

Introduction

BlueStar appreciates the opportunity to provide input on Staff's proposed draft rule, which will be discussed at the upcoming workshop. BlueStar's answers provide a starting point for further discussions. Absence of a response to a particular section of the proposed rule should not be construed as lack of interest, position or consensus on a particular issue. BlueStar looks forward to participating in further discussions and reserves the right to amend or supplement our answers as well as respond to comments submitted by others.

Staff's Proposed Rule

Staff's proposal is to add these new requirements to the existing [Code Part 410](#) (Standards of Service for Electric Utilities and Alternative Retail Electric Suppliers). In addition to the proposed new Subparts F through I below, Staff proposes to add the following two definitions to Section 410.10:

"Retail Electric Supplier" or **"RES"** includes Alternative Retail Electric Suppliers and electric utilities serving retail customers pursuant to Section 16-116 of the Act [220 ILCS 5/16-116].

BlueStar Comments: BlueStar has no comments at this time.

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

BlueStar Comments: BlueStar agrees with using the existing statutory definition of a “small commercial customer” in the Public Utilities “Act (PUA) (a consumer who consumes no more than 15,000 kilowatt-hours of electricity annually) as the appropriate cut-off for the proposed consumer protections. As with any of the proposed consumer protections, the statutory language is the guide for determining applicability of additional consumer protections.

SUBPART F: MARKETING PRACTICES

As a beginning point, rather than re-addressing BlueStar’s previous comments on Staff specific proposed consumer protection proposals, BlueStar would like to begin by providing general comments related to the creation and implementation of additional consumer protections contained in Staff’s proposed rule. BlueStar recommends that the focus of any new or enhanced consumer website protections, including marketing rules, contractual requirements, product or definition standardization, dispute resolution reporting requirements, complaint reporting and enforcement mechanisms should all be guided by and limited to the scope and applicability of existing legislative authority and administrative rules. In fact, BlueStar agrees with ORMD’s statutory conclusion and recommendation as it relates to additional customer protection in its June 2009 Annual Report to the General Assembly, the Governor and the Illinois Commerce Commission. In particular, BlueStar shares the opinion expressed in the ORMD report where Staff concluded,

“[T]he Commission lacks the explicit statutory authority to establish these requirements through additional administrative rules. As a result, we recommend the General Assembly either a) amend the Public Utilities Act to provide the Commission with explicit rulemaking authority to establish rules in line with the proposed requirements discussed, or b) turn the recommended requirements into statutory mandates.”

The focus of any new or enhanced consumer protections should be balanced between measures limited to actually protecting customers and enhancing the development of a competitive retail mass market. Any well intended but unnecessary protections could jeopardize the development of this market. Any new rules should reflect commercial and operational realities regarding the competitive retail electric industry.

Section 410.500 Application of Subpart F

The provisions of this Subpart shall apply to retail electric suppliers serving or seeking to serve residential or small commercial customers with the following exceptions: Sections 410.560 a), b) and c) and 410.570 shall apply to retail electric suppliers serving or seeking to serve any customer class

BlueStar Comments: BlueStar has no comments at this time.

Section 410.510 In-Person Marketing

a) Sales agents who contact customers in person at a location other than the RES's place of business for the purpose of selling any product or service offered by the RES shall produce identification as soon as possible and prior to describing any products or services offered by the RES. This identification shall be visible at all times and prominently display the following:

- 1) The sales agent's full name in reasonable size typeface;
- 2) A photograph of the sales agent;
- 3) The trade name and logo of the RES they are representing.

b) If a customer elects to enroll with the RES, the sales agent shall read to the customer all items within the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is contained in Section 410.730.

c) If a fixed bill product is being offered, the sales agent shall explain to the

customer that the fixed bill amount is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore, the fixed bill amount is not the total monthly amount for electric service.

d) If a customer enrolls by signing a Letter of Authorization, the sales agent shall require the customer to initial the written uniform disclosure statement, of which a copy is to be left with the customer at the conclusion of the sales visit. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document.

e) If a customer's enrollment is authorized by a third party verification as a result of in-person marketing, the third party verifier shall require the customer to verbally acknowledge that he or she understands the uniform disclosure statement, and that a copy of the uniform disclosure statement was left with the customer.

f) If the customer's enrollment is authorized on-line, the requirements of Section 410.550 shall apply.

g) 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 a representative in the area 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. When the use of an interpreter is necessary, a form consistent with Section 2N of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2N] must be completed. 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.

h) The sales agent shall add the person's name to the RES's "Do Not Market List" upon that person's request.

BlueStar Comments: BlueStar stands by previously submitted comments on this subject.

Section 410.520 Telemarketing

- a) In addition to complying with the Telephone Solicitations Act [815 ILCS 15], RES sales agents who contact customers by telephone for the purpose of selling any product or service shall provide the sales agent's name and, on request, the identification number;
- b) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand, and the customer or another third party informs the RES sales agent of this circumstance, the sales agent must immediately transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call.
- c) If a customer elects to enroll with the RES, the sales agent ~~must read~~ **must explain or, at the customer's option, send the disclosure statement to the customer via mail, fax or e-mail.**
- d) If a fixed bill product is being offered, the sales agent must explain to the customer that the fixed bill amount is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed bill amount is not the total monthly amount for electric service.
- e) If third party verification is used to authorize a customer's enrollment, the third-party verifier must require the customer to verbally acknowledge that he or she understands the uniform disclosure statement.
- f) The written disclosure statement and sales contract must be mailed **or e-mailed** to the customer within 3 business days of the utility confirmation of accepted enrollment. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document.
- g) If a customer elects to enroll on-line as a result of an outbound telemarketing call, the requirements of Section 410.550 shall apply.

BlueStar Comments: BlueStar has no further comments at this time.

Section 410.530 In-bound Enrollment Calls

In the event a customer initiates a call to a RES in order to enroll for service, the RES must:

- 1) Follow the requirements in Section 2EE of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE]
- 2) Read to the customer all the items included in the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is contained in Section 410.730.
- 3) Require the customer to verbally acknowledge that he or she understands the uniform disclosure statement.
- 4) Mail the written disclosure statement and sales contract to the customer within 3 business days of the utility confirmation of accepted enrollment.

BlueStar Comments: BlueStar has no further comments at this time.

Section 410.540 Direct Mail

- a) Each RES that contacts customers for enrollment by direct mail shall include a Uniform Disclosure Statement for the product or service being solicited.
- b) The Uniform Disclosure Statement shall include (at a minimum) the items listed in Section 410.730. The Uniform Disclosure Statement must be printed on a document that will stay with the customer and is not required to be mailed back to the RES.
- c) If a written Letter of Agency is being used to verify any subscriber charge, it shall contain a statement that the customer has read and understood the terms and conditions contained in the Uniform Disclosure Statement.
- d) If third party verification is used to obtain the customer's authorization for enrollment, the third party verifier must comply with 815 ILCS 15 (Telephone

Solicitations Act) and require the customer to verbally acknowledge that he or she understands the uniform disclosure statement for this product.

- e) If a customer elects to enroll on-line as a result of an outbound telemarketing call, the requirements of Section 410.550 shall apply.

BlueStar Comments: As noted previously any additional customer protections must be based on existing statutory authority.

Section 410.550 Online Marketing

- a) Each RES offering retail electric products 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, utility service territory, and/or type of service being sought (residential or commercial).
- b) The Uniform Disclosure Statement must be printable in no more than a two-page format and shall be available for downloading by the customer.
- c) The RES shall obtain, in accordance with 83 Illinois Administrative Code 453 and the procedures outlined below, an authorization to change RES that confirms and includes appropriate verification data by encrypted customer input on a supplier's Internet web site.
- d) The RES shall require the following customer information in an electronic authorization form:
 - 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 utility account number;
 - 6) The billing address if different from service address; and
 - 7) The customer's electronic mail address.
- d) The Internet enrollment website of the RES shall, at a minimum, include:
- 1) All items within the Uniform Disclosure Statement. The minimum list of items to be included in the disclosure statement is contained in Section 410.730;
 - 2) A statement that electronic acceptance of a sales contract is an agreement to initiate service and begin enrollment;
 - 3) A statement that if the customer is currently with a RES other than the utility, 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) An e-mail address where the customer can express his or her decision to rescind the sales contract.

BlueStar Comments: As noted previously any additional customer protections must fully comply with the statute. BlueStar stands by its previously submitted comments and looks forward to discussing this issue at the workshop.

Section 410.560 Training of sales agents

- a) All sales agents engaged in sales activity in Illinois (whether directly employed by the RES or otherwise exclusively selling the RES's service) shall be knowledgeable of the requirements contained in Subparts F through I herein and other relevant requirements contained in the Public Utilities Act, the Consumer Fraud and Deceptive Business Practices Act and the Illinois Administrative Code

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 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.
- 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.
- 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 RES shall obtain at least monthly on the 15th calendar day of the month from the electric utility. If the 15th calendar day is a non-business day then the RES shall obtain the list 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).

BlueStar Comments: It is unreasonable to expect all sales agents to be familiar with the specifics of all products and its associated terms and conditions. This language hampers specialization within the sales organization. From an efficiency or competitive perspective, a RES sales team may want to divide the sales team by customer class or by customer class and a specific utility. The services, products and terms and conditions may vary. The rule must allow for customer class specialization as defined by the ARES. In addition, the rules must comply with the statute.

In terms of the Do Not Call List, any rules must reflect commercial and operational realities regarding the retail electric industry. The rule must

recognize that these lists are subject to change, and there is a lag time between the sending, receipt and posting of names.

Section 410.570 Records Retention and Availability

- a) A RES must retain, for a minimum of two years or, for the length of the sales contract, whichever is longer, verifiable proof of authorization to change suppliers for each customer. Authorization records need to be provided by the RES within seven business days after a request is made by the Commission or Commission Staff.
- b) 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.

BlueStar Comments: BlueStar has no comments at this time.

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

Section 410.600 Application of Subpart G

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

Section 410.610 Rescission of sales contract

Within one business day after accepting a valid electronic enrollment request from the RES, the electric utility will notify the customer in writing, **which includes e-mail notification**, of the scheduled enrollment and the name of the RES that will be providing power and energy service. If the customer wishes to rescind its enrollment with the supplier, the customer will not incur any early termination fees if either the customer contacts ~~the electric utility or~~ the RES within ~~ten~~ **three** (3) calendar days of the electric

utility's processing of the enrollment request. If the ~~tenth~~ third calendar day falls on a non-business day, the rescission period will be extended through the next business day. The written enrollment notice from the electric utility will state the last day for making a request to rescind the enrollment.

BlueStar Comments: As stated in previous comments, extension of the rescission period is problematic. First, it is not appropriate to characterize such the extended rescission period as "customer protection" measure. Extending the rescission window will result in higher prices because the RES will factor in a risk premium to reflect the increased uncertainty and associated obligation to purchase power based on the customer commitment. Second, Ten calendar days is not consistent with Illinois electric statutory and administrative rules. Third, ten days is needlessly excessive for a rescission window. In its experience, BlueStar has not received any rescission requests from Illinois consumers after the third business day. Fourth, the utility should be required to direct calls to the ARES for all rescission matters. Fifth, the language should explicitly state that written notification includes e-mail correspondence.

Section 410.620 Deposits

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.

BlueStar Comments: BlueStar has no comments at this time.

Section 410.630 Early Termination Fee

Any agreement between a RES and a customer that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee. ~~It must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described above. In addition, any agreement that contains an early termination fee shall provide the customer the opportunity to terminate the agreement without any termination fee or~~

~~penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES.~~

BlueStar Comments: If early termination fees are accurately disclosed in an easy-to-understand manner prior to the execution of the contract, then consumers should not be allowed to game the system by canceling their agreement simply because a better deal comes along a month later. This type of provision will discourage suppliers from offering any sort of fixed price product to customers. Early termination fees are part of service contracts that consumers enter into all of the time; there is no reason ARES contracts should be subject to less protection under the law than those of other service providers. See comments in previous section.

Section 410.640 Contract Renewal

a) Non-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 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:

- 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 date the existing contract will expire;
- 3) A statement in bold lettering no smaller than 12 point font that establishing service with another electric supplier can take up to 45 days, and failure to enter into a new contract or switch to another RES by the specified date will result in the customer being reverted to the utility default

service and provide in the statement the length of the utility tariff minimum stay period if applicable;

4) If the RES is offering a contract renewal, the disclosure of the terms and conditions of the renewal offer maybe combined with the mailing of the contract expiration notice;

5) The RES must provide a full description of any renewal offers available to the customer, including the date service under the new term will begin;

6) 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 failure to renew their existing contract or switch to another RES by the specified date will result in the customer being reverted to the utility default service and provide in the statement the length of the utility tariff minimum stay period if applicable.

BlueStar Comments: BlueStar stands by its previously submitted comments.

b) 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 30 days prior to the end of the initial contract term but no more than 60 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:

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 Renewal Notice;"

- 2) The date service under the new term will begin;
- 3) 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;
- 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 their rejection of the new contract term to avoid incurring a termination fee under the new contract term;
- 5) Clearly disclose the contract terms including a full description of any renewal offers available to the customer;
- 6) A statement in bold lettering no smaller than 12 point font that establishing service with another electric supplier can take up to 45 days, and failure to renew their existing contract or switch to another RES by the specified date will result in the customer being reverted to the utility default service and provide in the ~~statement the length of the utility tariff minimum stay period if applicable.~~ remaining with the current RES.

BlueStar Comments: BlueStar stands by its previously submitted comments.

Section 410.650 Assigning customers to a different RES

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:

- 1) The new supplier is a RES,
- 2) The new RES is in compliance with all applicable requirements of the Commission and/or the electric utility to provide electric service;

3) 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;

4) The customer is given fifteen (15) calendar days prior written notice of the assignment by the current RES; and

5) 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.

BlueStar Comments: BlueStar has no further comments at this time.

SUBPART H: DISPUTE RESOLUTION AND CUSTOMER COMPLAINT REPORTS

Section 410.700 Application of Subpart H

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

Section 410.710 Required RES Information

- a) The RES shall provide the following:
 - 1) A copy of its bill formats (if it bills customers directly rather than using utility consolidated billing);
 - 2) Standard customer contract;
 - 3) Customer complaint and resolution procedures;
 - 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) In any dispute between a customer and a RES concerning the terms of a contract, any vagueness, obscurity, or ambiguity in the contract will be construed in favor of the customer.
- c) 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.

Section 410.720 Dispute Resolution

a) Complaint Handling

- 1) 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. A customer other than a residential or small commercial customer may agree 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. However, nothing in this subsection is intended to prevent a customer other than a residential or small commercial customer to file an informal or formal complaint with the Commission if dissatisfied with the results of the alternative dispute resolution.

b) Complaints to RES

- 1) A customer or applicant for 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 within 14 calendar days. If the RES does not respond to the

customer's complaint in writing, the RES shall orally inform the customer of the ability to obtain the RES's response in writing upon request. 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 Attorney General.

c) Complaints to the Commission.

1) Informal complaints.

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 Illinois Commerce Commission's Consumer Services Division and provide the following contact information: Illinois (toll-free) (800) 524-0795, from out-of-state (217) 782-2024, website address: www.icc.illinois.gov, TTY (800) 858-9277, fax (217) 524-6859. Complaints may be filed with the Consumer Services Division by phone, via the internet, by fax or by mail. Information required to process a customer complaint include:

- i) The customer's name, billing and service addresses, and telephone number;
- ii) The name of the RES;
- iii) The customer account number;
- 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.
- B) The Commission's Consumer Services Division may resolve a complaint via phone by completing a call between the customer, the Consumer Services 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 Consumer Services 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. In the case of utility-consolidated billing and the utility purchasing the supplier's receivables, the RES shall notify the utility of any informal complaint received and the utility shall cancel disputed supplier charges and remove those charges from the customer's bill.
- C) 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.
- D) The Commission shall review the complaint information and the RES's response and notify the complainant of the results of the Commission's investigation.
- E) While an informal complaint process is pending:

- 1) The RES (or the electric utility in the case of utility-consolidated billing) shall not initiate collection activities for any disputed portion of the bill until the Commission has taken final action on the complaint.
 - 2) A customer shall be obligated to pay any undisputed portion of the bill and the RES (or the electric utility in the case of utility-consolidated billing) 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 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.

BlueStar Comments: BlueStar takes the position that any additional complaint rules must comply with the statute. BlueStar has many questions about this section. The draft rule must be able to separate and not elevate meritless informal complaints as reported formal complaints. BlueStar looks forward to discussing these issues at the workshop.

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.

3) Disclosure of RESs' level of customer complaints

The Commission shall, on a quarterly basis, prepare a summary of all formal ~~and informal~~ complaints received and publish it on its World Wide Web site. The summary shall be in an easy-to-read and user friendly format. The Commission shall develop a ~~proposed~~ ranking system of

individual RES' complaints ratios in comparison with a RES-wide complaint ratio, as well as the **proposed** associated ranking methodology. **The proposed ranking system will be developed in a subsequent rulemaking.**

BlueStar Comments: As a beginning point, BlueStar takes the position that any complaint procedures must comply with the statute. The disclosure of all “formal and informal customer complaints” to include complaint data for residential as well as small business customers warrants further discussion. In particular, BlueStar would like to understand the distinction between a formal and informal complaint. For example, would a resolved or a meritless customer complaint be classified as a complaint? In order to provide more meaningful context to the reporting of complaints, the summary should include resolution, whether the complaint was found to be meritorious and/or a notation indicating that resolution is pending. Similarly, there should be an admonition that the mere act of filing of a complaint should not be construed as meaning that the ARES is actually guilty of any violation. Moreover, BlueStar would need to understand the details of the ranking methodology and ranking system, which should be subject to a further rulemaking so all parties have a meaningful opportunity for comment.

Section 410.730 Uniform Disclosure Requirements

- a) In addition to providing a copy of the sales contract, a RES must disclose the following information to the customer prior to any enrollment for electric service, regardless of the form of marketing used. The written Uniform Disclosure statement must use a font of 12 point or larger and, if a separate document, must not exceed two pages in length:
 - 1) The legal name of the RES;
 - 2) The RES's business address;
 - 3) The RES's toll free telephone number for billing questions, disputes, and complaints;

- 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;
- 5) The length of the agreement including the automatic renewal clause, if any;
- 6) The presence or absence of early termination fees or penalties, and applicable amounts or the formula pursuant to which they are calculated;
- 7) For a RES using Dual Billing or SBO, any possible requirement to pay a deposit, 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;
- 8) Any fees to the applicant for switching to the RES;
- 9) The name of the electric service offering for which the customer is being solicited;
- 10) A statement that the customer may rescind the agreement within ~~ten~~ **three** calendar days of the utility processing the enrollment request by calling either the RES or the utility and provide both phone numbers;
- 11) A statement that the RES is an independent seller of electricity and that the RES is not representing or acting on behalf of the electric utility, governmental bodies, or consumer groups;
- 12) A statement that the utility will continue to deliver the electricity to the customer's premise and will continue to respond to any service calls and emergencies;
- 13) A statement that the customer will receive written notification from the utility confirming the switch of suppliers;

14) If savings are guaranteed, or guaranteed under only 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

15) For products where a customer's charges are a fixed amount per billing period regardless of the market price for electricity or the customer's electricity consumption during the billing period, the billing period covered. In addition, it must state that the fixed bill amount is for supply charges only and does not include delivery service charges and applicable taxes; therefore the fixed bill amount is not the total monthly amount for electric service.

BlueStar Comments: BlueStar stands by previous comments submitted.

SUBPART I: ENFORCEMENT

Section 410.800 Application of Subpart I

The provisions of this Subpart shall apply to retail electric suppliers serving or seeking to serve any customer class.

Section 410.810 Enforcement provisions

a) If the Commission Staff or other party believes that a RES has repeatedly violated the requirements contained in Sections 410.500 - 410.730, the following additional expedited procedures may be used to enforce these requirements. However, the complainant, the respondent, and the Commission may mutually agree to adjust the procedures established below. No complaint may be filed under this provision until the complainant has first notified the respondent of the alleged violation and offered the respondent 48 hours to correct the situation.

1) Reasonable discovery specific to the issue of the complaint may commence upon filing of the complaint. Requests for discovery must be served in hand and

responses to discovery must be provided in hand to the requester within 14 days after a request for discovery is made.

2) An answer and any other responsive pleading to the complaint shall be filed with the Commission and served in hand upon the complainant within 7 days after the date on which the complaint is filed.

3) A pre-hearing conference shall be held within 14 days after the date on which the complaint is filed.

4) The hearing shall commence within 30 days of the date on which the complaint is filed. The hearing may be conducted by a hearing examiner or by an arbitrator. Parties shall be entitled to present evidence and legal argument in oral or written form as deemed appropriate by the hearing examiner or arbitrator. The hearing examiner or arbitrator shall issue a written decision within 60 days after the date on which the complaint is filed. The decision shall include reasons for the disposition of the complaint and, if a repeated violation is found, directions and a deadline for correction of the violation.

5) Any party may file a petition requesting the Commission to review the decision of the hearing examiner or arbitrator within 5 days of such decision. Any party may file a response to a petition for review within 3 business days after actual service of the petition. After the time for filing of the petition for review, but no later than 15 days after the decision of the hearing examiner or arbitrator, the Commission shall decide to adopt the decision of the hearing examiner or arbitrator or shall issue its own final order.

6) The complainant may include in its complaint a request for an order for emergency relief. The Commission, acting through its designated hearing examiner or arbitrator, shall act upon such a request within 2 business days of the filing of the complaint. An order for emergency relief may be granted, without an evidentiary hearing, upon a verified factual showing that the party seeking relief will likely succeed on the merits and that the order is in the public interest. An order for emergency relief shall include a finding that the requirements of this

subsection have been fulfilled and shall specify the directives that must be fulfilled by the respondent and deadlines for meeting those directives. The decision of the hearing examiner or arbitrator to grant or deny emergency relief shall be considered an order of the Commission unless the Commission enters its own order within 2 calendar days of the decision of the hearing examiner or arbitrator. Any action required by an emergency relief order must be technically feasible and economically reasonable and the respondent must be given a reasonable period of time to comply with the order.

7) In determining the appropriate consequence for a violation, the Commission may take into account the nature, the circumstances, including the scope of harm to individual customers, and the gravity of the violation, as well as the RES's history of previous violations.

8) Consequences for violating one or more of the requirements above may include one or more of the following restrictions on a RES's opportunity to sell electricity to retail customers:

A) Suspension from a specific Commission approved retail program in either a specific utility service territory or all of Illinois;

B) Suspension of the ability to enroll new customers in either a specific utility service territory or all of Illinois;

C) Imposition of a requirement to record all telephonic marketing presentations, which shall be made available to Commission Staff for review;

D) Reimbursements to customers who did not receive savings promised in the RES's sales contract/uniform disclosure statement or substantially demonstrated to have been included in the RES's marketing materials or to customers who incurred costs as a result of the RES's failure to comply with the requirements set forth above;

E) Release of customers from sales contracts without imposition of early termination fees;

F) Revocation of a RES's eligibility to operate in Illinois;

G) Any other measures that the Commission may deem appropriate.

H) Consequences imposed pursuant to this paragraph shall continue to apply until the RES's failure to comply has been cured or the Commission or Commission Staff has determined that no further cure is necessary.

b) A party shall not bring or defend a proceeding brought under this Subpart or assert or dispute an issue in a proceeding brought under this Subpart, unless there is a non-frivolous basis for doing so. By presenting a pleading, written motion, or other paper in complaint or defense of the actions or inactions of a party under this Subpart, a party is certifying to the Commission that to the best of that party's knowledge, information, and belief, formed after a reasonable inquiry of the subject matter of the complaint or defense, that the complaint or defense is well grounded in law and fact, and under the circumstances:

1) it is not being presented to harass the other party, cause unnecessary delay in the provision of competitive electric supply services to customers, or create needless increases in the cost of litigation; and

2) the allegations and other factual contentions have evidentiary support, or if specifically so identified, are likely to have evidentiary support after reasonable opportunity for further investigation or discovery as defined herein.

c) If, after notice and a reasonable opportunity to respond, the Commission determines that subsection (b) has been violated, the Commission shall impose appropriate sanctions upon the party or parties that have violated subsection (b) or are responsible for the violation. The sanctions shall be not more than \$30,000, plus the amount of expenses accrued by the commission for conducting the hearing. Payment

of sanctions imposed under this section shall be made to the Common School Fund within 30 days of imposition of such sanctions.

d) In the event of any conflict between these Sections and the requirements for RESs provided in electric utility tariffs on file with the Commission as of the effective date of this Part, this Section shall control.

BlueStar Comments: As a beginning and ending point, all enforcement rules must be based on and comply with the statute. This entire section deserves further discussion. BlueStar looks forward to discussing these issues at the workshop.