omits the word "retail."

The Commission also adopts Staff's proposal that the disclosures be made in the same order as included in the Rule. As noted by CUB, this allows for customers to compare contracts. CUB Surreply at 6. Although NAE makes a general claim that RESs should be able to write contracts that conform to all laws and regulations, NAE notably does not point to any laws or regulations with which a contract conforming to Staff's proposed Section 412.110 would conflict. NAE Surreply at 7. Most likely, the new Rule will require RESs to rewrite their contracts anyway, so conforming to the required order can be addressed at that time.

Staff proposes to separate the current subsection (p) into two subsections - (d) and (e). The Commission agrees that this is appropriate because subsection (d) concerns disclosing estimated prices at different kWh levels for products with fixed charges and subsection (e) requires a RES to explain whether a fixed charge is for a customer's entire bill. The Commission tends to agree with NAE that, as proposed by Staff, these subsections could use clarification. The intent of subsection (d) appears to be that customers that are being marketed a product for which some, but not all, of the customer's electric bill will be fixed should be informed of what the estimated total bill amount will be at different usage levels. The intent of subsection (e) appears to be that customers that are being a marketed a product for which some, but not all, of the customer's electric bill will be fixed should be informed that the fixed charge does not cover the entire bill for electric service and to inform the customer of which charges are not included in the fixed price. The attached Appendix A has language that attempts to address both parties' apparent concerns.

The Commission adopts ICEA's language as proposed in Surreply Comments regarding subsection 412.110(g) and termination fees that are not set. This language will help consumers to understand any fees they might face and it is adopted.

In ICEA's proposed language for subsection 412.110(j), ICEA attempts to make a distinction between the average customer and the specific product being offered. A close reading of the language proposed by Staff makes clear that if a RES represents that a

customer will save money under any conditions, then that must be explained. It does not anywhere say that this should be a disclosure about an average customer, but rather the customer who is being targeted and will receive the disclosure. Staff's language encompasses any product, program, rate, or circumstance that a RES might try to sell to a customer and claim that savings will be realized. For these reasons, Staff's language is adopted.

Staff's initial proposed amendment to Subsection 412.110(k) would allow a RES to alter the Enrollment Rescission window, but as pointed out by Ameren, this is not something a RES can control. Thus, Ameren proposes language that attempts to allow two separate rescission periods, one for cancelling the contract (which the RES controls) and one for cancelling enrollment with the utility (which the utility controls). The Commission finds that this adds unnecessary complexity. In its Surreply Comments, Staff proposes leaving this subsection as currently written. This is reasonable and adopted by the Commission. The Commission deletes the requirement that the RES and utility phone numbers must be provided because that is already required in uncontested subsection 412.110(n).

The Commission notes that Staff accepts ICEA's proposed language for subsection 412.110(l) which clarifies that sales agents shall not only refrain from stating that they are representing or acting on behalf of a utility, a government agency or a consumer group, but they may also not make references to indicate that they are representing or working on behalf of a "program" associated with those entities. ComEd's language provides further clarification as to the claims that RESs are prohibited from making. ComEd proposes that RESs can also not claim to be employed by any of the entities included in Staff's language. The Commission finds that ICEA's and ComEd's proposals will reduce customer confusion and misleading statements by RESs. The Commission declines to adopt ICEA's further modification to subsection (l), which would allow a RES to claim it was endorsed by a consumer group, as long as it had proper authorization from a consumer group for the claim. This is not adopted because the term "consumer group" is not defined and could lead to possible misrepresentations and consumer confusion. These changes are made consistently throughout the attached Rule to Sections 412.115(b)(13), 412.120(a), 412.130(a), 412.140(a), 412.150(a), and 412.160(a). Also, as addressed above, RESs are prohibited from using a utility logo and from using a utility name in a misleading manner.

CUB has withdrawn its proposal to require customers to take affirmative action to renew a contract. The Commission finds that the requirements for automatic contract renewals contained in Section 412.240(b) adequately protect consumers.

ICEA proposes to reinstate text which Staff deletes in subsection (m) regarding reliability. The Commission agrees with Staff's view that this statement is beneficial to RESs because it reassures customers that their reliability will not be impacted if they switch suppliers. It does not fall into the category of statements that this Section of the Rule seeks to address. In other words, it is not a statement regarding the contract with the RES, but rather about the utility's service. RESs are free, of course, to include it after the required disclosures and even in the same size type, but it will not be required.

The Commission notes that NAE proposes a new subsection (o) to address its concerns that these new requirements not be imposed on existing contracts. NAE Initial at 10-11. Similar to the discussion of Section 412.30 above, the Commission declines to adopt ICEA's proposed amendment because the Commission shares Staff's view that it is unaware of any basis for retroactive application of administrative rules.

XI. SECTION 412.115 UNIFORM DISCLOSURE STATEMENT

A. Staff

Staff proposes a new Section 412.115, the Uniform Disclosure Statement ("UDS"). Pursuant to Section 16-117(h) of the Act:

The Commission may also adopt a uniform disclosure form which alternative retail electric suppliers would be required to complete enabling consumers to compare prices, terms and conditions offered by such suppliers.

220 ILCS 5/16-117(h). The term "uniform disclosure form" is undefined and the content is not prescribed, despite the fact that current sections of Part 412 refer to a required UDS when marketing to residential and small commercial customers. Staff hopes that the new proposed Section 412.115 will add clarity to other Part 412 requirements and enable customers to make informed comparisons between competing offers. Staff Initial at 17.

Staff does not see the value in a UDS if each RES gets to decide the length and content. Staff states "A [UDS] should be a compact summary of the relevant features and disclosures associated with each RES offer." Staff Reply at 22. Staff points out that if the UDS is left up to each RES, there is no difference between than the UDS and the entire contract or minimum contract terms and conditions described in Section 412.110. Staff agrees with ICEA that RESs can describe other offers and product features in as much detail as a RES chooses in either the contract or other documentation. *Id.*

In response to Ethical, Staff states that it appears Ethical complains that the UDS is both too long and too short. Staff states that the UDS should be "a concise, and perhaps obviously *uniform* summary of the rates, terms and conditions of each RES offer." Staff Surreply at 11. Staff recognizes that not every conceivable offer can be fully described in a document that is designed to be short and uniform. However, Staff's proposed UDS briefly encapsulates the rates, terms and conditions of each RES offer but permits a RES to supplement with separate documentation. *Id.* at 12.

Staff proposes that Section 412.115(a) prescribe the format of the UDS, including a one-page limit, and that it be in a minimum of 12 point type. Staff states that a RES would be allowed to include its logo on the UDS but the remainder of the content would be limited to the required items laid out in this Section and proposed Appendix A, the proposed UDS form. Staff Initial at 17.

Subsections (b)(1)-(3) require the RES to disclose its name, address or internet address, and a toll-free number with hours of availability. Proposed subsection (b)(4) requires a supplier to disclose the price in cents/kWh as well as the length of time this price would be in effect. Staff points out that this information is vital to a customer's consideration of any RES offer, and advises the customer of the current price and when/if that price will change. *Id.* at 17-18. Staff's proposed subsection (b)(4) allows for "custom"

offers that vary, as well as offers that are not based on monthly usage, or are tied to an index, i.e. “time of use” offers, where rates change more often than monthly. *Id.* at 18.

Staff’s proposed (b)(5) requires that the supplier disclose whether there is a fixed monthly charge in addition to a usage rate. Staff notes that such offers are becoming more common in the Illinois residential market. Subsection (b)(6) is the total price, which can be easily compared to the utility’s default rate. Subsection (b)(7) requires the length of the contract be stated in months. Subsection (b)(8) provides that a RES must disclose the price after the initial price, whether fixed or variable. This subsection may also refer the customers to their contract. Subsections (b)(9)-(b)(12) require disclosures similar to those required by current Part 412.110. In Surreply, Staff agrees with Ameren that subsection (b)(11) is confusing so Staff deletes the last sentence which allowed a period of over ten days for rescission if the contract allowed. Staff Surreply at 28. Subsection (b)(13) requires the RES to clarify that the contract is a sales solicitation and that the customer would be changing suppliers. Staff’s proposed subsection (b)(14) requires a RES to provide CSD’s toll-free number and the Commission’s website for information on choosing an electric supplier. Staff Initial at 18.

Staff’s proposed subsection (b)(15) requires the RES to include the date of solicitation and an agent ID, if applicable. *Id.* at 18-19. In response to ICEA’s objection to including the date and sales agent identification, Staff states that CSD can more easily work with a RES if there are informal complaints and/or claims of alleged misrepresentation. This is especially helpful if the solicitation did not lead to an enrollment request by the RES. Staff does not object to (b)(15) modified to state:

The UDS shall state the date the customer was solicited when the UDS is used for in-person solicitations.

Id. at 26-27.

In response to RESA’s claim that Staff’s proposed UDS regulates RESs’ commercial free speech, Staff cites *People v. Hollins* for the proposition that statutes are presumed constitutional, and Illinois courts will construe statutes in a manner which preserves this constitutionality, wherever reasonably possible. *Id.* at 23, citing *People v. Hollins*, 2012 IL 112754 ¶13. Moreover, commercial speech is protected to a lesser degree than other speech, and disclosure laws are constitutional. *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976); *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985).

Staff states that NAE’s concerns are unfounded that the UDS provides the same information be required twice in direct mail solicitations. The inclusion of a UDS is only required if the solicitation includes a written LOA. In these solicitations, as well as in-person marketing, there is no TPV. Staff agrees with NAE’s comments related to Sections 412.115(b)(4) and (b)(5). Staff points out that the cents per kWh disclosure required by Section 412.115(b)(6) would be required for products where the entire price is comprised of a fixed monthly charge that does not change with usage. *Id.* at 29.

Staff opposes CUB’s request to modify the UDS to require affirmative customer action to renew a contract at the end of the initial contract term. Staff is of the opinion

that this prohibits a contract provision which the General Assembly has found to be lawful. *Id.* at 27, citing 815 ILCS 610/1, *et seq.*, Illinois Automatic Contract Renewal Act.

Staff opposes the AG's proposed subsection on variable rate price history, due to its desire to maintain a one-page UDS and because Staff proposes that a RES publish its historical variable rates on PlugInIllinois.org, as directed on the Staff's proposed UDS. *Id.* at 27-28.

B. ICEA

ICEA does not generally object to including a UDS with the Part 412 revisions. ICEA makes some clarifying edits but recommends the deletion of the requirement that RES agents date and identify themselves on the UDS provided to customers required in Staff's proposed Sections 412.115(b)(15) and (b)(16). ICEA Initial at 20-21. ICEA states that no evidence has been provided to show a need for this requirement or the consumer benefit. Further, the compliance costs are burdensome. *Id.* at 21.

ICEA is concerned that the one page limit imposed by Staff does not allow for product offerings beyond fixed-priced commodity to be accurately explained. ICEA therefore proposes modifying Part 412.115(c) to allow a RES the option to provide additional pages detailing offers provided the UDS so describes that there are additional pages. *Id.*

ICEA supports RESA's suggestion that RESs should have additional flexibility to add more pertinent information to the UDS as needed. ICEA opposes the AG's proposal to add historic price information to the UDS, and also opposes CUB's recommendation eliminating automatic renewal contracts. ICEA Reply at 18-19.

C. Ethical

Ethical states that it supports consumer protection in its contracts and works with regulators in all jurisdictions to increase transparency and consumer education. Ethical states that as a supplier of 100% renewable energy, it believes that Staff's narrowly designed UDS would not allow it to freely contract with customers because it would need separate disclosures for the renewable energy content. The length of Staff's proposed UDS creates a barrier to competition and customer enrollment. Because Ethical primarily markets using direct mail, which it claims is less intrusive to the residential customer than other methods, the form and font size restrictions of the UDS will force suppliers to use contracts that are multiple pages long and impractical. If suppliers cannot use direct mail, Ethical states they will fall back on other customer acquisition methods. Ethical agrees with Staff that door-to-door marketing presents significantly more consumer protection issues than other channels.

Ethical proposes a Schumer Box in lieu of a UDS and states that as long as the information provided therein includes the requirements outlined in Section 412.115, RESs should be able to add other pertinent information. The Schumer Box is a best practice adopted from the credit card industry and it clearly and easily would describe the terms of the Ethical renewable offers. Ethical states that the Commission should allow suppliers to develop language for the Schumer Box. A mass application of the UDS tailored to suppliers that market on price, rather than energy type, like Ethical, is not satisfactory. Ethical Reply at 18-20.

D. RESA

RESA proposes deleting the last sentence of Section 412.115(a) which limits the length of the UDS to a single page. According to RESA, this is “inappropriate micromanagement of a RES’ operations.” RESA Initial at 12-13. RESA states that as long as the UDS covers the information required by Section 412.110, the RES should be able to add other pertinent information. The RES’s provision of additional information on a UDS is commercial free speech. *Id.* at 13. RESA states in Surreply Comments that its support for this statement is the U.S. Constitution. RESA states that Staff’s argument is that Section 16-117 authorizes a UDS which allows the Commission to violate constitutional rights. Staff’s argument must be rejected, states RESA. RESA points out that the UDS would not include information about whether a product was renewable energy, which RESA states is a relevant feature which should be disclosed. RESA Surreply at 18.

RESA does not agree to add the AG’s proposed additional requirement about previous history of a product with variable rates. RESA Reply at 15. RESA supports Ethical’s proposed Schumer Box concept instead of Staff’s UDS. RESA Surreply at 18.

E. Ameren

Ameren proposes changes to subsection (b)(11). Staff’s proposed title to this subsection is “Rescission” but Ameren recommends the title “Enrollment Rescission” which would mirror the language defined in Section 412.10. Ameren opposes the inclusion of language that extends the enrollment rescission window past 10 calendar days and provides for customer enrollment periods to vary individually based on the contract. Ameren notes that it should not have to incur costs associated with changing its billing systems, EDI transactions, or employee training to be able to handle a variable Enrollment Rescission window. Ameren Initial at 5-6.

Ameren also recommends modifying Section 412.115(b)(12) by titling it “Contract Rescission” versus Staff’s proposed “Cancellation.” Again, this is consistent with the terms defined in Section 412.10 Definitions and would differentiate the process from that described in subsection (b)(11). Similar to the rationale described above, Ameren recommends amending the language to retain the standard ten calendar day utility enrollment rescission period. *Id.* at 8.

In its Surreply Comments, Ameren notes that Staff amended Section 412.115(b)(11) in response to Ameren’s concerns, but did not modify subsection (b)(12) which should be similarly modified. Ameren recommends the deletion of the last sentence in subsection (b)(12) of Staff’s Proposed Rule. Ameren Surreply at 4.

F. ELPC

ELPC supports CUB’s recommendation to subsection (b)(10) that the customer must take affirmative action to renew the contract by the end of the initial term, or the customer will be returned to utility supply. If the Commission does not want to go that far, ELPC urges a change to the Rule to only allow RESs to renew a customer automatically at the same terms and conditions as the current contract. ELPC Reply at 10.

In Surreply, ELPC points out that the Automatic Contract Renewal Act does not bar the Commission from enacting additional restrictions on these types of contracts. In

fact, ELPC states that Section 412.240(b) already regulates automatic renewals beyond what is set out in the Automatic Contract Renewal Act by stating “In addition to complying with the Illinois Automatic Contract Renewal Act, the RES shall...” 83 Ill. Adm. Code 412.240(b). ELPC Surreply at 9.

In response to NAE’s suggestion that retroactive application of contract restrictions would violate the contract clauses of the U.S. and Illinois Constitutions, ELPC states that courts examine whether the law at issue substantially impairs a contractual relationship. ELPC states that customers have no obligation with respect to renewals; they are free to opt out of an automatic contract renewal. Even if there is an impairment, states ELPC, it would be minor because automatic renewal provisions do not deal with the initial contract, they deal with the extension of the contract after it ends. ELPC cites *Home Bldg. & Loan Ass’n v. Blaisdell* for the premise that laws that impair contracts are reasonable if they are “addressed to a legitimate end and the measures taken are reasonable and appropriate to that end.” *Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 438 (1934). Finally, ELPC states that if the Commission declines to adopt CUB’s proposed language for subsection (b)(10), it should require any automatic contract renewals to have terms identical to the original contract. Customers should not be bound by a contract renewal with new or different terms and conditions absent an affirmative action on their part to agree to those terms, and they should never have to respond in writing in order to prevent a contract from automatically renewing. ELPC Surreply at 10-12.

G. CUB

CUB supports Staff’s proposed UDS as “concise, descriptive and includes the most relevant and important terms of service in plain language that are easy to read.” CUB supports the one-page limitation. CUB Initial at 5.

Consistent with CUB’s recommended changes to the Minimum Contract Terms and Conditions, CUB recommends the UDS includes a statement that only upon affirmative action by a customer will a contract renew, by modifying subsection (b)(10). CUB Initial at 5. CUB withdraws this recommended change in Surreply. CUB Surreply at 2.

CUB supports Staff’s proposed subsections (b)(15) and (b)(16) which identify the date of solicitation and agent. CUB states that this would aid in assisting a complaining customer, even if they did not enroll with the RES.

CUB also supports the AG’s proposal to add a twelve-month rate history for all variable rate offers. CUB states that RESA’s objection is that the UDS already contains too many disclosures which troubles CUB because it indicates a lack of interest in ensuring customers receive pertinent information. CUB Surreply at 7.

H. AG

The AG recommends adding a subsection to the end of Section 412.115 which states:

For a variable rate product, the UDS shall state that the current rate per kWh price and a one-year price history, or history for the life of a product, if it has been offered for less than one year, is available on the RES’ website and at a toll-

free number. A RES shall not rename a product in order to avoid disclosure of price history.

The AG states that this proposed subsection addresses the Commission's concerns regarding variable rates by requiring additional disclosures about performance. AG Initial at 6. In response to ICEA, NAE and RESA who oppose this proposed subsection because they claim it would be imperfect, the AG states that a customer could glean valuable information from a "high-level" comparison. AG Surreply at 9.

Staff also opposes this proposed subsection because it would not fit on Staff's one page limit. The AG agrees with Staff that it is important to limit the UDS to one page and understands its insistence that customers be directed to PlugInIllinois.org, but notes that not all consumers have easy Internet access. The AG proposes as a compromise that there be a note directing potential customers to a separate second page which would set forth the historical 12-month average. *Id.* at 8-10.

I. NAE

NAE claims that the UDS requirement for some types of solicitations is redundant and unnecessary. NAE points out that the current Section 412.110 refers to a UDS but no form was adopted when the Rule went into effect in 2012, and that current 412.150 requires direct mail contacts to include the items of the UDS but not the inclusion of a separate UDS. NAE Initial at 6. NAE suggests that proposed Section 412.115(a) be modified to state that the UDS "shall be substantially in the form appended to this Part as Appendix A" instead of a directive requiring Appendix A with no room for modification.

NAE states that it does not object to the content of the disclosures but objects to the needless duplication of information RESs must supply. NAE understands why a UDS would be required for door-to-door solicitations, but it claims that direct mail solicitations already require the Minimum Contract Terms and Conditions to be provided. NAE maintains that the proposed revisions could specify that the requirement to provide a separate UDS shall not apply to a RES that includes that information in its direct mail solicitation. *Id.* at 7. Alternatively, NAE proposes that any UDS requirement for direct mail should match the UDS requirement for telephone marketing. *Id.*

NAE also opposes CUB's automatic contract renewal language in subsection (b)(10), which is the same as what CUB proposed in Section 412.110. NAE states that CUB's language, which requires a customer to take affirmative action to renew a contract by the end of the initial contract term, is contrary to the Illinois Automatic Contract Renewal Act and would have a detrimental effect on the competitive marketplace. NAE states that this requirement would add cost to suppliers but no benefit to customers, who have already affirmatively chosen to receive RES supply. NAE states that CUB's proposal violates the contract clauses of both the U.S. and Illinois Constitutions. NAE Reply at 4.

In Surreply, NAE notes that Staff adopted its revisions to subsection (b)(4) which refine the description of "custom rate." Staff also agreed with NAE's concern regarding time of use rates and proposed alternative language to address that concern, with which NAE agrees. NAE Surreply at 9.

Regarding subsection (b)(6), NAE is concerned that for a product that includes delivery service charges, the disclosure of a per kWh price is misleading and does not provide an apples to apples comparison as “supply only” products would not include delivery service charges. The current Rule excludes fixed bill products that include delivery service charges from such a disclosure in Section 412.110(p). In Surreply, NAE states that subsection (b)(6) should be modified to include a similar exclusion for products including delivery services charges in the fixed monthly amount. NAE also recommends a similar change to subsection (b)(8). *Id.* at 9-10.

NAE opposes the AG and CUB’s recommendations to modify the UDS which expand the content of the UDS to include a one year price history of the variable rate product, or its historical life, if it has not been offered for a year. NAE states that the AG’s proposal (which CUB supports) is not practicable because a RES may frequently change the fixed amount component of its offer based on changing market conditions or other factors. Because of this, there is no comparable history. Additionally, a requirement of such information would make it less likely or impossible to keep the UDS a page or less, as proposed by Staff. NAE Reply at 4.

J. Commission Analysis and Conclusion

At the outset, the Commission points out that Section 16-117(a) states the following:

The restructuring of the electricity industry will create a new electricity market with new marketers and sellers offering new goods and services, many of which the average consumer will not be able to readily evaluate. It is the intent of the General Assembly that (i) electricity consumers be provided with sufficient and reliable information so that they are able to compare and make informed selections of products and services provided in the electricity market; and (ii) mechanisms be provided to enable consumers to protect themselves from marketing practices that are unfair or abusive.

220 ILCS 5/16-117(a). It is with this aim that the General Assembly suggested the Commission and the ORMD adopt a UDS in Section 16-117(h). Subsection (h) in Section 16-117 states that the Commission “may also adopt a *uniform disclosure form* which alternative retail electric suppliers would be required to complete enabling customers to compare prices, terms and conditions offered by such suppliers.” 220 ILCS 5/16-117(h)(emphasis added). The Commission notes that Section 16-117(h) identifies a *form*, not a statement. When interpreting a statute, the primary objective is to determine the legislature’s intent, and the best indication of that intent is the statutory language itself. *Metro Utility Co. v. Ill. Comm. Comm’n*, 262 Ill. App. 3d 266, 274 (1994). Clear and unambiguous terms should be given their plain and ordinary meaning. *West Suburban Bank v. Attorneys Title Insurance Fund*, 326 Ill. App. 3d 502, 507 (2001). “Where statutory provisions are clear and unambiguous, the plain language as written must be given effect, without reading into the language any exceptions, limitations, or conditions that the legislature did not express.” *Local Union Nos. 15, 51, and 72, Int’l Brotherhood of*

Electrical Workers v. Ill. Comm. Comm'n, 331 Ill. App. 3d 607, 614 (5th Dist. 2002), citing *Davis v. Toshiba Machine Co.*, 186 Ill. 2d 181, 184-85 (1999).

Consistent with that law, the Commission examines the plain language of Section 16-117. Dictionary.com defines “form” as “a set order of words, as for use in religious ritual or in a legal document; a document with blank spaces to be filled in with particulars before it is executed; a typical document to be used as a guide in framing others for like cases.” To the Commission, this indicates that the UDS should be a fairly restrictive document, with the contents as described in Proposed Rule 412.115, not arbitrary or determined by each individual RES. Rather, a “set order of words.” The Commission agrees with Staff that limiting the size and content ensures that potential customers are given consistent information by suppliers, and assists the average consumer to “readily evaluate” the market. The Commission also agrees with Staff that the additional information that ICEA, RESA and NAE wish to provide customers can be included elsewhere.

The Commission disagrees with RESA that the UDS frustrates RESs’ protected commercial free speech. The Commission can certainly impose limitations on the commercial speech of an entity it regulates. Commercial speech, although protected under the First Amendment, is subject to state regulation because of the nature of such speech, and regulation of commercial speech is permissible by means of appropriate time, place, and manner restrictions and where such speech is false or misleading or related to unlawful activity. Even when communication constituting commercial speech is not misleading, the state retains some authority to regulate it under the First Amendment. *Desnick v. Dep’t. of Professional Regulation*, 171 Ill.2d 510, 519 (1996). The Commission is not restricting the commercial speech of RESs because they can provide as much additional information as they wish to; they must simply limit the document entitled the “UDS” to the form and format described in Part 412.115. The Commission does not see the value of adopting a Schumer Box-style disclosure, as recommended by Ethical and supported by RESA, when Staff has already proposed a format for Appendix A that is clear, concise, and contains the relevant disclosures needed for a customer to review a sales offer.

The Commission removes the word “substantially” from Staff’s proposed subsection (a), which NAE suggested, for the reasons discussed above. The Commission agrees with Staff that there is no point to a *uniform* disclosure statement if the form is not uniform. Including the word “substantially” gives leeway that is counter to the intent of the form. As discussed, RESs are free to provide as much additional information as they wish to customers. The Commission is of the opinion that the UDS should look as similar as possible across all RESs. ICEA urges the Commission to allow a two-page UDS and does not understand Staff’s resistance to what it describes as “full disclosure.” The Commission again reiterates that the UDS will be standardized and RESs can supplement their UDSs with as much further information as they wish. The Commission endeavors to satisfy all parties with this compromise, which ensures customers ultimately receive the information they need to make an informed decision about electric supply.

The Commission generally adopts subsections (b)(1) through (b)(3) as proposed by Staff. Subsections (b)(1) through (3) provide the name, address and phone number

of the RES. ICEA proposes a modification to (b)(2) which requires both business and internet addresses. The Commission is satisfied that either the business or internet address is acceptable. It is possible, though unlikely, that a RES does not have an internet address, or that the business address is not the same address where the RES would receive mail from customers.

Subsection (b)(4) as proposed by Staff is designed to identify the price in cents per kWh of the offer and the number of months the price stays in effect. This language is adopted. The Commission agrees with Staff that subsections (b)(4), (b)(5) and (b)(6) provide the customer with an offer that can be easily compared to the utility's current price. Staff adopted NAE's recommendations to subsection (b)(4) which further clarify the terms "custom" and "time of use." The Commission agrees such changes better explain the required disclosures related to price.

Subsection (b)(5) as proposed by Staff designates whether the offer includes a fixed monthly charge that does not change based upon the customer's usage. This language is adopted.

Subsection (b)(6) as proposed by Staff describes the total price with other monthly charges. NAE proposes a modification to subsection (b)(6) which includes products where the fixed monthly charge does not include all supply and delivery service charges. The UDS would require the total price in cents per kWh at sample usage levels of 500, 1,000 and 1,500 kWhs. NAE states that this would allow for an apples to apples comparison to most RES offers. The Commission agrees with NAE's proposed modification and it is hereby adopted.

Staff's proposed subsection (b)(7), describing the length of the contract in months, is simple and concise and is hereby adopted.

ICEA proposes minor language changes to subsection (b)(8). NAE proposes a modification similar to subsection (b)(6) which includes fixed bill products that include delivery service charges. For the reasons described in subsection (b)(6), NAE's proposed modification to Staff's subsection (b)(8) is adopted.

The Commission adopts Staff's proposed subsection (b)(9) which describes early termination fees and requires the UDS to disclose the amount of the fee or penalty. The Commission agrees that the subsection should refer to a "fee or penalty" which is consistent with the definition of "early termination fee" in Section 412.10 and further outlined in Section 412.230.

The Commission declines to revise subsection (b)(10) as proposed by CUB and supported by ELPC. Provided the disclosures comply with the relevant sections in this Code Part as well as the Illinois Automatic Contract Renewal Act, the Commission will not further limit RESs' abilities to use automatic contract renewals in their contracts. The Commission declines to adopt ICEA's proposed modifications to this subsection which clarify that the UDS must state whether contract renewal requires affirmative action by the customer. The Commission instead simplifies the language proposed by Staff. A RES must indicate whether the contract renews automatically. The Commission finds that this modification is consistent with the Illinois Automatic Contract Renewal Act, but also protects customers by requiring clear indication on the UDS whether the contract for

the offered product renews automatically. The customer can then refer to the contract for additional information. For these reasons, the Commission need not respond to NAE's claims that prohibiting automatic contract renewals violates the contract clause of the U.S. and Illinois Constitutions.

ICEA suggests adding a sentence that the customer remains responsible for any charge incurred for service. The Commission declines to adopt this proposal as it is unnecessary. The customer is informed that this subsection relates to early termination fees, not service.

The Commission adopts Ameren's proposed edits to subsection (b)(11), with which Staff later agrees. Staff's proposed language in Surreply clearly states that a customer can rescind his or her enrollment within 10 calendar days after the utility has received the order to switch suppliers. This is consistent with Section 412.210. Ameren suggests a modification to subsection (b)(12) similar to subsection (b)(11) which limits cancellation to ten business days and does not allow the contract to extend the period beyond that. Ameren also suggests renaming the section "contract rescission." Ameren notes that it has no objection to a cancellation period that exceeds ten days but it will have difficulty modifying its processes if individual customers are allowed either ten days or whatever the individual RES contract specifies. The Commission declines to rename the subsection as Ameren suggests because the term "cancellation" is more readily understood than "contract rescission." The UDS should include terminology that any layperson can understand, not legal contract terminology. The Commission agrees with Ameren that keeping (b)(11) and (b)(12) the same is easier on the utility for operational purposes. Ameren points out that Staff agreed with this modification but did not include it in Staff's Draft Rule attached to its Surreply Comments. The Commission adopts Ameren's proposed modification to subsection (b)(12).

The Commission modifies subsection (b)(13) to remove "your electric utility" and include "a utility." The Commission agrees with the AG, as discussed in Section 412.120, below, that a RES agent may not state or imply he represents *any* utility, it need not be an electric utility or even the customer's own utility. ICEA proposes several modifications to Staff's subsection (b)(13). The Commission adopts ICEA's proposed changes to subsection (b)(13) which make it consistent with Section 412.110(l). As discussed above, a RES shall not imply it is representing a utility *program*, governmental body or program. The Commission declines to adopt ICEA's modification to the first sentence of subsection (b)(13) which notifies the customer that he or she is changing retail electric supplier. ICEA suggests adding "and/or the product offering under which you currently take your electric supply." The Commission finds this clause needlessly complicates an important statement. It is enough to notify the customer that he or she is changing supplier. The Commission also declines to modify the second sentence which adds the phrase "unless there is an contractual agreement to the contrary" because there is no "agreement" that a RES could make with a utility, governmental body or consumer group which would permit the RES to represent or act on behalf of those entities. If there was a municipal aggregation program in a city or township, for example, the RES would not be required to provide a UDS to customers. Part 470 addresses notice requirements for municipal aggregation customers. 83 Ill. Adm. Code Part 470.

The Commission adopts subsection (b)(14) as proposed by Staff. The UDS must identify CSD's toll-free number and direct customers to PlugInIllinois.org.

The Commission adopts Staff's proposed subsections (b)(15) and (b)(16) in part. The UDS shall include the date the customer is solicited as well as an agent ID. This is useful information regardless of the manner of the type of solicitation; customers may later need to contact the RES and possessing both the date of sale and agent ID may aid the RES in answering general questions, not necessarily just to identify an inappropriate agent or misleading sale. ICEA opposes this addition to the UDS because it is burdensome. The Commission cannot understand how the addition of two easily-identifiable pieces of information are in any way burdensome to a RES. The Commission declines to make Staff's modification to subsections (b)(15) and (b)(16), limiting the requirement to in-person solicitations. There is no reason why a UDS that is sent as the result of a telemarketing or inbound call solicitation or a direct mail solicitation could not benefit from this information. With a telephone solicitation, the customer spoke with a live agent and that identification is useful for future questions, concerns or complaints. For a direct mail solicitation, a UDS could identify the RES agent that created a custom offer. If there was no specific agent, the UDS could simply say "not applicable." And any of these types of solicitation would have a date when the UDS was created for a customer. This information is neither costly nor burdensome and provides important benefits to all parties.

The Commission declines to adopt the AG's proposed additions related to variable rates and product 12-month history. The Commission again notes the importance of limiting the UDS to the format and page restrictions as proposed by Staff. The Commission also agrees with ICEA, NAE and RESA that the AG's proposal, as written would be difficult for RESs to adhere to because of the way prices fluctuate. The Commission also agrees that it makes the most sense to direct consumers to PlugInIllinois.org for a comparison of rate offers across RESs.

Finally, the Commission declines to adopt ICEA's proposed Section 412.115(c). This subsection seeks to allow RESs to add additional pages of descriptions for products and services related to the electric power and energy supplied and reference those pages on the Appendix A form. As stated above, the Commission supports Staff, and does not object to the RESs supplementing the UDS with as much additional information as it wishes. However, the Commission intends for the UDS to be a standard form with the most important disclosures, prices and terms and conditions of a RES offer. The Commission is of the opinion that any more information clouds the purpose of the UDS and takes away from those important features. Therefore, the Commission declines to add ICEA's proposed subsection (c) which would allow RESs to indicate on Appendix A that there are additional pages for the customer to review.

XII. APPENDIX A: UNIFORM DISCLOSURE STATEMENT

A. Staff

Staff proposes a form UDS. The form conforms to proposed Section 412.115(a) requirements for page length and font size, which would reference Appendix A. A RES would be allowed to add its logo, but the remainder of the UDS content would be limited

to the items listed in Staff's proposed Section 412.115 and proposed Appendix A. Staff Initial at 17; Appendix A (filed Nov. 3, 2015).

B. NAE

NAE states that the proposed revisions to Part 412 should make clear that suppliers have some flexibility in the exact wording that is contained in the new UDS. The new Part 280 Rules provide a form of disconnection and indicate that notices "shall be *substantially in the form of Appendix A.*" NAE recommends that Staff's proposed Section 412.115(a) should be revised similarly. NAE Initial at 8.

C. Commission Analysis and Conclusion

For the reasons discussed above under Section 412.115, the Commission agrees with Staff that the UDS should be a consistent form used by all RESs with a distinct and discrete number of required disclosures in the same format. The Commission agrees with Staff that if the length and content is left up to the RESs, there is no difference between the UDS and the contract. The Commission emphasizes that this Rule does not regulate sales scripts, training materials, marketing materials, or even contracts beyond their minimum terms and conditions. RESs are free to use any type of marketing materials they choose in order to solicit customers, provided they comply with the disclosures required in Part 412.110. The Commission only requires the UDS to look the same for each RES. This gives RESs a considerable amount of autonomy, does not stifle competition, and allows the RES to supplement the UDS with as much additional information about its offers and products as it sees fit.

The Commission disagrees with NAE that using "substantially the same" format is sufficient. This is discussed above in Section 412.115(a). A disconnection notice is unlike an enrollment notification. Customers do not likely receive disconnection notices from multiple utilities, whereas they may receive multiple offers from RESs while shopping for supply service. A consistent form will allow customers to easily compare the offers and decide which product best fits their needs. The Commission adopts Staff's proposed Appendix A to Part 412, modifying only the language discussed in Section 412.115(b)(13).

XIII. SECTION 412.120 IN-PERSON SOLICITATION

A. Staff

Staff's proposed revision replaces "door-to-door solicitation" to apply to all situations where a sales agent and customer are in each other's physical presence. Based on Staff's experience dealing with customers and complaints, all such transactions give rise to a similar need for consistent rules and disclosures. By limiting the regulation to strictly door-to-door sales, the regulation does not address how an agent must solicit a customer during other types of in-person sales. Staff has found that instances of misrepresentation of identity as well as deceptive prices and savings have occurred during sales conducted during all in-person interactions. Staff notes that customers who are not at home may be less "on their guard" at a retail facility because they falsely perceive themselves as being more active in the process. Similarly, customers may be more trusting when it comes to solicitations involving "affinity" procedures, where agents market to acquaintances, friends or family. Staff observes that the problems and abuses

associated with in-person sales are not dependent upon location, but rather due to the physical presence of the salesperson and the customer and the fact that such interactions cannot be recorded. Staff Initial at 19-21.

In Reply Comments, Staff states that ICEA, NAE and RESA oppose Staff's proposal to expand Section 412.120 beyond door-to-door sales. Staff states that ICEA's assertion that small commercial customers do not need protections like residential customers should be discounted because the General Assembly took the view that customers should be treated identically. Staff points out that ICEA articulates no legal basis for departing from this. Staff states that NAE does not elaborate why Staff's examples of concerns with in-person sales do not exist or what rules RES agents should follow for sales that are not door-to-door. Staff states that its proposal is sound and adequately addresses any ambiguities or deficiencies in the existing Rule. Staff urges rejection of the proposals by NAE, ICEA and RESA. Staff Reply at 30-31.

Staff notes in Surreply that it is difficult to determine whether a preexisting relationship exists between a customer and a RES agent and what defines that relationship. Staff states that it has received complaints of fraud by a friend or family member. Staff states that opponents of the Section offer no solution, despite the fact that Staff solicited comments regarding how the Rule should address other in-person marketing aside from door-to-door. Staff Surreply at 12-13.

Staff proposes modifications to subsection (a) which prohibits a RES agent from implying that he or she is "employed by, representing, endorsed by or acting on behalf of" an electric utility, governmental body or consumer group *program*. In Staff's view, the work "program" is frequently used and obscures the true nature of the transaction. According to Staff, nothing in the Act, Commission Rules, or Commission Orders specifically refers to retail electric choice as a "program." Rather, there is a competitive retail electric supply market. Staff Initial at 21.

In Reply Comments, Staff recommends adoption of Ameren's proposals to Section 412.120(a) which are typographical. Staff supports ICEA's proposed revisions, as Staff acknowledges the potential for a RES to enter into a contractual agreement with a consumer group. Staff does not support ICEA's proposed last sentence in subsection (a) which would permit a reference to a particular utility. Staff opines that any reference that might suggest a relationship between a utility and RES could be misleading. Staff also states that ICEA's proposed sentence is inconsistent with the remainder of the subsection. Staff Reply at 32-33.

Staff's proposed modifications to subsection (c) state that RES agents who engage in in-person solicitation 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. Under proposed subsection (c)(3), which only applies to door-to-door sales, the RES agent is prohibited from wearing a badge or logo which states or implies that the RES is a utility representative. Staff Initial at 21.

In Reply Comments, Staff supports ICEA's proposed revisions to subsection (c) as long as the deletion is relocated to Section 412.120(c)(3). This subsection relates to RES agents wearing identification on outer garments. Staff supports ComEd's edits to subsection (c)(3), which clarify restrictions on the use of a utility name or logo by a RES

agent. Staff also supports ICEA's revisions to (c)(3) requiring the RES agent to wear identification on an outer garment. Staff Reply at 34.

Staff's proposed revisions to subsection (d) require a RES agent to promptly leave the customer's premises if requested by the customer. Staff Initial at 22. Staff supports ICEA's proposals to Section 412.120(d) to the extent they clarify the circumstances under which a RES agent shall be required to leave a customer's premises. Staff, however, proposes removing the qualifier that the customer be the owner-occupant. Staff also supports ICEA's proposed language, requiring RES agents to terminate sales if they hear either a verbal request to leave by the customer, or two statements of no interest. RESA opposes Staff's proposed Section 412.120(d) on the basis that it is unnecessary if the Section applies only to door-to-door solicitation. Staff states that this requirement is already in existing subsection (d) and Staff's proposed revisions limit the requirement to solicitations that take place at premises owned or occupied by a customer only. Staff objects to RESA's proposed deletion of this subsection. Staff Reply at 34-35.

Staff's proposed subsection (e) requires the RES agent to verbally disclose the new proposed subsections from Section 412.110. Staff Initial at 22. Staff supports Ameren and ICEA's proposed revisions to subsection (e) and proposes a subsection (e) that combines both. The edits fix typographical errors and add a limitation that the agent is only required to verbally disclose the relevant subsections from Section 412.110 provided the sales presentation is not terminated by the customer. Staff Reply at 36-37.

Staff proposes revisions to subsection (f), which eliminate the requirement that the customer initial the UDS. Staff Initial at 22. Staff does not oppose the AG's recommendation that the RES agent leave a business card or material with agent identification but points out that Section 412.120(f) requires a copy of the UDS be left with the customer and proposed Section 412.115 requires RES contact information. Staff does not object to ICEA's proposed revision to Section 412.120(f) which states that a RES agent need not leave a UDS at the conclusion of the visit if the customer refuses it. Staff Reply at 36-38.

Staff proposes modifications to subsection (g) which require a TPV and a LOA for enrollments. Staff supports RESs that have taken the additional step of adding TPV to door-to-door sales in addition to obtaining signed LOAs. In Staff's view, this assists RESs in demonstrating the authenticity of the customer's authorization when there is a dispute. Staff also modifies subsection (g) to remain consistent with the proposed Section 412.110, and Staff proposes requiring a pause and acknowledgment by the customer between each disclosure. This subsection also states that the RES agent must be physically separate from the customer when the TPV occurs and the RES may not contact the customer after the TPV for a period of 24 hours. Staff points out that this eliminates potential coaching by the RES agent, as well as pressure by the agent. Staff's proposed two-step verification process is intended to ensure clear understanding between the RES agent and the customer and help RESs retain customers because fully-informed customers are satisfied with their enrollment choices. Staff's proposals to this subsection are derived from Staff's observations of best practices in the marketplace and prior Commission orders. Staff Initial at 22-24, citing *Citizens Utility Board, et al. v. Illinois Energy Savings Corp.*, Docket No. 08-0175, Order at 50-51 (Apr. 13, 2010).

In Reply Comments, Staff addresses ICEA's and NAE's objections to subsection (g). In response to ICEA's claim that Staff has no authority to require both a LOA and a TPV for in-person sales, Staff states that a RES, by complying with Section 2EE of the CFDBPA, does nothing more than avoid committing an unfair or deceptive act or practice. Nothing in the CFDBPA or the PUA prohibits or restricts the Commission from requiring more than one form of authorization. Staff states that administrative agencies are entitled to deference when enacting regulations, and when interpreting the statutes they enforce. *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶59. Likewise, agencies are authorized to regulate and execute the provisions of the statutes they enforce and to carry out the powers conferred upon them. *Eastman Kodak Co. v. Fair Employment Practices Comm'n*, 86 Ill. 2d 60, 70 (1981). Staff states that it is further worthy of note that remedial statutes, of which the CFDBPA is one, should be broadly construed to effect their remedial purposes, and very specifically to "introduce regulation conducive to the public good, or cure public evils." *Scott v. Assoc. for Childbirth at Home, Intl.*, 88 Ill. 2d 279, 288 (1981). This leads to the conclusion that Section 2EE should be not be read as a limitation, but rather as prescribing minimum protections which can be augmented by rule.

Staff states that though the CFDBPA does not require more than one form of verification, it should not be read as a limitation upon the Commission's authority to require it, if it finds that it is necessary. The Illinois Appellate Court for the Fourth District recently held that the Act's silence on the Commission's authority to require a consumer protection does not limit the Commission's authority to do so. See *Ameren*.

Staff argues that ICEA's assertion that Staff's proposal would require exclusive use of a TPV is inaccurate. Staff's proposal would require both a TPV and a LOA to verify in-person sales and complete an enrollment. Both a TPV and an LOA would satisfy the requirement of Section 2EE so long as the relevant provisions of each method are followed. Staff continues to support the inclusion of a two-step verification because the signing and execution of a document signifies a formal, significant transaction which may have binding legal consequences. Nonetheless, merely obtaining a signature is insufficient to afford the customer an opportunity to remove him or herself from the sales process and affirmatively acknowledge the nature of the transaction outside of the sales agent's presence. A TPV that is conducted outside the presence of the sales agent allows the customer to independently assess the disclosures, to review the terms, and affirm his or her willingness to switch. Staff Reply at 35-39.

NAE argues that Staff's recommendation that a TPV be conducted outside the presence of the RES agent is illogical and compliance is impossible for transactions taking place at kiosks. Staff points out that NAE provides no rationale as to why a RES agent should be present with the customer. Staff reiterates that a RES agent can issue undue influence over the customer, or "coach" the customer to provide "correct" answers. In Staff's view, a TPV outside the RES agent's presence is a best practice. Staff does not object to ICEA's recommendation to add "unless contacted by the customer" to Staff's proposed prohibition that the RES agent refrain from contacting the customer for 24 hours following a TPV. Staff Reply at 40-41.

Staff's proposed subsection (h) prohibits in-person solicitations at premises that declare a prohibition of solicitation. Staff Initial at 25. In Reply Comments, Staff states that ICEA's revisions to subsection (h) which limit the application to door-to-door sales

should be rejected for the same reasons as stated in its Initial Comments. Staff rejects RESA's proposed modifications to subsection (h) because they are too broad and do not specify how consent would be obtained or recorded. Staff states the revisions do not take into account the applicability to door-to-door sales. Staff would consider additional revisions that would require written consent to market from building management or owner. Staff Reply at 41-42.

Staff's proposed subsection (i) requires a RES agent to obtain consent to enter multi-unit buildings and clarifies that consent to enter a multi-unit building from one occupant does not constitute consent to market to other occupants in that building. Staff Initial at 25-26. Staff states that CUB's proposed modifications to subsection (i) may prevent solicitation of lessee customers who may not be averse to solicitation. Further, a RES could pay a landlord to solicit tenants on an exclusive basis; while abusive, this would not violate the Rule as amended by CUB. Staff seeks additional comments on CUB's revisions. Staff does not object to ICEA's revisions which would allow RES agents to set up displays in common-areas of buildings with consent of management or the landlord, provided permission be obtained in writing and provided that approval does not constitute a basis for active soliciting in the building. Staff proposes further revisions to subsection (i) which captures these provisions. Staff opposes ICEA's revisions which limit the Section to door-to-door sales. Staff Reply at 43-44.

Staff's proposed subsection (j) recodifies former subsection (h) and relates to non-English speaking customers. Staff's proposed subsection (k) recodifies the current subsection (i) and states that the RES shall refrain from further marketing at the request of a customer, and shall retain a record of that customer's request for a period of two years. Staff Initial at 25-26. Staff opposes ICEA's revisions to subsection (k) which limit the subsection to only door-to-door sales for the same reasons discussed above. Staff Reply at 44.

In response to CUB's subsection (l) proposal that RESs video and audio record all in-person sales, Staff agrees with CUB that existing laws and regulations are ineffective at eliminating misleading practices. Staff also agrees that the most effective way to evaluate compliance is to evaluate the manner in which the product is described to the customer. Staff seeks additional comments from parties regarding CUB's proposal. *Id.* at 44-45. In Surreply, Staff states that it disagrees with ICEA that video recording would intimidate a potential customer, and ICEA did not provide any support for this statement. Staff notes that legal concerns are satisfied by a customer giving consent to record, similar to the recording of telemarketing and TPVs, and also Section 14-2(a)(2) of the Illinois Criminal Code on Eavesdropping. 720 ILCS 5/14-2(a)(2). While Staff states that CUB's proposal is principled, Staff has concerns about cost and implementation. Staff encourages suppliers to pursue this option but does not propose it as a Rule requirement. Staff Surreply at 13-14.

Staff notes that ICEA's proposed subsections (l) and (m) are limited to door-to-door sales only. Staff acknowledges merit in the proposals but notes that door-to-door sales would require a definition. Staff maintains that Section 412.120 should apply to all in-person sales. Staff welcomes ICEA to supplement proposed 412.120(l)(1) and how it would function in light of 412.120(i); similarly, ICEA should further refine subsection (l)(2). Staff would support ICEA's proposed 412.120(m) but questions what the threshold would

be from prohibiting an individual from marketing for a RES based on the results of a background check. Staff seeks further comment on this from ICEA and the AG. Staff Reply at 45-46.

B. ICEA

ICEA does not oppose expanded requirements for door-to-door sales and proposes modifications to Section 412.120. ICEA, however, opposes Staff's recommendations to expand door-to-door sales to all in-person solicitations. ICEA believes regulating in-person solicitations exceeds the Commission's authority and adds costs to RESs without enhancing the customer experience. ICEA states that it is unclear as to the actual problems that the proposed amendments are meant to address, and unless and until ICEA gets a better understanding of the factual or policy basis, ICEA cannot propose meaningful alternatives. According to ICEA, in-person solicitations that take place in a public space do not require as much protection as door-to-door sales because the consumer is mobile. ICEA Initial at 22.

ICEA questions the Commission's authority to regulate in-person sales. Section 2EE of the CFDBPA allows for three separate and discrete ways in which a customer can demonstrate intent to switch electric suppliers. ICEA cannot find authority for requiring in-person solicitations to confirm a customer's intent to switch using both an LOA and a TPV. ICEA Initial at 23.

ICEA seeks feedback from the parties about their concerns with multi-level marketing, affinity programs or peer-to-peer marketing that caused Staff to propose broadening the door-to-door solicitation Section. ICEA Initial at 27. ICEA does support common-sense regulation of door-to-door sales. For example, ICEA's proposed subsection (d) recommends door-to-door solicitation must terminate with at most two statements: either one affirmative request for the RES agent to terminate the sales pitch or two statements of non-interest.

ICEA states that certain of its proposed door-to-door protections would be difficult to implement for in-person sales, such as its proposed subsection (d) which ICEA believes Staff would apply to RES agents that are licensees or invitees. ICEA states that a customer cannot request a RES agent leave public property, for example. Similarly, if a customer requests to not be marketed to again, in many scenarios the only way to comply with this request is to receive the customer's contact information, and this may not be possible. ICEA does not object to this subsection where it would apply, such as door-to-door sales or telemarketing.

ICEA recommends that RES agents be allowed to set up displays in multi-unit buildings without the consent of all residents. ICEA supports the requirement that TPV be required for door-to-door sales and the requirement that the agent must leave the premises and may not return for a day. ICEA recommends that a customer can request a RES agent return, however, and ICEA opposes this entire requirement for commercial customers. ICEA states that commercial customers are used to professional transactions and are unlikely to feel intimidated during a TPV. ICEA Initial at 28-30.

ICEA states there are practical reasons why RESs cannot comply with the proposed Section 412.120(k). For example, a RES cannot always receive identification

information from an individual who says to a RES agent at a booth “do not market to me.” ICEA also notes that it would be difficult to state the disclosures of proposed Section 412.120(e) in a public space. ICEA states that there could be exceptions to this Rule, where building management has permitted a RES to enter a building and solicit to its tenants. *Id.* 24-26.

ICEA proposes two new subsections (l) and (m) which are intended to apply to door-to-door solicitations only. Subsection (l)(1) states that RES agents shall not cross the threshold of a residential customer’s door, even if invited. Subsection (l)(2) requires a RES to maintain a record of who sold door-to-door and where for the most recent six months. If the Commission requests such lists, the Commission could not disclose the information to any other party. ICEA’s proposed subsection (m) requires each RES agent to complete a background check in each state that the agent has lived in the prior twelve months. ICEA Initial Comments, Attachment A.

In Reply Comments, ICEA notes that an annual compliance workshop would be an appropriate place for Staff to discuss the trends it sees in complaints involving door-to-door sales or other in-person solicitations. ICEA expresses concern that CUB’s suggestion to videotape all sales would be illegal. ICEA states that it would be nonsensical to require recording of in-person sales that are not door-to-door. ICEA Reply at 19-22. ICEA states that video recording would have a negative impact on consumer comfort. ICEA understands that some RESs do require their agents to conduct audio recording of door-to-door solicitations, but the Commission should not require it. Further, video is not a statutorily-acceptable form of verification; only LOA, TPV and inbound enrollment calls are available under Section 2EE of the CFDBPA. ICEA Surreply at 34-35.

ICEA states that the concept of “in-person solicitation” has provided significant difficulty for ICEA and other stakeholders. ICEA states that Staff’s goals in this proposed section of the Rule are ambiguous, and unclear. ICEA urges the Commission to remove the concept of “in-person” solicitations from the Rule and order a thorough but time-limited workshop discussion. The workshop approach would vet the issues but not lead to delay. ICEA suggests that multi-level marketing should be regulated in some way, but this requires a deeper discussion of that concept. ICEA reiterates that RESs cannot control conversations around a dinner table or “friends and family” interactions resulting in gift cards or bill discounts that are drastically different than when referral fees are for income purposes. If the Commission insists upon a definition of in-person solicitation in this docket, ICEA recommends that its previous proposals for revisions to Section 412.120 should be implemented. It is clear to ICEA that the AG and CUB’s concerns are with door-to-door sales practices. ICEA Reply at 25-26.

ICEA states that the concept of “in-person” solicitation is too new to merit inclusion in the Proposed Rule. According to ICEA, neither Staff nor other parties provide examples of bad practices by RES agents in contexts other than door-to-door solicitation, and ICEA does not understand Staff’s goals in crafting Section 412.120. ICEA states the record is incomplete on this topic, because the AG, CUB and Staff allege broad experience with the topic but offer no examples. ICEA is confident that a workshop as opposed to a contested docket with a deadline will allow for an exchange of ideas and a better discussion. ICEA recommends a six-month deadline with a report detailing consensus items and no changes to Section 412.120 at this time. Afterwards, ICEA recommends

the Commission open a rulemaking docket of limited scope to address only this Section, if the report so suggests. *Id.* at 27-29.

If the Commission declines to open a workshop process, ICEA urges the Commission to adopt its proposed definition for “in-person solicitation” and “multi-level marketing.” ICEA proposes these definitions in response to what it believes is Staff’s concern regarding in-person sales which are not door-to-door. ICEA includes kiosks in its proposed definition although individuals can walk away or avoid the sales pitch. ICEA claims the problem with the breadth of Staff’s proposed Section 412.120 and the broad definition of “RES agent” could be read to encompass any conversation about a RES product. ICEA states that its proposed enhancements to this Section are contingent upon application only to door-to-door sales. If the Commission applies this Section to all in-person sales, ICEA opposes any of its proposals be applied, for example its suggestion for subsection (d), unless they are expressly limited to door-to-door and multi-level marketing. ICEA states that it would not object to the inclusion of its proposals in a separate door-to-door only Section, should the Commission create one. *Id.* at 30-31.

C. RESA

RESA states that the current Section 412.120 should not be revised, but other face-to-face solicitations should be covered in a separate section or sections. Some of Staff’s provisions are impractical; for example, subsection 412.120(h) prohibits RES agents from conducting sales where “no solicitations” signage is posted, but this makes no sense in the context of a RES working out of a kiosk in a supermarket. RESA Initial at 13. RESA opposes CUB’s suggestion of video and audio taping each interaction as it would be cost-prohibitive. RESA Reply at 15.

In Surreply, RESA proposes a new Section 412.125 which sets forth appropriate disclosures for in-person solicitations other than door-to-door. RESA’s proposed Section 412.125(a) states that in-person solicitations other than door-to-door consist of permanent store locations operated by a RES; temporary or seasonal kiosks at malls or airports; RES booths/tables at trade shows or community fairs or other venues to which the RES has been invited; pre-scheduled appointments; in-home meetings through “friends and family network marketing”; or other in-person solicitation where the enrolment is conducted in a manner consistent with internet enrollment requirements and the customer’s authorization is manifested by electronic signature. RESA’s proposed subsections (b), (c), (d), (e) and (f) are taken from the existing door-to-door provisions but include some minor modifications. RESA Surreply, Attachment A.

RESA disagrees with Staff’s response to ICEA’s revisions to Section 412.120(a). RESA opposes marketing that attempts to mislead a customer into believing that the RES is or represents a utility. RESA states that using the utility name is appropriate and informative in instances such as “ComEd will continue to provide your delivery service” rather than “your electric utility will continue to provide your delivery service.” RESA Surreply at 8.

D. ComEd

ComEd proposes Section 412.120(c)(3) be revised to be consistent with Sections 412.150(a) and 412.160(b) which clearly forbid using the utility’s name and logo. ComEd

Initial at 2. ComEd supports Staff's revised Section 412.120(a). ComEd also supports Staff's revised subsection (c)(3) that Staff proposed in Reply Comments. ComEd Surreply at 6.

E. Ameren

Ameren proposes that Sections 412.120(a) and (e) be revised to correct typographical errors. Ameren Initial at 8-9.

F. CUB

CUB opines that Staff's proposed modifications to this Section must go further in order to be truly effective. In CUB's experience, in-person, including door-to-door solicitation is the most problematic form of marketing by far, due to the lack of oversight of the interaction. This leads to "he said/she said" situations when attempting to resolve complaints. CUB states that because doorstep sales agents almost always are engaged as independent contractors and paid on commission, the agents are incited to do or say anything to make a sale. The only way to eliminate misleading marketing practices, avers CUB, is to require the recording of in-person sales. CUB Initial at 5-6.

CUB opposes RESA's suggestion to delete the proposed definition of "in-person solicitation." CUB states that RESA's justification that customers go to RESs' places of business is not a common phenomenon and should not be considered. CUB states that the Commission should not consider this possibility when crafting the Rule. CUB Reply at 9.

CUB supports ComEd's modification to subsection (c)(3) which clarifies the restrictions on the use of utility name or logo by the RES agent. CUB also supports ICEA's proposed revisions to Section 412.120(e).

CUB proposes a change to subsection (i) which would require written consent from the building owner to enter multi-unit buildings, which would give the Commission the "hook" it needs to enforce situations where a RES agent promises savings to many residents. CUB Initial at 6-7. CUB withdraws its recommendation to require written consent in its Surreply Comments, but it opposes Staff's additional language describing a RES's ability to set up a booth in the lobby. CUB Surreply at 8.

CUB proposes a new subsection (l) which requires videotape and sound recording during the in-person solicitation from the initial contact through the point where the RES agent must leave the customer's presence for the TPV. CUB Initial at 5-6. This would mimic the proposals to record all telemarketing calls and would act as a significant deterrent to improper behavior. In Surreply Comments, CUB disagrees with ICEA's claim that recording would intimidate customers. CUB states that the RES agent could begin the sales pitch with a statement that the interaction is being recorded for quality purposes, similar to telemarketing. If anything, CUB states, the intimidation is from the RES agent because he or she is not being recorded and can make any kind of claim to make a sale. CUB states that the RESs have not addressed any specifics relating to cost to record sales, but considering the sophisticated technological advancements that RESA discusses, the costs may not be prohibitive. CUB Surreply at 8-9.

G. AG

In Reply, the AG reiterates its support for Staff's proposed revisions to Section 412.120(a) because they clarify that a RES may not attempt to affiliate its products with an electric utility or governmental body by suggesting that it is part of a utility or governmental "program." Staff's revisions to subsection (a) also prohibit the use of identification that states or implies the RES agent is a utility representative, which the AG approves. The AG states that whether or not references to a utility or governmental entity are intended to do so, such indicators are misleading, because they naturally communicate an association with the utility which is an established monopoly. "Exploiting this association for purposes of selling non-regulated, non-utility products and services is inconsistent with other parts of Part 412 that require RES agents to disclose that they are not affiliated with a utility." AG Reply at 10-11. The AG recommends that references to a utility name or logo be clarified to apply to any utility, not just the customer's. The AG recommends removing "the customer's utility" and replacing that phrase with "a utility" in Sections 412.110(l), 412.115(b)(13), 412.120(c) and (c)(3), 412.130(a), 412.150(a) and 412.160(a). In Response to NAE's objection to disallowing utility name and logo, the AG states that Section 16-116 of the Act is silent regarding the marketing practices of utilities competing in the retail supply market outside their service territories. The AG states that the Commission is free to take whatever steps it deems necessary in order to protect customers from confusion. *Id.* The AG cites to *Illinois Power* for the premise that there is an unfair competitive advantage of representing an affiliation with a regulated utility company. *Illinois Power at 261.*

The AG suggests modifying Staff's proposed subsection (f) to require RES agents to leave a business card or other material that lists the agent's name, identification number (if applicable) and title, and the RES name and contact information, including telephone number. AG Initial at 6.

H. NAE

NAE does not support Staff's changes to Section 412.120 because in-person solicitations do not present the same concerns as door-to-door marketing. NAE expresses concern regarding Staff's proposed subsection (c)(3) in that it is vague, ambiguous and overbroad. NAE states that it is not clear whether an affiliated entity that shares all or part of a name with any utility serving the customer would be deemed to imply that the RES agent is a representative of the customer's utility. Similarly, "utility" is not defined and is presumably not limited to the customer's electric utility. NAE states that this language conflicts with Section 450.25(b) which allows an affiliated interest in competition with ARES from using a corporate name or logo or an electric utility or holding company. 83 Ill. Adm. Code 450.25(b). NAE proposes withdrawing subsection (c)(3) or modifying "customer's utility" to "customer's electric utility" and adding a clause consistent with Rule 450.25(b). NAE Initial at 19-22.

NAE states that subsection (g) should not require both an LOA and a TPV, to be consistent with the statutory provision for alternative gas suppliers. NAE also objects to the requirement that there be a pause between the minimum terms and conditions disclosed to obtain clear acknowledgement of each disclosure because it is duplicative of the forthcoming TPV. NAE argues that this conflicts with the CFDBPA. NAE opposes

the requirement that a RES agent be physically apart from the customer during a TPV call because a RES agent may be at a kiosk and cannot abandon his or her workplace if the customer chooses to make a TPV call at the kiosk on his cell phone. NAE also states that the phrase “in a location physically separate from the customer” is not defined and its precise meaning is unclear. NAE proposes qualifying language to subsection (g) that limits the requirement to solicitations that “take place at premises owned or occupied by a customer.” NAE Surreply at 10.

NAE proposes a revision to subsection (k) to emphasize the requirement is limited to current active agents at the time of the request. NAE Initial at 21-22.

In Reply Comments, NAE states that although it does not use door-to-door sales in its marketing, CUB’s proposed video recording requirement would add significant costs and raise questions as to customer privacy. CUB does not propose a provision for an interested customer who does not wish to be recorded. NAE asserts that CUB has not made a showing that the cost of its proposal would justify its alleged benefits, nor has CUB proven that customers with alleged violations in the context of door-to-door sales are unable to pursue them. NAE also opposes CUB’s proposal to require written consent from building owners and states that this would eliminate that sales channel because owners and landlords are not generally present at their multi-unit buildings. NAE Reply at 5.

I. Commission Analysis and Conclusion

In their Initial and Reply Comments, neither RESA, NAE nor ICEA propose requirements for in-person marketing that is not door-to-door. All three parties appear to posit that because an individual is not at his home, he or she is less likely to be misled by deceptive marketing practices. ICEA modifies the existing door-to-door provisions, but appears to opine that no rules should apply to other in-person interactions that are not door-to-door or multi-level marketing. RESA recommends leaving the current Section 412.120 as is because Staff’s proposals are impractical for non-door-to-door sales. RESA recommends a new provision for in-person interactions, but does not propose any language until Surreply Comments. NAE states that in-person requirements do not present the same concerns as door-to-door interactions, and provides no suggestion for regulations governing other face-to-face solicitations.

The Commission disagrees with the positions of ICEA, RESA and NAE and points to the Affidavit of Peter Muntaner, Director of CSD, attached to Staff’s Initial Comments. Mr. Muntaner oversees operations and manages the consumer counselors that provide assistance to consumers in the resolution of informal complaints from consumers with regulated utilities and other entities, such as RESs. In analyzing the communications data that CSD has collected in the last three years, Mr. Muntaner has observed trends of common allegations and problems, many of which are from face-to-face interactions. See Staff Initial Comments, Affidavit of Peter A. Muntaner at 2-11. The Commission also acknowledges both CUB’s and the AG’s experience in dealing with questions, concerns and complaints from customers who have interacted with RESs since Illinois opened its competitive supply market. AG Initial at 2-3; CUB Initial at 1-2, Reply at 3-4.

To begin, the Commission is not persuaded that door-to-door interactions require significantly more protections than other in-person contact, and some of the parties in this

docket seem to imply that non-door-to-door interactions need no protection. ICEA notes that many RESs do marketing through affinity or peer-to-peer contacts where an agent solicits through family, business or social networks. The Commission disagrees that these interactions need fewer protections than stranger interaction; in fact, a customer is much more likely to rely on the statements of a “friend of a friend” than a total stranger, which is all the more reason those interactions should require the same disclosures as those that are door-to-door. For these reasons, the Commission agrees with Staff that Section 412.120 should be renamed “In-person solicitations” and the requirements apply to all face-to-face interactions.

ICEA proposes a definition of “in-person.” ICEA’s proposed definition includes door-to-door sales where the parties are not known to each other and multi-level marketing. ICEA also proposes a definition for multi-level marketing. The Commission declines to adopt ICEA’s proposed definition for “in-person solicitation” or “multi-level marketing” because the Commission declines to limit Section 412.120 to door-to-door sales, multi-level marketing, or stationary kiosks. Rather, “in-person solicitation” should cover all face-to-face interactions. The Commission disagrees that this level of complexity should be added to a Section which can easily be adapted for all in-person solicitations. ICEA also suggests that Staff’s expansion of door-to-door would appear to regulate dinner conversation, because it would now cover friends and family that recommend RES service to other friends and family in order to receive gift cards, bonuses, or discounts on their bills. The Commission disagrees that this sort of conversation would fall under the ambit of Section 412.120 because there is no enrollment. Rather, a potential customer would still need to sign up with a RES online or call the RES directly. Therefore, the sale will actually be regulated by Sections 412.150 and 412.140, respectively. ICEA’s concern regarding the Commission’s authority over these kinds of friends and family interactions is unfounded; the Commission agrees it has none.

On Exceptions, ICEA sought clarification that the initiator of the conversation should not be considered a “RES Agent,” and proposed supplemental language to the definition of RES Agent to exclude such interactions. The Commission understands that while it may be intuitively obvious in certain contexts, market participants would benefit from this additional clarity. As discussed in the analysis of Section 412.10, the Commission adopts ICEA’s definition change as a clarification to the analysis above.

ICEA also urges the Commission to direct the parties to conduct workshops on the topic of in-person solicitations. ICEA states that the parties do not have a clear indication on the impetus behind Staff’s broadening of Section 412.120 to cover all in-person solicitations. ICEA recommends the Commission impose a short workshop period concluding in a Staff Report, and initiating another rulemaking on this topic if it is warranted. The Commission disagrees with ICEA’s proposal. First of all, as stated above, there is sufficient evidence in the record to warrant Staff’s proposed expansion of door-to-door sales. The Commission disagrees with ICEA that Staff’s concerns are new or that Staff lacks examples of bad practices. The Commission also disagrees with ICEA that Staff’s concerns are limited to door-to-door sales or multi-level marketing. Rather, Staff has explained in detail the years of complaint data that it has analyzed which

resulted in its proposal to expand Section 412.120 to all in-person solicitations. The Commission does not want to reopen Part 412 again in a few months, because the Commission is well aware of how long rulemaking proceedings can take, even merely to modify an existing Section. ~~In the Commission's view, the lengthy NOI workshop process in 2014 and 2015, coupled with the discussions Staff and the parties had before formal comments were filed, constitutes enough notice to parties about Staff's concerns.~~

In Surreply, RESA proposes a new Section for in-person solicitations that are not door-to-door. RESA does not include any rationale for its proposed Section 412.125 other than to say it responds to Staff's request to provide language which addresses other face-to-face interactions besides door-to-door. RESA's subsection (a) lists six face-to-face contacts but states "examples included but not limited are." The Commission declines to adopt RESA's proposed Section 412.125. First, the list of interactions is, as RESA admits, not exhaustive. There could be other face-to-face interactions which are not listed and by default, would not be covered by this Section of the Rule or any other. Second, the list includes phrases that are vague or need definitions, which RESA does not provide. One face-to-face interaction RESA lists that would fall under this Section is "pre-scheduled appointments." It is unclear what this definition would encompass; for example, does RESA mean a door-to-door prescheduled meeting? In which case, does Section 412.120 apply or Section 412.125? Other terminology RESA uses that may require definitions are: "community fairs", "friends and family network marketing" and "other in-person solicitation where the enrollment is conducted in a manner consistent with internet enrollment requirements and the customer's authorization is manifested by electronic signature." The Commission does not understand this last type of non-door-to-door face-to-face interaction, nor why Section 412.160, Online Marketing, would not apply. Again, RESA does not put forward any rationale for its proposed Section 412.125.

Finally, RESA proposes several other subsections that look similar to current or proposed Section 412.120, but no reasoning for the differences. For example, RESA proposes subsection (b) which contains part of the current Section 412.120(a) but omits the sentence that "A[] RES agent shall state that he or she represents an independent seller of power and energy service certified by the Illinois Commerce Commission." RESA does not explain why this sentence, currently the first required disclosure in Section 412.120, should not apply to other face-to-face interactions, especially since RESA argues that the current Section 412.120 should not be modified. RESA does not recommend that Section 412.125 require the RES agent to disclose any of the Minimum Contract Terms and Conditions. Again, the Commission believes the terms in Section 412.110 should be disclosed in all marketing transactions. RESA does not explain why it declines to include this protection to consumers who are marketed at an airport kiosk, for example. For all of these reasons, and those described above, the Commission declines to adopt RESA's proposed Section 412.125 and reiterates its support for Staff's proposed Section 412.120 which covers all in-person interactions.

The Commission modifies subsection (a) to make it consistent with Section 412.110. The Commission agrees with Staff that RESs should not be able to market under the guise of a "program." The Commission also eliminates the "electric" utility qualifier. As discussed in Section 412.110, any statements that imply the RES agent is soliciting on behalf of *any* utility can be misleading to the customer. This rationale is

discussed at length, above, in Section V. The Commission also adopts Ameren's proposed edits, supported by Staff, which are typographical.

The Commission adds Staff's proposed subsection (j) (former subsection (h)) to the end of current subsection (b), because the subsections that address non-English speakers should be combined.

The Commission modifies Staff's proposed subsection (c) to state that a RES agent's identification shall be visible on an outer garment. The Commission modifies subsection (c)(1)(3) to prohibit the use of all utility names or logos, not simply the customer's utility. The Commission declines to add the second sentence as proposed by Staff and supported by ComEd, CUB and the AG. In the Commission's view, this is duplicative. The Commission does not understand how RES agents would comply with a provision that the identification "clearly disclose that the sales agent is *not* representing" the utility. Rather, the provision that requires the trade name and logo of the RES on all agent identification and the prohibition against the agent's badge stating or implying that the agent is a representative of a utility is sufficient. The Commission is of the opinion that this subsection now contains much clearer directives.

The Commission declines to modify subsection (d). Staff proposes qualifying language that specifies that the RES agent must leave if a solicitation takes place at premises owned or occupied by a customer. ICEA proposes the "two nos and go" rule, to require the agent to leave the premises at the earlier of the customer's first affirmative verbal request for the agent to leave or the second affirmative verbal statement of no interest by the customer, owner, or occupant. Staff adopts this language in its Draft Rule proposed in Surreply. ICEA states that its proposed subsection (d) should only be used if it is expressly limited to door-to-door sales. The Commission disagrees to modify subsection (d) to be limited to door-to-door sales. If a friend or neighbor is a RES agent and is soliciting his social network, these requirements should still apply. There is no reason that a RES agent should not honor a request to leave during any in-person solicitation. The Commission declines to adopt ICEA's proposal because it understands the subjective nature of solicitation. In some instances, one "no" should be enough indication that a customer is not interested, and in others, customers may indicate disinterest a few times but still discuss products with a RES agent. The Commission does not want to regulate that level of marketing for RES agents. The RES agent should in these cases be able to use his or her own judgment to determine whether a customer is interested. The Commission merely retains the language in current Section 412.120(d) that the RES agent must leave the premises at the customer's, owner's or occupant's request. The Commission also declines to add the qualifier "promptly" to the subsection because that term is subjective. The subsection is clear as written and appropriately refers to all types of in-person solicitations.

Subsection (e) is adopted by the Commission as modified by Staff. The RES agent shall ensure that the disclosures required by Section 412.110 are relayed to the customer, unless the sales presentation is terminated by the customer. The Commission does not believe that the termination must be pursuant to subsection (d). The sales pitch could be terminated for any reason; the customer could tell the RES agent to come back another time, for example.

Subsection (f) requires the UDS to be left with the customer. The Commission agrees with the modifications proposed by Staff and ICEA. ICEA proposes a qualifier that the UDS need not be left if the customer refuses it. The Commission also agrees that the UDS could be given to the customer electronically, if he or she requests. These modifications improve the clarity of subsection (f). The Commission also makes some additional minor edits which refer to the UDS Section of the Rule (Part 412.115) and Appendix A to the Rule.

The Commission declines to add the AG's proposal to subsection (f) requiring a RES agent to offer a business card to customers. Because the Commission now requires all RES agents to wear identification, regardless of whether the solicitation is door-to-door or another face-to-face interaction, the Commission will not require RESs to produce this additional documentation. Of course, if requested, the RES agent should provide that information to the customer. Additionally, Sections 412.110 and 412.115 now include that information.

Subsection (g) consists of Staff's new requirement that in-person solicitations require both an LOA and a TPV. The Commission disagrees with NAE, RESA and ICEA that the requirement of an LOA and a TPV is outside the Commission's authority and conflicts with the CFDBPA. The Commission agrees with Staff that nothing in Section 2EE of the CFDBPA or the PUA prohibits or restricts the Commission from requiring more than one form of authorization. The CFDBPA states:

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

815 ILCS 505/2EE. The CFDBPA outlines the requirements for verification through LOA, TPV and for inbound enrollment calls. The Commission also agrees with Staff that the CFDBPA "need not be held to a strict standard of definiteness." *Scott v. Assoc. for Childbirth at Home, Inter.*, 88 Ill. App. 279, 288 (1981). The CFDBPA:

is a regulatory and remedial enactment intended to curb a variety of fraudulent abuses and to provide a remedy to individuals injured by them. Its stated purpose, set forth in its preamble, is to protect Illinois consumers, borrowers, and businessmen against fraud, unfair methods of competition, and other unfair and deceptive business practices. The [CFDBPA] is clearly within the class of remedial statutes which are designed to grant remedies for the protection of rights, introduce regulation conducive to the public good, or cure public evils.

Id. Further, there is “a belief that the Illinois legislature intended [the CFDBPA] to be liberally construed so as to effect the broad protective spirit of the [CFDBPA].” *Amer. Buyers Club v. Mt. Vernon*, 46 Ill.App.3d 252, 257 (5th Dist. 1977). It is the Commission’s opinion that while the CFDBPA states that solicitations for power and energy supply must comply with one of three options listed, the Commission is within its authority to further impose regulations to protect consumers against fraud and deceptive business practices. As stated above, requiring both a LOA and a TPV for in-person solicitations ensures that the RES agent has obtained “the subscriber’s *express agreement to accept the offer.*” 815 ILCS 505/2EE (emphasis added).

The Commission also disagrees with NAE that a TPV requirement is duplicative. The Commission agrees with Staff that a TPV is the best way to ensure that a customer who enrolls understands exactly what they are enrolling in, and the important terms of the contract. The Commission disagrees that hearing the disclosures in Section 412.110 twice, once pursuant to subsection (e) and once pursuant to subsection (g) is duplicative and will anger or be offensive to customers, as stated by NAE. Customers understand that the TPV process is increasingly common for transactions. The TPV process assists both the RES and customer. For the customer, he or she is again read the Minimum Contract Terms and Conditions and is required to acknowledge understanding of each. For the RES, it is assured that the customer likely fully understands the contract and will remain a customer. ICEA and NAE’s concerns about the duplicative nature of subsections (e) and (g) are unfounded. The disclosures required by Section 412.110 are several, and some are complicated. It is extremely useful for a potential customer to hear them twice: once from the sales agent who can answer any questions from the consumer, and once from a disinterested third party, which confirms the customer’s understanding of what he or she purchased. A truly interested customer will not object to this increasingly common practice of TPV and will appreciate hearing the information twice.

The Commission disagrees with ICEA that the TPV requirement should not apply to small commercial customers because they are generally less “intimidated” than residential customers. The types of small commercial customers can vary widely, the only factor being that they consume less than 15,000 kWh in a calendar year; this does not mean they are any more knowledgeable about the sale of power and energy than a residential customer. Because Section 412.110 applies to both residential and small commercial customers, the Commission declines to limit subsection (g) to residential customers only.

The Commission disagrees with NAE that RESs that sell at kiosks or booths cannot obey the requirement in subsection (g) that the TPV occur in a location “physically separate from the customer” because they cannot abandon their booths. The Commission agrees with Staff that the TPV should be conducted out of earshot from the RES agent, regardless of whether it takes place at an airport kiosk, at a doorstep, or at a friend’s home. In those likely rare situations, the RES agent can tell the customer to make the TPV call privately. The Commission agrees with NAE, however, that “in a location physically separate from the customer” may be vague. Therefore, the Commission revises this subsection to apply regardless of where the in-person solicitation takes place. The Commission does not require the RES agent to be in a space “physically separate” from the customer, just that they not hear the customer while the TPV is being conducted.

The Commission also includes a qualifier to the end of the sentence which allows “the RES” to interact with the customer within 24 hours if the customer contacts that RES. This is a change from “RES agent.” The Commission acknowledges there may be instances where a customer contacts the RES at its toll-free hotline hours after it completes the TPV to ask a question, for example, which should be permitted. However, the modification also ensures that a different RES agent is not able to approach a customer within 24 hours of the TPV.

The Commission adopts Staff’s proposed subsection (h). RES agents shall not be permitted to market at locations where “no soliciting” signs and the like are posted. This should apply whether the RES agent knows the customer or does not. ICEA’s proposed limitation to this subsection restricts it to door-to-door sales, where the parties do not know each other. The Commission does not believe the relationship between the RES agent and the customer is relevant; if a “No Soliciting” sign is posted, the RES agent shall not approach the premises. RESA’s concern that this provision does not make sense in the case of kiosks is unwarranted. In that situation, this subsection would simply not apply. If a RES agent is specifically invited to a premises with such a sign or placard, then this provision would also not apply. The Commission modifies subsection (h) for clarity, removing Staff’s proposed last clause which seems duplicative.

The Commission rejects ICEA’s proposal to amend subsection (i) to allow RESs to put up displays in multi-unit buildings. This results in overregulation exactly of the kind with which ICEA appears to express concern. The Commission sees no reason why a RES could not put up displays in a building lobby with the consent of management, and a subsection permitting such practice is unnecessary. ICEA misses the impetus behind Staff’s proposed subsection (i), and the Commission notes that there is considerable difference between posted marketing materials or displays and knocking door-to-door in an apartment complex when those residents did not admit the salesperson. Consistent with this determination, the Commission declines to modify the Rule to allow building management to consent to a RES marketing door-to-door. The Commission doubts there are frequent occurrences of building management approving such a practice, but will not seek to regulate those actions.

The Commission moves Staff’s proposed subsection (j) to the end of subsection (b), as discussed above. The two subsections which address requirements for customers who do not speak English should be together. The Commission also notes Mr. Muntaner’s Affidavit which expresses that Staff has identified solicitation abuses among non-English speaking populations. Muntaner Aff. at 6. It is essential that customers that do not speak or understand English receive not only the sales pitch but all materials in their native language.

Staff’s proposed subsection (k) is now subsection (j) due to the modification just described. The Commission revises subsection (k) to be consistent with 412.130(g) in its entirety. It is reasonable for the RES to refrain from marketing to a customer if he or she so requests. The Commission disagrees with ICEA that this subsection should be limited to door-to-door sales only. Again, any potential customer should be able to tell a RES agent that he or she is not interested in receiving future solicitations, regardless of whether the interaction is door-to-door or otherwise. RESA’s concern that the proposed subsection cannot work for kiosks is unwarranted. It is unlikely that a person marketed

to at a kiosk would stay to listen to a sales pitch, then ask to be put on a do-not-market list. It is much more likely that the individual would simply walk away. The Commission also declines to add “current” to RES agents as suggested by NAE. The Commission notes that it is unlikely that RESs would feel obligated to give information about customers who are not interested in future solicitations from the RES to its former agents. The Commission also notes that the definition of “RES agent” is in the present tense, indicating that a RES agent is a current agent of the RES.

For similar reasons, the Commission does not adopt ICEA’s proposed subsection (l). These suggestions are reasonable and make sense, but again appear to be micromanagement of RESs’ operating protocols or unnecessary control over RESs’ own agents. Subsection (l)(2) as proposed by ICEA is overly complicated and as stated above, Staff’s proposed subsection (k) is more concise.

The Commission declines to adopt CUB’s proposal (subsection (l)) to require video and audio recording of all in-person sales. Despite the fact that it appears some RESs already use this practice, the Commission notes that this may be costly for RESs and is of the opinion that its modifications to subsection (g), which now requires a LOA and a TPV, will be sufficient consumer protections. The Commission agrees with Staff that ICEA’s concerns about the legality of videotaping and customer privacy are unfounded. Consumers are already consenting to be recorded on almost all telemarketing, not simply in this industry, and the TPV process also requires customer consent to record. There are likely few sales a RES would lose due to a customer’s unwillingness to be recorded. The Commission notes that Staff encourages RESs that do not already use recording for in-person sales, specifically door-to-door, to pursue this practice, and the Commission agrees.

Finally, the Commission also declines to adopt ICEA’s proposed subsection (m). Subsection (m) does not explain how the RESs should use the results of background checks on agents. While background checks may be good business practice, the Commission will not mandate the hiring practices of RESs or qualifications of the agents a RES hires.

XIV. SECTION 412.130 TELEMARKETING

A. Staff

Staff asserts that its proposed revisions to Section 412.130 provide for more consistent oversight of this marketing channel. Staff Summary at 6.

Staff states that its proposed revisions to subsection (c) simplify the language of the existing rule and update cross-references. The AG seeks to add a requirement to subsection (c) that would compel a telemarketing agent to disclose any topic included in the RES’s UDS which is not a specific item in the proposed Section 412.110(a) and 412.110(c)-(m) disclosures. Staff agrees with the AG’s assertion that if a RES believes a matter is important enough to include it in its written UDS, then that matter should also be disclosed in forms of marketing that involve verbal descriptions instead of printed ones. ICEA suggests that Section 412.130(c) be modified so that a RES agent is not required to continue with the disclosures if the customer terminates the conversation. Staff agrees this change is logical and supports its adoption. Staff Reply at 47.

Staff notes that, in reference to the Commission's Order in Docket No. 14-0701, RESA proposes that the rule allow for flexibility regarding the presentation to telephonic customers of the authorization language for this topic. Staff points out that RESA does not offer any language to amend the proposed rule. Staff recognizes that it may be possible to use shorter verbal disclosures, but in the absence of concrete language, Staff cannot endorse RESA's proposal. Staff Reply at 46.

In subsection 412.130(d), Staff's proposed revisions require that the full sales call be recorded for compliance purposes. Currently, only the TPV must be recorded. In addition, Staff's proposed rule would mandate that the sales recordings which lead to enrollments must be retained for a minimum of two years or the full period of the RES's relationship with the customer, whichever is longer. Staff proposes that sales call recordings which do not result in an enrollment must be retained for six months. In addition, the revisions would require RESs to develop plans to review and monitor calls for compliance, and it would allow Staff to request copies of both the recordings and the review materials. Staff proposes revision to subsection (d) because, in Staff's experience, RESs that require their own staff and vendors to make and retain recordings of sales calls are the ones which maintain the most effective oversight for quality control and compliance purposes of their telemarketing operations. Staff Initial at 27-28.

In response to NAE's and ICEA's complaints regarding Staff's proposed Section 412.130(d), Staff argues that retaining records for the life of the customer/RES relationship is important because of disputes that arise over renewal terms, particularly where a customer becomes subject to variable-rate service after expiration of an initial fixed-rate term. Where consumers complain that they were not provided an adequate description of this contract condition by telemarketing agents, retention of recordings will materially aid resolution of that dispute. In response to RESA's proposal to adopt a fixed one year retention period, Staff points out that this is not consistent with the two-year limitation for filing complaints under Section 9-252 of the Act. 220 ILCS 5/9-252. Staff states that RESA's concerns about designing an effective system to accomplish the requirement that recordings be saved for the longer of two years or the length of the customer/RES relationship are not persuasive, without further detail regarding the purported difficulties. Lastly, RESA's concern that it might be required to retain statisticians to determine statistical significance seems overblown. RESA Initial at 15.

With regard to ICEA's assertion that retaining failed calls will be overly burdensome, Staff notes that consumer complaints alleging fraud and misrepresentation by telemarketers are not made exclusively by those consumers who enroll. This retention requirement affords RESs and the Commission a useful resource to resolve disputes and enables RESs to more effectively monitor sales procedures, as does the requirement that RESs conduct periodic reviews of sample recordings. Staff Reply at 48.

Staff notes that NAE accepts Staff's proposal that RESs provide recordings to Staff upon request, but NAE opposes provisions which authorize Staff to request written confirmation that compliance reviews have occurred. NAE Initial at 27. Staff argues that it is not enough to simply require the reviews, but that a means to check compliance must also be in place. Staff Reply at 48.

Staff's proposed revisions to subsection (e) recodify the TPV requirement and update cross-references. Staff states that it has reviewed many verification recordings where the disclosures are recited in a cursory and hasty manner and do not afford customers an opportunity to comprehend the disclosures and to ensure that they are consistent with the representation made to them during the sale. Therefore, Staff's proposed revision would require a sufficient pause between each individual disclosure so that the customer acknowledges each one separately. Staff Initial at 28.

Staff opines that revisions to subsection (g) are appropriate because, although the current rule requires that a RES halt further marketing when a customer requests that this be done, the rule does not make clear how this is accomplished, nor is it clear how long the RES must comply with this request. Staff's proposed revision would create a requirement that records be retained for two years after such a request, and would further require that the RES notify all of its marketing agents of the request. Staff Initial at 28. CUB seeks to increase the retention period under Section 412.130(g) to ten years, but Staff notes that this is a substantial change that is unexplained. Staff Reply at 50.

Staff supports Ameren's proposal to alter the occurrences of "an RES" to read "a RES" in Section 412.130 and recommends that it be made wherever necessary throughout the rule. Staff Reply at 46.

Staff states that the AG's recommendation regarding prohibiting telemarketing from 9 P.M. to 9 A.M. daily may not be entirely warranted. Staff Reply at 50.

B. RESA

For subsection (c), RESA recommends that RES agents be allowed to explain the authorization in a manner that covers the key elements without being strictly bound to reciting the disclosure language. Citing *Illinois Commerce Comm'n*, Docket No. 14-0701, Order at Appendix A (Apr. 1, 2015). Reading the lengthy authorization language verbatim would be inconvenient to customers, RESA states, especially when combined with the disclosures required under Section 412.110. RESA Initial at 15.

RESA opines that Staff's subsection 412.130(d) has unreasonable retention requirements, because there are costs associated with retaining sales recordings and Staff has provided no explanation as to why such increased costs are justified. RESA notes that it is the nature of sales that there often are many unsuccessful calls, thus a six month retention obligation could apply to a massive volume of calls. This imposes a heavy burden without any corresponding benefit to customers. RESA Initial at 14.

For successful sales calls, RESA states that RESs require some finite definition of the retention requirement in order to build a record retention and data storage policy. Under typical data retention policies, electronic records are stored in bulk based on the date of creation of the record. For example, all records would be held for two years or three years after creation with older records deleted on a rolling basis. Thus, RESA recommends that the retention period for successful sales calls be limited to one year. RESA Initial at 14. RESA points out that Staff's proposal under subsection 412.130(d) will require RESs to retain the original sales call, even through numerous contract renewals. RESA Surreply at 20.

RESA does not oppose the proposal to prohibit telemarketing between the hours of 9 P.M. to 9 A.M. central, but asserts that the remaining proposals of the AG and CUB should be rejected. RESA Reply at 15.

In response to Staff's request for suppliers to comment on the cost and feasibility of CUB's proposal to increase the retention period in subsection 412.130(g) to ten years, RESA says that costs will vary. RESA argues that the more important point is that CUB's proposal is arbitrary and unsupported. RESA Surreply at 20.

C. ICEA

ICEA recommends rejecting the AG's proposal that RESs must disclose in a telemarketing call any information that is included in the UDS, but not in Part 412.110 subsection (a) and (c)-(m). ICEA points out that the AG did not identify any missing information or disclosures.

ICEA claims that preserving recordings of all unsuccessful outbound marketing calls would require a massive amount of storage at significant cost and recommends changes to Staff's subsection 412.130(d). It is unclear what purpose keeping these calls is intended to achieve. ICEA Initial at 30. ICEA understands and appreciates Staff's role in assessing and reviewing ongoing compliance, but states that Staff's goal could be obtained by reviewing calls where an enrollment does occur. ICEA Surreply at 40-41.

Even for successful calls, ICEA recommends allowing RESs the option to destroy call recordings of long-term customers after the contract addressed by the recorded call expires. This would prevent RESs from being required to retain calls from longstanding customers whose initial enrollment is far outside of any Commission statute of limitations. ICEA Initial at 30-31. Because the actual contract governs the RES-customer relationship, ongoing recordkeeping requirements should only apply, at most, to the contract then in effect. ICEA Surreply at 40.

ICEA notes that the proposed new subsection 412.130(e) restricts the available methods for the RES to demonstrate a customer's intent to switch suppliers. ICEA states that Section 2EE of the CFDBPA allows for three separate and discrete ways for a customer to demonstrate an intent to switch electric suppliers. 815 ILCS 505/2EE. According to ICEA, Section 2EE does not provide the authority for the Commission to restrict or condition the availability of these three options in any particular scenario. As a result, ICEA recommends that this provision be modified to remove the restrictions on how a RES may confirm a customer's intent to switch suppliers. ICEA Initial at 30.

ICEA urges the Commission to reject CUB's proposed ten year requirement for the do-not-market list. ICEA Reply at 22-23. ICEA points out the difference between keeping a record of the request and maintaining the do-not-market list. The contact list itself will need periodic maintenance to account for changing contact information (for instance, do-not-contact requests from a particular address or land line are no longer applicable when the former resident leaves), but it is not destroyed every two years. In contrast, the requests for removal, whether audio recordings, electronic documents, or paper documents, need not be retained past two years, and certainly not for ten. ICEA asserts that no party has provided evidence that the record of the request has special significance that suggests it should be maintained for so long. ICEA Surreply at 40.

ICEA notes that the AG also recommends a restriction on call times for telemarketing. ICEA asserts that any rule that is intended to restrict telephone solicitations would have to be consistent with Illinois and federal statutes and rules. ICEA Reply at 24.

D. Ameren

Ameren proposes amending subsections (a) & (c), by replacing “an” with “a” for references to a RES. Ameren Initial at 9-10.

E. CUB

CUB agrees with the AG’s proposal for subsection 412.130(c) that the disclosures in the UDS should also be required for telemarketing calls. CUB Reply at 17.

CUB views Staff’s proposed subsection 412.130(d), which requires the recording of telemarketing solicitations, as a necessary addition to Part 412 because it is the only effective way to combat potential misinformation and fraud. CUB Initial at 7. CUB supports Staff’s requirement to retain records of successful sales calls for a period of two years or the length of the relationship with the customer, whichever is longer. In support, CUB provides the example of a customer that signs up for a three year fixed rate that switches to a variable rate. CUB argues that what the customer is told during the sales call about the rate that will be in place after the initial term could be very relevant to determining whether the notification provisions in the rules have been violated, but will not be discovered until years after the sales call. CUB Reply at 9.

With respect to recording failed marketing calls, CUB asserts that misleading solicitations are in violation of the Act and the Commission’s Rules. Whether or not the customer is induced to sign up, misleading solicitations harm the market and do nothing to aid in the effective education of Illinois consumers regarding the competitive market. CUB Surreply at 9. For those calls that do not result in a sale, CUB argues that it is necessary to retain the records for purposes of Staff’s ability to track and enforce the rules and laws governing the sales pitch. CUB Reply at 15. CUB agrees with the AG’s recommendation to make the retention requirements of telemarketing calls consistent with that of inbound enrollment calls. CUB Reply at 17.

CUB disagrees with ICEA’s proposed changes to subsection 412.130(e), which eliminate Staff’s proposed TPV requirement. According to CUB, requiring a TPV should be an industry best practice and if a RES is not willing or able to facilitate this process, they should not be marketing in Illinois. CUB Reply at 14.

In proposed subsection (g), CUB proposes that Staff’s requirement to maintain records of customers’ do not market requests be extended to ten years. CUB Initial at 8. CUB states that consumers reasonably assume that if they ask to be placed on a do-not-market list, then that request has no expiration. For that reason, CUB maintains that ten years is a conservative requirement. CUB Surreply at 9.

CUB also supports the AG’s proposal to include a provision that imposes a reasonable time limit on telemarketing, restricting calls to 9:00 A.M. to 9:00 P.M. CUB Initial at 8.

F. AG

The AG asserts that Staff's proposed subsection 412.130(c) should be modified to require telemarketers to include any information required in the Section 412.115 UDS that is not included in the disclosures required by subsections (a) and (c) through (m) of Section 412.110. The AG argues that persons solicited by telemarketers should not be denied information that is required to be made available to other persons who are solicited by other means.

For subsection 412.130(d), the AG opines that RESs that have record retention policies are better able to establish that they have complied with existing Part 412 requirements. Thus, the AG argues that this should be required of all RESs, as proposed by Staff. AG Reply at 12-13.

In addition, the AG proposes that Section 412.130 should prohibit telemarketing between the hours of 9:00 P.M. and 9:00 A.M. The AG opines that this proposed modification is a common-sense limit on when RESs may engage in telemarketing. In Surreply Comments, the AG withdraws this proposal. AG Surreply at 10.

G. NAE

NAE has concerns regarding Staff's proposed new subsection 412.130(d) and its records retention requirement for telemarketing that leads to an enrollment. NAE proposes that, to avoid imposing unreasonable costs, the requirement to retain recordings for the length of the customer's service with the RES should be revised to the length of the initial contract term, without any renewal periods. NAE Initial at 5.

NAE is also concerned that the proposed subsection (d) requirement for calls that do not result in an enrollment will impose significant costs that are not justified by a corresponding benefit. If such a requirement is necessary, NAE suggests that it should be imposed on a case by case basis and limited to individual RESs found by the Commission to have failed to comply with applicable requirements. NAE proposes that this provision be deleted from the proposed rule revisions. NAE also opposes the proposed new subsection (d) requirement that the recordings and written information on the compliance reviews be provided to Commission Staff upon request. NAE opines that there is no need or basis for the Commission to insert itself into the details of how all RESs operate. NAE Initial at 5.

New proposed subsection (e) requires the use of TPV for telemarketing. NAE admits that most telemarketing enrollments would likely use TPV as a practical matter, but argues that Staff has not identified any basis to impose this new limitation on verification of telemarketing enrollments. As worded, the requirement covers any telemarketing that "leads to a completed enrollment" and NAE suggests this would presumably include subsequent web enrollment, customer call backs, and LOAs. It is unclear why a consumer could not elect to use a LOA to confirm a telemarketing enrollment, or any other allowable verification method. Staff's proposed language should be rejected or modified to refer to "telemarketing that leads to a completed enrollment during the telemarketing call."

NAE argues that Staff's proposed revision to subsection 412.130(e) expands on the existing requirement to obtain verbal acknowledgement that the customer

understands the disclosures the sales agent is required to make, and imposes a duplicative disclosure requirement within the TPV process. NAE Initial at 21.

For subsection (g), NAE wants to limit this notification requirement to its agents that are engaged in marketing activities for the RES subsequent to the request. NAE Initial at 22.

H. Commission Analysis and Conclusion

Subsection 412.130(a) has the same issues addressed above in subsection 412.110(l) regarding representations that RESs may make and the use of a utility's name. Subsection 412.130(a) is modified to be consistent.

There are no proposed modifications to subsection 412.130(b). The Commission changes the word "and" to "or" to require RESs to transfer the call to an agent that speaks the customer's language either because it is apparent they do not speak English or if the customer makes that request. If it is apparent the customer's language skills are insufficient, the customer should be transferred regardless of whether they request to be transferred.

The Commission finds that Staff's proposed modifications to subsection 412.130(c), which require that the disclosures in Section 412.110 be made during the sales presentation, are reasonable. RESA disagrees, and proposes, without supporting language, that RESs not be required to state all the information in the minimum terms and conditions contained in Section 412.110. The Commission agrees with Staff that this proposal cannot be adopted without corresponding language. Without specific language to approve, the Commission finds that giving RESs license to shorten the required disclosures in any manner could re-open the door to the problems that these amendments seek to address.

The further clarification suggested by ICEA that addresses calls terminated by a customer before all disclosures are made is adopted by the Commission. It is not necessarily required because common sense would not require a RES to continue disclosures after a customer has hung up, but also, there is no harm in including the clarification in the rule.

The AG proposes a modification to subsection (c), which would require that any information contained in the UDS that is not contained in Section 412.110 also be disclosed in a telemarketing call. The Commission does not adopt this proposal, because there is no apparent need for the AG's proposal. The AG argues that consumers that are the subject of telemarketing should be provided the same information as those that are marketed through different channels. This is not convincing because the rules require that the UDS must be sent to telemarketing customers within three business days after the electric utility's confirmation to the RES of an accepted enrollment, which is required in subsection 412.130(f). In other words, the customers will receive the UDS and, thus, this provision is not necessary.

ICEA, RESA and NAE are opposed to Staff's proposed subsection 412.130(d), which require RESs to retain recordings of sales calls, and argue that it is overly burdensome. The first area of disagreement involves the length of time that RESs should be required to retain recordings of telemarketing calls that result in an enrollment of the

customer in the RES's service. Staff proposes two years or for the length of time that the customer takes service with the RES, or whichever is longer. The Commission agrees with CUB's reasoning that the only effective way to monitor RES telemarketing is through recording these calls. Any claims that a RES agent makes during the initial sales call that induce a customer to enroll are an area of concern that this rulemaking seeks to address. Staff's proposal is adopted.

The second area of disagreement in subsection 412.130(d) pertains to records retention for telemarketing calls that are unsuccessful. Staff proposes that recordings of these sales calls be kept for six months. Staff also proposes that a statistically significant number of the recording be reviewed by the RES. And, upon request of Staff, the recordings and written records of the RESs' internal review of the recordings must be provided to the Commission. The Commission does not adopt Staff's proposal in its entirety. Staff does not support its modification and fails to explain what writings it is seeking to review. The Commission concludes that requiring RESs to produce the recordings upon request of Staff will allow Staff to determine if a RES is complying with the Rule. Also, the Commission further modifies Staff's proposal to make it less burdensome on RESs by only requiring that RESs retain unsuccessful telemarketing calls that last longer than two minutes. The intent is to limit the recording requirement to only those calls that make it past the initial introductions.

NAE argues that Staff's proposal for subsection (e) is unclear. The Commission disagrees. If a customer, after an unsuccessful telemarketing solicitation, decides to go to a RES's website and enroll on-line, this is not a telemarketing call that leads to an enrollment. This is an online enrollment. Similarly, if a RES unsuccessfully markets a customer by telephone, but then the customer receives a direct mailing and signs up through an enclosed LOA, the Commission finds that this is also not a telemarketing call that leads to an enrollment. Although the Commission does not believe that Staff's rule is unclear, a slight modification to subsection 412.130(d) is made in the attached rule to clarify that this subsection applies to sales calls that result in a telephone enrollment.

ICEA claims that the Commission does not have the authority to require a TPV for telemarketing enrollments. The Commission disagrees. The CFDBPA imposes minimum requirements; there is nothing in the CFDBPA that limits the Commission's power to impose a TPV requirement for telemarketing calls.

For subsection (g), ICEA raises an interesting point regarding the distinction between keeping a record of a customer's request not to be marketed to and maintaining the do not call list. The Commission agrees that no party has provided evidence that the record of the customer's request has special significance which would suggest that it should be maintained for ten years, as proposed by CUB. Indeed, the Commission fails to see the necessity at all for retaining the customer's requests, as long as the customer is no longer targeted for marketing. Rather it seems appropriate that a customer be put on the list and not removed, unless there is a change in circumstances. The Commission agrees that no special significance has been raised regarding the actual customer request and CUB's modification is not adopted. Subsection (g) is modified to require that RESs notify their agents of a customer's request.

XV. SECTION 412.140 INBOUND ENROLLMENT CALLS

A. Staff

Staff proposes several revisions to this Section. First, Staff modifies subsection (a) to require the RES agent to “fully comply” with section 2EE of the CFDBPA. Staff modifies subsection (b) to be consistent with its proposed Minimum Contract Terms and Conditions Section (Part 412.110).

Staff adds a new subsection (c) which requires that all calls that lead to enrollment be recorded and retained for a minimum of two years, or the length of the customer’s service with the RES, whichever is longer. Staff’s rationale is that it is aware of numerous instances of customer confusion and allegations of non-disclosure regarding renewal conditions. Many times this confusion occurs after a switch from a fixed rate to a variable one. Staff states that RES management, the Commission and Staff would benefit from the ability to review the initial transaction when these questions arise. The RES shall review “a statistically significant number of such recordings to ensure compliance with all applicable rules and regulations.” Staff’s rationale regarding length of time to maintain a recording is the same as for the Telemarketing Section, described above. Staff Initial at 29-30.

Staff states that ICEA’s rejection of Staff’s proposal that it be able to request the sales recordings is essential because it is not enough to require the reviews, it must also ensure compliance through a review of the records. Staff also responds to NAE’s statement that consumers may not want to be recorded by stating that recording customer service calls is commonplace, and it is likely that most RESs already do this. Staff also stands by its proposal to require RESs to retain recordings for two years or the life of a customer’s contract because of the many disputes that arise over renewal terms. That customer may complain that the terms were not adequately disclosed on the initial call, and that recording may be necessary to resolve the dispute. Staff also notes that the time period for filing complaints under Section 9-252 of the Act is two years, as well as what Staff proposes in Section 412.180, Records Retention. Staff also responds to NAE’s objections that the RES should have to prepare reports on its compliance reviews of these telephone calls. Staff states that in order to be an effective compliance and quality control tool, some sample of those recordings must be reviewed and likely all recordings associated with complaints must be reviewed. The Commission, through its Staff, needs to be able to verify RES compliance with this Section of the Rule. Staff Reply at 53-54. In response to ICEA’s claim that recording costs between \$1-2 a call, Staff reveals that its own research has shown that ICEA’s estimate is unreliable; the cost to store a two megabyte file for 5 years is approximately three cents. Staff Surreply at 14-15.

Staff notes that the AG seeks to add to subsection (c) a requirement that all calls be recorded and records retained for six months, which parallels Staff’s proposal for telemarketing calls that do not result in an enrollment. Staff asks for additional comment by the parties on what this would cost. Because Staff now classifies transferred calls as telemarketing, Staff is comfortable keeping the requirements governing inbound enrollment calls less comprehensive than that for telemarketing. Staff Reply at 51.

In Initial Comments, Staff proposes a new subsection (d) which requires a TPV for inbound sales that result in an enrollment. In Staff’s experience, any sales transaction in

which a sales agent describes a supplier's services should be verified by an independent party when an enrollment results. Staff notes that this is especially important when a customer does not directly initiate an inbound call but is transferred from a third party. The TPV language in subsection (d) is similar to Staff's proposal in Section 412.130(e), Telemarketing. Staff Initial at 29-30. In Reply Comments, Staff responds to ICEA's challenge of its authority to require TPV for inbound enrollment calls. Staff points to the decision in *Ameren*, which found that an agency has authority to promulgate a rule when it is: (1) authorized to do so by statute; and (2) when such rule does not conflict with other statutes. *Ameren* at ¶¶105-119. Staff states that it has clear authority, citing its Initial Comments at 3-9, and the proposed subsection does not conflict with Section 2EE of the CFDBPA. Staff Reply at 54.

The AG proposes to add a requirement to subsection (d) that would require a RES agent answering an inbound enrollment call to disclose anything included in the RES's UDS whether or not specifically included in other disclosure requirements. Staff recommends moving that language to subsection (c). *Id.* at 55.

In Reply Comments, Staff ultimately withdraws its proposed TPV requirement in this Section, stating that customers that affirmatively contact a RES to enroll in electricity supply are more cognizant than those transferred from another party. Staff now considers transferred calls to be treated as telemarketing. *Id.*

Finally, Staff moves the current subsection (c) to the end of the Section, renaming it subsection (e), without substantive edits. Staff Initial at 30. In response to ICEA's proposed modification to subsection (e) which would state that the UDS and contract can be sent to the customer "in writing in a manner authorized by the customer," Staff does not know why this change is warranted. The current definition of "send" already allows for any method of delivery that the two parties agree to use. Staff Reply at 55.

Staff responds to RESA's request for flexibility in what is presented to customers of the authorizing language. Staff notes that while there could be a shortened version of its proposed Rule, RESA does not propose any alternative language. *Id.*

B. ICEA

ICEA opposes the TPV requirements proposed by Staff, stating that the requirements restrict the available methods pursuant to Section 2EE of the CFDBPA for the RES to demonstrate a customer's intent to switch suppliers. ICEA states that the Commission lacks the authority to impose such requirements, and questions why a RES could not use Section 2EE(c) of the CFDBPA to demonstrate consumer intent when that subsection is specifically designed for inbound enrollment calls. ICEA Initial at 30.

ICEA removes the requirement in Staff's proposed subsection (c) that Staff receive recordings and written information on the compliance reviews because it is costly and serves no purpose. *Id.* In Reply Comments, ICEA states that it understands the cost to record and maintain a typical call for a year to be between \$1-2. ICEA Reply at 23.

ICEA modifies subsection (e) to allow the contract and UDS sent to the customer "in writing in a manner authorized by the customer." ICEA Initial, Appendix A.

C. RESA

RESA proposes that Staff's subsection (c) should be revised to eliminate a retention period of recorded calls and compliance reviews in excess of one year. RESA also modifies the phrase "a statistically significant" as that implies the need to hire statisticians. A RES should be able to determine itself what constitutes a reasonable number of recordings to review for compliance. RESA also objects to Staff's proposed TPV requirements as exceeding the Commission's authority. RESA Initial at 16.

RESA states that Staff's reliance on Section 9-252 of the Act is faulty because that statute only applies to utilities, not RESs. Further, RESA states that Staff misinterprets the holding in *Ameren*, which does not provide the Commission with authority to say that an enrollment that is valid under Section 2EE of the CFDBPA is no longer valid. RESA Reply at 20-21.

D. CUB

CUB supports Staff's modification requiring recording of all inbound enrollment calls as "another positive step forward when it comes to combating fraud related to electric supply choice." CUB Initial at 8.

In response to NAE, CUB states that the CFDBPA does not conflict with the proposed requirement to record and require TPV for these calls. CUB Reply at 10-11. CUB agrees with the AG that the disclosures in the UDS should be required for inbound enrollment calls, telemarketing sales and direct mail solicitations. CUB Reply at 17.

E. AG

The AG proposes modifying Staff's proposed subsection (c) to include the following sentence: "Inbound enrollment calls that do not lead to a complete enrollment must be recorded and retained for a minimum of six months." This sentence is identical to subsection (d) of Staff's proposed Telemarketing Section and maintains consistency. AG Initial at 7.

In Reply Comments, the AG states it supports Staff's call retention policy of two years, as opposed to RESA's suggestion of one year. The AG agrees with Staff that RESs with stricter record retention policies are better able to address problems as they arise. Additionally, the AG agrees with Staff that for any dispute that occurred after the twelve-month contract, a RES would not have a recording of the initial enrollment call available. AG Reply at 13.

The AG proposes to modify subsection (d) to require RES agents to include any information required in the UDS that is not included in the Minimum Contract Terms and Conditions that Staff recommends be disclosed. The AG states this proposal is consistent with Section 412.130. AG Initial at 8.

F. NAE

NAE states that inbound enrollment calls are not and should not be subject to the mandatory redundant use of TPV. NAE states that adding a TPV requirement is costly and unreasonable to both the customer and the RES, adding no corresponding benefit. According to NAE, the recorded call verification method provides confirmable and reliable

proof of enrollment. NAE urges the Commission to reject Staff's proposed subsection (d) from this Section. NAE Initial at 22-23.

In Reply Comments, NAE opposes the AG's proposal to modify subsection (c) to add a requirement to record inbound enrollment calls that do not result in an enrollment for six months, similar to Staff's proposal for telemarketing calls in Section 412.130, because it is costly and provides no benefit. NAE objects to the AG's proposal to modify subsection (d) to require telemarketers to include any information required in the UDS required in Section 412.115 that is not included in subsections (a) and (c) through (m). NAE states that requiring the same information to be disclosed multiple times in a single call is inefficient and considered offensive to customers. NAE Reply at 5-6.

G. Commission Analysis and Conclusion

The Commission is not persuaded that an inbound enrollment call is so fundamentally different from a telemarketing call that fewer customer protections are needed. The energy industry, specifically how electricity is purchased and sold, is a highly complex and technical field, even for the savviest consumer. A customer that affirmatively contacts a RES may be calling for a variety of reasons. There is no reason to assume that a customer has necessarily reviewed a variety of RES companies and offers and fully understands the switch to retail supply. Moreover, the customer could be contacting the RES after seeing an advertisement on TV or receiving one in the mail, or the customer may be responding to a recorded message on his or her voicemail. The simple fact of making a call to a RES does not transform the customer into one knowledgeable about what he or she is purchasing, especially if the advertisement or message contains misleading or deceptive information. For example, the customer could think he or she is contacting the utility. With this in mind, the Commission modifies Section 412.120 to ensure that customers making inbound calls to RESs are as protected as those who are solicited by RESs.

Staff's proposed Subsection (a) mandates that the RES agent shall "fully comply" with the requirements in Section 2EE of the CFDBPA. The Commission adds language to subsection (a) to be consistent with Sections 412.110(l), 412.115(b)(13), 412.120(a), 412.130(a), 412.150(a) and 412.160(a) and the rationale described in Section V, above. There is no reason that for inbound calls the RES agent should not ensure the customer understands he or she has contacted an independent seller of power and energy, and the additional disclosures.

Staff proposes modifying subsection (b) to capture the changes proposed for Section 412.110, and references those subsections in lieu of the UDS. Staff also proposes including the AG's suggested modification to subsection (d) which would require that any information contained in the UDS that is not contained in Section 412.110 also be disclosed during the telephone call. For the reasons discussed in Section 412.130, the Commission does not adopt this proposal. Because customers will receive the UDS pursuant to Section 412.140(e), this provision is not necessary. The Commission modifies Staff's proposed subsection (b) to correspond to the new Section 412.110 and reference subsection (a) and (c) through (n).

Subsection (c) mandates recording of all calls that lead to an enrollment. The Commission agrees with Staff that recording calls benefits both the customer and the

RES. The Commission also agrees that a one-year retention requirement, as recommended by RESA, may not capture communications that arise after termination of a one-year contract, and contradicts the requirement of Section 2EE(c) of the CFDBPA.

ICEA states that recording and retention requirements as proposed by Staff for subsection (c) are a significant burden on RESs. There is no evidence in the record that recording costs are burdensome. ICEA proposed that the costs to retain a call are \$1-2 but Staff has indicated this is an overestimate (**ICEA contends on Exceptions that Staff did not compare equivalent services**). The Commission adopts the two-year or length of the contract requirement. It makes sense that recordings of the initial enrollment may be useful upon contract renewal, if the customer does not believe he or she was told about an automatic contract renewal or if terms changed.

The Commission declines to adopt Staff's proposal to mandate how or how many of these recordings the RES should review. First, "statistically significant" is a vague and confusing description, and RESs should already review the sales calls of their agents during the normal course of business. The Commission agrees with NAE that this is an unnecessary insertion into RESs' operations. The Commission agrees with Staff, however, that recordings of calls should be provided to Staff at its request. The Commission notes that this will greatly assist CSD when dealing with complaint cases.

Finally, while the Commission agrees with the AG and CUB that telephone communications that do not result in an enrollment should also be recorded and maintained, the Commission agrees with ICEA and RESA's position that this requirement could be costly, especially if a call lasting just a few seconds takes place and must be recorded and stored for two years. **The Proposed Order recommended a compromise, which would limit recordkeeping to recordings of over two minutes and require RES to keep these recordings for six months. On Exceptions, ICEA acknowledged the Commission's goal in reviewing failed enrollment calls and the Proposed Order's attempt at compromise, which explicitly solicited feedback from stakeholders. However, ICEA noted that the compromise likely will not accomplish its goal because of the normal length of solicitation calls. As an alternative that ICEA argues would lower RES compliance costs but allow the Commission to review more calls, ICEA requests calls be maintained for 30 days rather than six months but that calls of all lengths would be kept. The Commission agrees that this is a reasonable compromise, and will allow Commission Staff greater access to calls than the Proposed Order's compromise.** Therefore, the Commission offers language limiting the recordings and storage to calls that last over two minutes. This should eliminate calls that do not get past the general greeting and mimics the language adopted for Section 412.130. The Commission invites the parties to respond to this suggestion in future briefs or comments.

In Initial Comments, Staff proposes subsection (d) which requires a TPV to enroll a customer from an inbound enrollment call. The Commission disagrees with ICEA, NAE and RESA that a TPV is unnecessary for an inbound enrollment call. Simply because the customer may have been more proactive in seeking alternative supply than a customer that enrolls from a door-to-door or telemarketing call does not mean they are less likely to believe misrepresentations from a sales agent. A TPV ensures the purchaser understands each element of the Minimum Contract Terms and Conditions and is still

willing to enroll in supply service. Since the Proposed Rule does not prohibit transferred calls, it is imperative that inbound calls are protected with the same TPV requirements as other sales methods. While **However, in response to arguments in Initial Comments,** Staff proposes elimination of subsection (d) in Reply Comments, with the rationale being that transferred calls are now considered under the Telemarketing umbrella, the Commission points out that a RES may not always know whether an inbound call is initiated by the customer or a third party. **The Commission notes that no party provided a substantive defense of subsection (d) aside from Staff either before or after Staff proposed its removal in Reply Comments.** The Commission hereby adopts Staff's **Reply Comments recommendation, and deletes** proposed subsection (d), with some minor modifications for clarity. **Because the Commission does not adopt proposed subsection (d), the Commission need not analyze or rule on ICEA's authority argument.**

The Commission disagrees with ICEA that Section 2EE of the CFDBPA conflicts with Staff's proposed subsection (d). The relevant portions of that statute state:

When a subscriber initiates the call to the prospective electric supplier, in order to enroll the subscriber as a customer, the prospective electric supplier must, with the consent of the customer, make a date-stamped audio recording that elicits, *at a minimum*, the following information:

- (1) the identity of the subscriber;
- (2) confirmation that the person on the call is authorized to make the supplier change;
- (3) confirmation that the person on the call wants to make the supplier change;
- (4) the names of the suppliers affected by the change;
- (5) the service address of the supply 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 suppliers shall maintain and preserve the audio records containing the information set forth above for a period of 2 years.

815 ILCS 505/2EE(c) (emphasis added). The language in this section clearly states that the six requirements are the *minimum* the RES must record. There is no prohibition on requiring additional information, and again, the Commission notes that it is not always possible to determine who initiated the inbound call. Staff's proposed subsection (d) is not in conflict with this Section of the CFDBPA.

Additionally, the Commission points to its analysis in Section 412.120 as to why the Commission can require both an LOA and a TPV for in-person solicitations. The Commission finds that it is within its authority to further impose regulations to protect consumers against fraud and deceptive business practices. While the CFDBPA

~~discusses three ways in which an enrollment can be verified, the Commission may impose further requirements in this Rule. Similarly, the Commission disagrees that customers will be irritated or annoyed by the requirements of subsections (c) and (d), which NAE claims are duplicative. Again, the Commission believes customers should hear the important terms of sale twice, first from the RES agent, who must disclose the Minimum Contract Terms and Conditions to the customer, and then from an independent third party, who will confirm the customer understood what he or she signed up to purchase through the TPV process.~~

Subsection (e) is the current subsection (c) in this Section and requires the RES to send the UDS and contract to the customer within three business days after the electric utility's confirmation to the RES of an accepted enrollment. The Commission adopts Staff's proposed subsection and renames it as subsection (e) with no edits.

XVI. SECTION 412.150 DIRECT MAIL

A. Staff

Staff accepts ICEA's proposed modification to subsection 412.150(a), similar to 412.110(l) and 412.130(a). Staff Reply at 56. Prohibiting use of the utility name or logo in direct mail solicitations while requiring certain disclosures will further ensure that customers are aware that the contact is a solicitation from an independent seller of power and energy service. Staff Initial at 30-31.

Staff proposes revisions to subsection (b) and the addition of subsection (c) to draw a distinction between the methods by which a consumer may authorize a switch in supplier, and the requirements for verification associated with each method. Staff's proposed revisions to subsection (b) would require that, where a direct mail solicitation includes a LOA, which if executed, would authorize a switch in supplier, the solicitation must include the UDS required by Section 412.115. Staff states that a written LOA must comply with Section 2EE of the CFDBPA and must contain a statement to confirm that the prospective customer has read and understands the disclosures in subsections (a), (c), and (e) through (m) of Section 412.110. Staff Initial at 31.

The addition of subsection (c) is intended to ensure that a customer's authorization of the decision to switch suppliers can be verified in those cases where the consumer enrolls by telephone or online. The current rule is silent as to what steps a RES must follow when the direct mail offer instructs the customer to enroll using a method of contact other than filling out an included LOA. Staff Initial at 31. RESA suggests that Section 412.150(c) be revised to recognize a distinction between direct mail which seeks to induce the customer to enroll using an attached or enclosed LOA, and direct mail that seeks to induce a customer to enroll by telephone or the internet. Staff states that Section 412.140 applies when a potential customer calls to enroll, and Section 412.160 applies where a potential customer enrolls online. However, Staff does not recommend adoption of RESA's proposed amendment, because replacing "allows" with "requires" does not acknowledge that the marketing material may contemplate use by the customer of any of several options, and not specifically require the use of any one of them. Staff Reply at 57-58.

Staff notes that NAE complains that it is duplicative and wasteful for the direct mail solicitation to include the Section 412.110 disclosures and also the separate UDS. Staff argues that NAE's concerns are unfounded because the inclusion of the UDS is not required for all direct mail solicitations. Also, Staff opines, the UDS is a critical component not only during in-person solicitations but also for direct mail solicitations where the customer returns a LOA and is not required to go through a TPV. Staff states that there is a benefit in dropping subsections (k), (l), and (m) of 412.110 from the list of required disclosures when a direct mail solicitation includes a written LOA. Staff Reply at 58.

B. ICEA

ICEA proposes language to similar to its proposals in subsections 412.110(l) and 412.130(a) for subsection 412.150(a).

ICEA proposes to strike subsection (c) of Staff's proposed language because, to the extent that the customer is inspired by direct mailings to enroll through an inbound enrollment call or the internet, the customer's enrollment will be governed by the relevant statutory provisions and rules for that enrollment channel. ICEA Reply at 25. ICEA believes that striking subsection (c) is the most effective solution, but if the Commission does not adopt ICEA's recommendation, ICEA does not oppose RESA's recommendation in the alternative. ICEA Reply at 25-26. In its Surreply Comments, ICEA states that Staff has addressed most of its concerns regarding this argument. ICEA Surreply at 43.

ICEA recommends that subsection (d) be modified to allow a customer to choose how she or he receives a UDS after enrolling through the direct mail channel. The rationale is to allow the customer to choose their preferred means of communication, making it more likely that the customer will promptly receive and review the UDS. ICEA Reply at 26. In contrast, the AG recommends that the UDS be included with every direct mail solicitation. ICEA understands the rationale behind the AG's proposal when the marketing materials include a LOA, but sometimes, ICEA explains, direct mail from a RES is designed to advertise multiple products and does not include a LOA, such as a postcard that encourages customers to check the RES's website for the latest pricing and offers. ICEA Reply at 26.

C. RESA

RESA states that subsection 412.150(c) should be revised to recognize a distinction between direct mail which seeks the customer to enroll via the direct mail and direct mail which seeks the customer to enroll via an inbound call or via the internet. RESA Direct at 16.

D. CUB

For subsection 412.150(a), CUB makes an argument similar to subsection 412.110(l) and 412.130(a).

In response to NAE's argument that it is duplicative to provide the UDS with direct mail marketing, CUB states that the whole purpose behind the UDS requirement is to make the presentation of information consistent across all marketing channels to assist in transparency and consumer understanding of the offer. CUB Reply at 11. CUB supports the AG's requirement that the UDS be on a separate page. CUB Reply at 17.

E. AG

The AG argues that subsection 412.150(b) should be modified to require that the UDS, be included in direct mail solicitations, and on a separate page from other marketing materials. This would provide direct mail recipients a separate easy-to-reference guide for evaluating RES solicitations. AG Direct at 8.

F. NAE

NAE objects to Staff's proposal to require that the same information be provided twice in a direct mail solicitation – once by requiring the direct mail solicitation to include items (a) and (c) through (m) of Section 412.110 and a second time by requiring a separate UDS where the direct mail includes a written LOA. NAE asserts that the requirement to provide the Minimum Contract Terms and Conditions from Section 412.110 provides sufficient written notice. The proposed revisions could also address this issue by specifying that the requirement to provide a separate UDS shall not apply to a supplier that includes the same information in its direct mail solicitation material. NAE Initial at 7.

In the alternative, and without waiving its primary position, NAE submits that any UDS requirement for direct mail solicitations should match the UDS requirement for telephone marketing solicitations, which require the RES to send 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. NAE Initial at 7.

G. Commission Analysis and Conclusion

As discussed above regarding representations and use of a utility name or logo, subsection 412.150(a) is modified to be consistent with subsections 412.110(l) and 412.130(a). Subsection 412.150(a) is also clarified to reference the entirety of Section 412.110. The Commission can see no reason to exclude some of the provisions of Section 412.110. Importantly, the Commission strongly believes that the phone number of the RES, the utility and the Commission's CSD should be included in direct mail material. Customers should be provided these numbers to call in case of questions. This requirement is retained from the current rules, contrary to Staff's proposal.

Also, the requirement to include the UDS with direct mail marketing only when the marketing includes a LOA is reasonable. ICEA points out that direct mail marketing could contain information about more than one offering and the Commission agrees that requiring multiple UDS forms could be burdensome to the RES, and also confusing for customers. Thus, the Commission declines to adopt the AG's proposal. The Commission does agree with the AG that the UDS should be on a separate piece of paper. The idea is that the UDS provides an easy way to comparison shop. The attached rule is modified to reflect this requirement.

ICEA includes in its discussion of this section a request that customers be allowed to choose the manner in which they receive the UDS, for example as a paper copy or an electronic version. The Commission does not see the need for ICEA's proposal. If a LOA is included, the UDS must be in the mailing with the marketing materials. If a customer enrolls by phone or the internet, Section 412.140 or Section 412.160 specify the manner in which customers are to receive the UDS.

Also, Staff's proposed language for subsection 412.150(b) is unclear because it requires that the LOA contain a statement that the customer has read and understood the Section 412.110 uniform disclosure statement. This is unclear because the uniform disclosure statement is discussed in Section 412.115. Thus, this subsection is rewritten to require a statement that the customer has read and understood certain of the Section 412.110 disclosures.

RESA's proposed language for subsection 412.150(c) is not adopted. It does not provide any further clarification of the process and which rule will apply. Staff's language, as attached to its Surreply Comments, clearly delineates which rule part applies depending on which path a customer chooses to enroll through.

XVII. SECTION 412.160 ONLINE MARKETING

The proposed amendments to this section are the same as those discussed elsewhere: utility logo and name and subsection 412.110(l). The attached Rule is modified to be consistent with those decisions.

XVIII. SECTION 412.170 RATE NOTICE TO CUSTOMERS

Staff's proposed revisions to Section 412.170 replace the text of the existing Section 412.170 entirely. Existing Section 412.170 is recodified as Section 412.175.

A. Staff

Staff explains that the Commission's existing rules do not address the issue of when a RES has to determine the variable rate it wants to charge its customers. Currently, Staff states that a RES could wait until the day the bill is being printed to determine what rate will apply for the usage incurred in the just-completed billing cycle. As a result, by the time a customer receives the monthly bill, the rate applicable that day may have changed again from the rate that is shown on the bill. In addition, neither ComEd nor Ameren currently allow residential customers to switch suppliers off-cycle. Given the required period to allow for rescissions and the utility's tariff requirements, it could be more than 45 days before a customer is able to switch to a new supply option. Staff Initial at 33-34.

Staff notes that the polar vortex during early 2014 led to a marked increase in wholesale power prices, which in turn resulted in variable rate customers paying unusually high retail electric bills. Staff Initial at 34. The number of informal complaints more than tripled during the months of February and March 2014. Accordingly, it is Staff's opinion that the issue of variable rates warrants the attention of the Commission. Staff Initial at 35-36.

Staff states that its proposed subsection (a) requires that RESs determine the variable rate at least 30 days prior to the start of a calendar month. Staff proposes a 30 day advance notice requirement because, in Staff's opinion, 30 days represents a reasonable balancing of flexibility on the supplier's part, and possible increases in the supplier's variable rates if the supplier has to commit to a variable rate well in advance of the rate taking effect. Also subsection (a) requires that RESs provide the variable rate information to only those customers who request it. The RES would have to provide the upcoming variable rate on its website (which would require a customer to sign into his or

her account with the RES if the RES has different variable rates for its residential customers) and over the phone. Staff Initial at 37.

In response to RESA and ICEA's complaints regarding methods of communicating rate information, Staff notes that its proposed rule allows RESs to utilize additional methods of communicating with customers, but such additional methods should not come at the expense of the customers contacting them by telephone. Staff Reply at 61. According to Staff, RESs are required to provide current information regarding rates, pursuant to Section 16-123 of the Act. 220 ILCS 5/16-123.

Staff is aware that the utilities do not bill by calendar month, and as a result, a customer with a billing cycle that overlaps two different calendar months would be able to calculate his or her rate if the RES provides the relevant information on its website. Staff Reply at 61-62.

Staff's proposed subsection (b) requires the RES to provide the variable rate information on the customer's monthly bill. While this rate notification obviously occurs much later than 30 days prior to the start of the relevant calendar month, it is a notification that benefits customers who do not proactively seek out the upcoming variable rate pursuant to Staff's proposed subsection 412.170(a). Subsection (b) also acknowledges that one of Ameren's billing options pursuant to Section 16-118(d) does not allow for individual messages at the account level. In such cases, the RES is required to include a bill message with the website address and/or telephone number where this information may be obtained by the customer. Staff Initial at 37-38. CUB proposes that, rather than requiring RESs to include a bill message that contains the toll-free phone number and/or website address, the RES should be required to provide a separate written notice of the rate for that month. While Staff favors a generic bill message for those situations, Staff does not oppose CUB's alternative proposal if the Commission believes that a bill message with the phone number and/or website address is insufficient information for the customer, provided that "written" is defined as Staff proposes. Staff Reply at 62.

Subsection (c) of Staff's proposed Section 412.170 requires that the variable rate information pursuant to subsection (b) also be expressed as a percentage change compared to the prior rate. Staff Initial at 38. Staff notes ICEA's argument that a rate increase may be significant and yet not necessarily out of line with the market equally applies to ICEA's example where a customer experiences high rates in June and July. In response, Staff explains that it proposes Section 412.170(c) and (d) not because every significant percentage increase in the customer's variable rate from one month to the next should prompt the customer to switch rate plans or suppliers, but rather because a disclosure about a significant percentage increase could lead some customers to review their options. Staff Reply at 65.

Subsection (d) requires a separate written notice in cases of large rate increases that raise the variable rate by more than 30%. Staff recommends that the Commission adopt this subsection because a larger number of customers would receive advance notice of significant rate increases as compared to simply learning about rate increases on their next monthly bill. It would also give customers more time to act on this information. Staff Initial at 38.

Although CUB and the AG support Staff's proposed Section 412.170(d), each urges the Commission to require a separate notice to customers once a variable rate increases by more than 20% from one monthly billing period to the next, instead of Staff's proposed 30% trigger point. While Staff acknowledges that it is difficult to balance the benefits of additional customer notifications and the increased costs on RESs as a result of frequent notifications, it seems likely that requiring customer notifications for increases of less than 30% might result in notices being so frequent as to be disregarded. Staff is of the opinion its proposed 30% threshold best balances consumer interests with cost. Staff Reply at 65-66.

In response to NAE's concerns, Staff points out that its proposed definition of the terms "written" and "writing" allows for electronic written communication as long as the RES and customer agree to communicate by electronic means. Staff Reply at 66.

Staff agrees with CUB that Subsections (a) through (d) are also in effect with regard to notice of the variable rates for the rate charged after the initial term. Staff Reply at 70-71. Although NAE disagrees, Staff explains that its proposal is that as long as the customer is a customer of the same RES, an increase of more than 30% from one monthly billing period to the next should trigger a separate written notice, regardless of the reason for the increase. Thus, Staff recommends that the Commission reject NAE's "clarifying" language on this subject. Staff Reply at 66.

Staff's proposed subsection (e) creates an exemption from subsections (a) through (d) for variable rates that are, in whole or in part, based on a publicly available index or benchmark because the RES is unable to determine the variable rate in advance for that type of variable rate. Staff Initial at 38. CUB argues that Staff's proposed Section 412.170(e) creates a giant loophole because it could incent a RES to make a small component of each rate determined on a publicly available index, and thereby avoid the vital notification provisions outlined in this rule. In response, Staff proposes to make it clearer that the exemption to the notification requirements in Section 412.170(a)-(d) is limited to situations where the customer is able to determine the variable rate by obtaining publicly available information, Staff proposes modified language which attempts to address situations where the RES is unable to calculate the upcoming variable rate until a publicly available index or benchmark is available. At the same time, the modified language attempts to address the concern that a customer is unable to determine his or her variable even if the index or benchmark is publicly available. Staff Reply at 67.

NAE supports Section 412.170(e) but clarifies that an index or benchmark is 'publicly available' whether or not such index is available from the publisher of the index with or without a subscription fee. Staff agrees, but proposes that, unless the RES provides the index or benchmark information to the customer without charge, the RES should be required to disclose the charge of obtaining the index or benchmark on the UDS and in the contract if the RES relies on Section 412.170(e) for exemption from Sections 412.170(a)-(d). As a result, Staff proposes an addition to Section 412.170(e), part of which is similar to language proposed by ICEA. Staff Reply at 67-68.

Subsection (f) applies in situations where the RES contract allows changing a fixed rate to a variable rate. It requires an advance written notice to be sent in advance of the switch from a fixed rate to a variable rate. This proposed requirement is similar to the

notification requirement in the existing Section 412.240. However, the existing rules only require the RES to send a contract renewal notice “when the contract automatically renews for a specified term of more than one month.” 83 Ill. Admin. Code 412.240. In other words, if a contract automatically renews with a month-to-month variable rate after the term of the fixed rate has expired, the current rules do not require any notice at all. Since automatic renewal with a monthly variable rate is common in the residential market, Staff proposes that this scenario be addressed in the rules. Based on informal complaints received from residential customers, it appears that some residential customers are not aware that they have been placed upon a variable rate until much later. Staff Initial at 38. In response to ICEA, Staff states its definition of “written” already allows for electronic communications so long as both the RES and customer have agreed to electronic communication. Staff Reply at 69.

Staff proposes that written notification pursuant to Section 412.170(f) should include a note that the customer is eligible for a new fixed rate offer (if applicable) and that there is no fee for switching suppliers after the switch to a variable rate. Staff proposes this amendment to apply to a situation common to many RES offers available to residential customers in Illinois where the initial term of the contract contains a fixed rate for a certain period and then the customer is automatically placed on a variable rate that will be determined by the RES on a month-to-month basis. However, in most cases no early termination fee applies if a customer leaves the RES after the fixed rate period has ended. In addition, many suppliers will offer their customers a new fixed rate before the customer is placed on a variable rate. Staff proposes a modification to Section 412.170(f)(3), in the hope that it will at least partially resolve NAE and RESA's concerns regarding these situations. Staff Reply at 70.

Proposed subsection (g) requires a RES to publish its residential variable rates for the most recent 12-month period. Both ICEA and RESA argue that the Commission should not adopt Staff's proposed Section 412.170(g) because a disclosure of variable rates from the recent past is not helpful to customers. In response, Staff explains that it is proposing Section 412.170(g) because it provides, in Staff's opinion, at least two benefits. First, it gives prospective customers the ability to become aware of seasonal as well as weather-related fluctuations in the variable rates charged by the various suppliers. Second, it provides prospective customers a basis upon which to compare recent variable rates by different suppliers. Staff Reply at 72.

Staff also notes that historical information is not necessarily an indicator of current or future market conditions, and accordingly recommends that a disclosure stating that historical pricing is not indicative of present or future pricing be included on PlugInIllinois.org, which is the place where these historical rates by suppliers would be posted under Staff's proposal. Staff Initial at 42.

If the Commission adopts Staff's proposed Section 412.170(g), Staff explains that suppliers would use the existing RES Portal to enter and maintain the most recent 12-month average variable rate information. The existing RES Portal is a password-protected application that allows each supplier to create, modify, and remove residential offers to be shown on PlugInIllinois.org. Staff Initial at 42. Also, Staff explains that its proposed Section 412.170(g) excludes "green" offers when calculating a RES' average residential variable rate. Doing so ensures that at least one source of potential distortion

is eliminated from the average rate calculation. For this reason, time-of-use offers are explicitly excluded from Staff's proposed definition of variable rates. Staff Reply at 74.

In response to ICEA's expressed doubt that the Commission has the authority to adopt subsection (g), Staff notes that in a recent Appellate Court decision, the court determined that the Commission was fully authorized to impose administratively-created consumer protection requirements. *Ameren* at ¶¶ 105-119. The *Ameren* court ruled that courts properly make two inquiries when determining whether an administrative action is proper: first, whether it is authorized by statute, and second, whether it conflicts with other statutes. *Ameren*, ¶¶ 96, 98, 104. Staff asserts that the Commission clearly has authority to promulgate the rule and the proposed rule does not conflict with any statute ICEA has identified. Further, Staff argues that, because the Commission is authorized to require use of a UDS, it stands to reason that the Commission is therefore authorized to require such disclosures as it deems necessary to protect the public interest, including price comparisons. Staff Reply at 64.

In response to ICEA's argument that some offers are not generally available, such as those for municipal aggregations, Staff states that it has yet to encounter a single municipal aggregation contract that includes a variable rate. Staff Reply at 74.

Proposed subsection (h) makes posting of residential offers by the suppliers on the Commission's website mandatory. Currently, about two-thirds of the suppliers with residential customers post their offers on PlugInIllinois.org. Staff considers it reasonable to assume that residential customers would consider it beneficial if they could find all suppliers with residential offers in one location. Staff Initial at 42. At the same time, Staff proposes that the Commission limit the number of residential offers posted by a single RES to three. To be clear, Staff is not advocating that the Commission restrict the number of residential offers a supplier is allowed to have at the same time. Staff is instead recommending that a supplier limit the number of residential offers (per utility service area) posted to PlugInIllinois.org to three. Because all supplier offers on the Commission's website contain links to the supplier's website, it is very easy, in Staff's opinion for potential customers to see additional offers by suppliers that are marketing more than three residential offers in a particular electric utility's service area at the same time. Staff Initial at 43.

B. ICEA

ICEA notes that proposed Section 412.170 provides completely new obligations on RESs with regard to variable rates. ICEA supports the requirement that rate changes for non-index variable products have to be announced with enough time for a consumer to decide whether to continue with a particular product. ICEA Initial at 33. ICEA does not object to Staff's proposed subsection 412.170(a), so long as any method of outbound communication is acceptable. ICEA does not oppose allowing customers to make inbound calls to a RES for information about variable product pricing. ICEA Surreply at 44-45.

With respect to Staff's proposed subsections 412.170(b), ICEA disagrees with the proposed approach for several reasons. First, the customer will be alerted of price changes in advance for variable non-index products. The relevant information is the price of the customer's current product compared with other available products, not percentage

increase. Second, Staff's proposal would effectively commandeer RES use of the bill message for any purpose other than price notification—which ICEA supports providing through separate channels pursuant to Section 412.170(a). Third, none of Staff, the AG, or CUB have provided any evidence or justification in the record as to why a billing message notification is necessary, or even effective, on top of the other required notification. ICEA Reply at 30.

In addition, ICEA points out that Ameren notes the practical impossibility of using bill messages for certain customers served by Ameren because each RES must send the same bill message to all customers on a particular rate code. Thus, it would not be possible for over 72% of Ameren residential customers to receive a bill message with a percentage change on the bill. ICEA Reply at 31. ICEA recommends that the Commission require use of bill messages to disclose upcoming non-index variable price changes only if the RES does not use another form of communication authorized by the customer to push out price notification. ICEA notes that using a "push" method also takes care of the calendar month vs billing cycle issue. ICEA Surreply at 46.

ICEA argues that Staff's proposal in subsection (b) to mandate a description of the percentage increase (or decrease) does not provide the customer actionable information about whether the overall product is competitive or not. ICEA Initial at 38.

Although ICEA recommends that Section 412.10 take the content from new proposed Section 412.170(e) and integrate it into the definition of "variable rate" and make a corresponding change to Section 412.170(a) regarding applicability, ICEA supports the substance of new proposed Section 412.170(e). The structure set out by Staff matches ICEA's longstanding recommendation that a consumer should either know their rate in advance or have a transparent formula for their price based on public indices or values. In the event that the Commission does not incorporate the concepts of Index Variable and Non-Index Variable in the definition sections, ICEA strongly recommends keeping proposed new Section 412.170(e). ICEA Initial at 34.

ICEA does not object to CUB's recommendation to the extent that CUB recommends that Staff's proposed subsection (e) only applies to variable index products. ICEA Reply at 35. ICEA recommends revising subsection (e), which as written offers a partial exemption for Variable Index products. Without a recognition that variable index based products do not have a known price 30 days prior to the month, suppliers would not be able to use current index pricing. This would be, ICEA opines, a regulatory prohibition on index products. ICEA instead recommends providing customers with the information and timing necessary to calculate a price in time with the index release of current pricing. ICEA Initial at 35.

For Staff's proposed subsection (g), ICEA states that it cannot identify the Commission's authority to require disclosure of historic prices or to compare current prices to past prices. ICEA Initial at 35. Also, ICEA does not see the sense in Staff's recommendation that RESs provide average residential variable rates. Variable non-index products cover a wide range of products from commodity only to commodity plus value added products and services. Products may also have different terms and conditions, including minimum lengths/early termination fees. Each is different and is not apples-to-apples comparable. ICEA Initial at 37-38.

As a compromise, ICEA recommends that historic pricing information be limited to a shorter window of time closer to the period the customer receives the offer. While this more limited information suffers from the same flaws as twelve month historic price information, it would at least give the customer a view of market conditions in a similar timeframe. ICEA continues to recommend against providing historic pricing information but if the Commission decides to go forward ICEA recommends a workshop to discuss implementation issues and further proceedings to implement such a rule consistent with ICEA's alternative recommendation above. ICEA Surreply at 49-50.

ICEA also urges the Commission to reject Staff's proposal in subsection 412.170(h) to require RESs to post at least one but no more than three offers to PlugInIllinois.org. ICEA believes that the Commission does not have the authority to require participation. ICEA Reply at 34. Further, ICEA believes it would be imprudent to place Staff's proposed PlugInIllinois.org restriction in Part 412. ICEA states that RESs can offer a wide range of products with limitless possibilities for add-ons and bundling with other offers. It would harm the market if each RES that offered any variable product had to take up one of its scarce PlugInIllinois.org spaces with a variable product, especially if the variable product is not being heavily marketed. Furthermore, from a procedural standpoint, ICEA opines that once restrictions are codified in Part 412 it is time-consuming and difficult for the Commission to adjust PlugInIllinois.org to changing circumstances. ICEA urges the Commission to consider changes to PlugInIllinois.org in a separate, non-rulemaking proceeding or in workshops to fully vet the costs and benefits of potential changes. ICEA Reply at 34-35.

C. RESA

RESA avers that Staff's proposed section 412.170 is an example of inappropriate over-regulation of competitively priced services. In particular, RESA complains that Staff's rule would : 1) dictate how RESs use their limited bill message space on a utility's bill; 2) require written notices of matters that are already spelled out in the sales contract between the RES and its customer, e.g. the time at which a fixed rate switches to a variable rate; 3) require phone calls to customers advising them of matters already covered by the contracts the customers signed; 4) mandate certain RESs to post twelve months of historical rate data, data which provides no value to customers as to future rates; and 5) require RESs that do not want to post residential offers to do so, while limiting RESs that want to post residential offers to three such offers at any point in time. RESA Initial at 17.

RESA is also concerned with competitive parity. RESA notes that the Commission does not require utilities to send bill messages regarding changes in purchased electricity prices nor changes in base rates, nor does it require letters or phone calls. All of these requirements, RESA maintains, would cause RESs to incur substantial costs without any commensurate benefit to customers. RESA opines that Staff is attempting to indirectly prohibit variable rates by exposing RESs that offer variable rates to extreme increases in the cost of doing business. RESA Initial at 17-18.

In response to arguments regarding the polar vortex, RESA asserts that no RES would have been able to predict the polar vortex or the increases in its costs because of that situation. RESA Surreply at 22-23.

In response to the AG and CUB's proposal to decrease the 30% figure to 20% in subsection (c), RESA argues that this would only exacerbate the problems of Staff's proposed new subsection. RESA Reply at 16.

RESA disagrees with CUB's position that subsections 412.170 (a)-(d) should apply to fixed rate contracts that change to variable rates after the initial term. RESA argues that changes to a contract after the additional term are covered by Section 412.240, Contract Renewal, which requires notices consistent with that Section and the Illinois Automatic Contract Renewal Act. Thus, RESA opines that CUB's proposal is redundant and unnecessary. RESA Surreply at 23.

In response to RESA's concern that proposed subsection 412.170(f) appears to require a RES to advise a customer how he or she can avoid a contract requirement, Staff proposed a modification in reply comments. RESA states that it finds Staff's modification to Section 412.170(f) as proposed in reply comments to be an improvement over its original language. RESA Surreply at 22.

In response to Staff's proposed subsection 412.170 (g), RESA explains that providing historical prices does not provide useful information to customers. Certainly there is nothing that would help the customer predict which supplier would provide him or her with the lowest costs in the future. RESA Surreply at 23.

RESA deletes most of the subsections of Staff's new Part 412, leaving the following which, in RESA's view, represents a reasonable compromise:

Section 412.170 Rate Notice to Customers

At a reasonable time prior to the start of a calendar month, the RES must publish on its website the variable rate(s) for its residential customers applicable for the calendar month in question. In addition, the RES must provide requesting variable rate customers with this rate information via telephone. The customer's contract must contain the website address and toll-free phone number for the customer to retrieve the variable rate information in accordance with this section.

D. Ameren

Ameren states that in order to evaluate subsections 412.170(b) and (c), it is important to understand Ameren's billing capabilities and limitations. Ameren's tariffs provide three billing options for RESs: (1) Dual Billing Option, (2) Single Billing Option, and (3) Utility Consolidated Billing / Purchase of Receivables ("UCB/POR") Program. Ameren Initial at 11. Proposed Rule Sections 412.170(b) and (c) do not appear to raise concerns associated with the Dual Billing Option or the Single Billing Option. Ameren Initial at 13.

Ameren states that of the 713,313 customer accounts that were on RES-supply as of the end of August 2015, 678,300 were billed using the UCB/POR option. Under UCB/POR there are two available sub-options – (1) "Rate Ready" combined billing or (2) "Bill Ready" combined billing. Of these options, 493,246 customer accounts were on Rate Ready billing, with the remainder, 185,054 accounts, on Bill Ready billing. Ameren Initial

at 11. Under Rate Ready billing each customer is associated with a rate code that ties to a specific RES product. Customers on the same product will have the same rate code. With respect to messaging, a RES is capable of attaching up to two messages on each bill, subject to a 147 total character limit. However, these messages can only be entered (1) at the RES level, meaning that all of an individual RES's Rate Ready customers would receive the same message(s), or (2) at the rate code level, meaning that all of the customers assigned to a given rate would receive the same message(s). Under Rate Ready billing, a RES cannot tailor messaging on an account-by-account basis. To be clear, Ameren is not capable of placing individual, account-specific messages from RESs on Rate Ready customer bills. Ameren Initial at 12.

Under Bill Ready billing, a RES sends the Company each customer's charges each month. The Company then places those charges on the combined bill. With respect to messaging, like under the Rate Ready option, a RES is capable of attaching up to two messages on each bill, subject to a 147 total character limit. But, unlike the Rate Ready option, messages for Bill Ready customers can be created, managed and applied on an individual, customer account basis. Ameren Initial at 12.

E. CUB

According to CUB, this proposed section is one of the most important. Most of the variable rate offers CUB has seen are far higher than the utility price-to-compare and often higher than the market rate for electricity. CUB has observed a trend in supplier offers that include an attractive initial fixed or variable rate to a consumer, which later converts to a much less attractive variable rate, and the customer is not affirmatively notified of the changed rate. The notices to consumers proposed by Staff are an important component to dealing with this problem. CUB Initial at 9.

Although NAE takes issue with the need for Section 412.170, CUB states that NAE ignores the substantial negative customer feedback on variable rate plans in the wake of the polar vortex when rates doubled, tripled or even went up six fold. Many customers had no idea they were even on a variable rate, in many cases because they were automatically renewed at a variable rate after the initial fixed price term of the contract. CUB Reply at 12.

Subsection (b) would require the RES to notify the customer via the customer's bill of the rate in effect at the time the bill is received by the customer. According to CUB, this is an extremely important notification as it allows a customer to cancel if the rate is set to go above what the customer is comfortable with. CUB proposes that if the electric utility's implementation of Section 16-118(d) prevents a RES from complying with this section, then the RES should be required to provide a separate written notice of the rate for that month. It is simply unacceptable and fraudulent, CUB argues, for a customer to learn the variable rate they were billed when they receive the bill for the previous month and it is too late to take action. CUB Initial at 9.

Subsection (c) requires that the RES show the percentage change from one month to the next of a variable rate on a customer's bill. Like with Subsection (b), however, if the electric utility's implementation of Section 16-118(d) prevents a RES from complying with this section, the RES should provide separate written notice to customers with the

percentage change because this is another important customer notification. CUB Initial at 9-10.

For subsection (d) of this Section, CUB proposes that the 30% should be changed to 20%, as a 20% increase in an electric supply rate could have large economic impact on the affordability of a customer's electric bill. CUB Initial at 10. CUB asserts that the Commission has the clear authority to dictate notifications and disclosures. CUB Reply at 9. Regarding NAE's suggested revisions to Staff's proposed subsection (d) to allow RES notification via email or text, CUB agrees that if the customer previously indicates such communication is acceptable, this is a reasonable provision. NAE's opposition to the proposed requirement to provide notice when a rate changes from fixed to variable, however, does not take into consideration the inevitable confusion and customer dissatisfaction that occurs when a fixed rate changes to a potentially volatile variable rate that could be many multiples of the utility rate. This notification is important because CUB has found many consumers are not aware that the rate will change to variable because of failures in the marketing presentation. Even if consumers are aware the rate will change at some point, the additional notification would serve as an important reminder to examine the rate so the customer can determine whether he should remain with the RES or revert back to utility supply. CUB Reply at 12-13.

Subsection (e) would allow subsections (a) through (d) to become moot if a RES determines "the variable rate or a component of a variable rate, on a publicly available index or benchmark." This subsection creates a giant loophole and should be stricken from the final rule. This provision could incent a RES to make a small component of each rate determined on a publicly available index, and thereby avoid the vital notification provisions outlined in this rule. Simply the fact that some portion of the rate is based on an index is not enough to inform customers as to what rate they will be charged. Furthermore, whether or not an index is publicly available is irrelevant to whether a consumer can read and understand the "publicly available index." Though electricity buyers working on behalf of RESs certainly are able to read and understand these indexes, to suggest the general public can do the same, let alone connect them to movements in electric prices, is certainly a stretch. For this reason subsection (e) should be modified to include only those rates that are based solely on a publicly available index. Striking this subsection would ensure customers on variable rates, no matter how they are calculated, would receive notice of the variable rate they are being charged, before they receive the bill for last month's usage. CUB Initial at 10.

Subsection (f) of the proposed Section would require notice to customers when their fixed rate turns into a variable rate. It should be made clear here that subsections (a) through (d) are also in effect with regard to notice of the variable rates for the rate charged after the initial term. CUB Initial at 11.

Subsections (g) and (h) of the proposed rule deal with transparency in RES pricing, and require notifications on the ICC PlugInIllinois.org website of RES variable rate offers. CUB opines that each of these subsections is an excellent addition to the rule, which contribute to price transparency and allow consumers to compare RES offers and see how a RES stacks up historically against their competitors. Though a historical look back does not guarantee future performance, it does give a consumer more information about the RES and its pricing practices. CUB Initial at 11.

F. AG

The AG argues that Staff's proposed Section 412.170 is an important consumer protection. By definition, variable rates can change from month-to-month and the AG points out that RESs are not limited in the amount they can increase variable rates. It is fundamentally unfair, according to the AG, to customers that they have no knowledge of the rate they are going to pay for electricity before they use it. AG Reply at 14.

The AG notes that the first part of subsection (b) requires RESs to provide rate information regarding the rate that is in effect at the time the bill is received by the customer. In other words, Staff's subsection (b) does not require RESs to provide upcoming variable rate information in bill messages. The AG proposes that the first sentence of subsection (b) be modified to require RESs to provide upcoming variable rate information. AG Initial at 8.

Subsection (d) of Staff's proposed Section 412.170 requires RESs to provide a separate written notification to customers whose variable rates will increase "by more than 30% from one monthly billing period to the next." The AG agrees with Staff's concept, but proposes that the trigger for written notification be 20%, not 30%. A one-month 20% increase is sufficiently significant that customers should receive separate written notification of the impending increase in rates. AG Initial at 8-9.

With respect to subsection (g), the AG agrees that a twelve month history of variable rates is not perfect, but that does not mean that a customer on a variable rate or a person considering a variable rate cannot glean valuable information from such data. Moreover, the AG states that the opaque way in which RESs determine variable rates warrants giving customers data that could allow them to have some basic understanding of how variable prices can fluctuate. AG Reply at 15.

G. NAE

NAE states that Section 412.170 would impose significant new information and notice requirements on RES with respect to variable rate changes, the costs of which could be significant. It is not clear to NAE what problem these new provisions are attempting to address or why these are proposed as the appropriate solutions. NAE Initial at 15. While NAE appreciates Staff's movement on certain rate notice requirements, NAE disagrees with any assertion that the costs and effect of the remaining requirements proposed by Staff can simply be dismissed or disregarded. NAE Surreply at 12-13.

If RESs are allowed to use any form of communication authorized by the customer (e.g., email or text messages), which may be less costly, NAE does not object to Staff's proposed subsection (a). NAE Initial at 15.

Subsection (b) requires RES to disclose on a customer's bill the variable rate in effect at the time the bill is received. According to NAE, the meaning and intent of Staff's proposed revision is ambiguous and unclear. NAE's concern is that this language appears to require a RES to make a disclosure regardless of whether there is sufficient space on a utility consolidated bill and regardless of whether a utility provides bill messaging or customer-specific bill messaging capability. NAE Initial at 16. NAE proposes edits to clarify Staff's proposed rate notice requirements when utility consolidated billing is used. NAE Surreply at 14.

In response to CUB's proposal to require RESs to send a separate written rate notice to customers each month if the RES is prevented from providing such information on a utility consolidated bill, NAE opines that CUB's proposal is unreasonable, would harm the competitive marketplace, and would add extensive costs without a corresponding benefit. NAE Reply at 5. NAE argues that Staff's statement that it would not oppose CUB's proposal reflects a lack of recognition of the costs imposed by newly proposed requirements. NAE Surreply at 13.

The AG proposes to modify Staff's proposed revisions to Section 412.170 to expand the required disclosures to include "the variable rate that will be in effect the following monthly billing period." AG Initial at 8. This section of Staff's proposed rule was intended to be practicable and fair to all parties, and takes into account the limited space available, costs, and information known at the time. Variable rates based on an index will not be known ahead of the publishing of a monthly index. The AG's proposal is not practicable, will add unnecessary costs, and should be rejected. NAE Reply at 6.

NAE states that the additional proposed requirement to disclose the percentage change in a variable rate from one month to the next per Staff's proposed subsection (c) should be included in subsection (b) as that disclosure will be subject to the same bill messaging limitations just discussed. NAE Initial at 17.

Subsection (d) requires a separate written notice to a variable rate customer if the customer's rate increases by more than 30% from one monthly billing period to the next. While well intended, NAE believes Staff's proposal will add significant costs without corresponding benefits. This requirement should be eliminated, but at a minimum and in the alternative, RESs should be allowed to use any form of communication authorized by the customer (e.g., email or text messages), which may be less costly. NAE states that Staff's response regarding the definition of the terms "written" and "writing" addresses this specific concern. NAE Surreply at 14. Similarly, NAE does not support the AG's proposal to expand the applicability of Staff's proposed rate change notice requirement for rate increases above 30% to rate increases above 20%. See AG Initial at 8-9. The AG's proposal to expand this requirement would add even more costs. NAE Reply at 5.

NAE argues that Staff's proposal should be clarified so that the separate written notice for residential customers with variable rates that increase by more than 30% from one monthly billing period to the next does not include situations involving a new or renewal contract. NAE Initial at 18. In a situation with a "new" variable rate contract (e.g., with no prior contract or where the customer was previously on a fixed rate contract), NAE does not understand how there would be an "increase" to be reported. As to renewal situations, the RES will already be advising the customer of any new or changed variable rate that is applicable as part of the renewal notice. NAE Surreply at 14-15.

Staff's proposed subsection (e) provides that "Subsections (a) through (d) shall not apply to contracts which determine the variable rate, or a component of the variable rate, on a publicly available index or benchmark." NAE supports this subsection, but wants to be clear that an index or benchmark is "publicly available" whether or not such index is available from the publisher of the index with or without a subscription fee. NAE Initial at 18.

While Staff agrees with NAE and confirms that an index is "'publicly available' whether or not such index is available from the publisher of the index with or without a subscription fee," Staff proposes that, unless the RES provides the index or benchmark information to the customer without charge, the RES should be required to disclose the charge of obtaining the index or benchmark on the UDS and in the contract if the RES relies on Section 412.170(e) for exemption from Sections 412.170(a)-(d)." Staff Reply at 67-8. NAE Surreply at 15. While NAE is not opposed to disclosing that the publisher of a publicly available index charges a subscription fee when applicable, such subscription fee is a fee of the publisher rather than the RES. NAE Surreply at 15-16. Moreover, primary reasons for this exemption include that index-based rates are transparent as to their calculation (versus custom rates that include RES costs - similar to utility supply charges reflecting utility costs) and the fact that suppliers may utilize a publicly available index by specifying that the customer's charge will be the index rate per kWh plus a fixed amount per kWh. While the fixed additional amount per kWh will generally be fixed for an individual customer's contract term, suppliers may change that amount over time in response to market conditions. Hence, publication of generic variable rate information on a web site would be impractical or impossible in that situation. Staff's new language inexplicably appears to add the impractical or impossible requirement that the exemption was intended to address. NAE Surreply at 16.

With respect to CUB's proposal to delete "or a component of the variable rate" from the exclusion for variable rates based on a publicly available index, NAE understands this language to allow for variable rates where one component of the variable rate formula is an index. CUB's deletion appears intended to defeat the purpose of the exception, and NAE argues that it should be rejected. NAE Reply at 5-6.

If a contract switches to a variable rate at some point during its term, subsection (e) requires a separate written notice to a residential customer 30 to 60 days in advance of an upcoming change to a variable rate. It is unclear why an additional notice is required if the contract already discloses that a rate will be fixed for a limited period of time and then switch to a variable rate. Such a disclosure will also be included in Staff's proposed UDS. The draft proposed rule language also incorrectly assumes that the switch to a variable rate is optional or conditional by requiring the notice to advise the customer of the action to be taken to avoid a rate change. This requirement should be eliminated. NAE Initial at 18-19.

In reply comments, Staff's proposes to delete language in subsection (f) that required the notice to advise the customer of the action to be taken to avoid a rate change. This addresses NAE's secondary issue, but NAE continues to maintain that this subsection is unnecessary and should be eliminated. NAE Surreply at 16-17. Staff also proposes language to this subsection to make clear that the contracts providing for a switch to a variable rate are also subject to subsections (a) through (d) governing variable rates. Staff Rep. Com. at 70-1. NAE does not dispute that fixed rate contracts which switch to a variable rate are variable rate contracts after they switch to a variable rate. But the language proposed by Staff is broader than it needs to be and could be read to indicate that such contracts should be treated as variable rate contracts before they switch to a variable rate. NAE proposes revised language. NAE Surreply at 17.

Subsection (h) provides that “The RES shall not publish more than three residential offers per electric utility service area at any point in time.” NAE understands this to limit only what can be published on PlugInIllinois.org, not what a RES offers in the marketplace. There is no authority to limit RES offers. NAE Initial at 19.

H. Commission Analysis and Conclusion

The Commission finds that based on the concerns raised by Staff, the failure to provide notice to customers subject to variable rates is one of the most troubling aspects of the current RES marketplace. Staff’s proposed Section 412.170 is an important step in addressing this consumer protection issue.

The parties raise several issues with Staff’s proposed subsection 412.170(a). This subsection requires that the variable rate that a RES will charge its residential customers in the following calendar month must be published on the RES’s website and be provided to customers over the telephone. There was some confusion in the Initial Comments regarding whether this requires a RES to phone customers with the rate information. The Commission rewrites this subsection to clarify that the rate information must be provided to customers that call the RES’s toll-free number. According to Section 16-123 of the Act, RESs are required to maintain a customer call center for customers to receive current information. It states:

All electric utilities and alternative retail electric suppliers shall be required to maintain a customer call center where customers can reach a representative and receive current information. Customers shall periodically be notified on how to reach the call center.

220 ILCS 5/16-123. The Commission agrees with Staff that the statutory requirement to provide current information includes current information regarding rates.

ICEA points out that some RES rates change on a billing cycle that does not coincide with the calendar month. The Commission agrees with ICEA that Staff’s proposal that rates must be given for the following calendar month is unnecessary. The Commission sees no added benefit in disclosing prices based on the calendar month versus a RES’s billing cycle. ICEA’s modified language is adopted.

The Commission agrees with NAE’s clarification that subsections (b) and (c) should be combined because it is easier to read and the two sections are repetitive. In the attached rule, the Commission makes this change.

On Exceptions, ICEA argues that the Commission should limit the website posting requirement to allow customers on a particular product to view upcoming pricing. Although the Commission generally favors transparency, the Commission shares ICEA’s concern that if a RES has multiple products, or any of the products are not available to all customers, that there is significant opportunity for customer confusion and dissatisfaction. The Commission agrees with ICEA that posting advance pricing notice on the RES’s website but allowing the RES to restrict access to current customers through customer account portals avoids this concern without impairing the utility of the rule.

In contrast to subsection (a), which requires notification of future prices, subsection (b) requires notification in bill messages of prices in effect when the customer receives the bill. Ameren points out that its systems will not always allow a RES to include this information on a customer's bill. ICEA also complains that it may have other important information to include in the limited space allowed for RES messages to customers. The Commission finds that ICEA makes a suggestion that is practical and should be incorporated in the Rule. In particular, ICEA proposes that the requirements of subsection (b) (formerly (b) and (c)) should only be imposed if a RES does not send a customer the information in a different manner. This is a legitimate proposal especially given the implementation problems raised by Ameren. For these reasons, the Commission agrees that ICEA's proposal to not require the bill message in subsection (b) if the RES provides the information in another manner, is appropriate and adopted. Various proposals to delete this rate notice will not be adopted because just like providing notice of future rates, the rates currently in effect should be disclosed to consumers to enable them to make decisions regarding appropriate choices in electric service.

Subsection (c) (Staff's proposed subsection (d)) of the attached Rule requires that if a variable rate customer's rate increases by more than 30% from one monthly billing period to the next, the RES must send the customer a separate written notice. NAE is concerned that this requires a written notice. NAE complains of costs and proposes that at the very least, the mode of communication be flexible. As noted in the discussion of definitions above, the Commission finds "written" can mean either electronic or paper, so long as both parties agree. This should alleviate many of the RESs' concerns regarding the cost to implement this provision. Also, the Commission agrees with Staff that lowering the percentile increase to 20% to trigger this notification, as proposed by CUB, could result in too many notices.

Subsection (d) of the attached rule exempts contracts which determine the variable rate solely on a publicly available index or benchmark. Because the Commission declines to adopt ICEA's proposed definitions of index-based variable and non-index based variable in Section 412.10, the Commission agrees that subsection (d) is appropriate. The word "solely" is proposed by CUB and contested by NAE. CUB argues that without it, the rules will have a loophole that will allow RESs to avoid providing customers notice. NAE on the other hand asserts that "solely" will render this provision meaningless. It appears that if a customer signs up for a contract with a variable rate that is solely based on an index, he or she is supposed to check the index to find out what rate will apply to his or her supply service. The Commission finds that with all the other notice requirements adopted with this rulemaking (Section 412.110 and 412.115), the customer ought to know to check the index and, thus, monthly notices regarding rates should not be necessary. For these customers, all parties seem to agree that subsections (a) through (c) should not apply. On the other hand, if only part of the customer's supply service is a variable rate based on an index, it is not clear whether subsections (a) through (c) should apply. If the remainder of a customer's supply service is a variable rate that is not based on an index, then it appears to the Commission that notice pursuant to subsections (a) through (c) ought to be sent. The attached rule attempts to address this. NAE also raises a concern that the variable rate will usually be based on an index plus a fixed per kWh charge that will be specific to a customer. The Commission notes that this was raised in Surrey Comments and no party appears to have addressed this situation.

Nor is it clear that the attached Rule addresses the various scenarios involving index based rates.

The Commission notes that Staff's latest revisions to subsection (e) (Staff's subsection (f)), which requires notice when a customer is switched from a fixed to a variable rate, alleviate most of the issues raised. NAE continues to argue that this notice provision is unnecessary because the customer's contract and the UDS already have this information, but the Commission finds it important that customers that have been on a fixed rate receive this notice because the customer may no longer have the contract or UDS readily available for review.

The Commission notes that Staff's proposed subsections (g) and (h) are the most contested provisions of Section 412.170. As proposed by Staff, subsection (g) requires that the historical average cost of a RES's variable products be posted on the Commission's PlugInIllinois.org website. ICEA argues repeatedly that historical average prices are not helpful to customers. The Commission notes that the website could be used before a customer selects a RES and also after a customer has been with a RES to determine if the customer wants to continue receiving service from a particular RES. On the other hand, the Commission also finds that historical information could be useless for new products or if a RES has instituted new policies that will render historical prices irrelevant. Also, Staff's proposal requires the average of all variable products required by a RES, which does not provide information regarding a specific offer that a customer may be considering or have already enrolled in.

Staff argues that the recent Appellate Court decision in *Ameren* supports the Commission's authority to require RESs to provide historical information. There are several distinguishing features between the consumer protection upheld in *Ameren* and that proposed here. Most notably, the *Ameren* consumer protection involved marketing materials for specific offers with price comparisons, but here it is average price information that will be posted on the Commission's website. In the proposed amendments to Part 412, and adopted by the Commission herein as Section 412.110(j), there is a new requirement that when a RES makes a price comparison, the RES must include the price to which it is being compared. The Commission finds that the *Ameren* case unquestionably supports the Commission's adoption of the Section 412.110(j) consumer protection for price comparisons. But more important for the issue at hand is the distinction between focused marketing materials and public posting on the Commission's website. This is an important distinction especially given the unclear relevance of historical prices to a specific RES offering. The Commission finds that the *Ameren* case provides questionable support for Staff's proposed subsection (g). Also, Section 16-117, which governs the information that is required to be posted on the Commission's website, does not include anything price related. 220 ILCS 16-117.

For these reasons, the Commission does not agree with Staff's proposal that this information must be posted on the Commission's website. Instead, the Commission finds that historical information regarding a specific offer should be disclosed to customers. The Commission requires this pursuant to Section 5/16-115A(e)(i) and (ii) of the Act. If a RES markets a variable rate product or a product that will switch to a variable rate, pursuant to Section 15/16-115A(i), the RES must be able to provide the price history for a product. If a customer is considering switching to a RES, pursuant to Section 15/16-

115A(ii), the RES must be able to provide price history for the product being offered prior to switching a customer. For all these reasons, the Commission declines to adopt Staff's proposed subsection 412.170(g) and in its stead adopts subsection (f), which requires that price history of specific offers be available by phone and on the RES's website.

Staff's proposed subsection (h) requires RESs to post at least one, but no more than three offers to the Commission's PlugInIllinois.org website. It is not entirely clear to the Commission why RESs should be required to post offers on the website. It may be free advertising, but if a RES does not want to participate Staff has not provided a reason or basis for this requirement. The Commission agrees that a list of RESs with contact information is important in case a customer is looking for information, but mandatory posting of offers is not supported.

In addition, ICEA raises the legitimate concern that a mandate regarding a website posting in a rulemaking makes changing that mandate very burdensome. The ORMD controls this website, it is not clear why impartial rules regarding posting cannot be imposed. Also, it is not clear that a RES's ability to list offers should be limited. The Commission, in Section 412.115 limits the UDS to one offer and sends customers to PlugInIllinois.org for more information. For these reasons, the Commission does not adopt Staff's proposed subsection 412.170(h).

XIX. SECTION 412.175 TRAINING OF RES AGENTS (PREVIOUSLY 412.170)

A. AG

The AG contends that RES agents "have engaged in a litany of questionable sales tactics since the advent of residential and small commercial customer retail competition." AG at 9. The AG proposes modifying Staff's Section 412.175(a), requiring agents to be familiar not only with the PUA and the CFDBPA, but federal laws and regulations "pertaining to the marketing of sales of power and energy service." *Id.* The AG recommends five new subsections be added to Section 412.175. Subsection (d) would require that RES agents be trained that they are prohibited from making a record of a potential customer's account number unless that potential customer enrolls in RES service. This would minimize slamming, according to the AG. Proposed subsection (e) requires RESs to document its trainings and maintain a record for three years. Additionally, a RES shall provide training materials or records within seven business days if asked by the Commission or its Staff. Subsection (f) requires that for any independent contractor or vendor that trains RES agents, the RES must confirm the training was conducted in accordance with this Section. Subsection (g) requires the RES to monitor telephonic and in-person sales to ensure that RES agents are providing accurate and complete information and complying with applicable laws and regulations. Subsection (h) is designed to eliminate an incentive for the RES agents to make false statements and misrepresentations in order to increase salaries. AG Initial at 9-10.

In Surreply Comments, the AG acknowledges the possibility that there may be reasonable uses for a RES to retain customer account numbers. The AG proposes a modification to subsection (d): "No RES agent shall make a record of a customer's account number unless the customer has agreed to enroll with the RES *or otherwise provided their consent to the release of that information in accordance with methods approved by the Commission.*" AG Surreply at 11 (emphasis added).

B. CUB

CUB supports the AG's proposal to include additional provisions relating to training and compensation of RES agents. It is CUB's position that unethical sales occur because of the incentives created by a commission-based salary. The RES is ultimately responsible for its agents' compensation. CUB Initial at 11-12.

C. RESA

RESA opposes the AG's five new subsections, some of which have "nothing to do with the training of RES agents" and are burdensome and unnecessary. RESA Reply at 16. RESA particularly opposes subsection (h) and states that the Commission does not have the authority to dictate how RESs pay their agents. *Id.*

D. ICEA

ICEA does not agree that the AG's recommended subsections (d) through (f) are necessary, but ICEA is open to further discussion. ICEA notes that subsection (d) could be incorporated into its proposed revisions to Section 412.120. ICEA states that seven business days is too short to provide training materials to the Commission or Staff; at least ten business days should be allowed. ICEA recommends rejection of subsection (g) in that it is contrary to the law and could be a severe invasion of customer privacy. ICEA states that the AG should identify its sources of authority for proposing subsection (h). ICEA Reply at 36.

E. NAE

NAE states that the AG's proposal to modify this Section is premised on an assumption of non-compliant behavior. NAE states that the types of remedies proposed by the AG may be appropriate for an improper RES but not imposed on all RESs. Additionally, the AG's prohibition on keeping the customer's account number if he or she does not enroll is not practical because there may be many legitimate uses of a customer's account number, such as a custom quote, where the potential customer does not ultimately decide to enroll. Finally, NAE states that the AG's proposed subsection (h) is "ludicrous" in the energy sector and in the sales industry generally. NAE Reply at 8.

F. Commission Analysis and Conclusion

The AG and CUB propose several modifications to this Section. Staff does not propose any changes to this Section, other than renumbering it to account for the new Section 412.170, Rate Notice to Customers. Staff also does not weigh in on the suggestions by the AG or CUB, or the reactions to those proposed modifications by ICEA, RESA or NAE.

The Commission declines to modify Section 412.175(a) as the AG recommends. Knowledge of the PUA and the CFDBPA is more than sufficient to successfully sell power and energy services in Illinois; there is no need for an agent to have knowledge about federal energy laws, and the AG does not explain its rationale.

The Commission declines to add subsections (d), (e), (f) and (g) as they do not add to the Rule and would add significant costs to RESs. The Commission, its Staff or any other party can use discovery methods to obtain training materials for a show cause proceeding or any other enforcement proceeding, and the Commission's CSD already

regularly obtains recordings when dealing with informal complaints. The Commission also agrees with NAE that there may be reasonable uses for a RES to possess a potential customer's account number, even if that customer does not enroll in power supply.

The Commission declines to add the AG's proposed subsection (h) which directs how a RES must compensate its agents. This requirement goes beyond the Commission's authority. While the Commission agrees that a commission-based compensation system could encourage individuals to use unethical or deceptive tactics in order to make sales, the Commission believes its revisions to Part 412, specifically Sections 412.110, 412.115, 412.120, 412.130, 412.140, 412.150, and 412.160 are sufficient to ensure appropriate sales methods, disclosures, and behavior. RES agents are recorded and monitored (Sections 412.130 and 412.140), and Section 412.115(b)(15) now requires a RES agent's identification to be disclosed for every offer, making it unattractive for a RES agent to improperly enroll a customer since each sale can ultimately be tracked back to the agent. Moreover, subsection (c) states that RES agents shall not utilize "false, misleading materially inaccurate or otherwise deceptive language or materials in soliciting or providing services." This Commission can utilize its enforcement powers against any RES whose agents violate this prohibition pursuant to Chapter XIV of the Act and its Rules. Finally, the Commission also notes that Section 412.330, discussed below, addresses penalties for violations of the Rule.

XX. SECTION 412.180 RECORDS RETENTION AND AVAILABILITY

A. Staff

Staff states that its revision allows for other retention requirements specified in other sections of the rule. Staff Summary at 9.

B. ICEA

ICEA, recommends allowing RESs to destroy call recordings of long-term customers after the contract addressed by the recorded call expires. ICEA Initial at 31. ICEA asserts that this will prevent RESs from holding on to call recordings from longstanding customers whose initial enrollment is far outside of any Commission statute of limitations. ICEA Initial at 31.

C. Commission Analysis and Conclusion

The current rules require that recordings must be kept "for a minimum of two years or for the length of the contract, whichever is longer." ICEA inserts the word "original" before contract. 2EE requires that recordings be kept for a "minimum" of two years, so imposing a longer requirement would not be contrary to the CFDBPA. 815 ILCS 505/2EE(b).

The CFDBPA states that for third-party verification methods, the:

suppliers shall maintain and preserve audio records of verification of subscriber authorization for a minimum period of 2 years after obtaining the verification

815 ILCS 505/2EE(b). Section 412.180(a) requires that verifiable proof of the authorization to switch suppliers be kept for a minimum of two years or for the length of the contract, whichever is longer. Illegally switching customers should never happen. RESs should be able to produce these recordings at any point during the relationship between the RES and the customer. The Commission rewrites the attached rule accordingly.

XXI. SECTION 412.190 RENEWABLE ENERGY PRODUCT DESCRIPTIONS

A. Staff

Staff's proposed revisions to Section 412.190 broaden the applicability of Section 412.190 to include terms that are analogous to "green", "renewable", or "environmentally friendly." Staff Summary at 9. Subsection (a) requires that RESs may only use these terms if power or energy is purchased over and above the requirements of the renewable portfolio standard applicable to RES under Section 16-115(D) of the Act.

Staff notes ICEA's concern that Staff's subsection (a) will disallow a RES from making a truthful statement about compliance with Illinois Renewable Portfolio Standard ("RPS") requirements. Staff is of the opinion that its proposed subsection 412.190(a) does not prohibit such truthful statements, and is not opposed to ICEA's revision. Staff Reply at 79-80.

Staff's proposed subsection (b) would impose a new requirement that RESs that market green offers shall disclose the percentage of renewable energy resources used in supplying power or energy for customers. Staff is informed and believes that the majority of current RES offers disclose the percentage of renewable energy resources for offers that have a renewable energy percentage higher than what Illinois law requires. Staff Initial at 43-44.

Staff notes that Ethical proposes a narrower definition of renewable energy resources than what is currently found in the IPA Act. Staff states that it appreciates Ethical's proposal to limit "renewable" or "green" offers to all solar, all wind, and low-impact hydro, but Staff recommends that the Commission use the definition of renewable energy resources found in the IPA Act. Staff Surreply at 22.

Ethical also proposes that the Commission only allow products that are 100% renewable energy to use the names 'green' or 'clean' or 'renewable' or a similar descriptor. Staff notes that customers are free to choose products that are 100% green and that the percentage disclosure requirements found in Staff's proposed Section 412.190(b) allow customers to do just that. Staff Surreply at 22.

Staff's proposed subsection (c) would require the RES to disclose the percentage of renewable energy resources generated in the State of Illinois. Staff views this requirement as proper in light of the fact that renewable energy credits or certificates are a readily-traded commodity and are fungible across jurisdictional boundaries. This would

inform customers regarding the local environmental benefits of an offer, as well as prohibiting RESs from implying that offers have local environmental benefits when there are none. Staff considers it reasonable to assume that a significant percentage of consumers considering “green”, “renewable” or “environmentally friendly” offers might base their enrollment decision, to at least some degree, upon information regarding local environmental benefits. Staff Initial at 44.

Ethical opposes Staff’s proposed Section 412.190(c) because it would not allow RESs to claim a reduced impact on the environment for renewable energy from adjacent states. While Staff continues to prefer that RES green offers that claim (explicitly or implicitly) local environmental benefits be limited to offers where the renewable energy resources come from locations within the State of Illinois, Staff is generally not opposed to broaden it to the four states adjacent to Illinois. However, Staff does not recommend that the Commission allow a RES offer to claim local environmental benefits for renewable energy resources that are located anywhere in the customer’s ISO region. Such a broad region would be especially inappropriate for the PJM region where Illinois is far removed from the other states included in PJM. Staff Surreply at 22-23.

Ethical also states that “if a supplier uses what are known as ‘National RECs’ they should be permitted to make claims about reduced impact on America’s environment at large.” Id. at 12. Staff does not disagree with this statement and Staff’s proposed rules would not prevent a RES from making such claims. However, Staff asserts that the RES purchasing RECs nationwide should be forbidden from implying any reduced environmental impact on the customer’s local environment. Staff Surreply at 23.

In response to both ICEA and RESA’s assertions that most suppliers do not commit to buying specific RECs in advance of customers signing up for a particular “green” offer, Staff proposes that the Commission require RESs to disclose whether a particular green offer has guaranteed attributes or whether the RES will decide later how exactly it fulfills its renewable energy obligations. In other words, the Commission should not require that each RES commit to a very specific resource mix and location for every green product it offers. If a RES decides to not commit to a specific resource mix and location in advance of signing up customers, the RES should be required to disclose this when advertising such a product. Staff proposes new language in its Reply Comments to subsections 412.190 (c) and (e). Staff Reply at 77-78.

Staff’s proposed new subsection (e) assumes that a customer interested in a green offer will review available information about the type and location of the renewable energy resources on the supplier’s website. Staff’s proposed new subsection (e) requires a RES to provide more detail about the type and location of the renewable energy resources on its website for customers and potential customers, who desire this type of information. Staff Initial at 45.

In response to ICEA’s claim that it is not the role of the Commission to mandate such steps, Staff is of the opinion that it should indeed be the role of the Commission to require RESs to truthfully disclose whether, and how, they have committed to a particular mix and location of renewable energy resources at the time they market particular offers. Staff’s modified language is intended to clarify this requirement further. Staff Reply at 78.

Staff's proposed new subsection (d) requires that disclosure of the percentage of renewable energy resources and the percentage of Illinois resources also be made with respect to offers posted on PlugInIllinois.org. Staff notes that currently, even if a prospective customer reviews the various "green" RES offers on PlugInIllinois.org, there is little information regarding the differences, if any, between such offers. Staff recommends that the Commission require that comparison of the numerous green RES offers be rendered more user-friendly by creating a new column in the RES Offer Matrix on PlugInIllinois.org. This new column would be labeled "% Renewable Resources in IL" and each supplier would enter the percentage information through the existing RES portal for any green offers it displays on the Commission's website. Staff Initial at 45.

ELPC, Ethical and the AG propose that RES customers receive a report sometime after signing up for a green offer that details the actual resource mix and location(s) of the RECs that were purchased to fulfill the marketing claims of the green offer. Staff proposes new language in its Surreply Comments to address this. Staff Surreply at 21. Staff's proposed language requires that RESs provide verification of the information, upon Staff's request.

With respect to ELPC's arguments regarding bundled RECs, which the AG supports, Staff does not believe the AG's language will be helpful to the Commission. Also, Staff opines that RECs from the current year are a better indicator of investment in renewable energy and more likely to encourage investment in new renewable energy development. Staff Reply at 75. In response to ELPC's proposal to require that RECs be from the current year, Staff states that it is very much in favor of requiring a detailed disclosure of the characteristics of the RECs a RES intends to purchase, but Staff does not recommend that the Commission limit the universe of allowable RECs to the ones from the current year. Without questioning the perceived superiority of recent-vintage RECs, Staff sees no benefit from an outright ban on RECs that are not from the current year. Staff Surreply at 20-21.

In response to ELPC's proposal to require that RECs be retired, Staff states that it is not necessarily opposed to a provision in the rule that specifically addresses retirement of RECs, but notes that ELPC did not provide any language for Staff or other parties to comment on. Staff Reply at 74-75.

B. ICEA

ICEA is concerned that Staff's proposed modifications to Section 412.190 place a significant burden on RESs while preventing RESs from making truthful statements about the environmental benefits of a particular product or service. ICEA Initial at 38-39.

ICEA disagrees with the argument that Section 16-115A(e)(iii) provides the necessary authority for the Commission to promulgate the Part 412 amendments proposed by Staff. ICEA argues that Section 16-115A(e)(iii) supports its recommendation that if a RES makes a claim about green, clean, renewable, or the like, the RES should provide substantiation. ICEA Reply at 38.

ICEA also opposes the recommendations of ELPC and the AG to set minimum percentage requirements in order to qualify for the terms "renewable," "green," or "environmentally friendly." Even if the Commission restricts these terms to energy

coupled with RECs, against the recommendations of ICEA and others, as long as a RES discloses the percentage procured and it is above the RPS minimum, ICEA opines that any percentage should be sufficient to qualify. ICEA argues that ELPC and the AG provide no reason why a fully disclosed percentage is insufficient to meet consumer expectations. Thus, ICEA recommends the Commission reject this proposal. ICEA Surreply at 56.

ICEA argues that Staff's subsection 412.190(a) is too broad in its regulation of the use of the terms "green," "renewable," or "environmentally friendly" or "any term or descriptor of like or similar import." ICEA asserts that procuring more RECs than the minimum RES self-procure percentage in a particular year is not the only way to provide a "green," "renewable," or "environmentally friendly" product. Illinois statutes also recognize the environmental benefits of energy efficiency, demand response and distributed generation. See, e.g., 220 ILCS 5/8-103(a); 220 ILCS 5/16-101A(e). ICEA believes that claims that a supply product coupled with similar value added services is "environmentally friendly," "renewable," or "green" would be truthful. Although ICEA is not unsympathetic to concerns about minimal compliance with the RPS being labeled "renewable," there is no reason a RES should be disallowed from making a truthful statement about compliance with Illinois RPS requirements. ICEA Initial at 39-40.

ICEA believes that pursuant to Section 16-115A(e)(i), a RES would be obligated to disclose any enhancements to its retail energy product—whether it is RECs, demand response, distributed generation, carbon offsets, energy audits, home automation, smart thermostats, other efficiency, or any other service that has recognized environmental benefits. Thus, ICEA does not believe there is a need for Staff's proposals. However, to the extent that the Commission believes that a clarification of the requirement in 16-115A(e)(i) is necessary, ICEA is proposing alternative language to clarify how "green" or "environmentally friendly" services must be disclosed. ICEA Initial at 41. ICEA asserts that carbon offsets and distributed generation address the electricity itself. ICEA Surreply at 52-53.

ICEA notes that Section 16-115D of the Act has geographic requirements for RECs procured for the purposes of RPS compliance, but points out that other RECs are available on the market and, in ICEA's opinion, should count as "renewable" as long as the REC is consistent with Section 1-10 of the IPA Act as interpreted by the IPA. ICEA Initial at 40-41. Although ICEA states that it has no current plans to make a Constitutional challenge, it opines that Staff's proposed Illinois disclosure may make the proposed rules vulnerable to a federal Dormant Commerce Clause challenge. See, e.g., *Pete's Brewing Co. v. Whitehead*, 19 F. Supp. 2d 1004 (W.D. Mo. 1998). ICEA asserts that if a RES makes an affirmative statement that it procures a certain percentage of RECs from Illinois sources, the RES must be able to substantiate that claim after the fact. But, ICEA states, no party has explained the benefits of disclosing the Illinois content. As a result, ICEA recommends that the Commission accept ICEA's proposal to delete the Illinois-sourced disclosure. ICEA Surreply at 55-56.

With regard to Staff's proposed Sections 412.190(c) and (e), there are commercial feasibility and policy concerns with compliance. From a feasibility perspective, ICEA understands that the general market practice is not to buy RECs in advance of acquiring customers. In other words, ICEA states, even if each REC can be linked to a particular

facility (or state), a RES is unlikely to know the location in advance of acquiring a customer unless the product specifications include specific RECs (for example, a 100% Illinois wind product). Also, ICEA notes that some tracking systems do offer unit-specific REC tracking, but not all REC tracking systems are unit-specific. Thus, even after the fact it may not be possible for a RES to identify the units or state of origin for the RECs included. ICEA Initial at 41-42.

From a policy perspective, ICEA understands the apparent intent of the new Section 412.190(c) and (e) is to identify which products best support Illinois or specific fuel types. ICEA could see a supplier voluntarily taking the steps outlined in proposed subsections 412.190(c) and (e) for its own marketing purposes. However, ICEA believes that it is not the role of the Commission to mandate such steps, and requiring each RES to identify Illinois renewable energy resources is outside the authority of the Commission. ICEA Initial at 42.

ICEA notes that Staff also makes an amended proposal to require all RESs offering “renewable,” “green,” or “environmentally friendly” products to make disclosures on their websites. In the case that the RES advertises that it will procure RECs from a particular source or fuel type, ICEA does not in principle object to a website-based disclosure. Although Staff’s revision is preferable to its former language, ELPC’s recommendation, or the AG’s recommendation, ICEA opines that a RES should not have to make the disclosure that it is not procuring from a particular location or fuel type. A REC is already defined very expansively in Section 1-10 of the IPA Act, and thus there should be no need for a RES to disclose that it intends to procure from a broad range of locations and fuel types. ICEA Surreply at 55.

With regard to Section 412.190(d), ICEA has no objection in concept to some disclosure on PlugInIllinois.org of the information from Sections 412.190(a) and (b) (as modified by ICEA). However, with ICEA’s recommended modifications, the information is no longer a simple percentage and may in fact require significant narrative (especially for products with value-added services). A redesign on some level of PlugInIllinois.org would likely be required to support narrative rather than simple percentages, but could pay dividends for informing customers. ICEA Initial at 42.

ICEA opines that a rulemaking is a particularly inflexible way of defining columns on a Commission-run website that should be flexible enough to change as products and services change. If the parameters for PlugInIllinois.org cannot be agreed to by consensus, then a Commission Order should suffice for defining the contents of a Commission-run website. No matter what the focus of the rulemaking, ICEA recommends that issues of PlugInIllinois.org design be handled in a procedural vehicle other than a rulemaking. ICEA Initial at 42-43.

ICEA states that if a RES makes a specific claim about the environmentally friendly, renewable, or green nature of a product in marketing materials, the RES should have to back it up. ICEA believes that the best solution is stricter enforcement under Section 16-115B(a)(ii) of the Act, which avoids the authority issues while allowing the Commission to punish bad actors making untruthful claims about whether a product is “renewable.” However, to the extent that the Commission does apply a prescriptive rule regarding disclosures rather than using enforcement and discipline as its primary tool,

ICEA recommends that the Commission require support of truthful claims rather than limit otherwise truthful claims. ICEA Initial at 40.

ICEA notes that ELPC recommends disclosure of the percentage of RECs procured separately from bundled energy from the corresponding generation facility, but ICEA explains that RECs represent the environmental attributes, so the bundled energy would necessarily be devoid of environmental significance. ICEA Reply at 40-41.

In response to ELPC's recommendation that unbundled RECs used to support claims of electricity being 'renewable,' 'green,' etc. should be from the current year, ICEA notes that the IPA Act makes no such distinction in its definition of "renewable energy credit" nor does Article XVI of the Act or the Commission's rule on RES compliance with the RPS. See, e.g., 20 ICLS 3855/1-10; 83 Ill. Admin. Code §§ 455.110, 455.120. Unless the RES makes a claim about the vintage of RECs retired in conjunction with a particular product, the RES should have no obligation greater than the RPS obligation in terms of REC vintage. ICEA Surreply at 53-54.

ICEA states that it is confused by the focus on REC retirement by the AG. According to ICEA, unless a REC is retired, ICEA is unsure how a RES could truthfully count a REC's renewable attributes toward a customer's usage. ICEA thus agrees with the underlying concept that a REC's attributes cannot be claimed without retirement, but is unclear why this needs to be specified in the rule. ICEA's understanding is that failure to retire a REC when that REC's environmental attributes are claimed for a customer would expose the RES to enforcement pursuant to Section 16-115B of the Act. ICEA Surreply at 53.

ICEA notes that ELPC seeks to regulate RES responses to requests for proposals ("RFPs") from municipalities that have obtained authority pursuant to Section 1-92 of the IPA Act to undertake municipal aggregation. According to ICEA, the contents of aggregation documents are governed by Section 1-92 of the IPA Act, and are within the discretion of the municipalities seeking bids. ICEA recommends against adoption of any requirement here in this proceeding affecting municipalities or the RFP process for municipal aggregations. ICEA Reply at 41.

According to ICEA, the precise volumes, sources, vintage, and mix of renewable resources, like all procurement decisions by RESs, is competitively sensitive information. ICEA states that even under the Illinois RPS, RESs are not required to publicize the sources of RECs (to the extent RECs are relied on by a RES instead of the Alternative Compliance Payment) and have protection against releasing competitively-sensitive information. See 220 ILCS 5/16-115D(e). ICEA Surreply at 54. ICEA opines that the Commission should not force RES to differentiate between sources of RECs when the RES does not make any particular claims about RECs other than the volume. If the Commission or another party is concerned that a RES is not procuring sufficient RECs to meet the obligations stated in the RES's marketing materials or contracts, the proper oversight is enforcement or a complaint, not disclosure of sensitive information. ICEA Surreply at 55.

C. ELPC

ELPC strongly supports the development of greater disclosure requirements and restrictions pertaining to the marketing of electricity as "green," "renewable," "environmentally friendly" or similar descriptions. According to ELPC, regulation of the use of these terms in electricity marketing by RESs is important to protect the public from misleading advertising and help consumers who wish to support renewable energy make educated choices about which electricity product to purchase. ELPC Initial at 1-2.

In response to ICEA's statement that the Commission does not have authority to regulate RESs as set out in Staff's proposed Section 412.190, ELPC points out that ICEA itself acknowledges that RESs are subject to 220 ILCS 5/16-115A(e)(i). ICEA Initial at 11. According to ELPC, the disclosures proposed by the Staff, as well as the additional marketing restrictions and disclosure requirements proposed by ELPC, implement this provision and are well within the Commission's authority. ELPC Reply at 3-4.

ELPC notes that RESA claims that Staff's proposed amendments will increase the burden and expense of compliance for RESs, but ELPC opines that the proposed disclosure requirements will create minimal costs for RESs. ELPC states that most of the requirements proposed by Staff and ELPC are as easy as adding additional text to marketing materials that the RES has already chosen to produce. The benefit to consumers, on the other hand, ELPC avers, is substantial because additional disclosures can help ensure that customers fully understand their options and can make an informed decision in line with their values and preferences. Moreover, the Illinois legislature has explicitly stated its intent that "electricity consumers be provided with sufficient and reliable information so that they are able to compare and make informed selections of products and services provided in the electricity market." 220 ILCS 5/16-117(a). The benefit of increased disclosures justifies the minimal burden on RESs. ELPC Reply at 5.

Notwithstanding the requirement that a RES may only advertise an electricity product as "green" if the RES exceeds the requirements of the Illinois RPS, as proposed in Staff's subsection 412.190(a), it would be appropriate to allow a RES to advertise the total percentage of electricity from renewable energy resources (including the amount necessary to comply with the RPS), as long as the percentage used to meet the RPS is disclosed and the marketing material clearly states that that percentage is being used to meet an existing legal standard. ELPC Initial at 6. In response to ICEA's proposal that RESs be allowed to truthfully state that they are in compliance with the Illinois Renewable Portfolio Standard ("RPS"), ELPC does not object, but argues that RESs must make clear that such compliance is required by law. ELPC states that RESs should in no way imply that such compliance is voluntary or somehow sets them apart from other electricity suppliers. ELPC Surreply at 6.

Section 412.190 should require minimum percentages of renewable energy for electricity products advertised as "renewable," "green," etc. Specifically, electricity marketed simply as "renewable" should have to be sourced from 100% renewable energy resources (or the RES must purchase the equivalent number of RECs). Alternatively, a RES could market electricity as "X% renewable." This mirrors the approach taken in Texas, see 16 TAC § 25.476(d)(2), and is consistent with the Federal Trade Commission's guidance, see 16 C.F.R. § 260.15(c). ELPC Initial at 4-5.

Other descriptions, ELPC states, such as "green," "environmentally friendly," and similar terms are less specific and indicate a substantial level of environmental benefits without carrying the implication that 100% of the electricity is from renewable energy resources. Accordingly, ELPC proposes, these terms should be permitted only if at least 50% of the electricity is sourced from renewable energy resources (or the RES purchases the equivalent number of RECs). These requirements will ensure that various advertising terms are not used to mislead customers as to the environmental benefits of specific electricity products. ELPC Initial at 5.

ICEA and RESA both express concerns about advertising restrictions for environmentally beneficial products and services that are related to electricity use, such as carbon offsets, smart thermostats and energy efficiency. Importantly, ELPC explains, products and services like carbon offsets, smart thermostats, energy efficiency, demand response, and distributed generation do not ensure that the actual electricity being sold is any less environmentally damaging than electricity from conventional energy sources. ELPC agrees that products and services like energy efficiency and smart thermostats can have significant environmental benefits and that RESs should be permitted to truthfully advertise the environmental benefits of these services and products. But, ELPC avers, RESs may not claim that the actual electricity itself is "renewable," "green," or "environmentally friendly." ELPC avers that a RES should only be permitted to advertise electricity as "renewable," "green," etc. if it obtains the requisite RECs. ELPC Reply at 6-7.

In response to ICEA's argument that RESs should be able to support claims that an electricity product is "renewable," "green," etc. with RECs that do not meet the requirements for compliance with the Illinois RPS, as long as the RECs meet the requirements of Section 1-10 of the IPA Act, ELPC opines that it is critical that any REC used to support a claim that electricity is "renewable," "green," etc. should be registered with and obtained through a reputable tracking system, such as PJM's Generation Attribute Tracking System (GATS), the Midwest Renewable Energy Tracking System (M-RETS), or Green-e. This will ensure that the RECs are legitimate and the environmental attributes of the renewable energy are not double-counted. ELPC Reply at 7.

ICEA and RESA's concerns with the feasibility could be addressed by providing alternatives for some of the disclosure requirements. ELPC proposes that RESs be allowed to choose to not make a specific claim about the renewable energy resource mix and resource location that it will use for electricity advertised as "renewable," etc. if and only if the RES discloses on all marketing material the anticipated mix and resource location for the current year and the actual mix and resource location for the previous year. In addition, the RES would be required to notify its customers at the end of the year which renewable energy resources were actually utilized, the percentage of each resource, and the location of the resources. ELPC explains that RESs would also have to post this information on their websites. The alternative disclosure requirements would only apply to the mix of renewable energy resources and resource location. ELPC Reply at 8.

Importantly, if a RES decided to make specific marketing claims up-front, it would be required to meet those claims. For example, if a RES marketed its electricity as being supported by 100% Illinois wind RECs, it could not later decide to use Illinois solar RECs

or wind RECs from a different state. ELPC believes this is a fair way to balance the feasibility concerns of the industry and the public interest in disclosure requirements. ELPC Reply at 8-9.

Alternative compliance requirements would address the concerns of Ethical regarding the disclosure of the location of renewable energy resources, and would make moot its suggestion to only require disclosure of the region, rather than state, in which renewable energy resources are located. If RESs are permitted to disclose the location of the renewable energy resources from which they purchased RECs after the fact, there is no reason that they would not be able to identify the specific state, rather than the region. ELPC Surreply at 7.

ELPC supports the AG's position that all marketing material related to electricity marketed as "renewable," "green," etc., should include information explaining what a REC is and how RECs work. ELPC asserts that it is reasonable to think that many consumers do not know what RECs are or understand how RECs work. ELPC Surreply at 5.

While Staff's proposals are a good start, ELPC argues they should be further strengthened. RESs should be required to disclose on all marketing materials, including on their websites, the renewable energy percentages and generation sources used for each electricity product marketed as "renewable," etc. If a marketed electricity product uses more than one renewable energy resource, each of the resources and corresponding percentages should be provided. The proposed definition to be added to Part 412 defines renewable energy resources to include a variety of resources, from wind and solar to biodiesel, waste biomass, and landfill gas. Customers may reasonably have preferences about what specific types of renewable energy resources they wish to support, and marketing materials should contain the information necessary for customers to make choices in line with their preferences. ELPC Initial at 5-6.

When marketing an electricity product as "renewable," etc., ELPC proposes that RESs should also be required to disclose whether the RES has purchased the actual electricity along with the REC ("bundled RECs"), or whether it has purchased just the REC without a contract for the underlying electricity ("unbundled RECs"). For unbundled RECs, RESs should disclose the age of the renewable energy project, the REC vintage, and whether the renewable energy project costs were rate-based (i.e. whether the capital costs were recouped through the electricity rates of the consumers who receive the actual power from the project). Consumers may value bundled and unbundled RECs differently, as the purchase of bundled RECs is a more direct investment in renewable energy, and is more likely to encourage new renewable energy development. Requiring RESs to disclose on all marketing material whether a "green" electricity product includes bundled or unbundled RECs (or the percentage of each, if applicable) will ensure that customers know exactly what they are choosing and paying for. ELPC Initial at 3-4.

ELPC opines that a RES that markets an electricity product as "green," "renewable," "environmentally friendly," or any similar description should be required to purchase and retire RECs for that advertised electricity. The proposed amendments do not set out a mechanism for ensuring that this occurs. A REC retirement requirement would prevent RESs from counting electricity that is already being used to satisfy a

renewable energy standard in Illinois or another state, consistent with consumer expectations. ELPC Initial at 2-3.

ELPC states it is unclear whether the requirements of Staff's Section 412.190 would apply to RESs' responses to RFPs for municipal aggregation programs. ELPC opines that the provisions of Section 412.190 should apply to all materials in which RESs describe their electricity products, including not only traditional advertising and marketing materials and websites, but also responses to RFPs from municipal aggregation programs. This will ensure that administrators of municipal aggregation programs receive the same complete information that any other customers receive. ELPC Initial at 6-7. Likewise there is no reason that customers in an aggregation program should not be entitled to the same level of disclosure as individual customers regarding the source of electricity marketed as "renewable," "green," etc. ELPC states that the issue is not the Commission's authority over the municipal aggregation RFP process, but rather its clear authority over RES marketing. See, e.g., 220 ILCS 5/16-115A(e); 220 ILCS 5/8-501. ELPC Surreply at 8.

If the Commission believes that it does not have the authority to apply the restrictions and requirements of Section 412.190 directly to RES responses to municipal aggregation RFPs, ELPC states that it should at least work with the IPA to issue guidance on disclosure standards, which should include all of the disclosures and marketing restrictions included in Section 412.190. ELPC Surreply at 8-9.

D. CUB

CUB proposes to add the word "also" to Staff's proposed subsection (d) to require that the disclosures also apply to offers posted by a RES on the Commission's PlugInIllinois.org website. CUB argues that all green, renewable, or environmentally friendly offers should be required to make the disclosures contemplated in subsections (b) and (c) whether they are posted to PlugInIllinois.org or not. CUB Initial at 12.

E. AG

The AG opines that Staff's proposed Section 412.190 is a vast improvement over the current version of Section 412.190, but argues it is insufficient to address the confusion customers have regarding renewable energy products. AG Initial at 10. The AG opines that energy sourced from renewable resources, while seemingly simple, is a confusing topic. The AG explains that as a matter of physics, unless a customer's residence is directly connected to a wind farm or solar panels, RESs (or any other entity) cannot truthfully claim that they are providing electricity generated from renewable resources. Instead, the "green" component of "green" power almost assuredly comes from the purchase of RECs. Staff's proposed Section 412.190 makes no attempt to reduce potential customer confusion and makes no mention of RECs. It does not require RESs marketing "green" products to verify their purchase of RECs and that their RECs have been certified by an independent third party and that their RECs have not been sold more than once. AG Initial at 11.

In the AG's opinion, its proposed Section 412.190 remedies these shortcomings. It requires RESs marketing "green" products to provide information to potential customers regarding the actual source of the "green" component of the power they sell. The AG

concedes that RECs are not a simple concept. However, it is better that potential customers be provided information about the actual source of “green” power as opposed to being provided a simplified version that does not reflect reality. AG Initial at 11.

In response to ICEA’s argument that the Commission does not have jurisdiction to adopt certain of Staff’s proposed modifications to Part 412, the AG argues that Section 16-117(a) of the Act sets forth the General Assembly’s recognition that the “average consumer” will not be able to understand nor evaluate RES product offerings. 220 ILCS 5/117(a). To remedy this, the General Assembly makes clear its intent that consumers be provided the tools necessary to make informed comparisons and evaluations of retail electric products. The AG argues that provisions of Staff’s proposal that ICEA finds objectionable are consistent with the General Assembly’s stated intent. AG Reply at 3.

In response to ICEA’s concerns regarding offers that include things like demand response or energy efficiency, the AG urges the Commission to focus its attention, and the changes to Section 412.190, on the actual provision of electricity (i.e., the supply product). The AG believes this category is where the need for consumer protection and disclosure requirements is the greatest. Electrons are invisible and electricity markets are largely inaccessible to everyday consumers - if those consumers do not receive what they bargained for in terms of helping the environment, they will likely have no idea or way of checking it. Meanwhile, the AG explains that the additional services or incentives that may be packaged with the supply product and that may accurately be described as helpful environmentally (such as energy audits, smart thermostats, etc.) are actually visible to consumers, affording them the ability to assert rights and remedies under general consumer protection mechanisms. AG Reply at 16-17.

In order to call its supply product “renewable,” “green,” or some similar terminology, the AG agrees with ELPC that RES should be required to purchase and retire RECs for 100 percent of the customer’s usage beyond what is covered by RPS compliance. See ELPC Comments at 2-3. If the supply product is not 100 percent renewable, then the RES must be required to specify the percentage of RECs that it will procure (as in “x% renewable”). The AG opines that the purchase and retirement of RECs is important to ensure verification and to avoid double-counting. AG Reply at 17.

Regarding customer disclosures, all supply products that are referred to as “renewable,” “green,” or some similar terminology, must explain to customers in their marketing materials and product descriptions the basic concept of a REC and the fact that the electrons the customer will be consuming are not necessarily electrons from a renewable energy source. In addition, the AG agrees with ELPC that more fulsome disclosures about unbundled RECs would be helpful to consumers. AG Reply at 17-18.

On the issues of timing, practicality, and feasibility raised by ICEA and RESA, the AG suggests a two-step framework to address these comments: first, the Commission could require that marketing materials must include a description of the supplier’s intent and a reporting of results from the previous year (if available); second, a RES would provide a year-end report to the customer of what the supplier actually procured. According to the AG, this approach represents a balancing of the state’s interest in customer information and awareness with the practical realities of how RESs procure RECs, as described by ICEA and RESA in their respective comments. AG Reply at 18.

F. RESA

RESA questions the need for the proposed revisions to Subsection (a) of Section 412.190, but does not generally oppose them.

In Initial Comments, RESA opines that subsections (b) through (e) of Staff's proposed Rule should be deleted, because they would recast how green products are created and structured in a competitive market. RESA explains that when a RES markets a green product, it does not typically pre-purchase the RECs that it will use to satisfy the green content. This is because the RES does not know how many customers will enroll. Instead, RESA states, most RESs will enroll customers on the product throughout the year and will then make REC purchases either according to a specific schedule (annually or quarterly) or when it is advantageous to do so (i.e. when REC prices are low), in sufficient quantities to match the amount of load enrolled. Moreover, RESs may purchase different types of RECs to satisfy the green content based on the market price. RESA Initial at 18-19.

In response to Staff's revised versions of subsections (c) and (e) of Section 412.190, RESA states that if the Staff would make comparable revisions in Subsection 412.190 (b), it would find Staff's modifications acceptable. RESA Surreply at 24. RESA notes that the AG and ELPC, in reply comments, propose revisions to address the feasibility concerns raised by RESA and ICEA. From RESA's perspective, the AG's and ELPC's proposed revisions do not solve the problems raised by RESA. RESA Surreply at 24.

In addition, RESA states that the compliance requirements contemplated by the proposed revisions to Section 412.190 are inconsistent with the procurement of other "environmentally friendly" resources. For example, carbon offset products are not tied to any particular source. RESA Initial at 19.

RESA argues that as long as a RES procures RECs (or other renewable resources) that are consistent with how the product is marketed, it should be allowed to market the product as "green" energy. For example, if a RES markets a product as being 50% sourced from wind energy, the RES must procure wind RECs (or wind energy purchased under a contract) equal to the load that results from that offer, otherwise, it has misrepresented the offer, which is a violation of existing rules. If a RES markets a product as being 50% sourced from Illinois wind, the RES must procure RECs (or wind energy purchased under a contract) from Illinois wind sources equal to the load that results from the offer. RESA Initial at 19.

In response to ELPC, RESA states that ELPC does not offer any evidence that customers need the additional information that would be provided by Staff's proposed amendments to Section 412.190, let alone ELPC's proposed additional requirements. RESA recommends that ELPC's proposed additions to Section 412.190 be rejected. RESA Reply at 17.

G. Ethical

Ethical states that it exclusively offers customers renewable energy supply and products. Ethical Reply at 1. Ethical opines that it and all RESs offering renewable energy products must have two things to function in the Illinois market and to further the

production and use of renewable energy: 1) a clear definition of "green energy" or "renewable energy"; and 2) the ability to freely market to and contract with customers. Ethical Reply at 2.

Ethical notes that the parties most engaged on this topic all agree that claims must be substantiated and that the substantiation must be traceable or auditable. Ethical further posits that there needs to be some education for suppliers about language that would be allowable or not. This could be done with a workshop and guidance instead of new regulations. Ethical Reply at 3-4.

Ethical proposes that the Commission only allow products that are 100% renewable energy to use the names "green" or "clean" or "renewable" or a similar descriptor. Other than that, the RES should have the discretion to "true up" any claims within a specific calendar window similarly to how it is currently done for renewable portfolio standards. Ethical Reply at 10.

Ethical explains that RECs are the centerpiece of renewable energy claims. Numerous federal and state governmental entities, regional transmission operators and market participants have recognized that RECs represent and convey the renewable, environmental and/or green attributes of renewable electricity generation for the owner of the REC. Simply stated, the entity that owns the REC owns the renewable energy attributes of the energy at the facility at which the electricity was generated. Ethical Reply at 6. Put simply, in the absence of a REC, there is no renewable energy in use. Ethical Reply at 17.

In response to Staff's proposal to require disclosure of Illinois resources, Ethical states that Staff's proposal is contrary to the existing standard in the market because they would not allow for renewable energy from adjacent states to be able to claim a reduced impact on the environment. Ethical Reply at 10-11. The prevailing industry standard is not to narrow the geographic scope for environmental impact to only a state, but rather to a geographic region that includes the customer's location. Ethical Reply at 11. Ethical proposes that Staff's subsection (c) be revised to cover a regional mix with region defined to include several definitions including: ISO, NERC Region, geographic region (i.e. Midwest), state, multi-state region (i.e. IL, IA, MO, WI, IN as one region). At the same time, if a supplier uses what are known as "National RECs" Ethical opines it should be permitted to make claims about the reduced impact on America's overall environment. The key is to require that substantiation is available in some way and properly assigned. Ethical Reply at 12.

In addition, like other renewable energy RESs, Ethical is unable to predict with accuracy in advance: 1) how much energy its customers will use; and 2) if there will be sufficient RECs available in Illinois during a given period to account for all of that usage. Thus, Ethical buys some portion of our RECs in arrears-after customer consumption data is provided by the utility and ISO. Because Ethical procures a large amount of RECs, it is sometimes impossible for the company to source all of those RECs in sufficient quantities from any one specific wind farm, county or state. Therefore, it would be impossible for Ethical to say for certain in marketing materials prior to the purchase of RECs what percentage of the customers future consumption will be covered by RECs generated in Illinois. Ethical Reply at 12-13.

Ethical proposes an alternative measure. The Commission could have RESs indicate their "expected mix of renewable sources". Specifically, RESs could indicate in the customer's contract the anticipated state or ISO from which it will source the green energy. At the end of the year, RESs can identify where they ultimately sourced those RECs via filing or by notice on the company website. Alternatively, the Commission could create a specific "green and local" product label for RESs to use. If the Commission created a specific "green and local" category of product offerings it would be reasonable to expect RESs to definitively identify an Illinois source for the renewable energy supply in that product offer. Ethical Reply at 13.

Staff's proposed subsection 412.190(e), requires RESs to disclose, on their websites, the generation source and location of renewable energy they procure for green product offers. It is unclear to Ethical whether Staff is interested in the renewable generators' ISO, state, utility region, or the physical address of the renewable generating facility. Ethical opines the language should be clearer so it is not open to future interpretation and possible disagreement. There is no need to foreclose one type of product in an effort to assure that substantiation for claims is being made. Ethical Reply at 13-14.

Ethical proposes a supplemental filing or notice in which a RES could submit the ultimate percentage mix and generator location used to fulfill the Illinois customer load without the risk associated with the proposed requirements as they are now worded. Ethical states that it commonly provides environmental disclosure statements to customers in other states on an annual basis. Ethical Reply at 14.

We also agree that there should be a disclosure between bundled and unbundled RECs. The prevailing national standard is that RECs bundled with null power is renewable energy or green power. Unbundled RECs are, at a national level, required to carry that disclosure. Ethical Reply at 18.

H. Commission Analysis and Conclusion

Staff's proposed rule addresses potential consumer confusion regarding products that are marketed as renewable, green, environmental or other similar terms. Because many RESs market the renewable aspects of the energy they sell, the Commission finds it important that this Rule be implemented. The Rule seeks to provide customers with a method to verify that the claims that induced them to purchase the energy product can be verified. Staff's proposed Section 412.190 accomplishes this and is adopted with some modifications and additional requirements regarding the retiring of RECs and municipal aggregation customers.

The Commission disagrees with ICEA that it does not have the authority to regulate RESs' marketing of renewable products or to require disclosures about the percentage and location of renewable energy resources. In particular, pursuant to Section 16-115A(e)(1), a RES must ensure that:

Any marketing materials which make statements concerning prices, terms and conditions of service shall contain information that adequately discloses the prices, terms and

conditions of the products or services that the alternative retail electric supplier is offering or selling to the customer.

220 ILCS 5/16-115A(e)(i). Moreover, Section 16-115A(e)(iii) states:

An alternative retail electric supplier shall provide documentation to the Commission and to customers that substantiates any claims made by the alternative retail electric supplier regarding the technologies and fuel types used to generate the electricity offered or sold to customers.

220 ILCS 5/16-115A(e)(iii). The attached Section 412.190 seeks to assure that RESs comply with these statutory provisions.

Subsection (a) in the attached rule, requires that in order for a RES to use any term like “green” or “renewable” in the marketing of a power or energy service, the RES must purchase more renewable resources than required by the Illinois RPS. As discussed in Section 412.10 above, the term “renewable energy resources” is defined in the IPA Act and encompasses a wider array of renewable energy resources than some parties are comfortable with. It states:

"Renewable energy resources" includes energy and its associated renewable energy credit or renewable energy credits from wind, solar thermal energy, photovoltaic cells and panels, biodiesel, anaerobic digestion, crops and untreated and unadulterated organic waste biomass, tree waste, hydropower that does not involve new construction or significant expansion of hydropower dams, and other alternative sources of environmentally preferable energy. For purposes of this Act, landfill gas produced in the State is considered a renewable energy resource. "Renewable energy resources" does not include the incineration or burning of tires, garbage, general household, institutional, and commercial waste, industrial lunchroom or office waste, landscape waste other than tree waste, railroad crossties, utility poles, or construction or demolition debris, other than untreated and unadulterated waste wood.

20 ILCS 3855/1-10.

The attached rule retains Staff’s proposed language that it is “renewable energy resources” that are being addressed. It encompasses RECs, bundled and unbundled, of any vintage; it encompasses resources from any location; and it encompasses resources that Ethical asserts many customers may not consider to be “environmental” such as landfill gas. The Commission does not adopt any of the proposals to limit the definition of renewable energy resources. The Commission seeks rather to ensure that if a RES makes a claim that uses any term like “green” that the RES will disclose to customers the renewable energy resources that it used to serve the customer and be prepared to provide verification to Staff, upon request.

Importantly, the attached Rule requires that to use any “green” label to market a power or energy product in Illinois, a RES must procure more renewable energy resources than required by the Illinois RPS. No party disputes this requirement and the Commission thinks it is reasonable. The Commission also agrees with ICEA that it is appropriate for a RES to be able to state that they have complied with the RPS, if true, but at the same time the Commission finds that any such statement must also clarify that this is required by law. This will ensure that customers are not misled into believing that a RES, which merely does the minimum, is in any way more environmental than other RESs.

The Commission declines to adopt the proposal by the AG and ELPC that only products that are 100% sourced from renewable energy resources may use the term “renewable energy.” The attached Rule requires that the percentage of renewable resources be disclosed, so that customers will be given the information necessary to understand the product they are buying. The Commission believes that customers should be able to choose a product based on green attributes and price; allowing for different percentages will enable different price/renewable mixes.

ICEA is concerned that the Commission’s rules will not allow RESs to advertise other “green” products such as energy efficiency or carbon offsets because it believes the definition of terms like “green” is too broad. The Commission does not see its Rule in the same way. The attached Rule requires that if any term like “green” is used to describe a power or energy service, the RES must procure more renewable energy resources than required by the Illinois RPS. This rule does not address those other green value-added products, which are not the actual power or energy that the customer uses. For these other products, a RES may not claim the energy itself is green or renewable, etc.

Staff modified its proposal in its Surreply Comments, to recognize that RESs cannot always know ahead of time the particularities of the renewable energy resources it will procure. This change recognizes the explanations provided by ICEA, RESA and Ethical regarding the manner in which RESs generally participate in the renewable energy market. This change is adopted as subsection 412.190(b)(3) in the attached rule.

The Commission finds that RESs should disclose what percentage of renewable resources are from Illinois. The Commission sees that ICEA complains that it is not always possible to identify the state of origin. ~~In the event that Illinois cannot be identified as the state of origin, a RES cannot claim that its power and energy are from Illinois renewable energy resources.~~ **On Exceptions, ICEA notes that the definition of “renewable energy resources” in the Illinois Power Agency Act generally does not require a state of origin except in the case of landfill gas, but if a RES must disclose at minimum the state of origin of a REC pursuant to 412.190(b)(5), these RECs are essentially excluded. The Commission agrees with ICEA, and notes that while a RES cannot claim that a REC without a state identified is an Illinois REC (and, of course, a landfill gas REC that is not associated with Illinois would not be considered a renewable energy resource), the requirement in (b)(5) to identify the state of origin would exclude legitimate RECs.**

[ALTERNATIVE LANGUAGE IF THE COMMISSION DOES NOT COMPLETELY REMOVE THE GEOGRAPHIC REQUIREMENT FROM 412.190(b)(5):] On Exceptions,

although ICEA argues that geographic requirements should be removed, ICEA alternatively argues that there should not be an additional granularity requirement in subsection (b)(5) and that the disclosure should be at the RTO level. The Commission agrees with ICEA that identifying a particular facility (or sufficiently granular information to identify a specific facility) would not add marginal information for consumers but would harm the competitive interests of both RESs and renewable generation facilities. The Commission cautions, however, that RES making specific claims about the origin of RECs used for a “green” product cannot evade their obligations under Article XVI of the Public Utilities Act to back up all sales claims about generation sources.

Ethical would like this subsection to be modified to allow claims regarding the local environmental benefits to encompass a wider geographic area than Illinois. The attached Rules require that all RESs that use a term like “green” disclose the percent generated in Illinois, but the Commission emphasizes again that it does not prohibit further truthful claims. A RES could, for example, claim that the power or energy it is marketing is 50% from Midwest renewable energy resources. This claim is not prohibited by the Rule. The RES making this claim would be required to disclose the total percentage of renewable resources, the percentage from Illinois resources and in the annual report provide the information regarding Midwest resources and, upon request of Staff, provide verification of this information. Section 412.190, proposed by Staff, and adopted herein, does not limit truthful advertising by RESs.

Staff’s proposed rules require that RES marketing disclose the percentage of renewable resources and the percentage of Illinois generated renewable resources. The Commission agrees and the attached rule, in subsections (b)(1) and (b)(2), requires that “green” offers, whether made in marketing materials or on a RES’s website must disclose the percentage renewable and the percentage from Illinois. If this is unknown at the time an offer is made, because a RES procures renewable resources on a rolling basis and not in advance, the offer must be clear that this is what it intends.

The Commission notes that there is not enough information in the record to specify how RECs and renewable energy resources should be verified. ELPC suggests RECs purchased through PJM-GATS would be appropriate, but because there is not enough information, the Rule just requires that the renewable energy resource be verifiable.

The Commission agrees with Staff that the offers posted on the Commission’s PlugInIllinois.org website need to be consistent with the rules adopted herein. In other words, offers posted on PlugInIllinois.org need to post the percentage of renewable resources and the percentage from Illinois renewable energy resources. The actual mechanics of how this should be instituted on the PlugInIllinois.org webpage need not be addressed in a Commission Order. The Commission does not adopt ICEA’s proposal that RESs should be given a space to explain the “green” attributes of their products. A simple statement of the percentage of renewable energy resources makes for an easy comparison.

Customers that purchase a green or renewable energy product are not necessarily purchasing based on price. Therefore, in order to ensure that these customers are getting what the marketing materials offered, the actual renewable energy resource that was

procured for these customers must be disclosed, not just to customers, but also to the Commission. Subsection (b)(5) requires that RESs that offer a green power or energy product to provide customers that enroll with an annual report that discloses the actual renewable energy resource mix that was procured to serve the customer. Staff's proposal did not require that the annual report be given to Staff, but the Commission finds it necessary not only to be able to answer customer enquiries, but also to determine if verification of the information should be requested. It is imperative that RESs be prepared to provide documentation of the information provided to Staff and the attached Rule makes this a requirement.

The Commission agrees that RECs must be retired in order to assure that the RECs advertised and purchased by Illinois consumers are actually attached to the energy purchased and not used previously or to satisfy a renewable portfolio standard elsewhere. ELPC explains that without this requirement customers' expectations that they are purchasing green electricity cannot be met. The Commission notes that Staff does not oppose this proposal. The AG proposes language, which is the basis for subsection (b)(6) in the attached Rule.

The Commission does not share ICEA's concerns regarding the competitively sensitive nature of procurement decisions as it relates to Section 412.190. If a RES does not want to disclose the source of its renewable energy resources, the RES should not make claims that it is offering a "green" power or energy service. The Commission firmly believes that RESs should be required to verify these claims.

The Commission will not impose itself into the municipal aggregation RFP process as proposed by ELPC. As pointed out by ICEA, the specific information sought by a municipality in an RFP is not under the Commission's jurisdiction. For this reason, the Commission will not impose most of Section 412.190, which pertains to marketing claims, on the municipal aggregation process. ELPC argues that marketing to decision-makers in the municipal aggregation program is the same as marketing to customers, but the Commission disagrees because the decision-makers for a municipality are better equipped to make these decisions than the residential consumers these rules seek to protect. The Commission does agree with ELPC that there is no readily apparent distinction between residential customers enrolled in a municipal aggregation program and those enrolled independently with a RES. The similarity from the customer standpoint, leads the Commission to conclude that RESs that serve customers through a municipal aggregation program that offer service as "green" or other similar term should provide the disclosure required by subsection 412.190(b)(5). The Commission includes an additional subsection (b)(7) that the disclosures required in the attached Rule apply equally to customers enrolled in a municipal aggregation program.

XXII. SECTION 412.210 RESCISSION OF SALES CONTRACT

A. Staff

Staff proposes modifying subsection (c) which protects a small commercial retail customer from incurring an early termination fee beyond the ten day period if the contract provides for a longer rescission period. Staff Summary at 9.

B. Ameren

Ameren proposes changing the title of Section 412.210 from “Rescission of Sales Contract” to “Rescission of Sales Contract and Enrollment.” Section 412.10 refers to both enrollment rescission and contract rescission under the definition of “Rescind.” Ameren opposes Staff’s proposed Rule which allows the contract to dictate the Pending Enrollment Rescission window. For the reasons discussed under Section 412.110, Ameren opposes Staff’s last clause proposed in Section 412.210(c). Ameren Initial at 14-15.

C. AG

The AG recommends adding the phrase “by US mail” to the second sentence of subsection (a). The AG also proposes adding an additional sentence to the end of subsection (a): “The written enrollment notice from the electric utility shall also provide information regarding options for the customer if the enrollment has been made in error or without the customer’s consent, including contact information for the utility and for the Commission.” At the end of subsection (b), the AG proposes adding the phrase “upon request by the customer, if the RES is unable to provide verifiable proof of authorization of enrollment.” This revision allows customers to cancel RES service without termination fees if the RES cannot prove that the customer authorized enrollment. AG Initial at 11-12.

D. RESA

RESA opposes the AG’s three modifications to this Section because they are ambiguous. RESA Reply at 18.

E. CUB

CUB supports the clarifications made by Staff to Section 412.210(c). CUB also supports the AG’s proposal to include a provision in subsection (a) that requires the written enrollment notice to provide information regarding options for the customer if the enrollment was made in error or without the customer’s consent. Because of the recurrent instances of slamming, CUB notes that this is an important piece of information. CUB Initial at 12-13.

F. ICEA

ICEA disagrees that the AG’s proposed changes to this Section will protect against slamming. ICEA does not oppose the recommendation from the AG and CUB that the utility switching letter explain customer recourse in the case of error or unauthorized switching. ICEA encourages a collaborative process to develop the language to be used in the notice. ICEA Reply at 42.

G. NAE

NAE states that there is no reason to require that the utility notice be sent by U.S. mail if a customer has elected to receive communications electronically. There is no need to expand the rescission period because if a RES were unable to prove enrollment, the Commission can already determine that a cancellation fee would not be appropriate. NAE Reply at 9.

H. Commission Analysis and Conclusion

The Commission agrees with Ameren that rescission will not be permitted if the customer contacts the RES beyond ten calendar days after the electric utility receives the enrollment request. For the reasons explained in Section 410.110, the Commission declines to modify subsection (c) as Staff proposes. The Commission declines to adopt the AG's proposed revisions and agrees they add a layer of complexity not needed to this Section. The customer is already informed about how to cancel an enrollment in its contract and on the UDS. In the case of an unauthorized switch, or "slamming", the customer can contact the utility or the RES and the termination fee would be waived regardless.

XXIII. SECTION 412.220 DEPOSITS

Staff proposes a technical revision to Section 412.220, to make this section consistent with subsection 412.110(h). Staff Summary at 10. CUB indicates support for Staff's revision. CUB Initial at 13. No other party commented on Staff's proposal. The Commission agrees that Staff's proposal is reasonable and it is included in the attached Rule.

XXIV. SECTION 412.230 EARLY TERMINATION OF SALES CONTRACTS

A. Staff

Staff proposes limiting any early termination fee to \$50 for residential customers and \$150 for small commercial customers, using language from Section 16-119 of the Act. 220 ILCS 5/16-119. Staff also proposes a statement that says "The caps shall not apply to charges or fees for devices, equipment, or other services provided by the utility or alternative retail electric supplier." Staff Summary at 10.

B. AG

The AG proposes deleting the sentence which does not allow a customer to rely upon this provision to avoid an early termination fee twice within a year. The AG proposes adding a sentence stating: "If a customer has accepted service from a RES after solicitation by a door-to-door salesperson, there shall be no termination fees assessed if the customer terminates during the first six billing cycles." AG Initial at 12-13.

C. CUB

CUB supports the AG's proposal to include a provision that prohibits termination fees to be assessed during the first six billing cycles for customers who signed a contract with a RES after a doorstep solicitation. CUB states "this sales model is ripe for unethical sales tactics" and that customers should be given a longer grace period before incurring termination fees for cancelling service. CUB Initial at 13.

D. RESA

RESA opposes the AG's additional restrictions beyond what the General Assembly imposes in Public Acts 99-0103 and 99-0197. RESA Reply at 18.

E. Ameren

Ameren proposes only typographical edits to this Section. Ameren Initial at 15.

F. ICEA

ICEA states that the AG and CUB provide no evidence or support for the AG's proposal to allow rescission for six months after enrolling from a door-to-door sale. During this period of time, ICEA points out that the customer will receive at least four bills from his or her new provider. According to ICEA, the proposal should be rejected because the current version of Section 412 already requires customer notifications through the minimum terms and conditions, a TPV or LOA, a welcome packet from the supplier, and a switching letter from the utility. Instead of a longer rescission period, ICEA recommends further regulation of door-to-door sales. ICEA also disagrees with the AG's recommendation that a customer should be able to rescind without early termination fees as often as he or she desires. While ICEA agrees that a slammed customer should not be restricted in his or her rescission rights, a customer cannot continually claim ignorance of contract terms and conditions. ICEA Reply at 43.

G. NAE

NAE opposes the AG's proposal because if a customer is subjected to non-compliant sales tactics as the AG describes, the Commission's general authority over RESs already provides adequate methods of redress. NAE Reply at 9.

H. Commission Analysis and Conclusion

The Commission adopts Staff's proposed first sentence in Section 412.230, which directly quotes language from Section 16-119. The Commission does not adopt Staff's proposed second language which describes what the caps *do not* apply to. Instead, the Commission adopts language from Section 16-119 which describes what the caps *do* apply to: "The caps on early termination fees and penalties apply only to early termination fees and penalties for early termination of electric service." 220 ILCS 5/16-119.

The Commission declines to adopt the AG's additional proposals to modify this Section. There is no evidence that individuals solicited through door-to-door methods should be exempt from early termination fees for six billing cycles, versus other methods. Furthermore, there is no evidence that individuals need to avail themselves of this provision repeatedly, as the AG suggests. The Commission declines to delete the sentence limiting a customer to relying on this provision to once in a twelve month period.

XXV. SECTION 412.240 CONTRACT RENEWAL

A. AG

The AG proposes adding a phrase to subsection (b)(6) to incorporate subsections (b)(2) through (b)(5). The AG also proposes adding this sentence to subsection (b)(6) "Calls made pursuant to this Subsection shall also comply with the requirements of Section 412.130." AG Initial at 13.

B. RESA

RESA opposes the AG's proposed revisions. RESA Reply at 18. RESA states that CUB's position violates the Illinois Automatic Contract Renewal Act and Section 16-119 of the PUA. RESA Surreply at 25.

C. CUB

CUB proposes a new subsection requiring telephone calls to the customer in addition to written notice required under Section 412.170(e). CUB proposes that the call shall provide the customer with the toll-free number that the customer may use to contact the RES to discuss the automatic renewal. The RES shall make a record of the call and whether the customer was reached and retain the record for two years. CUB Initial at 13.

D. ICEA

ICEA states that the AG appears to recommend that telephone calls to current RES customers regarding notice of an automatic renewal be treated as telemarketing. ICEA disagrees that existing customers should be treated like new customers because if the RES contract has a valid automatic renewal provision, the customer need not take any action to remain a customer. ICEA also disagrees that customers be read the terms of their automatic re-enrollment when contacted, as the AG recommends. ICEA states that the customer already agreed to the terms of the renewal as part of the initial contract and additional disclosures are unnecessary. ICEA Reply at 44.

E. NAE

NAE states that it understood that Staff did not propose any changes to this Section to avoid imposing unnecessary or inefficient costs. The AG's proposal to require not only written notice of renewal but also telephonic notice is duplicative and costly, according to NAE. NAE Reply at 9-10.

F. Commission Analysis and Conclusion

The Illinois Automatic Contract Renewal Act requires that a business entity must disclose any automatic renewal clause "clearly and conspicuously" on its contract to sell or offer products and services. 815 ILCS 601/10(a). Section 412.240 requires RESs to follow this statute as well as the other requirements of this Section. The Commission finds these requirements sufficient to notify customers of any automatic contract renewal that is part of the supplier contract. The Commission declines to modify this Section as recommended by CUB and the AG. The Commission agrees with ICEA, RESA and NAE that existing customers are not the same as prospective customers, and contacts related to automatic contract renewals need not comply with the telemarketing requirements discussed in Section 412.130. The Commission also declines to add subsection (c) as desired by CUB; the written notifications outlined in current Section 412.240(b) are sufficient to inform customers of contract terms.

XXVI. SECTION 412.250 ASSIGNMENT

A. AG

The AG recommends adding a new subsection (c) that provides RES customers more information regarding the terms and reasons for the assignment of their contracts. Current subsection (c) should become subsection (d) and should be modified to make clear that an assignment must be in writing and that the customer has received all contract disclosures required by Section 412.110. AG Initial at 13.

B. RESA

RESA opposes the AG's proposals to this Section because assignments of contracts do not result in modifications of those contracts. RESA Reply at 18.

C. ICEA

ICEA states that the AG's proposed subsection (c) appears to be an exact duplicate of new subsection (d). ICEA notes that most contracts already require amendments to be mutually agreed-upon be in writing, so the AG's proposal would not materially affect the status quo.

D. Commission Analysis and Conclusion

The Commission adopts portions of the AG's modification to subsection (c). If the terms of the assigned contract change after the initial contract expires, the new RES must provide a contract which complies with Section 412.110. The Commission declines to adopt the additional proposals by the AG, and the revisions or changes to the contract need not be in writing. As ICEA notes, most contracts already state this requirement.

XXVII. SECTION 412.310 REQUIRED RES INFORMATION**A. AG**

The AG recommends revising this Section to require RESs to make an annual filing with CSD to provide the information described in subsections (a)(1) through (4). Currently, RESs only have to provide this information before they begin marketing to residential and small commercial customers. AG Initial at 14.

B. CUB

CUB agrees with the AG's proposal that RESs make an annual filing. CUB Reply at 17.

C. RESA

RESA views the AG's proposed requirement as "pointless and unnecessary." RESA at 19.

D. ICEA

ICEA states that the AG does not provide a rationale for its proposal requiring annual filing of RES information. ICEA is concerned that the AG wishes to access all RES marketing materials through Section 4-601(b)(2) of the PUA without making a formal request to a RES, which is not a legitimate reason to propose a modification to this Section. ICEA proposes an annual compliance workshop in lieu of annual filing requirements. ICEA Reply at 45-46.

E. Commission Analysis and Conclusion

The Commission declines to modify this Section as the AG proposes. There is no need for an annual filing because subsection (b) already requires updated information when any of the documents described in subsection (a) are modified. The Commission believes a requirement of an annual filing would be unduly burdensome on CSD, and would provide little benefit if the documents described in subsection (a) remain the same as the previous year.

XXVIII. SECTION 412.320 DISPUTE RESOLUTION

A. AG

The AG states that subsection (b) should be revised to require RESs to document complaints submitted by customers and subsequent communications between the customer and the RES. The RES shall be required to maintain this documentation for two years and produce such information to the Commission or its Staff upon request within seven business days. The phrase “If a complainant is dissatisfied with the results of an RES’ complaint investigation” should be deleted from subsection (c)(1)(A) because RESs should inform customers of their rights to file informal complaints at the Commission regardless of the outcome. AG Initial at 14.

B. CUB

CUB agrees with the AG that RESs should document complaints and maintain those records for a period of two years. CUB Reply at 17.

C. RESA

RESA states that the AG’s proposal encourages consumers to file complaints with the Commission which provides no benefit to any party. RESA urges the Commission to reject such proposals. RESA Reply at 19.

D. ICEA

ICEA notes that Staff did not make any recommendations to modify this Section. ICEA recommends the Commission reject the AG’s proposed modifications to subsections (b) and (c)(1)(A) because the modifications are “unworkable.” ICEA states that it is good business practice for RESs to document interactions with customers. It is not always clear, however, when a communication rises to the level of a “complaint” and when the AG’s proposed requirement would “attach.” ICEA estimates that such recordkeeping would cost between \$1 and \$2 a year. ICEA also opposes the AG’s recommendation that the customer be informed of their rights to file complaints at the Commission because it may encourage satisfied customers to contact the Commission. ICEA Reply at 46-48.

E. NAE

NAE opposes the AG’s deletion of the limiting language in subsection (c)(1)(A) because it adds needless costs and encourages escalation where it would otherwise not be warranted. NAE Reply at 10.

F. Commission Analysis and Conclusion

The Commission declines to modify subsection (b) as the AG requests. It appears that RESs generally already retain this information as a matter of course. The Commission agrees with the AG, however, that RESs should inform all customers of their rights to file informal complaints at the Commission, regardless of the complainant’s satisfaction with the RES’s handling of the complaint. The customer’s level of satisfaction is a subjective one, and the RES agent need not make that determination on his own. Providing this information does not “encourage” complaints to the Commission, as ICEA, NAE and RESA imply; rather, it reminds customers that the Commission is available as

a neutral regulatory party in the case of a complaint or even to answer general questions about supplier contracts. ~~Therefore, the AG's proposed modification to Section 412.320(c)(1)(A) is adopted. The Commission also similarly modifies subsection (b).~~ **On Exceptions, ICEA proposes moving the stricken language to make clear that the RES must provide information about CSD but that the RES may explain that contact with CSD is for situations in which the customer is dissatisfied with the RES dispute resolution process. The Commission agrees with ICEA's changes, and moves the first phrase to the middle of the sentence.**

XXIX. SECTION 412.330 FAILURE TO COMPLY

A. ComEd

ComEd proposes a section on penalties similar to the municipal aggregation rules. 83 Ill. Adm. Code Part 470.260. ComEd suggests a Section at the end of Part 412 which underscores the RESs legal obligations and consequences for noncompliance:

Section 412.330 Failure to Comply

Unless otherwise noted, a violation of this Part shall be subject to the fines and penalties set forth in the PUA.

ComEd Initial at 3. In response to ICEA's objection, ComEd states that the proposed section is modeled after a similar section in the municipal aggregation rules in Part 470. Since both apply to RESs, argues ComEd, each should contain a section clarifying the consequences of violations. It is irrelevant that Part 470 involved the issue of jurisdiction over municipalities. ComEd Surreply at 6-7.

B. CUB

CUB supports ComEd's proposed Section 412.330 which underscores RESs' legal obligations for noncompliance. CUB Reply at 5.

C. ICEA

ICEA opposes ComEd's proposed Section. ICEA states that it does not dispute the underlying principle that violations would subject RESs to discipline. ICEA states that in Part 470, the Commission had to navigate the delicate balance of regulating RESs, over which it had authority, and municipalities, over which it had no authority. There is no ambiguity in Part 412, ICEA claims, because only RESs are regulated. Therefore, ComEd's proposal does not add to the existing statutory framework. ICEA Reply at 58.

D. Commission Analysis and Conclusion

The Commission agrees with ComEd that a new Section 412.330 should be added to the Proposed Rule. ComEd's proposed language is clear and concise and mirrors Part 470. The Commission agrees with ComEd that it is not relevant that Part 470 dealt with municipalities in addition to RESs. The Commission found it had authority to promulgate rules related to municipal aggregation and RESs' responsibilities in that area. The Commission also ordered that the Rule state that RESs that violated provisions of that Rule were subject to fines and penalties. Here, the Commission has authority to regulate RESs and their interactions with consumers, as discussed at length above. Therefore, ComEd's proposal to include compliance language in Part 412.330 is appropriate and

hereby adopted. The Commission only modifies the language to refer to the “Act” instead of the “PUA.”

XXX. AG’S SIX PROPOSED SECTIONS

A. AG

The AG recommends six new Sections be added to the Proposed Rule. First, the AG proposes to add a section entitled “General Disclosure Requirements.” This section as proposed would explicitly state that RESs are required to provide customers sufficient information about the products the RESs are selling, allowing customers to make informed decisions. This new section would also require that information provided to customers and potential customers “be clear and not misleading, fraudulent, unfair, deceptive or anti-competitive.” AG Initial at 15.

The AG proposes to add a section entitled “Use of Utility Name or Logo Prohibited” previously discussed above in Section V above.

The AG proposes a new Section stating that RESs are liable for the actions of their agents. The new Section would also describe the penalties that a RES would be subject to for its agents’ malfeasance, citing Section 16-115B(b) of the Act. AG Initial at 16.

The AG proposes to add a new Section requiring RESs to provide price comparisons to prospective customers, allowing them to determine whether RESs’ offers are attractive. The AG’s proposed language mirrors a New Jersey regulation. *Id.* at 16-17.

The AG suggests a new section entitled “Acceptance of Transferred Utility Calls Prohibited.” The AG understands that customers who contact their gas utility to change service to a new address may be asked by the utility service representative if they wish to transfer their electric service as well, but their calls are transferred to a RES, not the electric utility. The AG states that this enables unauthorized switching and that customers do not understand that they are being switched from utility supply to RES supply. *Id.* at 17-18. In Surreply Comments, the AG supports Staff’s proposed definition of “transferred call” and withdraws its proposed new section. AG Surreply at 8.

Finally, the AG proposes a new section mirroring a Texas regulation which ensures that if there is a dispute between a customer and a RES, any vagueness, ambiguity, or obscurity of contract terms should be construed in favor of the customer. The AG states that this is fair because the RES drafts the contract and associated documents. AG Initial at 18.

B. RESA

RESA opposes all of the AG’s recommended new Sections. RESA states that the General Disclosure Requirements section merely restates the obvious – RESs cannot provide fraudulent or misleading information to customers. The AG’s proposal regarding Supplier Liability for its Agent misstates the principle of agency law. RESA states that the Price Comparison Required section adds disclosure requirements that are redundant to Staff’s proposed UDS. RESA notes that the AG’s proposed new section to prohibit RESs from accepting calls that are transferred from a utility to a RES seek to regulate a practice which does not violate any current law or rule. RESA adds that the AG’s conjectures

about what occurs during these conversations are not supported by any facts. Finally, RESA argues that the proposal by the AG to add a section construing vague, ambiguous or obscure contract terms in favor of the customer is unnecessary and redundant, because this is a basic premise of contract law. RESA Reply at 19-21.

C. ComEd

ComEd supports the AG's proposal to add language clarifying that a RES is liable for the actions of its agents and may be penalized for its agents' malfeasance. ComEd finds this new section to be an appropriate extension of its own proposed "Failure to Comply" section (proposed Section 412.330, discussed above). ComEd Reply at 6.

D. ICEA

ICEA urges the Commission to reject five of the six AG proposals for new Sections to the Draft Rule. ICEA states that the General Disclosure Requirements section is frivolous and ambiguous. ICEA does not understand what is added beyond a restatement of Section 16-115A(e)(i). ICEA Reply at 50.

ICEA maintains that the AG's proposal to add a section on "Supplier Liability" exceeds Commission authority. ICEA points out that discipline for the actions of a RES agent is governed by Section 16-115C(g). ICEA states that there is no authority to hold a RES liable for the actions of its agents. *Id.* at 52.

ICEA opposes the AG's recommendation to include a "Price Comparison" requirement in the Proposed Rule. ICEA states that this proposal exceeds Commission authority and would be commercially infeasible to implement. RESs have an obligation to disclose the price of the product they are offering in the current and revised Section 412.110, but they should not be obligated to disclose the price of a competing offer, the bundled utility supply rate. ICEA also notes that disclosing the utility price is in direct conflict with the AG's proposal to ban using the utility's name in marketing. Additionally, no one can predict the Purchased Energy Adjustment for each future month, so a RES could not properly predict the utility's rate even if required. Finally, the comparison to bundled utility rate is not reasonable in consideration of the other products the RES may be offering, such as green energy, energy efficiency services, demand response, energy audits, distributed generation, carbon offsets, rewards programs, combined packages, or other values. *Id.* at 53-54.

ICEA opposes the AG's recommended section that the contract terms are construed in favor of the customer because it alters established law and would lead to impractical outcomes. ICEA states that Illinois law requires the Commission to first look to the primary rules of contract construction when resolving a dispute before construing ambiguities against the RES. ICEA also states that the Texas and Illinois energy markets are distinctly different – customers that do not select a RES are assigned to the utility's affiliate. ICEA notes that the terms "vagueness", "ambiguity" and "obscurity" are undefined and also subjective. According to ICEA, "it would be very difficult to have a straightforward and understandable consumer contract if a RES is forced to explicitly address every potential vagary, ambiguity, or obscurity." *Id.* at 54-56.

In its Surreply Comments, ICEA urges the Commission to require an annual, mandatory, Staff-led compliance workshop because the AG's justification of its six new

proposed Sections and Staff's support thereof are premised upon the need for "heightened awareness" of the marketplace. ICEA Surreply at 57-59.

E. CUB

CUB supports the AG's new proposed Sections. CUB Reply at 4. CUB specifically supports the AG's proposal to add a section to the rule entitled "Price Comparison Required," which would require that twelve months of rate data be provided. This provision contributes to price transparency and allows consumers to compare RES offers and see how a RES stacks up historically against their competitors. CUB Reply at 17.

F. NAE

NAE opposes the AG's "General Disclosure" Section because it duplicates existing requirements and is not within the Commission's general authority. NAE Reply at 10. If the Commission agrees to add such a Section, it should mirror the language from Section 412.170. NAE Surreply at 17. NAE states there is no need for a provision on Supplier Liability because Illinois law generally provides that a principle is responsible for the acts of its agent. The AG's proposal to add a Section entitled "Price Comparison" is also not needed, and will cause the UDS to exceed the specified one-page limit. NAE opposes the AG's proposed Section prohibiting transferred utility calls. NAE states that it is unaware of any current practice that is as the AG describes in its Initial Comments. Regardless, the proposal would result in a negative customer service experience for the customer if a RES was prohibited from transferring a call if the customer made such a request. NAE also claims that such a provision would hinder protected customer free speech. NAE opposes the AG's Vagueness section, because general contract law already resolves any vagueness or ambiguity against the drafter. Such a provision also goes beyond the Commission's authority, purporting to regulate any dispute between the parties and not merely those that come before the Commission. NAE Reply at 13-14.

G. Staff

Staff supports the AG's proposed "General Disclosure Requirements" Section in concept. Staff Reply at 83. Staff also agrees that the new Section which prohibits utility name and logo has merit, but may be better incorporated into existing Sections rather than stand-alone sections. Staff supports the addition of "Supplier Liability for its Agent" because it appears to mirror the requirements of Article XVI of the Act. Staff Reply at 83-85.

Staff does not support the AG's proposed new Section entitled "Price Comparison Required." Staff maintains that the UDS already requires price disclosure in separate sample usage intervals. Additionally, Staff opposes using the back of the UDS for any type of disclosure. Staff recommends that any offer comparisons be done without calculating delivery service charges because they do not change, in contrast to the AG's suggestion that suppliers be required to calculate the customer's "total electric bill." The utility's fixed price supply rate is not known for each month of the year, and the UDS already advises customers to visit PlugInIllinois.org to review offers from RESs.

Staff opposes the AG's new section prohibiting transferred calls from utilities to RESs because it is "too specific to be entirely useful." Consumers may contact other entities besides utilities to perform tasks such as activating utility services. The AG's

proposed language assumes the RESs are aware that the call is a transferred call, which may not be true. *Id.* at 85-83.

Staff also opposes the AG's proposed Section which resolves any dispute regarding the interpretation of contract terms in favor of the customer. Staff states that such a Rule might lead to unreasonable results or remove the Commission's position as a neutral arbiter of any contract disputes that may come before it. *Id.* at 86-88.

H. Ameren

Ameren opposes the AG's recommendation to include a provision holding the RES liable for the actions of its agents. Ameren agrees with NAE that there is no reason to codify principal-agent law in its Rule. Ameren Surreply at 7-8.

I. Commission Analysis and Conclusion

The Commission declines to add a Section entitled "General Disclosure Requirements." The AG's new section, as proposed, does not add to the Proposed Rule and is duplicative. The Proposed Rule is designed with the purpose of providing customers with enough information to make informed decisions; stating this in the Rule adds nothing. Whether the RES behaved fraudulently or deceptively is a factual question which would be decided by the Commission after it weighs the evidence of the parties in a proceeding. Each Section of the Rule specifically outlines the RES requirements for each type of sale (In-person, Telemarketing, Inbound Enrollment Call, Direct Mail and Online Enrollment) and these clear directives are superior to a general prohibition against "misleading, fraudulent, unfair, deceptive or anti-competitive" behavior. Finally, new Section 412.330 discusses penalties for a RES that violates any Section of the Rule.

The discussion of utility name/logo is above in Section V.

The Commission declines to add the AG's proposed "Supplier Liability" section. "RES agent," as defined in Section 412.10, covers all forms of employer-employee relationships between the RES and an individual selling power on its behalf. The Commission regulates the training of RES agents in Section 412.175, and also regulates the conduct of Agents, Brokers, and Consultants in Section 16-115(c) of the Act and Part 454 of the Commission's Rules. Section 412.175 states that RES agents "shall not utilize false, misleading, materially inaccurate or otherwise deceptive language or materials in soliciting or providing services." 83 Ill. Adm. Code 412.175(c). The Commission agrees with RESA and Ameren that principal and agency law is generally settled in Illinois, and a principal is responsible for the negligence of his agent where the principal controls the agent and the conduct falls within the scope of the agency. *Magnini v. Centegra Health Sys.*, 2015 IL App. (1st) 133451. Since the Commission already retains authority over RES agents, there is no need to further codify the principal and agency relationship.

The Commission agrees with Staff that the AG's proposed Price Comparison Section is unnecessary because such information is already required in the UDS. Therefore, the Commission declines to add this Section. Staff's proposed Section 412.115 outlines the mandatory disclosures that RESs must make regarding their offers and directs customers to PlugInIllinois.org to find the current utility supply prices as well as offers from RESs.

The AG withdrew its suggested Section entitled “Acceptance of Transferred Utility Calls Prohibited” when Staff proposed a definition of “Transferred calls.” This definition now identifies such calls as falling under the rubric of Section 412.130, Telemarketing. That definition is discussed above in Section 412.10, Definitions. The Commission is troubled by what appears to be the practice of a gas utility transferring calls to its affiliate RES, but finds that a regulation prohibiting such practice is inappropriate in a Rule directed at RESs. Such a practice would be considered a “Transferred call” under Section 412.10 because the customer did not directly dial a *RES agent*, but rather a *utility*. Many consumers do not distinguish between gas and electric service or understand the differences between their utilities, and if a consumer is calling to discuss an issue regarding his or her gas service, it seems unlikely that he or she wishes to enroll with an electric supplier. The Commission declines to add the AG’s proposed Section but does add a definition for “Transferred calls” as discussed above in Section 412.10. The Commission also adds the TPV requirement to Section 412.140 to ensure that all inbound calls that result in an enrollment have the protections inherent in TPV, not just sales that result from telemarketing.

The Commission declines to adopt the AG’s proposed Section entitled “Vagueness, Ambiguity, or Obscurity of Contract Terms Construed in Favor of the Customer.” This proposed language states a legal conclusion which prematurely directs how a dispute should be resolved, without looking at the individual facts of that dispute. A contract must be examined by the trier of fact to determine whether its terms are clear and unambiguous, before any language is construed against the drafter. *USG Interiors, Inc. v. Commercial and Architectural Products, Inc.*, 241 Ill.App.3d 944, 949 (1st Dist. 1993). The Commission agrees with several parties that this is also well-established contract law in the State of Illinois.

XXXI. CUB’S PROPOSAL TO MODIFY AMEREN AND COMED PURCHASE OF RECEIVABLES TARIFFS

A. CUB

CUB urges the Commission to open a proceeding to amend the utilities’ Purchase of Receivables (“POR”) tariffs. This amendment would limit the receivables purchased by the utility for variable rate supplier offers to no more than the utility/IPA price per kWh price-to-compare rate during the contemporaneous time period. This action would “send the correct economic signal to the market” because it would require RESs to be accountable for the amount of receivables their customers impose on all electric customers. CUB notes that Section 16-118(b) of the Act allows for the tariff to include “other just and reasonable terms and conditions” and since all electric customers must pay for uncollectibles above and beyond utility default pricing, it is just and reasonable for RESs to have some responsibility for its offers and contracts. CUB Initial at 14, citing 220 ILCS 5/16-118(c)(iv).

B. RESA

RESA opposes CUB’s proposal to amend the Purchase of Receivables tariffs to limit the receivables purchased for variable rate supplier offerings to no more than the utility/IPA price per kWh price-to-compare rate. RESA states that, as CUB itself admits, this proposal is outside the scope of this rulemaking. RESA Reply at 21.

C. ComEd

ComEd states that the Commission should reject CUB's proposal that the Commission open a docket to modify the utilities' POR tariffs. ComEd Reply at 2. ComEd states that CUB's proposal might require a legislative amendment to implement because Section 16-118(c) of the Act governs utilities' POR programs. According to ComEd, CUB's proposal goes beyond the Commission's Section 16-118(c) authority to limit the price at which the utility purchases RES receivables. CUB asserts that if the utility had to conduct an individualized analysis of each receivable to determine at which price the utility may purchase the receivable, this practice would be cost prohibitive and perhaps not even feasible. *Id.* at 7-8.

D. ICEA

ICEA opposes CUB's proposal to modify POR tariffs and states that suppliers will be very reluctant to offer dynamic rates to residential customers if the dynamic rates are capped at the utility default rate. ICEA states that CUB's approach does not take into account any added value included as part of the products CUB seeks to cap, and ICEA does not understand how price control eliminates the need to address bad actors and deceptive marketers within the RES community. ICEA Reply at 57-58.

E. Ameren

Ameren opposes CUB's proposal and agrees with ComEd that examining tariffs is outside the scope of this proceeding. Ameren Surreply at 8.

F. Commission Analysis and Conclusion

The Commission agrees that examining ComEd and Ameren's POR tariffs and considering amendments is outside the scope of this proceeding. The Commission disagrees with ComEd that CUB's proposal goes beyond the Commission's authority because 16-118(b)(iv) allows the Commission wide latitude to regulate POR and its tariffs. Regardless of its authority, the Commission declines to initiate a proceeding concerning these tariffs at this time.

XXXII. ICEA'S PROPOSED ANNUAL COMPLIANCE WORKSHOP

ICEA recommends an annual compliance workshop. ICEA explains that even RESs that wish to comply with the letter and spirit of the law may find it difficult due to constantly changing statutes, rules and Commission Orders and recommends an annual workshop mandatory for all RESs and hosted by Staff. "Such a workshop would allow Staff to communicate compliance priorities and changes in law, while allowing RESs to ask questions and seek clarification in a workshop setting where responses will be heard by the entire market." ICEA Initial Comments at 5-6. **On Exceptions, ICEA clarified that the purpose of the workshop would be for Staff to communicate directly with suppliers, rather than the traditional workshop that involves Staff testing new ideas and building consensus as a first step before regulatory change.**

The Commission **agrees with ICEA that the ~~does not oppose the concept of~~ annual workshops with Staff and interested parties all RESs is a low-cost way for the Commission to communicate enforcement priorities and issues and trends in the marketplace with all RESs at once. The Commission notes that this is not meant**

as a replacement for regular Office of Retail Market Development-led workshops, because this mandatory, annual compliance workshop has a different goal in mind. The Commission directs Staff to work with RESs to develop a plan for an annual, mandatory, Staff-led compliance workshop consistent with ICEA's proposal within six months of this First Notice Order. The Commission notes that once the workshops begin, it will have reduced tolerance for RESs claiming ignorance of Illinois statutes and rules, because each RES must have a representative at these workshops. The Commission points out that the revisions to Part 412 at issue in this docket were the direct result of the 2014 NOI workshops and trends that Staff noticed as a result of its own review of the marketplace. A workshop will not provide any benefit, however, if there is no related enforcement capability. For example, a workshop to discuss Staff's concerns about in-person sales and Staff's desire that RESs use TPV for those enrollments will have no benefit if such a requirement is not in the Rule. RESs could agree to consider any number of suggestions by Staff, the AG, or CUB, but the Rule must mandate it. Therefore, the Commission declines to adopt an annual compliance workshop at this time.

XXXIII. SECTION 453.10 DEFINITIONS

RESA proposes to modify the definition of "Electronic Signature" to also include "a digitized recording of the handwritten signature of the executing person." RESA Initial at 21. Staff addresses this issue in its discussion of Section 453.20.

The Commission adopts RESA's proposed definition. Further discussion of this issue follows in Section 453.20 below.

XXXIV. SECTION 453.20 CRITERIA BY WHICH TO JUDGE THE VALIDITY OF AN ELECTRONIC SIGNATURE

A. Staff

Staff has observed, based upon experience working with both consumers and regulated entities, that little consistency exists in the manner in which RESs validate online authorizations. Where allegations of an improper switch arise, this lack of standardization presents problems in proving or disproving validation. Staff Initial at 45. Thus, Staff proposes revisions to the rule that change the word "may" to "shall" or "must," in the interests of clarity and to render the requirements mandatory. Staff Summary at 10.

Also, the proposed amendments prohibit the use of internet protocol ("IP") addresses alone as proof that a customer executed an online LOA. Internet Protocol addresses have not proven to be a successful means of confirming authorization in the Commission's informal complaint process. Staff Summary at 10. In Staff's experience working with RESs regarding this question, those which utilize a process where the unique identifier on the online LOA is captured in a separate affirmative action by the consumer have been subject to few allegations that consumers did not understand that they were enrolling with the RES. Similarly, such active procedures afford greater protection against potential fraud by marketers. To address the issues observed in the market, Staff has proposed that revisions to this section make authorization requirements

clearly prescriptive with a list of options for authorization and prohibit the use of IP addresses. Staff Initial at 46.

In response to ICEA and RESA's assertion that Staff's proposals exceed the Commission's authority, Staff argues that the Electronic Commerce Security Act (5 ILCS 175/5-105) sets standards and creates evidentiary rules presumptions, especially those governing admissibility. Staff asserts that if RESs are prepared to qualify their security procedures such that the Illinois Secretary of State is prepared to certify them, this may be a useful resolution.

Staff notes that RESA does not suggest how its proposal regarding digitized recording of the handwritten signature would be accomplished nor does it indicate how disputes of authenticity of such enrollments might be addressed. Staff Reply at 80.

Staff does not oppose RESA's proposed revisions to subsection 453.20(b), which prohibits the use of customer account numbers. Staff Reply at 82. Staff supports ICEA's proposed revisions to subsection 453.20(b)(3) regarding encrypted websites. Staff Reply at 82.

B. ICEA

ICEA objects to Staff's proposal to change subsection 453.20(b)(1) to require at least one of the three examples of unique identifiers. ICEA cites to the Illinois Electronic Commerce Security Act. 5 ILCS 175/5-105. According to ICEA, the definition of "security procedure" is descriptive with a permissive list, but the proposed amendments are restricted and prescriptive. ICEA recommends that instead the rule quote the statute. ICEA Initial at 43. While ICEA agrees that unauthorized switching is prohibited by statute, the CFDBPA does not authorize the Commission to restrict otherwise lawful options for "security procedure" pursuant to the Illinois Electronic Commerce Security Act. ICEA Reply at 49. ICEA further argues that the Secretary of State has exclusive authority to adopt rules governing the validity of electronic signatures. Thus, if a security procedure is approved by the Secretary of State but it is inconsistent with Staff's proposed rule, it appears that Staff's proposed rule language would conflict with the Secretary of State's exclusive authority to define appropriate security procedures. ICEA Surreply at 60.

ICEA agrees with RESA's proposal regarding digitized handwritten signatures. ICEA Reply at 49.

C. RESA

RESA states that limiting the information that can be used for an electronic signature is burdensome and potentially expensive. RESA Initial at 22-23. In particular, for subsection 453.20(b)(1), RESA recommends adding that a digitized version of the handwritten signature of the executing person shall be self-authenticating. RESA states that it is unaware of any complaints from customers enrolling over the internet that they have been "slammed."

Also, RESA opines that the last sentence of this subsection should be revised because as written the sentence is overly broad. RESA states that it should be sufficient to prohibit the inclusion of the customer's account number. RESA Initial at 21.

In Surreply Comments, RESA explains that digitized signature recordings are determined by the capabilities of both the RES and the hardware at the point of sale. RESA states that it envisions this self-authentication to be incorporated into additional technological capabilities designed to manifest and confirm customer intent. RESs can provide customers access to hardware that contains electronic signature capability. RESA Surreply at 26.

RESA also suggests, given the time constraints of this proceeding and the numerous offered revisions to Staff's proposed revisions to Part 453, that issues relating to electronic enrollment that are not agreed to by all parties be deferred to a collaborative process. RESA Surreply at 27.

D. CUB

CUB supports the clarifications made by Staff regarding LOAs in these sections. CUB Initial at 14.

E. Commission Analysis and Conclusion

Staff's proposal to require specific criteria to validate an electronic signature is adopted. ICEA argues that the Commission does not have the authority to impose these requirements. The Commission disagrees. There is nothing in the Electronic Commerce Security Act to which ICEA cites that would constrain the Commission from adopting these provisions. The definition of "security procedure" upon which ICEA relies states that it:

means a methodology or procedure used for the purpose of (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. A security procedure may require the use of algorithms or codes, identifying words or numbers, encryption, answer back or acknowledgment procedures, or similar security devices.

5 ILCS 175/5-105. Part 453 as amended by Staff is consistent with this definition and is adopted.

The Commission also finds the revision to subsection 453.20(b)(3) proposed by ICEA, and accepted by Staff, to be reasonable and is reflected in the attached rule.

RESA's proposal regarding digitized signatures appears to be valid, but unfortunately the explanation was not provided until Surreply Comments. The Commission incorporates this proposal into the attached rule, but remains open to the suggestion that further workshops might be necessary.

XXXV. SECTION 453.30 METHOD BY WHICH THE AUTHENTICITY OF ELECTRONIC SIGNATURES MAY BE PROVEN

A. Staff

According to Staff, the revisions to this Section of the Rule do not substantially alter it, but rather clarify, its application and operation. Staff Summary at 10.

B. Commission Analysis and Conclusion

The changes to this Section are minimal and appear to be uncontested. The Commission changes the wording of Staff's proposed subsection (b)(2) slightly. Otherwise, Staff's amendments are adopted.

XXXVI. SECTION 453.40 ADDITIONAL REQUIREMENTS FOR AN ELECTRONIC LETTER OF AGENCY (LOA)

A. ICEA

ICEA's primary proposed changes to this Section clarify the interaction between the Rule and the CFDBPA. ICEA also recommends a change to subsection (b)(6) from the pre-existing language for the sake of clarity. ICEA states that it is unsure what it means for a customer's e-mail address to be "registered," a term that does not appear to be otherwise defined. Instead of using this vague term, ICEA recommends modifying this Section to refer to the e-mail address a customer provides. To the extent that Section 453.20(b)(1)(B) remains part of that Section, ICEA recommends parallel language for that subsection as well. ICEA Initial 44-45.

B. Staff

In its Reply Comments, Staff accepts ICEA's proposed revision to Section 453.40(a).

C. Commission Analysis and Conclusion

Staff and ICEA's amendments to this section appear to be minimal word changes. There is no apparent disagreement with the amendments. The Commission modifies subsection 453.40(b)(7) to be consistent with Section 412.180, which requires maintaining customer authorization to switch suppliers for the length of the time that the customer has service with the RES.

XXXVII. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- 1) the Commission has jurisdiction over the subject matter herein;
- 2) the recitals of fact set forth in prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- 3) Part 450.25 should be amended;
- 4) this proceeding is a rulemaking and should be conducted as such; and
- 5) the proposed amendments to Rule 412, 83 Ill. Adm. Code 412, as reflected in the attached Appendix A, and the proposed amendment to Rule 453, 83 Ill. Adm. Code 453, as reflected in the attached Appendix B, should be submitted to the Secretary of State to begin the first notice period.

IT IS THEREFORE ORDERED that Staff of the Commission shall initiate a rulemaking on Part 450.25 as described herein.

IT IS FURTHER ORDERED by the Illinois Commerce Commission that the proposed amendments to Rule 412, 83 Ill. Adm. Code 412, as reflected in the attached Appendix A, and the proposed amendments to Rule 453, 83 Ill. Adm. Code 453, as reflected in the attached Appendix B, be submitted to the Secretary of State pursuant to Section 5-40 of the Illinois Administrative Procedure Act.

IT IS FURTHER ORDERED that this proceeding is a rulemaking and shall be conducted as such and not as a contested case.

IT IS FURTHER ORDERED that this Order is not final and is not subject to the Administrative Review Law.

DATED:	January 19, 2016
BRIEFS ON EXCEPTIONS:	February 9, 2016
REPLY BRIEFS ON EXCEPTIONS:	February 23, 2016

Leslie Haynes,
Jessica Cardoni,
Administrative Law Judges

**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 B

To The

**VERIFIED BRIEF ON
EXCEPTIONS**

On Behalf Of The

**ILLINOIS COMPETITIVE
ENERGY ASSOCIATION**

February 9, 2016

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES

PART 412
OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS

SUBPART A: GENERAL

Section	
412.10	Definitions
<u>412.15</u>	<u>Compliance</u>
412.20	Waiver
412.30	Construction of this Part

SUBPART B: MARKETING PRACTICES

Section	
412.100	Application of Subpart B
412.110	Minimum Contract Terms and Conditions
<u>412.115</u>	<u>Uniform Disclosure Statement</u>
412.120	Door-to-Door Solicitation
412.130	Telemarketing
412.140	Inbound Enrollment Calls
412.150	Direct Mail
412.160	Online Marketing
<u>412.170</u>	<u>Rate Notice to Customers</u>
412.175 0	Training of RES Agents
412.180	Records Retention and Availability
412.190	Product Descriptions

SUBPART C: RESCISSION, DEPOSITS, EARLY TERMINATION
AND AUTOMATIC CONTRACT RENEWAL

Section	
412.200	Application of Subpart C
412.210	Rescission of Sales Contract
412.220	Deposits
412.230	Early Termination of Sales Contract
412.240	Contract Renewal
412.250	Assignment

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SUBPART D: DISPUTE RESOLUTION AND CUSTOMER COMPLAINT REPORTS

Section	
412.300	Application of Subpart D
412.310	Required RES Information
412.320	Dispute Resolution
<u>412.330</u>	<u>Failure to Comply</u>

412.APPENDIX A Uniform Disclosure Statement

AUTHORITY: Implementing Section 16-118 of the Public Utilities Act [220 ILCS 5/16-118] and authorized by Sections 10-101 and 8-501 of the Public Utilities Act [220 ILCS 5/10-101 and 8-501].

SOURCE: Adopted at 36 Ill. Reg. 17886, effective January 1, 2013.

SUBPART A: GENERAL

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 retail customer that is 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

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

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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]

"Early termination fee" means a fee or penalty for terminating a contract for electric service before the end of the contract term.

"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 a telephone call to a RES agent initiated by a consumer that results in an enrollment or change of provision of their power or energy service.

"In-person solicitation" means ~~any sale initiated or conducted where the RES agent is physically present with the customer.~~ (1) Door-to-door sales, in which a RES agent without a preexisting relationship with the customer and without prior request by the customer solicits at the customer's home (or, if a small commercial customer, the place of business), or (2) other sales solicitations of residential and small commercial customers where the RES agent receives taxable income which is provided pursuant to a multi-level marketing arrangement. In-person solicitations shall also include RES agents operating at static kiosks on public or private property

"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.

"Renewable energy credit" or "REC" means the same thing as defined in Section 1-10 of the Illinois Power Agency Act [20 ILCS 3855/1-1 et seq.].

"Renewable energy resources" means resources as defined in Section 1-10 of the Illinois Power Agency Act [20 ILCS 3855/1-1 et seq.].

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

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"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).

"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. **A RES Agent shall not include a person who takes part in a referral program (such as a friends and family program) and does not receive Federal or Illinois taxable income for referrals.**

"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. An 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 the process described in Section 2EE(b) of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE(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.

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"Transferred call" shall include any enrollment call in which the customer did not directly dial a RES agent, including calls which originate as live or automated calls to the customer who then might select an option that results in the call being forwarded to a RES agent. "Transferred call" does not include enrollment calls in which the customer directly dials a RES call center and selects to be forwarded to a RES agent from a call center menu or live operator. Transferred calls shall be treated as Telemarketing within the meaning of Section 412.130 of this Part for purposes of enrollment compliance.

"Variable rate" means a charge for power and energy service that is not fixed for six monthly billing periods or longer and the charge for power and energy service does not change more than once a month.

"Written" or "Writing" means a hard copy. Where this Part requires information to be "written" or in "writing", an electronic copy satisfies that requirement, so long as both RES and customer have agreed to electronic communication.

Section 412.15 Compliance

The Commission shall require implementation of each requirement as quickly as reasonably practicable, but in no event later than [the first day of the month following 6 months from the date of the Commission's final order], unless the Commission grants an extension of time for cause.

Section 412.20 Waiver

- a) The Commission, on application or petition of a RES or non-RES electric utility, may grant a temporary or permanent waiver from this Part, or any applicable subsections contained in this Part, in individual cases in which the Commission finds:
 - 1) the provision from which the waiver is granted is not statutorily mandated;
 - 2) no party will be injured by the granting of the waiver; and
 - 3) the rule from which the waiver is granted would, as applied to the particular case, be unreasonable or unnecessarily burdensome.
- b) The burden of proof in establishing a right to a waiver shall be on the party seeking the waiver.

Section 412.30 Construction of this Part

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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.

SUBPART B: MARKETING PRACTICES

Section 412.100 Application of Subpart B

- a) The provisions of this Subpart shall only apply to RESs serving or seeking to serve residential or small retail commercial customers, and only to the extent that the RES provide services to residential or small retail commercial customers.
- b) The following exceptions to Subpart B apply: Sections 412.1750(a), (b) and (c) and 412.180 shall apply to RESs serving or seeking to serve any retail customer, other than RESs certified under Subpart E of, or under the applicable of Subpart B or C of, 83 Ill. Adm. Code 451, to serve only their own load, and/or the load of a corporate affiliate and/or the load of an entity located on the site of a manufacturing or refining facility of the RES or its affiliate, when fully integrated into the existing electrical distribution system of the refining or manufacturing facility.

Section 412.110 Minimum Contract Terms and Conditions

The sales contract ~~must~~ shall contain the disclosures specified in subsections (a) through (n) of this Section in 12 point type size or larger, and in the order presented in this section. The disclosures specified in subsections (a) through (n) shall appear at the beginning of the sales contract; no other contract terms shall precede these disclosures~~disclose the following information to the customer, regardless of the form of marketing used. Any additional~~The sales contract language shall ~~must~~ use 10 point font type size or larger., and, if it is a separate document, it ~~The sales contract must not exceed two~~three pages in length. The sales contract shall include the following disclosures:

- a) The legal name of the RES and the name under which the RES will market its products, if different;
- b) The RES's business address;
- ~~e) The RES' toll-free telephone number for billing questions, disputes and complaints, as well as the Commission's toll-free phone number for complaints;~~
- ~~c~~d) The charges for ~~the~~ 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) For any product where the price includes a fixed monthly charge, which does not change with the customer's usage and does not include all supply and delivery

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service charges, the RES shall provide an estimated total bill for electric service using sample monthly usage levels of 500, 1,000 and 1,500 kilowatt-hours;

- e) For any product where the price includes a fixed monthly charge, which does not change with the customer's usage and does not include all supply and delivery service charges, the RES must provide a statement to the customer stating that the fixed monthly charge is not the total monthly amount for electric service and stating which charges are not included in the fixed monthly charge;
- fe) The length or term of the contract, including any possible applicable automatic renewal clause disclosed in a manner consistent with Part 412;
- gf) Whether anThe presence or absence of early termination fees or penalties will be imposed for termination of the contract by the customer prior to the expiration of its term and the applicable amount. If the early termination fee or penalty is not a set amount, the RES shall disclose the manner in which that fee will be calculated or the formula pursuant to which they are calculated;
- hg) 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 interestIf 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 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;
- ih) Any fees assessed by the RES to a customer for switching to the RES;
- ji) The name of the power and energy service for which the customer is being solicitedIf a RES represents that a customer 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;
- j) A statement that the customer may rescind the contract, by contacting the RES, before the RES submits the enrollment request to the electric utility;
- k) 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. Residential customers may rescind

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the contract and the pending enrollment by contacting either the RES or the electric utility. ~~The statement shall provide both toll-free phone numbers;~~

- l) ~~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 is not representing, endorsed by or acting on behalf of the electric utility or a utility program, a consumer group or consumer group program, or a governmental body or a program of 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 consumer groups ~~The contract shall not utilize the logo of a public utility in any manner. The contract shall not utilize the name of a public utility in any manner that is deceptive or misleading. The contract shall not utilize the name, or any other identifying insignia, graphics or wording that has been used at any time to represent a public utility company or its services, to identify, label or define any of its energy or power offers;~~
- m) ~~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 the customer will receive written notification from the electric utility confirming a switch of the customer's power and energy supplier switching to an RES will not impact the customer's electric service reliability; and~~
- n) ~~The toll-free telephone numbers for the RES, the electric utility, and the Commission's Consumer Services Division. A statement that the customer will receive written notification from the electric utility confirming a switch of the customer's power and energy supplier;~~
- o) ~~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~~
- 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~~

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~~kWh for the power and energy service using sample monthly usage levels of 500, 1000 and 1,500 kWh.~~

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 those 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's business address and internet address;
 - 3) Phone: The RES's 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 shall 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 shall 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, and the fixed monthly charge does not include all supply and delivery service charges, 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;

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- 7) Length of the contract: the length of the contract in months;
- 8) Subsequent prices after the initial price: 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, and the fixed monthly charge does not include all supply and delivery service charges, 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 the contract renews automatically;
- 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 rescind.";
- 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 or your first bill with charges from [RES name].";
- 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. The seller is not endorsed by, representing, or acting on behalf of, a utility or a utility program, a governmental body or a governmental program, or a consumer group or a consumer group program.";

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- 14) The UDS shall include the following: "If you have any questions or concerns about this sales solicitation, you may contact the Illinois Commerce Commission's Consumer Services Division at 1-800-524-0795. For information about the electric supply price of your 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.

Section 412.120 ~~Door-to-Door~~In-person Solicitation

- a) ~~A~~ RES agent shall state that he or she represents an independent seller of power and energy service certified by the Illinois Commerce Commission. ~~A~~ 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 a~~ utility or ~~electric a~~ utility program, a consumer group or consumer group program, or 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~~. No RES materials shall utilize the name or any other identifying insignia, graphics or wording that has been used at any time to represent a public utility company or its services to identify, label or define any of its energy or power offers.
- 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. 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.
- c) RES agents who engage in ~~door-to-door~~ in-person solicitation for the purpose of selling power and energy service offered by the RES shall display identification on an outer garment. This identification shall be visible 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

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- 3) The trade name and logo of the RES the agent is representing. The RES agent shall not wear or display any name or logo of a utility. In addition, the RES agent's badge shall not state or imply that the RES agent is a representative of a utility. If the agent is selling power and energy services from multiple RESs 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) The RES agent shall leave the premises at the customer's, owner's or occupant's request.
- e) ~~The RES agent shall ensure that, during the sales presentation to the customer, verbally disclose items (a) and (c) through (n) of Section 412.110 (d) through (p) of the uniform disclosure statement (Section 412.110(d) through (p)) are verbally disclosed to the customer unless the sales presentation is terminated by the customer. 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 described in Section 412.115 and Appendix A of this Part is to be left with the customer at the conclusion of the visit unless a customer refuses to accept a copy. 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 during the solicitation or solely with materials provided during the solicitation require a Letter of Agency and a third-party verification. The If a customer's enrollment is authorized by third party verification during door to door solicitation, the third party verification shall require the customer to verbally acknowledge obtain the customer's acknowledgement that he or she understands the disclosures required by subsections (c) and (e) through (m) of Section 412.110. applicable items in items (d) through (p) of the uniform disclosure statement. Each disclosure must be made individually with a sufficient pause between each to obtain clear acknowledgement of each disclosure. The RES agent must be in a location where he or she cannot hear the customer while the TPV is conducted. The RES 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~~

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~~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 any in-person solicitations at any building or premises where any sign, notice or declaration of any description whatsoever is posted which prohibits sales, marketing or solicitations.~~

- 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 of the building shall not constitute consent to market to any other prospective customers in the building without separate consent.~~
- j) ~~Upon a customer's request, the RES shall refrain from any further marketing to that customer. The RES shall notify its agents of a customer's request.~~

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 a utility program, a consumer group or a consumer group program, or a governmental body or a program of 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. Telephone solicitations shall not utilize the name of a public utility in any manner that is deceptive or misleading. No RES shall utilize a public utility name to identify, label or define any of its energy or power offers.~~
- 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~~ or 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)~~

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~~through (p)) are verbally~~ make all disclosures required by subsections (a) and (c) through (n) of Section 412.110 ~~disclosed to the customer, unless the sales presentation is terminated by the customer before the disclosures are completed.~~ A 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 solicitations that lead to a telephone enrollment must be recorded and retained for a minimum of two years, or for the entire period a customer takes service with the RES, whichever is longer. All telemarketing calls that do not lead to a telephone enrollment, but last at least two minutes, shall be recorded and retained for a minimum of six months. The recordings shall be provided to Commission Staff upon request.
- e) ~~For telemarketing that leads to a completed telephone enrollment, 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 (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. The RES shall notify its agents of a customer's request.

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; A RES agent shall state that he or she represents an independent seller of power and energy service certified by the Illinois Commerce Commission. A RES agent shall not state or otherwise imply that he or she is employed by, representing, endorsed by or acting on behalf of a utility or a utility program, a consumer group or consumer

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group program, or 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). The RES agent shall not utilize the name of a public utility in any manner that is deceptive or misleading. No RES shall utilize a public utility name to identify, label or define any of its energy or power offers;

- b) The RES agent shall ~~V~~verbally disclose to the customer items (d) through (p) of the uniform disclosure statement (Section 412.110(d) through (p)) make the disclosures required by subsections (a) and (c) through (n) of Section 412.110 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. An inbound enrollment call that does not lead to an enrollment but lasts at least two minutes shall be retained for a minimum of ~~six months~~ 30 days. The recordings 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 to the customer individually, requiring 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 listen to the call once the 3-way connection has been established; and~~
- 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.

Section 412.150 Direct Mail

- a) If a RES agents contacting customers for enrollment for power and energy service by direct mail, the direct mail material shall include all the ~~items~~disclosures required in of the uniform disclosure statement (Section 412.110) for the service being solicited. Direct mail material shall not make any statements of representation of, endorsement by or acting on behalf of ~~the a~~ electric utility or a utility program, a consumer group or a program run by a consumer group, or a governmental body or a 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

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the statements) or a consumer group. Direct mail shall not utilize the logo of a public utility. Direct mail shall not utilize the name of public utility in any manner that is deceptive or misleading. No RES materials shall utilize the name or any other identifying insignia, graphics or wording that has been used at any time to represent a public utility company or its services to identify, label or define any of its energy or power offers.

- b) If a direct mail solicitation includes a written Letter of Agency, the direct mail solicitation shall include items (a) and (c) through (i) of Section 412.110 and the also the UDS according to Section 412.115. The UDS shall be provided on a separate page from the other marketing materials included in the direct mail solicitation. If a written Letter of Agency is being used to authorize a customer's enrollment, the written Letter of Agency 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 each of the disclosures required by subsections (a), (c) and (e) through (m) of the items contained in the uniform disclosure statement in Section 412.110. The documents containing the Section 412.110 disclosures items of and the uniform disclosure statement must remain with the customer.
- c) If the direct mail solicitation allows a customer to enroll by telephone, and the customer elects to do so, Section 412.140 shall apply. If the direct mail solicitation allows a customer to enroll online, and the customer elects to do so, Section 412.160 shall apply.
- de) 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.

Section 412.160 Online Marketing

- a) Each RES offering power and energy service to customers online shall clearly and conspicuously make all display the items of the uniform disclosures required by 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's internet and electronic material shall not make any statements that it is a representative of, endorsed by or acting on behalf of the electric utility or a utility program, a consumer group or a program run by a consumer group, a governmental body or a 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. Online marketing shall not utilize the logo of a public utility. Online marketing shall not utilize the name of public utility in any manner that is deceptive or misleading. No RES materials shall utilize the name or any other

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identifying insignia, graphics or wording that has been used at any time to represent a public utility company or its services, to identify, label or define any of its energy or power offers

- 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) The RES shall obtain, in accordance with 83 Ill. Adm. Code 453 and Section 2EE(b) of the Consumer Fraud and Deceptive Business Practices Act, 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 disclosures required by items 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.

Section 412.170 Rate Notice to Customers

- a) At least 30 days prior to the start of a calendar month, each RES shall **publishmake available to its customers on that particular variable product on its website or through the customer's account log in** the variable rate(s) for its residential customers **on that particular variable product** applicable for the billing cycle starting during that calendar month. If the billing cycle does not match the calendar month, the dates that the rates will be in effect must disclose the one month period to which the rates will apply. In addition, each RES shall provide such rate information to its variable rate customers who request it through the RES's toll-free number. 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.
- 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

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the bill to disclose the customer's variable rate that is in effect at the time the bill is received by the customer and the percentage change, if any, of the variable rate from one monthly billing period to the next. 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. The requirements of this subsection to provide notifications in customer bills, do not apply if the RES sends the notifications required by this subsection via a written communication.

- c) If a residential variable rate customer's rate increases by more than 30% from one monthly billing period to the next, the RES shall send a separate written notice to the customer informing the customer of the upcoming rate change.
- d) Subsections (a) through (c) shall not apply to contracts which determine the variable rate solely on a publicly available index or benchmark. Contracts which determine the variable rate solely on a publicly available index or benchmark shall disclose the formula that will allow a customer to determine the variable rate, based on a publicly available index or benchmark. Each RES shall publish on its website sufficient information to identify the inputs to the formula used to calculate the variable rate, including the timing and location of the index prices and any information necessary to calculate the rate. Unless the RES provides the index or benchmark information to the customer free of charge, the RES shall disclose the charge to obtain the index or benchmark on the UDS and in the contract. If any portion of a customer's supply service is subject to a variable rate that is not based on an index, subsections (a) through (c) of this part apply to that variable rate.
- e) 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, subsections (a) through (c) of this section shall apply on and after the date that the contract changes to a variable rate. The RES shall also 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. 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) that states "Upcoming Switch to a Variable Rate";

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- 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, that the rate will change to a variable rate. If the customer is eligible for one or more fixed rate offers from the RES, the RES shall include information about such offer(s), including information explaining how to enroll in such offer(s). If the customer is not subject to an early termination fee after the switch to a variable rate, the notice shall advise the customer of such.
- f) For a variable price product, the RES shall disclose on the RES's website and through a toll-free number the one year price history, or history for the life of the product, if it has been offered less than one year. A RES shall not rename a product in order to avoid disclosure of price history.

Section 412.1750 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.

Section 412.180 Records Retention and Availability

- a) A RES must retain, for a minimum of two years or for the entire period the customer takes service with the RES, length of the 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~~ For the period the customer takes service with the RES, 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

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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.

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 the RES is “green,” “renewable” or “environmentally friendly” or any term or descriptor of like or similar meaning which conveys that such power or energy service has a reduced impact on the environment that includes unless such power and/or energy is purchased entirely separate and apart from in addition to, and over and above, the power, renewable energy credits or alternative compliance payments purchased or made to satisfy the renewable portfolio standard requirements applicable to RESs under Section 16-115D of the Act can be marketed as "green", "renewable energy" or "environmentally friendly". Nothing in this subsection prevents a RES from stating that it complies with the Illinois Renewable Portfolio Standard, if in fact it does so, but such statements must also disclose that the Renewable Portfolio Standard is required by law.
- b) ~~A RES marketing “green,” “renewable,” or “environmentally friendly” power or energy offers, or other offers of any description which convey the impression that such power or energy service has a reduced impact on the environment, in compliance with subsection (a) of this Section, shall comply with the following:~~
- 1) ~~disclose on all materials used in the marketing of these offers and on its website the percentage of renewable energy resources used in supplying power or energy to customers pursuant to each offer;~~
 - 2) ~~disclose on all materials used in the marketing of these offers and on its website the percentage of renewable energy resources generated in the State of Illinois used in supplying the power or energy to customers pursuant to each offer;~~
 - 3) ~~if a RES cannot comply with subsections (b)(1) and (b)(2) of this Section because a RES has not committed to particular renewable energy resources or has not committed to a particular location, or locations, of renewable energy resources at the time it markets such offers, the RES shall disclose this fact in marketing materials and on its website. For example, if a RES intends to purchase renewable energy resources anywhere in the nation or if a RES intends to purchase renewable energy resources located within the area of a specific Regional Transmission Organization, the RES shall disclose this in its marketing materials and on its website;~~

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- 4) the disclosures required in subsection (b)(1) through (b)(3) of this Section shall also apply to offers posted by a RES on the Commission's PlugInIllinois.org website;
- 5) within 14 months of enrolling a customer on a "green," "renewable," or "environmentally friendly" offer, and annually thereafter, the RES shall provide the customer with a disclosure of the actual renewable energy resource mix (and corresponding percentages of each resource) and location(s) (as granular as possible and at a minimum by state) of the renewable energy resources that were procured to serve the customer. The RES shall provide Commission Staff with the annual report provided to customers for each offer. In addition, the RES shall provide verification of the information provided pursuant to this Section to Commission Staff upon request;
- _____ **[ALTERNATIVE LANGUAGE IF THE COMMISSION DOES NOT COMPLETELY REMOVE THE GEOGRAPHIC REQUIREMENT:]** . . . the RES shall provide the customer with a disclosure of the actual renewable energy resource mix (and corresponding percentages of each resource) and location(s) ~~(as granular as possible and at a minimum by state)~~ **RTO of origin** of the renewable energy resources that were procured to serve the customer.
- 6) upon request of Commission Staff, the RES shall provide verification that the renewable energy credits claimed have been retired; and
- 7) the annual disclosure requirement of subsection (b)(5) of this Section 412.190 shall apply to "green," "renewable," or "environmentally friendly" claims from RESs serving customers in municipal aggregation programs.

SUBPART C: RESCISSION, DEPOSITS, EARLY TERMINATION AND AUTOMATIC CONTRACT RENEWAL

Section 412.200 Application of Subpart C

The provisions of this Subpart shall only apply to RES serving or seeking to serve residential or small commercial retail customers and only to the extent the RES provide services to residential or small commercial retail customers. In addition, Section 412.210 shall apply to non-RES electric utilities.

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.
- 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.

Section 412.220 Deposits

Any other provision of this Part 412 notwithstanding, a 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.

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 on early termination fees and penalties apply only to early termination fees and penalties for early termination of electric service. 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

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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.

Section 412.240 Contract Renewal

- a) Non-Automatic Renewal. The RES shall clearly disclose any renewal terms in its contracts, including any cancellation procedure. For contracts with an initial term of six months or more, the RES shall send a notice of contract expiration separate from the bill at least 30 but no more than 60 days prior to the date of contract expiration. Nothing in this Section shall preclude a RES from offering a new contract to the customer at any other time during the contract period. If the customer enters into a new contract prior to the end of the contract expiration notice period, the notice of contract expiration under this Section is not required. The separate written notice of contract expiration 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) that states "Contract Expiration Notice";
 - 2) The anticipated bill cycle in which the existing contract will expire;
 - 3) A full description of the renewal offer, including the date service would begin under the new offer, if a renewal offer was provided; and
 - 4) A statement, in at least 12 point font, that the customer must provide affirmative consent to accept the renewal offer, that establishing service with another RES can take up to 45 days, and that failure to renew the existing contract or switch to another RES may result in the customer being reverted to the electric utility default service. The statement shall provide the length of the electric utility tariff minimum stay period, if applicable.
- b) Automatic Renewal. In addition to complying with the Illinois Automatic Renewal Act [815 ILCS 601], the RES shall clearly disclose any renewal terms in its contracts, including any cancellation procedure. For contracts with an initial term of six months or more, and when the contract automatically renews for a specified term of more than one month, the RES shall send a notice of contract renewal separately from the bill at least 30 days but no more than 60 days prior to the end of the initial contract term. Nothing in this Section shall preclude a RES from offering a new contract to the customer at any other time during the contract period. If the customer enters into a new contract prior to the end of the contract

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expiration notice period, the notice of contract expiration under this Section is not required. The separate written notice of contract renewal 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) that states "Contract Renewal Notice";
- 2) The bill cycle in which service under the new term will begin;
- 3) A statement in bold lettering, in at least 12 point font, that the contract will automatically renew unless the customer cancels it, including the information needed to cancel;
- 4) If the new contract term includes a termination fee, a statement that the customer has from the date of the contract renewal notice through the end of the existing contract term to notify the RES of his or her rejection of the new contract term to avoid incurring a termination fee under the new contract term; and
- 5) A clear disclosure of the contract terms, including a full description of any renewal offers available to the customer.

Section 412.250 Assignment

If an RES is surrendering or otherwise cancelling its certificate of service authority or is no longer seeking to serve certain customers, the RES shall not assign the contract to a different RES unless:

- a) The new supplier is an RES;
- b) The new RES is in compliance with all applicable requirements of the Commission and the electric utility to provide electric service;
- c) The rates, terms and conditions of the contract being assigned do not change during the remainder of the time period covered by the contract; provided, however, the assigned contract may be modified during the term of the contract if the new RES and the retail customer mutually agree to the changes or revisions of the contract after assignment of the contract when the customer is provided the disclosures described in section 412.110;
- d) The customer is given 15 calendar days prior written notice of the assignment by the current RES; and

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- e) Within 30 days after the assignment, the new RES provides the customer with a toll-free phone number for billing questions, disputes and complaints.

SUBPART D: DISPUTE RESOLUTION AND CUSTOMER COMPLAINT REPORTS

Section 412.300 Application of Subpart D

The provisions of this Subpart shall only apply to RES serving or seeking to serve residential or small commercial retail customers and only to the extent the RES provide services to residential or small commercial retail customers. In addition, Section 412.320(c)(1)(B) and (c)(1)(E) shall apply to non-RES electric utilities.

Section 412.310 Required RES Information

- a) Prior to the RES initiating marketing to residential and small commercial retail customers, and annually thereafter, the RES shall provide the following to the Commission's Consumer Services Division (CSD):
 - 1) A copy of its bill formats (if it bills customers directly rather than using electric utility consolidated billing) (combined billing for RES services and electric utility services);
 - 2) Standard customer contract;
 - 3) Customer complaint and resolution procedures; and
 - 4) The name, telephone number and e-mail address of the company representative whom Commission employees may contact to resolve customer complaints and other matters.
- b) The RES must file updated information within 10 business days after changes in any of the documents or information required to be filed by this Section.
- c) If the RES has declared force majeure within the past 10 years on any contracts to deliver power and energy services, the RES shall provide notice to the Commission Staff prior to marketing to residential and small commercial retail customers.

Section 412.320 Dispute Resolution

- a) A residential or small commercial retail customer has the right to make a formal or informal complaint to the Commission, and an RES contract cannot impair this right.
- b) A customer or applicant for power and energy service may submit a complaint by U.S. mail, facsimile transmission, e-mail or telephone to an RES. The RES shall promptly investigate and advise the complainant of the results within 14 calendar days. If the RES responds to the customer's complaint verbally, the RES shall inform the customer of the ability to request and obtain the RES' response in writing. A customer ~~who is dissatisfied with the RES' response~~ shall be informed of the right to file a complaint with the Commission and the Office of the Illinois Attorney General.
- c) Complaints to the Commission
 - 1) Informal Complaints (see 83 Ill. Adm. Code 200.160)
 - A) ~~If a complainant is dissatisfied with the results of an RES' complaint investigation,~~ The RES shall inform the complainant of his/her ability to file an informal complaint with the Commission's Consumer Services Division (CSD) **if a complainant is dissatisfied with the results of a RES' complaint investigation** and provide contact information for the CSD. Informal complaints may be filed with the CSD by phone, via the internet, by fax, or by mail. Information required to process a customer's informal complaint includes:
 - i) The customer's name, mailing and service addresses, and telephone number;
 - ii) The name of the RES;
 - iii) The customer's electric utility and RES account numbers;
 - iv) An explanation of the facts relevant to the complaint;
 - v) The complainant's requested resolution; and
 - vi) Any documentation that supports the complaint, including copies of bills or terms of service documents.

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- B) The Commission's CSD may resolve an informal complaint via phone by completing a three-way call involving the customer, the CSD staff and the RES. If no resolution is reached by phone and a dispute remains, an informal complaint may be sent to the RES. In the case of the electric utility purchasing the RES' receivables or electric utility consolidated billing, the RES shall notify the electric utility of any informal complaint received and the electric utility shall follow the procedures outlined in its billing service agreement with the RES to withhold collection activity on disputed RES charges on the customer's bill.
 - C) The RES shall investigate all informal complaints and advise the CSD in writing of the results of the investigation within 14 days after the informal complaint is forwarded to the RES.
 - D) The CSD shall review the complaint information and the RES' response and notify the complainant of the results of the Commission's investigation.
 - E) While an informal complaint process is pending:
 - i) The RES (or the electric utility in the case of the electric utility having purchased the RES' receivables) shall not initiate collection activities for any disputed portion of the bill until the Commission Staff has taken final action on the informal complaint; and
 - ii) A customer shall be obligated to pay any undisputed portion of the bill and the RES (or the electric utility in the case of the electric utility purchasing the RES' receivables or the utility presenting the RES' charges on a consolidated bill) may pursue collection activity for nonpayment of the undisputed portion after appropriate notice.
 - F) The RES shall keep a record for two years after closure by the CSD of all informal complaints. This record shall show the name and address of the complainant and the date and nature and adjustment or disposition of the informal complaint.
- 2) Formal Complaints. If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the Commission pursuant to Section 10-101 of the Act and 83 Ill. Adm. Code 200.170.

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- 3) Disclosure of RES' Level of Customer Complaints. The Commission shall, on at least a quarterly basis, prepare summaries of all formal and informal complaints received by it and publish those summaries on its website. The summaries shall be in an easy-to-read and user friendly format.

Section 412.330 Failure to Comply

Unless otherwise noted, a violation of this Part shall be subject to the fines and penalties set forth in the Act.

UNIFORM DISCLOSURE STATEMENT

Name:
Address:

Phone:

Rates and Product Information			
Price (in cents/kWh) and number of months this price stays in effect:			
Other monthly charges:			
Total Price (in cents/kWh) with other monthly charges	500 kWh	1,000 kWh	1,500 kWh
Length of the contract:			
Price after the initial price:			
Early Termination Fees and Contract Renewal			
Early Termination Fee:			
Contract Renewal:			
Right to Rescind and Cancel			
Rescission	You have a right to rescind (stop) your enrollment within 10 days after your utility has received your order to switch suppliers. You may call us at (toll free number) or your utility at (toll free number) to accomplish this.		
Cancellation	You also have the right to terminate the contract without any termination fee or penalty if you contact us at (toll free number) within 10 business days after the date of your first bill with charges from [RES Name]		

This is a sales solicitation and the seller is [RES Name], an independent retail electric supplier. If you enter into a contract with the seller, you will be changing your retail electric supplier. The seller is not endorsed by, representing, or acting on behalf of, a utility or utility program, a governmental body or a governmental program, or a consumer group or a consumer group program.

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.

Date: _____

Agent ID: _____