

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER C: ELECTRIC UTILITIES

PART 412
OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS

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SUBPART C: RESCISSION, DEPOSITS,
EARLY TERMINATION AND AUTOMATIC
RENEWAL OF CONTRACT¶

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SUBPART C: CONTRACTS¶
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SUBPART A: GENERAL

Section 412.10 Definitions

“Act” means the Public Utilities Act [220 ILCS 5 et seq.].

“Alternative retail electric supplier” or “ARES” means the same as that term is defined in Section 16-102 of the Act [220 ILCS 5/16-102].

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“Commission” means the Illinois Commerce Commission.

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

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

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

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“Fixed monthly charge” means a flat monthly rate that that does not change with the customer’s usage and excludes utility delivery service charges.

“Fixed price” means the customer pays the same price per kWh for electricity each month times the amount of electricity used.

“Index price” means the customer can expect the price per kWh to change each month . The RES sets the monthly price per kWh based on one or more electricity benchmarks or published indexes.

“Residential customer” means a retail customer of an electric utility that receives (i) electric utility service for household purposes distributed to a dwelling which receives delivery services of a utility under a residential rate or (ii) electric utility service for household purposes distributed to a dwelling unit or units that is billed

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under a residential rate and is registered by a separate meter for each dwelling unit.

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

"Retail Electric Supplier" or "RES" means an ARES or an electric utility providing electric power and energy to retail customers outside the utility's service area pursuant to Section 16-116 of the Act [220 ILCS 5/16-116].

"Sales Agent" or "ABC" means agents, brokers, and consultants engaged in the procurement or sale of retail electricity supply for third parties and has the same meaning as defined in Section 16-115C(b) of the Public Utilities Act [220 ILCS 5/16-115C(b)].

"Small commercial customer" means those nonresidential customers of an electric utility consuming 15,000 kilowatt-hours or less of electricity annually in its service area

"Small commercial customer" means the same as that term is defined in Section 16-102 of the Act [220 ILCS 5/16-102].

"Variable price" means the price per kWh may go up or down with market trends. But this type of offer may not be tied to a market index. For example it may be based on the average cost to purchase electricity by the RES.

Section 412.100 Application

The provisions of Section 412 shall apply to retail electric suppliers serving or seeking to serve residential or small commercial customers with the following exceptions: Sections 412.160 a), b) and c) and 412.170 shall apply to retail electric suppliers serving or seeking to serve any customer class.

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"Sales agent" means a person engaged in selling power and energy service in Illinois, whether directly employed by the RES or otherwise exclusively selling the RES's service.¶

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Deleted: A RES may remove the customer from designation as a "small commercial 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 has consumed 15,000 kilowatt-hours of electricity or less during the previous year, 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 RESs as to a customer's status as a small commercial customer as that term is defined herein. Nothing in this Part relieves an electric utility from any obligation to provide information upon request to a customer, RES, the Commission, or others necessary to determine whether a customer meets the classification of small commercial customers as that term is defined herein.

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¶ The Commission, on application or petition of a RES or electric utility, may grant a temporary or permanent waiver from this Part, or any ...

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Comment [KCM1]: Instead of specific reference to existing laws, can't we use a generic savings ...

Comment [KCM2]: Why separate the classes here? Those provisions should apply to both ...

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SUBPART B: MARKETING

Section 412.110 Marketing and Enrollment Procedures

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a) A retail electric supplier and any RES sales agent shall clearly and conspicuously disclose the following information to all customers:

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1) the prices, terms and conditions of the products and services being sold to the customer;

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2) the retail electric supplier's contact information, including the address, phone number and website address;

3) contact information for the Illinois Commerce Commission including the toll-free number for customer complaints and website address;

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4) that the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable; and

5) all information contained in the Uniform Disclosure Statement, described in Section 412.330 of these rules.

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b) RES sales agents shall explain to the customer that any product and service offering is for the electricity supply charges only, and that it does not include delivery service charges, taxes and fees which may be charged monthly by the electric utility which will deliver the product and services purchased by the customer.

c) RES sales agents shall provide the sales agent's name and, on request, the identification number if available.

d) A retail electric supplier shall not submit or execute a change in a customer's selection of an electric supplier unless and until (i) all material terms and conditions of the offer, as contained in the Uniform Disclosure Statement, have been disclosed to the customer; (ii) the customer's express agreement has been obtained to accept the offer after the material terms and conditions of the offer

have been disclosed; and (iii) the customer's request has been confirmed through either a Letter of Authorization obtained from the customer or verification of the customer's request by a third party.

Comment [KCM3]: We need to define the "Letter of Authorization procedure." Elsewhere it's indicated that the UDS can be a part of the letter, so subpart e) needs to then be made consistent with whatever we decide the Letter can be.

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e) The Letter of Authorization must contain the following information:

- 1) The customer's name;
- 2) Confirmation that the person completing the form wants to make the supplier change;
- 3) The customer's consent to the price of the service to be supplied and the material terms and conditions of the service being offered;
- 4) The service address affected by the supplier switch;
- 5) The electric utility account number;
- 6) The billing address if different from service address; and
- 7) The customer's electronic mail address.

If a customer's request is authorized by the customer signing a Letter of Authorization, the sales agent shall also require the customer to initial the Uniform Disclosure Statement, of which a copy must be left with the customer at the conclusion of a sales visit.

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f) Where the customer's request is verified by a third party, the third-party verifier must require the customer to verbally acknowledge that he or she understands the Uniform Disclosure Statement.

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g) If not provided at the point sale, such as in the case of a door-to-door solicitation, the Uniform Disclosure Statement and sales contract must be provided to the customer within three (3) business days of the electric utility confirmation of an accepted enrollment.

h) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the sales agent, or where the customer or another third party informs the sales agent of this circumstance, the sales agent shall either find another sales

representative for the RES who is fluent in the customer's language to continue the marketing activity in his/her stead, use an interpreter at the premise, or terminate the in-person contact with the customer. If any sales solicitation, agreement, Letter of Authorization, or Uniform Disclosure Statement is provided to a customer, all such documents provided must be provided to the customer in that language.

- i) The RES and any of its sales agents shall add the person's name to the RES's Do Not Market List upon that person's request.

Section 412.120: In-Person Marketing

- a) RES sales agents who engage in door-to-door marketing for the purpose of selling a product or service, shall produce identification as soon as possible and prior to describing any products or services offered. This identification shall be visible at all times and prominently display (i) the sales agent's full name in reasonable size type face; (ii) a photograph of the sales agent; and (iii) the trade name and logo of the RES they are representing.
- b) The sales agent shall leave the premises of a customer when requested to do so by the customer or the owner or occupant of the premises.

Section 412.130 Direct Mail

- a) A RES that contacts customers for enrollment for a product or service by direct mail shall include a Uniform Disclosure Statement for the product or service being solicited.

Section 412.140 Online Marketing

- a) Each RES offering a product or services to customers online shall prominently display the Uniform Disclosure Statement for any products offered without requiring the consumer to enter any personal information other than zip code,

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<#>If a written Letter of Authorization is being used to authorize a customer's enrollment, it shall contain a statement that the customer has read and understands the items contained in the Uniform Disclosure Statement. ¶

If parties believe that the proposed requirement contained in c) cannot be combined with the Letter of Authorization, Staff offers the following alternative:¶

If a written Letter of Authorization is being used to authorize a customer's enrollment, the RES shall require the customer to return a signed statement that the customer has read and understands the items contained in the Uniform Disclosure Statement.¶

<#>If a customer

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electric utility service territory, and/or type of service being sought.

b) The Uniform Disclosure Statement must be printable in a PDF format not to exceed two pages in length, and shall be available for downloading by the customer.

c) The RES shall obtain an authorization to change RES that confirms and includes appropriate verification data by encrypted customer input on a supplier's Internet web site.

d) Any Internet enrollment website of the RES shall, at a minimum, include:

- 1) All items within the Uniform Disclosure Statement;
- 2) A statement that electronic acceptance of a sales contract is an agreement to initiate service and begin enrollment;
- 3) A statement that the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable;
- 4) A requirement that the customer accept or not accept the sales contract by clicking the appropriate box, displayed as part of the terms and conditions;
- 5) A telephone number and e-mail address where the customer can express his or her decision to rescind the sales contract, including hours of operation; and
- 6) A Letter of Authorization.

Section 412.160 Training of sales agents

a) All sales agents shall be knowledgeable with RES and utility policies and procedures, including Illinois statutes and rules, that pertain to the marketing and sales of electric supply service.

b) All sales agents should be familiar with the RES's products and services that

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Comment [KCM6]: Why specify format? Mandate it be available in two or three forms, and if you do specify, define the terms.

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<#>3) The customer's consent to the price of the service to be supplied and . the material terms and conditions of the service being offered; ¶

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they sell, including the rates, applicable termination fees if any, payment options and the customers' right to cancel. In addition, the sales agents shall have the ability to provide the customer with a toll-free number for billing questions, disputes, and complaints, as well as the Commission's toll-free phone number for complaints.

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c) A RES and its sales agents shall not utilize false, misleading, materially inaccurate, or otherwise deceptive language or materials in soliciting or providing services.

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d) A RES and its sales agents shall refrain from any direct marketing or soliciting of electric supply service to customers on the electric utility's Do Not Market List, which the electric utility shall make available at least monthly on the 15th calendar day of the month. If the 15th calendar day is a non-business day, the electric utility shall make the list available on the next business day following the 15th calendar day of that month. The Do Not Market List maintained by the electric utility shall contain the customer's name, address, and phone number(s). RESs shall use the most current version of the Do Not Market List available; however, in assessing compliance with this section, 31 days will be afforded to RESs to account for the time required by the RES to disseminate and process the list internally.

Comment [KCM7]: I don't get the timing – to me, this implies a rolling 31 day waiver? Is that right?

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Section 412.170 Records Retention and Availability

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a) A RES must retain, for a minimum of two (2) years or, for the length of the sales contract plus two (2) years, verifiable proof of authorization to change suppliers for each customer.

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b) Copies of authorization records must be provided by the RES within seven (7) business days upon customer request via e-mail, U.S. mail, or facsimile. The RES may charge a fee for such copies if a customer requests more than two copies in a 12-month period.

c) Authorization records need to be provided by the RES within seven (7) business

days upon request of the Commission or Commission Staff.

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SUBPART C: RESCISSION, DEPOSITS, EARLY TERMINATION AND AUTOMATIC RENEWAL OF CONTRACT

Deleted: Throughout the duration of the contract, and for two years thereafter, the RES shall retain and, within seven business days of the customer's request, provide the customer a copy of the sales contract via e-mail, U.S. mail, or facsimile. The RES may charge a fee for such copies if a customer requests more than two copies in a 12-month period.
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Section 412.200 Application of Subpart C

The provisions of this Subpart shall apply to retail electric suppliers serving or seeking to serve residential or small commercial customers.

Section 412.210 Rescission of sales contract

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The electric utility shall notify the customer in writing of a scheduled enrollment within one (1) business day of accepting a valid electronic enrollment request, including the name and contact information of the RES which submitted the enrollment request. If the customer wishes to rescind this enrollment, and contacts either the electric utility or the RES with in ten (10) calendar days of notification, that customer shall not incur any early termination fees. If the tenth calendar day falls on a non-business day, the rescission period will be extended through the next business day. The written notification must provide the name and contract information of the RES which submitted the enrollment request, the date the request was submitted and the last day for which a rescission request can be made under this section. In the event the customer provides notice of such rescission to the electric utility, the electric utility shall notify the RES.

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Deleted: its enrollment with the supplier, the customer will not incur any early termination fees if the customer contacts either the electric utility or the RES within ten calendar days of the electric utility's acceptance of the enrollment request.

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Section 412.220 Deposits

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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.

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Section 412.230 Early Termination Fee

Any agreement that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee, provided that the fee does not exceed \$50 in total. Any such agreement must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described above and state the customer will be provided the opportunity to terminate the agreement without any termination fee or penalty within ten (10) business days after the date of the first bill issued to the customer for products or services provided by the RES. This requirement does not relieve the customer of obligations for services rendered under the agreement prior to termination.

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Section 412.240 Contract Renewal

a) The RES shall clearly disclose any renewal terms in their contract including any cancellation procedure. For contracts with an initial term of six months or greater, the RES shall send a notice of contract expiration separate from the bill at least 30 days prior to the date of contract expiration but no more than 60 days in advance of 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. The separate written notice of contract expiration shall include:

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- 1) A statement printed or visible from the outside of the envelope or in the subject line of the email (if customer has agreed to receive official documents by e-mail) that states, "Contract Expiration Notice;"
- 2) The bill cycle in which the existing contract will expire;
- 3) A full description of the renewal offer, including the date service under the new offer would begin. This description may be combined with the mailing of the contract expiration notice; and
- 4) Notice that failure to renew their existing contract or switch to another RES by the specified date will result in the customer being reverted to

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Deleted: Provide a statement in no smaller than 12 point font that the customer must provide affirmative consent to accept the renewal offer and that establishing service with another electric supplier can take up to 45 days, and

the electric utility default service and provide in the statement the length of the electric utility tariff minimum stay period if applicable.

Section 412.250 Assignment

If a RES is exiting the Illinois retail electric market, surrendering or otherwise cancelling its certificate of service authority, or no longer seeking to serve certain classes of customers, the RES shall not assign the agreement to a different RES unless:

- a) The new supplier is a RES,
- b) The new RES is in compliance with all applicable requirements of the Commission and/or the electric utility to provide electric service.
- c) The rates, terms, and conditions of the agreement being assigned do not change during the remainder of the time period covered by the agreement; provided however, the assigned agreement may be modified during the term of the agreement if the new RES and the retail customer mutually agree to such changes or revisions of the agreement after assignment of the agreement;
- d) The customer is given fifteen (15) calendar days prior written notice of the assignment by the current RES; and
- e) Within thirty (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 Required RES Information

- a) 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

Comment [KCM8]: These timeframes are different than the automatic renewal act – 815 ILCS 601. It has 30-60 day windows.

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<#>Automatic Renewal¶
<#>The RES shall clearly disclose any renewal terms in their contract including any cancellation procedure. For contracts with an initial term of six months or greater, the RES shall send a notice of contract renewal separate from the bill at least 45 days prior to the end of the initial contract term but no more than 90 days in advance of such date. Nothing in this section shall preclude a RES from offering a new contract to the customer at any other time during the contract period. The separate written notice of contract renewal shall include:¶

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Deleted: <#>The date service under the new term will begin; ¶

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Deleted: <#>A statement in bold lettering no smaller than 12 point font that the contract will automatically renew unless the customer cancels it including the information needed to cancel;¶

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Deleted: <#>Clearly disclose the contract terms including a full description of any renew (...)

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electric utility consolidated billing);

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2) Standard customer contract;

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3) Customer complaint and resolution procedures;

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

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<#> Complaints to RES¶

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c)

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A) If a complainant is dissatisfied with the results of a RES's complaint investigation, the RES shall inform the complainant of their ability to file a complaint with the Commission's CSD and provide contact information for the Commission's CSD.

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Section 412.310 Dispute Resolution

a) A residential or small commercial customer has the right to make a formal or informal complaint to the Commission, and a RES contract cannot impair this right. A RES shall not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties.

b) A customer or applicant for a product or service may submit a complaint by mail, facsimile transmission, e-mail, or by telephone to a RES. The RES shall promptly investigate and advise the complainant of the results in writing within 14 calendar days.

c) A customer who is dissatisfied with the RES's review shall be informed of the right to file a complaint with the Commission and the Office of the Illinois Attorney General.

d) Complaints to the Commission

1) Informal complaints: Complaints may be filed with the Commission's Consumer Services Division, or "CSD", by phone, via the internet, by fax or by mail. Information required to process a customer complaint includes:

(A) The customer's name, billing and service addresses, and telephone number;

~~(B)~~ The name of the RES;

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~~(C)~~ The customer account number;

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~~(D)~~ An explanation of the facts relevant to the complaint;

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~~(E)~~ The complainant's requested resolution; and

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~~(F)~~ Any documentation that supports the complaint, including copies of bills or terms of service documents.

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The Commission's CSD may resolve a complaint via phone by completing a call between the customer, the CSD staff and the supplier. If no resolution is reached by phone, and a dispute remains, an informal complaint may be sent to the RES. Three-way calling may not be available or CSD staff may determine a three-way call is not the best method to handle the customer's complaint in which case an informal complaint will be sent to the RES.

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2) In the case of the electric utility purchasing the RES's receivables, the RES shall notify the electric utility of any informal complaint received and the electric utility shall cancel disputed RES charges and remove those charges from the customer's bill.

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3) The RES shall investigate all informal complaints and advise the Commission in writing of the results of the investigation within 14 days after the complaint is forwarded to the RES.

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4) The Commission shall review the complaint information and the RES's response and notify the complainant of the results of the Commission's investigation.

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5) While an informal complaint process is pending:

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(A) The RES (or the electric utility in the case of the electric utility having purchased the RES's receivables) shall not initiate collection activities for any disputed portion of the bill until the Commission has taken final action on the complaint.

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(B) 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's receivables) may pursue collection activity for nonpayment of the undisputed portion after appropriate notice.

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6) The RES shall keep a record for two years after closure by the Commission of all informal complaints forwarded to it by the Commission. This record shall show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint.

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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.

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e) Disclosure of RESs' level of customer complaints: The Commission shall, on at least a quarterly basis, prepare a summary of all formal and informal complaints received and publish it on its web site. The summary shall be in an easy-to-read and user friendly format.

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Section 412.330 Uniform Disclosure Requirements

a) In addition to providing the customer with a copy of the sales contract, a RES must provide and review with each customer a Uniform Disclosure Statement. The Uniform Disclosure Statement is must be a written document in 12 point or larger font not to exceed two pages in length:

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1) The legal name of the RES, and the name under which the RES will market its products, if different;

2) The RES's business address;

3) The RES's toll free telephone number for billing questions, disputes, and complaints and hours of operation;

4) The charges for the service for the length of the contract: if any charges are variable during the term of the contract, an explanation of how the variable

charges are determined; The name of the electric service offering for which the customer is being solicited, and an explanation of how the service will be priced – fixed price, fixed monthly charge, variable price, indexed price etc.;

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5) The length of the agreement in years and months, including specific mention of any automatic renewal clause;

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6) The presence or absence of early termination fees or penalties, and applicable amounts or the formula pursuant to which they are calculated;

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7) Any deposit requirements, including the estimated amount of the deposit or basis on which it is calculated, when the deposit will be returned, and if the deposit will accrue interest;

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8) Any fees assessed by the RES to the customer for accepting the product or service, including any fees associated with changing the customer's electric supply service;

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9) A statement that the customer may rescind the agreement within ten calendar days of the electric utility processing the enrollment request by calling either the RES or the electric utility, including the telephone numbers and website addresses where the rescission can be made;

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i) The name of the electric service offering for which the customer is being solicited;¶

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10) A statement that the RES is an independent seller of electric power and energy service, and that the RES is not representing or acting on behalf of the electric utility, governmental bodies, or consumer groups;

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11) A statement that the electric utility remains responsible for the delivery of power and energy to the customer's premise and will continue to respond to any service calls and emergencies;

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12) A statement that the customer will receive written notification from the electric utility confirming a switch of the customer's power and energy supplier;

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13) If savings are guaranteed under certain circumstances, the RES must provide a written statement which includes a plain language description of the conditions that must be present in order for the savings to occur; and

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14). A statement that products or services purchased do not include electric delivery service, including any applicable taxes and fees, and therefore any price estimates do not reflect the total monthly amount for electric service.

b) The Uniform Disclosure Statement can be part of the first page of the sales contract, included in the Letter of Authorization, or a separate document.

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Deleted: 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, it shall be disclosed to

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