

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On Its Own Motion)	
)	
vs.)	
)	
Sperian Energy Corp.)	Docket No. 15-0438
)	
Citation for alleged violations of Sections 16-)	
115A(b) and 16-116A(e) of the Public Utilities)	
Act and 83 Ill. Adm. Code 412.110, 412.130,)	
412.170)	

**ANSWER AND AFFIRMATIVE DEFENSES OF
SPERIAN ENERGY CORP. TO THE MORE DEFINITE STATEMENT
OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**

Sperian Energy Corp. (“Sperian,” “Sperian Energy,” or the “Company”), by its counsel, pursuant to Section 200.180 of the Rules of Practice of the Illinois Commerce Commission (the “Commission”), 83 Ill. Adm. Code § 200.180, and the schedule set forth by the Administrative Law Judge in the above-captioned matter, hereby provides its answer and affirmative defenses to the More Definite Statement (“MDS”) filed by the Staff of the Commission (“Staff”). The answers below are with respect to the corresponding Paragraphs as listed in the MDS.

I. INTRODUCTION

1. **MDS:** Sperian Energy Corp. (“Sperian”) is an Alternative Retail Electric Supplier (“ARES”) as defined in Section 16-102 of the Public Utilities Act (“Act”), 220 ILCS 5/16-102. Sperian was certified as an ARES within the State of Illinois by the Illinois Commerce Commission (“Commission”) on January 10, 2012, in Docket No. 11-0743.

Answer: Sperian admits the allegations of Paragraph 1.

2. **MDS:** In a Staff Report dated July 20, 2015 (“Staff Report”), Staff of the Consumer Services Division and of the Office of Retail Market Development recommended that the Commission initiate a proceeding directing Sperian to respond to the allegations in the Staff Report and to show cause why the Commission should not revoke Sperian’s certificate and its designation as an ARES or grant such other relief as authorized by law.

Answer: Sperian admits that the Staff of the Consumer Services Division and of the Office of Retail Market Development (“Staff”) filed a report in this proceeding (the “Staff Report”) and avers that the Staff Report speaks for itself.

3. **MDS:** On July 28, 2015, the Illinois Commerce Commission (“Commission”) entered an initiating order (“Order”) finding the Staff Report provides an evidentiary basis for the initiation of a proceeding directing Sperian to show cause why the Commission should not take any of the remedial or punitive actions contemplated by the Act for violations or non-conformance with the provisions of Section 16-115 or 16-115A of the Act. 220 ILCS 5/16-115. The Order made Sperian a respondent in the proceeding and the Staff Report was made a part of the record.

Answer: Sperian admits that the Commission entered an Initiating Order in this proceeding and avers that the Order speaks for itself. Further answering, Sperian denies that the unverified Staff Report constitutes evidence.

4. **MDS:** Sperian entered its appearance in this matter on August 17, 2015 and, on August 19, 2015, a prehearing conference was held. A petition to intervene was filed by the Citizens Utility Board (“CUB”) and granted by the Administrative Law Judge (“ALJ”). The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois (“AG”) intervened as a matter of right.

Answer: Sperian admits the allegations of Paragraph 4.

5. **MDS:** Pursuant to a schedule set by the ALJ, Sperian filed a verified response to the Order on September 30, 2015 (“Response”). Brian Rose, President of Sperian, swore under oath that the statements contained in that document were true and correct to the best of his knowledge, information and belief.

Answer: Sperian admits that it filed a Verified Response as directed by the Order and avers that the Verified Response speaks for itself.

6. **MDS:** On October 21, 2015, Sperian filed a motion for a “complaint or more definite statement” from Staff (“Motion”).

Answer: Sperian admits the allegations of Paragraph 6.

7. **MDS:** After the Parties fully briefed the Motion, the ALJ issued a ruling on December 10, 2015 denying the motion.

Answer: Sperian admits the allegations of Paragraph 7.

8. **MDS:** On December 30, 2015, Sperian filed a petition for interlocutory review. The ALJ stayed the proceeding pending resolution of the petition.

Answer: Sperian admits that it filed the Petition described in Paragraph 8. Sperian further responds that the subsequent order by the ALJ speaks for itself.

9. **MDS:** On January 20, 2016, the Commission granted Sperian's Petition.

Answer: Sperian admits the allegations of Paragraph 9.

10. **MDS:** On January 21, 2016, the ALJ ordered Staff to file a "complaint or more definite statement" by February 4, 2016. Staff's More Definite Statement follows.

Answer: Sperian responds that the ALJ's order speaks for itself.

II. LEGAL AUTHORITY

A. Public Utilities Act

11. **MDS:** Sperian is certified in Illinois as an ARES, pursuant to 220 ILCS 5/16-115 of the Act. To obtain certification, all ARES are required, among other things, to "comply with all applicable federal, State, regional and industry rules, policies, practices and procedures for the use, operation, and maintenance of the safety, integrity and reliability, of the interconnected electric transmission system." 220 ILCS 5/16-115(d)(2). Once certified, all ARES must:

- (1) "continue to comply with the requirements for certification stated in subsection (d) of Section 16-115";
- (2) "obtain verifiable authorization from a customer, in a form or manner approved by the Commission consistent with Section 2EE of the Consumer Fraud and Deceptive Business Practices Act ("Section 2EE"), before the customer is switched from another supplier";
- (3) "adequately disclose[] the prices, terms and conditions of the products or services that the alternative retail electric supplier is offering or selling to the customer" in any marketing materials which make statements concerning prices, terms, and conditions of service; and
- (4) "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" before any customer is switched from another supplier.

220 ILCS 5/16-115; 220 ILCS 5/16-115A(a)(ii), (b), (e)(i), (e)(ii); *see* 815 ILCS 505/2EE

Answer: Sperian admits that it is certified in Illinois as an ARES. The remaining allegations in Paragraph 11 are legal conclusions to which no response is required. Further answering, Sperian notes that Item 3 of Paragraph 11 of the MDS provides an incomplete recitation of subpart (ii) of Section 16-115A(e) of the Act, which provides in full “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.” *Id.* at (e)(ii).

12. **MDS:** Additionally, as an ARES Sperian is required to comply with 83 Ill. Admin. Code Part 412, entitled “Obligations of Retail Electric Suppliers.” 83 Ill. Admin. Code 412 (“Part 412”); 220 ILCS 5/16-115A(a)(2); 220 ILCS 5/16-115(d)(2). Part 412 sets forth the obligations of retail electric suppliers with respect to sales, marketing, solicitation and advertising.

Answer: Sperian admits it is an ARES. The remaining allegations in Paragraph 12 are legal conclusions to which no response is required.

13. **MDS:** Part 412 implements Section 16-118 of the Public Utilities Act (220 ILCS 5/16-118) and is authorized by Sections 10-101 and 8-501 of the Public Utilities Act. 220 ILCS 5/10-101 and 8- 501.

Answer: The allegations in Paragraph 13 are legal conclusions to which no response is required.

14. **MDS:** Part 412 prescribes, among other things: (1) minimum contract terms and conditions; (2) telemarketing; and (3) training of retail electric supplier agents to comply with Illinois regulations and statutes on energy sales. *See, generally,* 83 Ill. Admin. Code 412.110, 412.130, 412.170.

Answer: The allegations in Paragraph 14 are legal conclusions to which no response is required.

15. **MDS:** Part 412.130(c) requires a Retail Electric Supplier (“RES”) agent to ensure that, during sales presentations to prospective customers, information described in subsections

(d) through (p) of Section 412.110 are verbally disclosed to the customer. 83 Admin. Code 412.130(c).

Answer: The allegations in Paragraph 15 are legal conclusions to which no response is required.

16. **MDS:** All ARES are required to “continue to comply with the requirements for certification stated in subsection (d) of Section 16-115.” 220 ILCS 5/16-115A(a)(ii). Section 16-115(d) requires “[t]hat the [ARES] will comply with all applicable federal, State, regional and industry rules, policies, practices and procedures for the use, operation, and maintenance of the safety, integrity and reliability, of the interconnected electric transmission system.” 220 ILCS 5/16-115(d)(2).

Answer: The allegations in Paragraph 16 are legal conclusions to which no response is required.

17. **MDS:** A violation of the requirements of Part 412 is a violation of Section 16-115.

Answer: The allegations in Paragraph 17 are legal conclusions to which no response is required.

18. **MDS:** The Commission has jurisdiction to entertain and dispose of any complaint against an ARES alleging, among other things, that “the alternative retail electric supplier has violated or is in nonconformance with any applicable provisions of Section 16-115 through Section 16-115A.” 220 ILCS 5/16-115B(a).

Answer: The allegations in Paragraph 18 are legal conclusions to which no response is required.

19. **MDS:** Violations of Part 412 are violations of 220 ILCS 16-115A and, pursuant to 220 ILCS 5/16-115B, the Commission has authority to take whatever corrective action it deems appropriate for violations of 220 ILCS 16-115A.

Answer: The allegations in Paragraph 19 are legal conclusions to which no response is required.

20. **MDS:** Additionally, Section 5-202 of the Act addresses violations that are not otherwise covered by the Act. Pursuant to this section, “...any corporation other than a public utility...that violates or fails to comply with any provisions of this Act...in a case in which a penalty is not otherwise provided for in this Act, shall be subject to a civil

penalty...corporations other than a public utility are subject to a civil penalty of up to \$30,000 for each and every offense.” 220 ILCS 5/5-202.

Answer: The allegations in Paragraph 20 are legal conclusions to which no response is required.

21. **MDS:** Finally, Section 5-202.1 states “any person or corporation...who knowingly misrepresents facts or knowingly aids another in doing so or knowingly permits another to misrepresent facts through testimony or the offering or withholding of material information in any proceeding shall be subject to a civil penalty. Whenever the Commission is of the opinion that a person or corporation is misrepresenting or has misrepresented facts, the Commission may initiate a proceeding to determine whether a misrepresentation has in fact occurred. If the Commission finds that a person or corporation has violated this Section, the Commission shall impose a penalty of not less than \$1,000 and not greater than \$500,000. Each misrepresentation of a fact found by the Commission shall constitute a separate and distinct violation.” 220 ILCS 5/5-202.1.

Answer: The allegations in Paragraph 21 are legal conclusions to which no response is required.

B. Consumer Fraud and Deceptive Business Practices Act

22. **MDS:** The Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/, prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.

Answer: The allegations in Paragraph 22 are legal conclusions to which no response is required.

23. **MDS:** Section 2EE of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2EE, governs electric service provider selection.

Answer: The allegations in Paragraph 23 are legal conclusions to which no response is required.

24. **MDS:** Violations of the Consumer Fraud and Deceptive Business Practices Act are violations of 220 ILCS 16-115A. 220 ILCS 5/16-115A(b). Pursuant to 220 ILCS 5/16-115B, the Commission has authority to take whatever corrective action it deems appropriate for violations of Section 16-115A.

Answer: The allegations in Paragraph 24 are legal conclusions to which no response is required.

25. **MDS:** The Commission has separate and additional authority to take actions for violations of the Consumer Fraud and Deceptive Business Practices Act according to the terms of that statute. 815 ILCS 505/2EE(d).

Answer: The allegations in Paragraph 25 are legal conclusions to which no response is required.

C. Telephone Solicitation Act

26. **MDS:** The Telephone Solicitation Act, 815 ILCS 413/1, *et seq.*, prohibits the sale of goods or services in the State of Illinois via telephone except in accordance with the terms of that act.

Answer: The allegations in Paragraph 26 are legal conclusions to which no response is required.

27. **MDS:** Violations of the Telephone Solicitation Act are violations of 220 ILCS 16-115A and, pursuant to 220 ILCS 5/16-115B, the Commission has authority to take whatever corrective action it deems appropriate for violations of 220 ILCS 16-115A.

Answer: The allegations in Paragraph 27 are legal conclusions to which no response is required.

III. STATEMENT OF FACTS

28. **MDS:** The Consumer Services Division (“CSD”) and the Office of Retail Market Development (“ORMD”) of the Commission work in tandem to monitor consumer complaints against ARES or Retail Energy Suppliers (“RES”). When those two offices identify issues or concerns with a specific ARES, Staff contacts that company in an effort to address the problems.

Answer: Sperian does not have information sufficient to admit or deny the allegations of Paragraph 28, and to the extent that an answer is required, denies those allegations.

29. **MDS:** One of the ways that Staff monitors performance by an ARES is by tracking the number of consumer complaints and by ranking companies accordingly on a Complaint Scorecard. Complaint scorecards are calculated monthly and provide a method for Staff to

evaluate an individual ARES's level of informal complaints in relation to the level of informal complaints for the entire residential ARES market. The ranking is based on a six-month average of supplier complaint rates compared to the industry average to calculate a complaint ratio. Suppliers are placed into five groups displayed as a scale of stars, with one star indicating the highest rate of informal complaints, up to five stars, which represents the lowest rate of informal complaints.

Answer: Sperian does not have information sufficient to admit or deny the allegations of Paragraph 29, and to the extent that an answer is required, denies those allegations.

30. **MDS:** Staff learned of potential problems with Sperian in August 2012, the first month Sperian appeared on the Commission's Complaint Scorecard. A supplier is included on the Complaint Scorecard once it has had at least 200 residential customers for at least three consecutive months. Sperian was listed a one-star supplier and remained at a one- star ranking until July 2013 when it moved up to a two-star ranking.

Answer: Sperian does not have information sufficient to admit or deny the allegations of Paragraph 30, and to the extent that an answer is required, denies those allegations.

31. **MDS:** Sperian's low ranking on the Complaint Scorecard caused Staff to perform a more in-depth review of Sperian's performance. Staff's subsequent review of Sperian's sales scripts and third party verifications process identified non-compliances with Illinois' requirements.

Answer: Sperian denies "non-compliances with Illinois requirements." Sperian has insufficient knowledge as to truth of the remaining allegations contained in Paragraph 31, and to the extent that an answer is required, denies those allegations.

32. **MDS:** By a letter dated December 24, 2012 Staff advised Sperian to cease all noncompliant sales activity, including problems Staff discovered with Sperian's verifications.

Answer: On information and belief, Sperian believes that the allegations in Paragraph 32 refer to Attachment 1 of the Staff Report. Sperian responds that Attachment 1 speaks for itself, denies the inference that Sperian was engaged in noncompliant sales activity, and to the extent that any other factual allegations are contained in Paragraph 32, denies those allegations.

33. **MDS:** Pursuant to Staff's letter, Staff and Sperian engaged in discussions aimed at bringing Sperian into compliance. Staff memorialized these discussions in a January 16, 2013 letter.

Answer: Sperian admits that Staff and Sperian engaged in discussions in late 2012 but denies the inference that Sperian was not in compliance with applicable law. On information and belief, Sperian believes that the allegations in the last sentence of Paragraph 33 refer to Attachment 2 of the Staff Report, which speaks for itself.

34. **MDS:** By letter dated February 14, 2013, Sperian responded to Staff and described its efforts to make corrections to rectify the incidents of non-conformance.

Answer: On information and belief, Sperian believes that the allegations in Paragraph 34 refer to Attachment 3 of the Staff Report. Sperian responds that Attachment 3 speaks for itself and denies the inference that Sperian had incidents of non-conformance.

35. **MDS:** On April 18, 2013, after reviewing Sperian's description of the Company's attempts at corrective action, Staff provided additional recommendations to Sperian intended to facilitate Sperian's efforts to address non-compliance.

Answer: On information and belief, Sperian believes that the allegations in Paragraph 34 refer to Attachment 4 of the Staff Report. Sperian responds that Attachment 4 speaks for itself. Sperian denies the remaining allegations in Paragraph 35.

36. **MDS:** Staff determined that Sperian was responsive to Staff's concerns, as evidenced by the fact that complaints against Sperian dropped significantly. Because the Company had taken corrective measures, and consumer complaints had decreased, Staff took no further action at this time.

Answer: Sperian has insufficient knowledge as to truth of the allegations contained in Paragraph 36 regarding Staff's determinations and reasoning, and to the extent that an answer is required, denies those allegations. Sperian admits that Staff took no action against Sperian in 2013.

37. **MDS:** In December 2014 CSD Staff noted that the number of consumer complaints against Sperian rose to levels similar to those reported against the Company in 2012.

Sperian's complaint volumes remained elevated throughout the first half of 2015, lowering the Company to a one star rating – the lowest possible – on the Commission's Complaint Scorecard.

Answer: Sperian has insufficient knowledge as to the truth of the allegations contained in Paragraph 37, and to the extent that an answer is required, denies those allegations.

38. **MDS:** On March 31, 2015 at 4:09 pm, via email, Staff requested Sperian's marketing materials. Specifically, Staff asked Sperian to provide "copies of all residential sales scripts and TPV scripts used by Sperian in Illinois within the last 6 months."

Answer: Sperian admits that Staff requested ""copies of all residential sales scripts and TPV scripts used by Sperian in Illinois within the last 6 months" via email on March 31, 2015 at 4:09 pm. Sperian denies that all of the requested materials constitute "marketing materials" within the scope of Article 16 of the Act.

39. **MDS:** Sperian provided Staff with nine different sales scripts ("Documents") used at varying times by Sperian telemarketing agents from August 2014 to April 2015. Sperian also provided a March 24, 2014 document that appeared to detail Sperian's requirements for sales scripts.

Answer: Sperian admits that Sperian provided Staff with nine different sales scripts in April 2015. Further answering, these scripts were, to the best of Sperian's knowledge, information, and belief at the time of its response, all of the telemarketing sales scripts used by Sperian, its agents, and third party vendors in any telemarketing communications with Illinois consumers from October 2014 to March 2015 (in accordance with Staff's request covering "the last 6 months"). Sperian's then current employees and management personnel did not have personal knowledge of the exact sales scripts used during the requested time period, but rather identified scripts as "used" during the requested time period based on sales transactions, the existence of sales scripts in Sperian's business records, and other information. Sperian admits that Sperian provided Staff with a March 24, 2014 document that speaks for itself.

40. **MDS:** Staff reviewed the Documents and made the determination that sufficient evidence existed to conclude that Sperian’s sales tactics adopted in multiple scripts and used in late 2014 and the first quarter of 2015 were deceptive in nature. Staff’s full review of the nine scripts provided indicated a repeated pattern of violations in Sperian’s sales scripts, as well as violations with its TPV script, welcome letters, and the terms and conditions provided to consumers.

Answer: Sperian has insufficient knowledge as to truth of the allegations contained in Paragraph 40 regarding Staff’s review and determinations, and to the extent that an answer is required, denies those allegations. Sperian denies the underlying allegations regarding that “sales tactics adopted in multiple scripts and used in late 2014 and the first quarter of 2015 were deceptive in nature” and that “a repeated pattern of violations in Sperian’s sales scripts, as well as violations with its TPV script, welcome letters, and the terms and conditions provided to consumers.

41. **MDS:** Based upon Sperian’s poor informal complaint rating and Staff’s subsequent investigation, Staff drafted the Staff Report. Staff recommended such corrective action as the Commission might determine appropriate for violations, in part because the increase in complaints against Sperian and Sperian’s concomitant low ranking occurred so shortly after Staff’s efforts to assist Sperian in taking corrective action to rectify the previous high level of consumer complaints.

Answer: Sperian has insufficient knowledge as to truth of the allegations contained in Paragraph 41 regarding Staff’s review and determinations, and to the extent that an answer is required, denies those allegations. . Sperian admits that Staff prepared the Staff Report, which speaks for itself. Sperian denies the remaining allegations in Paragraph 41.

III. SPECIFIC VIOLATIONS

A. Allegation No. 1 – 8/15/2014 Script - Failure to Obtain Consent for Solicitation in Violation of 83 Admin. Code 412.130(a)

Sperian has moved to dismiss Allegation No. 1 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 42-52 is required.

B. Allegation No. 2. – 8/15/2014 Script - Failure to Identify Call as a Solicitation in Violation of 83 Admin. Code 412.130(a)

Sperian has moved to dismiss Allegation No. 2 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 53-66 is required.

C. Allegation No. 3 – 8/14/2014 Script - Guarantee of Savings in Violation of 83 Admin. Code 412.110(o)

Sperian has moved to dismiss Allegation No. 3 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 67-74 is required.

D. Allegation No. 4 – 8/15/2014 Script – Use of Deceptive or Misleading Language in Violation of 83 Ill Admin Cod 412.170(c)

Sperian has moved to dismiss Allegation No. 4 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 75-81 is required.

E. Allegation No. 5 – 8/15/2014 Script - Failure to Drop Off Call in Violation of 815 ILCS 505/

Sperian has moved to dismiss Allegation No. 5 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 82-91 is required.

F. Allegation No. 6 – 8/21/2014 Script - Knowingly Providing False Information to Staff in Violation of 220 ILCS 5/5-201.1¹

Sperian has moved to dismiss Allegation No. 6 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 92-105 is required.

G. Allegation No. 7 – 10/21/2014 Script – Failure to Gain Consent for Solicitation in Violation of 83 Admin. Code 412.130(a)

Sperian has moved to dismiss Allegation No. 7 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 106 - 116 is required.

H. Allegation No. 8 – 10/21/14 Script - Failure to Identify Call as a Solicitation in Violation of 83 Admin. Code 412.130(a)

Sperian has moved to dismiss Allegation No. 8 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 117 - 128 is required.

¹ Sperian believes that Allegation No. 6 refers to 220 ILCS 5/5-202.1, not 220 ILCS 5/5-201.1, which does not exist.

I. Allegation No. 9 – 10/21/2014 Script - Guarantee of Savings in Violation of 83 Admin. Code 412.110(o)

Sperian has moved to dismiss Allegation No. 9 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 129-135 is required.

J. Allegation No. 10 – 10/21/2014 Script - Use of Deceptive or Misleading Language in Violation of 83 Ill Admin Cod 412.170(c)

Sperian has moved to dismiss Allegation No. 10 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 136-143 is required.

K. Allegation No. 11 – October 2014 Script - Failure to Obtain Consent for Solicitation in Violation of 83 Admin. Code 412.130(a)

Sperian has moved to dismiss Allegation No. 11 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 144 - 154 is required.

L. Allegation No. 12 – October 2014 Script - Failure to Identify Call as a Solicitation in Violation of 83 Admin. Code 412.130(a)

Sperian has moved to dismiss Allegation No. 12 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 155 - 167 is required.

M. Allegation No. 13 – October 2014 Script - Guarantee of Savings in Violation of 83 Admin. Code 412.110(o)

Sperian has moved to dismiss Allegation No. 13 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 168 - 175 is required.

N. Allegation No. 14 – October 2014 Script - Use of Deceptive or Misleading Language in Violation of 83 Ill Admin Cod 412.170(c)

Sperian has moved to dismiss Allegation No. 14 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 176-184 is required.

O. Allegation No. 15 – October 2014 Script - Failure to Drop Off Call in Violation of 815 ILCS 505/

Sperian has moved to dismiss Allegation No. 15 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 185-194 is required.

P. Allegation No. 16 – October 2014 Script - Knowingly Providing False Information to Staff in Violation of 220 ILCS 5/5-201.1

Sperian has moved to dismiss Allegation No. 16 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 195- 205 is required.

Q. Allegation No. 17 – 11/17/2014 Script - Failure to Obtain Consent for Solicitation in Violation of 83 Admin. Code 412.130(a)

Sperian has moved to dismiss Allegation No. 17 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 206–216 is required.

R. Allegation No. 18 – 11/17/2014 Script - Failure to Identify Call as a Solicitation in Violation of 83 Admin. Code 412.130(a)

Sperian has moved to dismiss Allegation No. 18 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 217–230 is required.

S. Allegation No. 19 – 11/17/2014 Script - Guarantee of Savings in Violation of 83 Admin. Code 412.110(o)

Sperian has moved to dismiss Allegation No. 19 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 231– 239 is required.

T. Allegation No. 20 – 11/17/14 Script - Failure to Drop Off Call in Violation of 815 ILCS 505/

Sperian has moved to dismiss Allegation No. 20 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 240– 246 is required.

U. Allegation No. 21 – 12/8/2014 Script - Failure to Obtain Consent for Solicitation in Violation of 83 Admin. Code 412.130(a)

Sperian has moved to dismiss Allegation No. 21 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 247–257 is required.

V. Allegation No. 22 – 12/8/2014 Script - Failure to Identify Call as a Solicitation in Violation of 83 Admin. Code 412.130(a)

Sperian has moved to dismiss Allegation No. 22 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 258–268 is required.

W. Allegation No. 23 – 12/8/2014 Script – Failure to Disclose Material Terms in Violation of 83 Ill. Admin. Code 412.110

Sperian has moved to dismiss Allegation No. 23 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 269–275 is required.

X. Allegation No. 24 – 1/26/15b Script - Failure to Obtain Consent for Solicitation in Violation of 83 Admin. Code 412.130(a)

Sperian has moved to dismiss Allegation No. 24 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 276–286 is required.

Y. Allegation No. 25 – 1/26/2015b Script - Failure to Identify Call as a Solicitation in Violation of 83 Admin. Code 412.130(a)

Sperian has moved to dismiss Allegation No. 25 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 287–297 is required.

Z. Allegation No. 26 – 1/26/2015b Script - Failure to Disclose Material Terms in Violation of 83 Ill. Admin. Code 412.110

Sperian has moved to dismiss Allegation No. 26 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 298–303 is required.

AA. Allegation No. 27 – 1/29/2015 Script - Failure to Obtain Consent for Solicitation in Violation of 83 Admin. Code 412.130(a)

Sperian has moved to dismiss Allegation No. 27 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 304-314 is required.

BB. Allegation No. 28 – 1/29/2015 Script - Failure to Identify Call as a Solicitation in Violation of 83 Admin. Code 412.130(a)

Sperian has moved to dismiss Allegation No. 28 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 315–328 is required.

CC. Allegation No. 29 – 1/29/2015 Script - Use of Deceptive or Misleading Language in Violation of 83 Ill Admin Cod 412.170(c)

Sperian has moved to dismiss Allegation No. 28 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 329–336 is required.

DD. Allegation No. 30 – 1/30/2015 Script - Failure to Obtain Consent for Solicitation in Violation of 83 Admin. Code 412.130(a)

Sperian has moved to dismiss Allegation No. 30 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 337–347 is required.

EE. Allegation No. 31 – 1/30/2015 Script - Failure to Identify Call as a Solicitation in Violation of 83 Admin. Code 412.130(a)

Sperian has moved to dismiss Allegation No. 31 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 348-360 is required.

FF. Allegation No. 32 – 1/30/2015 Script - Use of Deceptive or Misleading Language in Violation of 83 Ill Admin Cod 412.170(c)

Sperian has moved to dismiss Allegation No. 32 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 361-365 is required.

GG. Allegation No. 33 – 2/7/2015 Script - Failure to Obtain Consent for Solicitation in Violation of 83 Admin. Code 412.130(a)

Sperian has moved to dismiss Allegation No. 33 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 366–376 is required.

HH. Allegation No. 34 – 2/7/2015 Script – Failure to Identify Call as a Solicitation in Violation of 83 Admin. Code 412.130(a)

Sperian has moved to dismiss Allegation No. 34 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 377–388 is required.

II. Allegation No. 35 – 2/7/2015 Script – Use of Deceptive or Misleading Language in Violation of 83 Ill Admin Cod 412.170(c)

Sperian has moved to dismiss Allegation No. 35 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 389-397 is required.

JJ. Allegation No. 36 – 2/7/15 Script – Failure to Disclose Material Terms in Violation of 83 Ill. Admin. Code 412.110

Sperian has moved to dismiss Allegation No. 36 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 398-406 is required.

KK. Allegation No. 37 - TPV Script – Failure to Confirm Customer’s Acceptance and Understanding of Uniform Disclosures in Part 412.110(d) – (p)

Sperian has moved to dismiss Allegation No. 37 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 407-419 is required.

LL. Allegation No. 38 – Welcome letter – Failure to Disclose terms/conditions in Violation of 83 Ill Admin. Code 412.110/

420. **MDS:** Staff incorporates by reference Paragraphs 1-41 as if set forth fully herein.

Answer: Sperian incorporates its answers to Paragraphs 1-41 by reference as if they were set forth fully herein.

421. **MDS:** During the course of its investigation of Sperian’s misconduct and potential violations, Staff asked Sperian to clarify how the Company complied with the disclosure requirements set forth at 83 Ill Admin. Code 412.110/.

Answer: Sperian denies that Staff ever advised it that Sperian was the subject of an investigation for alleged misconduct and potential violations. Sperian admits that Staff asked Sperian if it could “explain how it complies” with 83 Ill Admin. Code 412.110 and denies the remaining allegations of Paragraph 421, including the allegations which characterize Sperian’s actions as “misconduct and potential violations.”

422. **MDS:** Sperian informed Staff that it sent each new customer a Welcome Letter. Sperian also indicated that included with that Welcome Letter was an enclosure describing the terms and conditions of the contract.

Answer: Sperian admits that it informed Staff that it sends each new customer a Welcome Letter with the terms and conditions constituting the contract, and denies the remaining allegations of Paragraph 422. On information and belief, Sperian believes that the allegations in Paragraph 422 refer to Attachments 16 and 17 to the Staff Report, and responds that Attachments 16 and 17 speak for themselves.

423. **MDS:** In those instances when both the Welcome Letter and the terms and conditions sheet were sent to consumers, those documents make many of the required disclosures. However, the Welcome Letter and terms and conditions sheet fail to address several terms and conditions which the Company is required by law to disclose to the consumer.

Answer: Sperian admits the allegations in the first sentence of Paragraph 423, but denies any suggestion that the Welcome Letter and terms and conditions were not consistently sent to consumers as part of Sperian's normal business practices. Sperian denies the remaining allegations of Paragraph 423 and in further answering also incorporates its answers to Paragraphs 424 to 426 herein with respect to the alleged deficiencies in the Welcome Letter and terms and conditions.

424. **MDS:** The welcome letter and terms and conditions sheet fail to specify the length of the contract, in violation of Part 412.110(e).

Answer: Sperian denies the allegations in Paragraph 424. Further answering, Sperian states that the Terms and Conditions sheet (p. 1) contains a paragraph entitled "Service Term." It provides in relevant part that "Your service under this Agreement is provided under either a term product or a month-to month product. The box at the top of the Welcome Letter states that the contract is under the "Sperian Term Rate Plan" and that it is a "12 Fixed Term Rate."

425. **MDS**: Neither the Welcome Letter nor terms and conditions include a statement that Sperian is an independent seller of power and energy service certified by the Illinois Commerce Commission and that the RES agent is not representing or acting on behalf of the electric utility, governmental bodies or consumer groups. Failure to include this information is a violation of Part 412.110(l).

Answer: Sperian admits that the Welcome Letter and Terms and Conditions sheet it provided to Staff do not include a specific statement that Sperian “is an independent seller of power and energy service,” but denies that these documents do not state that Sperian is “certified by the Illinois Commerce Commission.” The first paragraph of the Terms and Condition sheet states that “Sperian is licensed as an [Alternative Retail Electric Supplier] with the Illinois Commerce Commission (“ICC”) in the State of Illinois.” Sperian admits that the Welcome Letter and Terms and Conditions sheet do not include a specific statement that Sperian is “not representing or acting on behalf of the electric utility, governmental bodies or consumer groups,” but denies that these documents could be reasonably interpreted to convey any such affiliation. Further answering, Sperian responds that the Welcome Letter and terms and conditions “adequately disclose, in plain language, the prices, terms and conditions of the products and services being offered and sold to the customer” as required by Section 16-115A(e) of the Act.

426. **MDS**: The Welcome Letter and terms and condition sheet do not include an estimated price per kWh for the power and energy service using sample monthly usage levels of 500, 1000 and 1,500 kWh 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. Failure to provide this information is a violation of Section 412.110(p).

Answer: Sperian denies the allegations in Paragraph 426. Further answering, Sperian responds that the Welcome Letter provides a per kWh price for 500kWh, 1000 kWh, and 1500 kWh.

427. **MDS:** Sperian violated Part 412.110(e), Part 412.110(l) and Part 412.110(p) each and every time it utilized the Welcome Letter and terms and conditions sheet and failed to disclose material terms of the contract to which the consumer is agreeing.

Answer: Sperian denies the allegation in Paragraph 427.

428. **MDS:** Each and every violation Part 412.110 is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

Answer: The allegations in Paragraph 428 are legal conclusions to which no response is required.

429. **MDS:** Staff recommends the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

Answer: Sperian admits that Staff requests the actions described in Paragraph 429, but denies that such actions are appropriate or justified. With respect to the “[r]ecommended action ... addressed more fully in Section IV, Penalties,” see Sperian’s response below to Section IV.

MM. Allegation No. 39 – Welcome letter - Use of Deceptive or Misleading Language in Violation of 83 Ill Admin Code 412.170(c)

430. **MDS:** Staff incorporates by reference Paragraphs 421-423 as if set forth fully herein.

Answer: Sperian incorporates its answers to Paragraphs 421-423 by reference as if they were set forth fully herein.

431. **MDS:** In its Welcome Letter, Sperian characterizes its fixed term product as a “new low electric generation rate” and a “discounted electric generation rate.” In truth and in fact, however, Sperian’s rates may not be low or discounted compared to the Utility’s rate if the utility supply rate fluctuates to a lower level than the fixed Sperian rate. Sperian’s false implication that the fixed rate will always be lower deceives the customer about the reality that electric supply prices can fluctuate up or down.

Answer: With respect to the first sentence of Paragraph 431, Sperian responds that the Welcome Letter speaks for itself. Sperian denies the remaining allegations in Paragraph 431.

432. **MDS:** The disclosures and accompanied language included in the Welcome Letters, like the Sperian sales scripts and TPV scripts, fail to explain the manner in which Sperian’s fixed monthly charge of \$4.93 affects the rate using sample monthly usage levels of 500, 1000, and 1,500 kWh. Instead, the Company provides a chart using sample monthly usage levels of 500, 1000 and 1,500 kWh but the chart does not take the fixed monthly charge into consideration. Failure to disclose this required information is a violation of Section 412.110(p).

Answer: Sperian responds that the Welcome Letter speaks for itself. Sperian admits that the Welcome Letter contains a chart using sample monthly usage levels of 500, 1000 and 1,500 kWh but denies that “the chart does not take the fixed monthly charge into consideration.” The fixed monthly charge is displayed prominently in the chart, and is also clearly disclosed in the text of the Welcome Letter. Sperian denies the remaining allegations in Paragraph 432. Further answering, Sperian’s products do not “include[] a fixed monthly charge that does not change with the customer's usage” as that phrase is used in Part 412.

433. **MDS:** On information and belief, the terms and conditions sheet was not included with all Welcome Letters. Letters reviewed by Staff directed the consumer to visit Sperian’s website to find the “terms and conditions of our electric generation service.”

Answer: Sperian denies the allegations in Paragraph 433.

434. **MDS:** By its conduct described herein, Sperian violated Section 412.110(p) each and every time it utilized the Welcome Letter and failed to include a terms and conditions sheet which would disclose material terms of the contract to which the consumer is agreeing.

Answer: Sperian denies the allegations in Paragraph 434.

435. **MDS:** Each and every violation of Section 412.110 is a violation of Section 16-115A of the Act, punishable as provided by Section 16-115B of the Act.

Answer: The allegations in Paragraph 435 are legal conclusions to which no response is required.

436. **MDS**: Staff requests the Commission take such corrective action as allowable under the relevant statutes and as deemed appropriate to address these violations. Recommended action for this alleged violation is addressed more fully in Section IV, Penalties, following.

Answer: Sperian admits that Staff requests the actions described in Paragraph 436, but denies that such actions are appropriate or justified. With respect to the “[r]ecommended action ... addressed more fully in Section IV, Penalties,” see Sperian response below to Section IV.

NN. Allegation No. 40 – Failure to Train Agents in Violation of 83 Ill Admin. 412.170.

Sperian has moved to dismiss Allegation No. 40 pursuant to 83 Ill. Adm. Code §200.190, and therefore no answer to Paragraphs 437–442 is required.

IV. PENALTIES

A. Remedies Available to the Commission

443. **MDS**: Section 16-115B(b) of the Act authorizes the Commission, after notice and hearing held on complaint or on the Commission’s own motion to take any or all of the following actions:

- (1) [t]o order an alternative retail electric supplier to cease and desist, or correct, any violation of or non-conformance with the provisions of Section 16-115 or 16-115A;
- (2) [t]o impose financial penalties for violations of or non-conformances with the provisions of Section 16-115 or 16-115A, not to exceed (i) \$10,000 per occurrence or (ii) \$30,000 per day for those violations or non-conformances which continue after the Commission issues a cease and desist order; and
- (3) [t]o alter, modify, revoke or suspend the certificate of service authority of an alternative retail electric supplier for substantial or repeated violations of or non-conformances with the provisions of Section 16-115 or 16-115A.

220 ILCS 5/16-115B(b).

Answer: The allegations in Paragraph 443 are legal conclusions to which no response is required.

444. **MDS:** Section 5-202.1 states that “any corporation...who knowingly misrepresents facts...through testimony or the offering or withholding of material information in a proceeding shall be subject to a civil penalty...of not less than \$1,000 and not greater than \$500,000. Each misrepresentation shall constitute a separate and distinct violation.” 220 ILCS 5/5-202.1

Answer: The allegations in Paragraph 444 are legal conclusions to which no response is required.

445. **MDS:** Additionally, in the alternative and in the event that any of the Allegations are determined not to be violations of Section 16-115 or 16-115A, Section 5/5-202 of the Act addresses violations that are not otherwise covered by the Act. Pursuant to this section, “...any corporation other than a public utility...that violates or fails to comply with any provision of this Act...in a case in which a penalty is not otherwise provided for this Act... are subject to a civil penalty of up to \$30,000 for each and every offense.” 220 ILCS 5/5-202.

Answer: The allegations in Paragraph 445 are legal conclusions to which no response is required.

446. **MDS:** In addition to remedies available to it under the Act for violations of the Act, the Commission has the authority to address any complaints filed by any consumer whose electric service was or is provided by Sperian in violation of the Consumer Fraud and Deceptive Practices Act. Specifically, if the Commission, after notice and hearing, the Commission finds that an electric service provider has violated this Section, the Commission may in its discretion do any one or more of the following:

- (1) Require the violating electric service provider to refund to the subscriber charges collected in excess of those that would have been charged by the subscriber's authorized electric service provider.
- (2) Require the violating electric service provider to pay to the subscriber's authorized electric supplier the amount the authorized electric supplier would have collected for the electric service. The Commission is authorized to reduce this payment by any amount already paid by the violating electric supplier to the subscriber's authorized provider for electric service.
- (3) Require the violating electric subscriber to pay a fine of up to \$1,000 into the Public Utility Fund for each repeated and intentional violation of this Section.
- (4) Issue a cease and desist order.
- (5) For a pattern of violation of this Section or for intentionally violating a cease and desist order, revoke the violating provider's certificate of service authority.

Answer: The allegations in Paragraph 446 are legal conclusions to which no response is required.

B. Factors In Aggravation of Sanctions

447. **MDS:** Each and every violation set forth herein is an “applicable federal, State, regional and industry rules, policies, practices and procedures for the use, operation, and maintenance of the safety, integrity and reliability, of the interconnected electric transmission system.” 220 ILCS 5/16-115(d)(2).

Answer: Sperian denies the allegations in Paragraph 447.

448. **MDS:** Each and every violation set forth herein is a “violation of or non-conformance with the provisions of Section 16-115 or 16-115A.” 220 ILCS 5/16-115B(b).

Answer: Sperian denies the allegations in Paragraph 448.

449. **MDS:** For each and every violation set forth herein the Commission may fine Sperian up to \$10,000 per occurrence. 220 ILCS 5/16-115B(b)(2).

Answer: Sperian admits the Commission has authority to impose fines pursuant to and in accordance with 220 ILCS 5/16-115(b)(2), but denies the remaining allegations in Paragraph 449 including allegations that fines against Sperian are appropriate or justified.

450. **MDS:** For each and every violation set forth herein the Commission may alter, revoke or suspend Sperian’s certificate of service authority. 220 ILCS 5/16-115B(b)(3).

Answer: Sperian admits the Commission has authority to alter, modify, revoke or suspend the certificate of service authority of an alternative retail electric supplier for substantial or repeated violations of or non-conformances with the provisions of Section 16-115 or 16-115A pursuant to and in accordance with 220 ILCS 5/16-115B(3), but denies the remaining allegations in Paragraph 449 including allegations that such action against Sperian is appropriate or justified.

451. **MDS:** Sperian’s violations demonstrate a pattern and practice of disregard for the statutory obligations of alternative retail electric service providers.

Answer: Sperian denies the allegations in Paragraph 451.

452. **MDS:** Sperian's violations demonstrate an intent to mislead the Commission as to the nature of Sperian's conduct.

Answer: Sperian denies the allegations in Paragraph 452.

453. **MDS:** Sperian's violations demonstrate a pattern and practice of intentionally misleading Illinois Consumers.

Answer: Sperian denies the allegations in Paragraph 453.

454. **MDS:** Sperian's pattern of non-compliant sales practices harmed both consumers and the competitive market.

Answer: Sperian denies the allegations in Paragraph 454.

455. **MDS:** Sperian's violations are numerous and extensive. On information and belief, Sperian enrolled approximately 29,000 customers using scripts that resulted in one or more violations per enrollment, each occurrence of which is punishable by a fine of up to \$10,000 pursuant to Section 16-115B.

Answer: Sperian denies the allegations in Paragraph 455.

456. **MDS:** By virtue of its contacts with Staff during the 2012 period, as alleged more fully herein, Sperian was placed on actual notice regarding compliance with various statutes and rules governing the solicitation of customers by RES, and its subsequent failure to comply with such statutes and rules must therefore be deemed knowing and willful.

Answer: Sperian denies the allegations in Paragraph 456. Further answering, Sperian responds that any claims related to the 2012 period are not specifically pled by Staff in the MDS, were never admitted by Sperian, were not the subject of any proceeding, and were not adjudicated on the merits.

457. **MDS:** On information and belief, other State agencies and organizations that address consumer complaints have received complaints of a similar nature as those brought to the attention of Staff. Such organization may include the Attorney General's Consumer Fraud Division, the Citizens Utility Board or the Better Business Bureau.

Answer: Respondent has insufficient knowledge as to truth of the allegations contained in Paragraph 457 and therefore, denies said allegations and demands strict proof thereof.

Further answering, Sperian states that unadjudicated claims against the Company are irrelevant with respect to the Allegations pled in this proceeding.

C. Staff Recommendations

458. **MDS**: Staff recommends this proceeding continue as in the case of Complaints as set forth in Article X of the Act.

Answer: Sperian admits that Staff recommends the action described in Paragraph 458.

459. **MDS**: Staff recommends that Sperian be given an opportunity to present information in defense of the allegations contained herein.

Answer: Sperian admits that Staff recommends the action described in Paragraph 459.

460. **MDS**: Staff recommends that, upon completion of a hearing, Sperian be found to be in violation of the allegations set forth herein.

Answer: Sperian admits that Staff recommends the action described in Paragraph 460, but denies that such a finding is appropriate or justified.

461. **MDS**: Staff recommends that, upon completion of a hearing and a finding that Sperian is in violation of the allegations set forth herein, the Commission take such of the following actions as it determines are warranted by the evidence and the public interest as prescribed by Section 16-115B of the Act:

1. Revoke Sperian's Certificate of Service Authority to operate as a Retail Electric Service Provider in Illinois;
2. Modify Sperian's certificate of Service Authority to operate as a Retail Electric Service provider in Illinois as to restrict Sperian's service authority to serve only its existing customers of record at the time of the issuance of a Final Order in this proceeding.
3. Prohibit Sperian from applying for an unrestricted certificate of Service Authority to operate as a Retail Electric Supplier in Illinois for a period of not less than three years.
4. That Sperian be assessed a fine of up to \$10,000 for each and every violation.

Answer: Sperian admits that Staff recommends the relief described in Paragraph 460, but denies that such relief against Sperian is appropriate or justified.

IV. AFFIRMATIVE DEFENSES

Sperian hereby reserves the right to present additional affirmative defenses as this matter proceeds, particularly with respect to those defenses presently unknown to Sperian. Sperian hereby asserts the following affirmative defenses, without assuming any burden of proof on any issue or relieving the Staff of the Commission of its burden to establish each element of its alleged claims.

FIRST DEFENSE (Violation of First Amendment Right to Free Speech)

The relief sought in the MDS, if adopted, would violate Sperian's First Amendment right to engage in constitutionally protected commercial speech. The Commission may not impose relief that violates Sperian's right to constitutionally protected commercial speech.

WHEREFORE, for the reasons set forth above, Sperian Energy Corp. respectfully requests that the Commission deny all claims and relief sought in the MDS.

Dated: February 18, 2016

Respectfully submitted,
SPERIAN ENERGY CORP.

By: Carmen L Fosco

One of its attorneys

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