ORMD Straw Man Compiled Comments

ICEA:
As indicated in earlier Comments submitted by ICEA member companies, and as will be discussed below, the ICEA supports the efforts of all stakeholders to develop an appropriate level of consumer protections. However, ICEA believes that the focus of any new or enhanced consumer protections, including marketing rules, commercial legal or contractual requirements, dispute resolution, reporting requirements, and enforcement mechanisms should be limited to measures to protect residential and small commercial customers that are served by Alternative Retail Electric Suppliers (“ARES”) or retail electric suppliers (“RES”).

ICEA incorporates by reference the previously submitted Comments of Constellation NewEnergy, Inc., Direct Energy Services, LLC, and Integrys Energy Services, Inc. Below, ICEA provides its Comments regarding the Revised ORMD Strawman distributed on March 6, 2009. The absence of a Comment on any one specific section or issue should not be construed as a lack of interest or concern related to such question.

1. Applicability

ICEA:
ICEA recommends that the scope of any new or enhanced consumer protections should use the existing statutory definition of “small commercial customer” in the Public Utilities Act (“PUA”) (someone who consumes no more than 15,000 kWhs of electricity annually) as the “cut-off” for the proposed enhanced consumer protections so that they would only apply to ARES or RES seeking to serve or actually serving residential and small commercial customers (with certain limited exceptions).

1 A RES is an electric utility providing competitive retail electric service outside of their franchised service territory.
2 220 ILCS 5/16-102.
Again, the reasons for applying the proposed new and enhanced consumer protections, marketing rules, commercial legal or contractual requirements, dispute resolution, reporting, and enforcement mechanisms to residential and small commercial segments can be summed up as follows:

• Will not upset the well-developed competitive retail electric marketplace that currently exists in Illinois, especially for commercial and industrial customers;
• Consistent with the existing regulatory and consumer protection regime that differentiates from the level of certification, marketing, and other requirements based upon the size of the customers that the ARES seeks to serve; and
• Consistent with a recently completed legislative package that was adopted for the retail natural gas industry.

Any proposed amendments to the PUA and/or the Consumer Fraud and Deceptive Business Practices Act (“Consumer Fraud Act”) should be properly tailored to protect residential and small commercial customers that are being solicited for electric power and energy service and/or served by ARES and RES. To do otherwise would not only add unnecessary costs to other market segments, but would also add requirements that could very well jeopardize the current well-functioning competitive retail electric industry that exists for commercial and industrial customers.

The ICEA supports the revised definition of “Small commercial customer” contained in the Strawman which is designed to track SB171. The revision adds an appropriate level of additional clarity to the definition.

Liberty Power:
Liberty Power has some concerns of Section I.1 (Training of ARES sales agents) applying to all customer classes as currently contemplated. Many ARES have sales teams that are dedicated to one customer class versus another. Due to its application to
all customer classes, as drafted, the language suggests that all sales agents have knowledge of all products and services. In the opinion of Liberty Power, it is unreasonable and inefficient for a sales agent that is dedicated to sales and marketing of large commercial and industrial customers to have thorough knowledge of all products (including terms and conditions) of residential products and vice-versa (for example). Liberty Power suggests that Section I.1 applies only to residential and small commercial customers or alternate language is drafted in order to remedy this issue. Alternative language has been provided below.

**MidAmerican:**

“Small commercial customer” means a nonresidential retail customer of an electric utility who consumed 15,000 kilowatt-hours of electricity or less during the previous year; provided that any ARES 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 ARES. 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 ARES 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, ARES, the Commission, or others necessary to determine whether a customer meets the classification of small commercial customers as that term is defined herein.

**Section I: Marketing Practices / Enrollment**

1. **Training of ARES sales Agents**
ICEA:
The term “relevant sales agents” still needs to be defined. Also, the scope of the “intimate knowledge” needs to be properly tailored. For instance, it makes no sense to have non-lawyer sales agents explaining legal terms (such as any “right” to cancel or terminate), and interpreting statutes, rules, and regulations.

Liberty Power
All sales agents engaged in sales activity in Illinois (whether directly employed by the ARES or otherwise exclusively selling the ARES’s service) shall be knowledgeable of these Retail Electricity Requirements and other relevant requirements contained in The Public Utilities Act, The Consumer Fraud and Deceptive Business Practices Act and Illinois Administrative Code 410 that pertain to the marketing and sales of electric supply service. All sales agents should be familiar with the ARES’s products and services offered in Illinois, as they pertain to the customer class that the sales agent is actively marketing to, 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. An ARES and its sales agents shall not utilize false, misleading, materially inaccurate, or otherwise deceptive language or materials in soliciting or providing services.

2. Do Not Contact List
ICEA:
Any rules adopted implementing this provision should reflect commercial and operational realities regarding the competitive retail electric industry. The rule should reflect the fact that these lists are subject to change, the lag in time between the sending and receipt of mail, and other similar commercial realities. As a result, there should not be any retroactive applicability and resulting penalty or other legal right created due to those commercial realities. For example, what would happen if an ARES or RES sent a letter to a potential customer on the 14th of the month and on the 15th of the month found out that this potential customer is now on the Do Not Contact List?
Similarly, certain ARES or RES may utilize the services of outside sales agents or sales channels. Any rules adopted pursuant to these rules should provide a commercially reasonable amount of time for the ARES or RES to distribute such lists after receipt from the electric utility.

**Liberty Power:**
Liberty Power concurs with comments provided by Integrys Energy Services, Inc. (“Integrys”) to version 1.1 of the ORMD straw man. Those comments are provided here with slight modifications:

Integrys would like to clarify that the requirement to obtain the Do Not Contact List each month applies only if the ARES is actively telemarketing to residential customers. If the ARES is not doing outbound calling they are not required to obtain the list.

### 3. Records Retention and Availability
**Liberty Power:**
Liberty Power believes the language should be modified to ensure that a customer cannot request an unlimited amount of copies of their sales contracts as this would be costly and administratively burdensome to the ARES. Liberty Power is providing the following suggested language:

Throughout the duration of the contract, and for two years thereafter, the ARES 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 customer’s first request during a calendar year will be free of charge. The ARES is permitted to charge a nominal fee for any additional requests during the same calendar year.

### 4. In-Person Marketing
**Liberty Power:**
Section I.4(ii) - Liberty Power does not believe sales agents should be required to read to the customer all the items within the uniform disclosure statement. Many customers,
particularly business owners whose time is very limited, will actually be annoyed by this process. Most, if not all of the items in the uniform disclosure statement would have already been covered during the course of the sales presentation. To require another separate process where these items would once again be disclosed is both duplicative and time consuming. The Commission Staff should focus on requirements that ensure important contractual information is included as part of the sales presentation and provided to the customer (as already contemplated in the proposal), but not require a separate process where all the items would have to be read to the customer.

The language clarifies when a “fixed bill product” is being offered, the sales agent must explain that the “fixed bill” (where a “fixed bill” refers to a fixed supply charge that does not change regardless of usage levels) is for supply charges only and does not include delivery service charges and applicable taxes. Liberty Power agrees with the spirit and intent of this rule – to ensure the customer understands the disclosed rate and how it applies to their bill. Liberty Power believes this concept should clearly apply to any circumstance where a rate is being marketed that only reflects supply charges – whether a “fixed bill”, “fixed rate”, “variable rate”, etc. It should not be assumed that all ARES market their products in the same way. In marketing their products some ARES may use a price that reflects only supply charges, others may market a “bundled price” (that reflects both supply and delivery charges). Even in the case where all ARES were consistent in disclosing prices that reflect only supply charges, this still would not alleviate the need or desire to clearly explain this to customers.

Liberty Power is recommended the proposed language be modified to the following:

If a customer elects to enroll with the ARES, the sales agent must **read** provide to the customer all items within the uniform disclosure statement **as contemplated in this section**. The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure requirements section below. If a **fixed bill product** the rate that is being offered **applies to supply charges only and does not include delivery service charges and applicable taxes**, the sales agent must
explain to the customer that the fixed bill amount rate disclosed is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed bill amount rate disclosed is does not reflect the total monthly amount due for electric service. If a customer enrolls by signing a Letter of Authorization, the sales agent must 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. If a customer’s enrollment is authorized by a third party verification as a result of in-person marketing, the third party verifier must 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. If the customer’s enrollment is authorized on-line, the requirements of Section I.7 shall apply.

5. Telemarketing

BlueStar:
(iv) If a customer initiates a call to an ARES, the ARES must follow the requirements in 815 ILCS 505/2EE (c) in addition to reading 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 the uniform disclosure statement below. The ARES must also require the customer to verbally acknowledge that he or she understands the uniform disclosure statement. The written disclosure statement and sales contract must be mailed to the customer within 3 business days of the utility confirmation of accepted enrollment.

BlueStar Comment: If a customer agrees to receipt of documents via email, then the ARES should have the option of sending the disclosure statement and sales contract in that manner (and in lieu of mailing a paper copy).
Liberty Power:

(i) Liberty Power believes there may be an improper citation of the Telephone Solicitation Act. We believe the proper citation to be 815 ILCS 413 (and not 815 ILCS 15).

(iii) Please see comments provided above in Section I.4(ii). Liberty Power is providing the following suggested language:

If a customer elects to enroll with the ARES, the sales agent must 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 the uniform disclosure requirements section below. If a fixed bill product the rate that is being offered applies to supply charges only and does not include delivery service charges and applicable taxes, the sales agent must explain to the customer that the fixed bill amount rate disclosed is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed bill amount rate disclosed is does not reflect the total monthly amount due for electric service. 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. The written disclosure statement and sales contract must be mailed sent 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. If a customer elects to enroll on-line as a result of an outbound telemarketing call, the requirements of Section I.7 shall apply.

(iv) Liberty Power is suggesting the following modified language to a portion of this section to be consistent with the modifications proposed in the previous section:

The written disclosure statement and sales contract must be mailed sent to the customer within 3 business days of the utility confirmation of accepted enrollment.
6. **Direct Mail**

7. **Online Marketing**

**Section II: Rescission/Deposits/Early Termination and Automatic Renewal of Contract**

1. **Rescission of sales contract**

   **BlueStar:**
   Within one business day after accepting a valid electronic enrollment request from the ARES, the electric utility will notify the customer in **writing** of the scheduled enrollment and the name of the ARES 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 the customer contacts either the electric utility or the ARES within **ten** calendar days of the electric utility's processing of the enrollment request. If the tenth 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 comment:** Two comments here. First, it should be made explicit that the written notification includes email correspondence. Customers should contact the ARES directly, and not the utility. The written notification from the utility could contain that ARES rescission contact information, including telephone and fax numbers, email and mailing addresses, and should direct customers to contact the ARES directly.

   Second, ten calendar days is needlessly excessive for the rescission window, and will result in higher prices for consumers as additional risk premiums will be built into the
price to account for the extended period of uncertainty. In its experience, BlueStar has not received any rescission requests from Illinois consumers after the third business day. To the extent that the customer is allowed to contact the utility to initiate rescission, that should not toll the three business day period. The utility should be required to direct calls to the ARES for rescission matters.

2. **Deposits**

3. **Early Termination Fee**

   **BlueStar:**
   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. 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 ARES.**

   **BlueStar comment:** The highlighted language should be removed. 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 fee provisions are part and parcel of service contracts that consumers enter into all the time; there is no reason that ARES contracts should be subject to less protection under the law than those of other service providers. Indeed, by requiring greater (and more meaningful) prior to execution of the contract, consumers will already be in a better position vis-à-vis almost all other service providers in Illinois.
Liberty Power:
Liberty Power is very concerned with the drafted language of this subsection. Allowing a customer to cancel a contract without early termination fees being applicable up to ten (10) business days after the date of the first bill issued is unreasonable, would harm customers due to higher prices, and cause undue harm on the competitive market.

One of the attributes of a robust competitive market is the number of product types available to customers, so that each may select an electric product that fits his or her particular needs. Many customers prefer the budget certainty that can be achieved through a fixed-rate product. This language would effectively eliminate the offering of long-term, fixed-rate contracts in the market. Most ARES have prudent, conservative hedging practices to ensure the long-term viability of the company. Conservative hedging practices dictate that an ARES pre-purchases 100% (or nearly 100%) of the estimated usage for the contract term within a few days of contract execution. To allow a customer to cancel a fixed-price contract without penalty for as many as 87 days after signing the contract, would preclude an ARES from recovering actual incurred damages, and will have a huge detrimental effect on the market's access to products that promote and support budget certainty.

First and foremost, many ARES will simply not take on the added risks of offering a fixed-price contract. Those that do, will offer prices at significantly higher rates due to the added risks associated with the possibility of a customer canceling their contract so many days after originally being contracted. Secondly, ARES that continue to offer long-term contracts will do so at a great risk to the overall financial viability of the company. If not well managed, subsequent decisions may ultimately force many ARES to go out of business. Aside from the immediate negative effects on customers caused by their electric provider going out of business, fewer retail competitors in the market will

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3 87 day scenario: 1 day to contract with customer + 2 days for processing contract and submission of EDI transaction to utility + up to 37 days for switch to occur (if date of switch request is less than 7 days prior to the customer’s next meter read date) + 31 day billing cycle + 2 days to process invoice + 14 calendar days for rescission (assumes first bill issued on a Friday)
ultimately lead to less competitive pricing offers being made available, causing further harm to customers.

Customers are already afforded a sufficient period of time (ten days, potentially more if the tenth day falls on a non-business day) to review their terms and conditions and rescind their contract, if they desire.

Liberty Power is in favor of fair and competitive markets and establishing rules that are designed to provide customers a wide-ranging portfolio of products to choose from. This proposed rule is a huge step back from achieving that goal. For all the reasons mentioned above, Liberty Power is suggesting the following language:

Any agreement that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the early 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 ARES.

Although not currently proposed in the latest version of the straw man, Liberty Power feels compelled to address certain comments previously made by other stakeholders as it appears these issues will continue to be discussed and debated.

Both the Ameren Illinois Utilities ("Ameren") and the Citizens Utility Board ("CUB") have advocated that "early termination fees do not exceed $50". To put it simply, such a proposal would eliminate the availability of fixed-price contracts. One of the main purposes of a competitive retail electric market is to provide customers with choice. One of the fundamental choices that a customer can make is whether they prefer to "lock-in" a rate and avoid any risks associated with a volatile energy market, or prefer to "ride the
market” (taking advantage of prices that may lower in real time). Any cap on early termination fees that would not allow for the ARES to collect actual damages effectively eliminates the customers’ right to choose a risk-adverse, fixed-price product. If any ARES do continue to offer fixed-price contracts, under such a requirement, these products will carry a very significant price premium. The Commission Staff should encourage regulatory policies that apply downward pressure on prices rather than increase them. Liberty Power recommends the Commission Staff focus their efforts on adequate disclosure of early termination fees rather than capping them to some arbitrary amount, which ultimately harms customers.

4. **Contract Expiration and renewal offers**

**ICEA:**
The ICEA supports the revised language on contract expiration and contract renewals that appears highlighted in green.

(i) **Contract Expiration**

**BlueStar:**
(3) For contracts with a term greater than six months, a statement in bold lettering no smaller than 12 point font that no termination fee shall apply 31 days prior to the date stated as the expiration date in the notice. No such statement is required if the customer is not subject to early termination fees.

**BlueStar comment:** Again, there is no justification for giving a customer the right to unilaterally breach the contract as it draws to a close. Even putting aside the significant logistical issues (imprecise meter reads, etc.) presented by trying to implement such a provision, there is simply no legitimate reason to interfere with an ARES contract, nor any corresponding benefit to the consumer. This will require an additional premium built into the customer’s contract without any discernible benefit.

**Liberty Power:**
Section II.4(i)(3) – Liberty Power is concerned with language that would eliminate the use of early termination fees during the last 31 days of any contracts greater than six (6) months in length. Liberty Power assumes the intent of this rule is to allow customers that are on fixed-price contracts sufficient time to switch electric providers (which can take up to 45 days) - without a) rolling onto an automatic renewal product or b) being subjected to early termination fees.

Again, this places additional risk on any ARES offering a fixed-price contract. Limiting this to contracts over six (6) months seems to give the impression that the ARES can offset any costs related to damages incurred by a customer canceling a contract during the last 31 days of a contract through profits earned in the prior six (6) months of the term. This is a false and dangerous assumption, which deters an ARES from offering a fixed-price contract greater than six months, further harming customers by severely limiting their access to products that offer the budget certainty many customers desire. Even if such a product is offered, this requirement would cause undue harm on customers through higher prices due to the increased risks associated with the possibility of a customer canceling a contract in the last 31 days of the term.

Rather than create a so-called “grace period” for early termination fees, the efforts of the ORMD and ICC should focus on reducing the amount of time it takes to expedite a switch, including, but not limited to low-cost off-cycle meter reads and the implementation of smart metering technology that would allow for immediate and zero-cost switching between ARESs.

Alternatively, and/or in concert with a shorter switching timeline, Liberty Power would be open to considering other ways to ensure a customer can switch ARES providers and still:

a) fulfill the full term of their contract (avoiding early termination fees)

b) prevent automatic renewal
c) avoid utility default service (which currently has a 12 month minimum stay requirement)

One option to consider would be to ensure that customers are aware of their contract end dates with their current ARES as early as possible and provided a reminder of the expiration dates as contemplated in this section. As an example, Liberty Power sends customers “welcome kits” with contract details including the length of term. Customer contract end dates are usually in sync with the account’s meter read cycle date, or at the very least with meter read cycles within the contract’s end month. This should provide the customer with an initial idea of the ending billing cycle. This information, combined with the expiration notice requirement, will provide the customer with the relevant information they need to properly time a switch. By having advanced knowledge of the current contract end dates a customer can work with their next ARES provider to ensure the subsequent contract start dates are in the same month. It is also customary for customers to ask their supplier to switch service “on the first available meter read after X date”. This will both prevent the triggering of an automatic renewal and allow customers to fulfill their full contractual obligation with the ARES - avoiding any early termination fees. Liberty Power believes the Commission Staff should consider creating a bill insert that clearly explains the procedures the customer needs to follow to ensure their switch is executed in this fashion.

Other than Texas, Liberty Power is unaware of any competitive electric market that has a “grace period” (not to be confused with rescission periods) for the application of early termination fees. These rules in Texas were only recently adopted, and have yet to go into effect in the marketplace. Therefore, the impacts of these new rules on customers and the competitive marketplace are still not known. In Texas, after careful contemplation, this “grace period” was reduced to the last 14 days of a contract’s initial term. Rather than a longer “grace period”, the Public Utility Commission of Texas (PUCT) is focusing its efforts on expediting the amount of time it takes a customer to switch electric providers to six (6) days.
MidAmerican:

i) The ARES 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 an ARES from offering a new contract to the customer at any other time during the contract period.

ii) 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.

(4) 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 ARES 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. (Language provided by Theresa Ringenbach)

ii) Renewal Offers.

Liberty Power:

Section II.4(ii)(2) – Liberty Power suggests the language be modified to be consistent with language provided by Integrys. This modification allows the language to be consistent with the utilities’ tariffs which can change. Suggested modified language is provided below:
A statement in bold lettering no smaller than 12 point font that establishing service with another ARES can take up to 45 days, and failure to renew their existing contract or switch to another ARES by the specified date will result in the customer being reverted to the utility default service for 12 months and provide in the statement the length of the utility tariff minimum stay period if applicable.

**Contract Renewal**

**MidAmerican:**

i) The ARES shall clearly disclose any renewal terms in their contract including any cancellation procedure.

ii) If the ARES intends to offer a contract renewal, the ARES shall send a notice of contract renewal separate from the bill at least 30 to 45 days prior to the date of contract expiration but no more than 60 days in advance of expiration. Nothing in this section shall preclude an ARES from offering a new contract to the customer at any other time during the contract period.

ii) 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 clear and disclosure of the contract terms including a full description of any renewal offers available to the customer, and any material changes in the terms and conditions including pricing, termination or other fees, and products.
In addition:

iii) Contracts with a renewal term greater than six months, with an early termination fee greater than the original contracted termination fee or with a calculated termination fee:

1) Must provide for affirmative consent: and

2) a statement in no smaller than 12 point font that:

   A) the customer must provide affirmative consent to accept the renewal offer;

   B) and that establishing service with another electric supplier can take up to 45 days;

   C) and failure to renew their existing contract or switch to another ARES 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. (Language provided by Theresa Ringenbach)

(iii) Automatic Renewal

MidAmerican:

If a customer’s sales contract includes an automatic renewal clause, an ARES may automatically renew the customer consistent with the automatic renewal clause in the contract and consistent with all the relevant provisions outlined in this section and 815 ILCS 601/10 (Automatic Contract Renewal Act). The pricing for an automatic renewal after the term of the original contract may be different than the pricing for the original term, but must be communicated to the customer and as permitted by this section and consistent with the original contract.
(1) For contracts with an automatic renewal term greater than six months, with renewal contract early termination fee less than or equal to that in the existing contract, the following must be provided:

C) The contract terms including the full description of any renewal offers available to the customer. This sentence is the sole difference between contracts with an automatic renewal of greater than or less than 6 months. I suggest this first sentence be added to all automatic contract renewals and these points consolidated. and a statement that if the customer takes no action by the specified date they will continue to receive service from the ARES under the terms of the renewal offer.

MidAmerican:

Assigning customers to a different supplier

The ARES must not assign the agreement to a different ARES unless:

(1) the new supplier is an ARES certified by the Commission and is registered with the electric utility;
(2) the rates, terms, and conditions of the agreement being assigned do not change during the remainder of the time covered by the agreement; or if the rates or material terms and conditions do change, the customer agrees in writing to the change in any material term or condition or, can switch suppliers with no early termination fee; if the customer is assigned to a different supplier, (provided by Sandy Guthorn)
(3) the customer is given no less than 30 days prior written notice of the assignment and contact information for the new supplier; and
(4) the supplier assigning the contract provides the customer with contact information for billing questions, disputes, and complaints.

5. Assigning customers to a different ARES

ICEA:
The ICEA supports the revised language regarding the process for assigning customers to a different ARES as a more appropriate reflection of commercial realities.

**MidAmerican:**

If an ARES 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 ARES must not assign the agreement to a different ARES unless:

1. the new supplier is an ARES certified by the Commission or an electric utility operating outside its service territory (RES);
2. the new ARES is in compliance with all other 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 ARES 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 ARES; and
5. within thirty (30) days after the assignment, the new ARES provides the customer with a toll-free phone number for billing questions, disputes, and complaints.

The aforementioned requirements do not apply to transactions where a certified ARES, or an electric utility operating outside of its service territory, has entered into an agreement for the sale, purchase, or any other transfer of ownership of all retail contracts with customers or a defined subset of such customer segments to another ARES certified by the Commission, or an electric utility operating outside of its service territory, provided that the new ARES is in compliance with all other

Comment [ngc2]: Not sure I see why the requirements for assigning customers to an ARES if a supplier goes out of business should be different than those for selling the supplier's book.
applicable requirements of the Commission and/or the electric utility to provide electric service. (Language provided by David Fein)

Section III: Uniform Disclosure Requirements

BlueStar:

10) A statement that the customer may rescind the agreement within ten calendar days of the utility processing the enrollment request by calling either the ARES or the utility and provide both phone numbers;

BlueStar Comment: As explained above, the appropriate rescission window is three business days, not ten calendar days.

13) A statement that the customer will receive written notification from the utility confirming the switch of suppliers;

BlueStar Comment: ARES have no control over actions of the utility, so the appropriate language would be that the utility is required to send written notification confirming the switch of suppliers.

MidAmerican:

For products where a customer's charges are a fixed amount per billing period regardless of the market price for natural gas energy or the customer's natural gas energy consumption during the billing period, the billing period covered must be defined (seems like this is an incomplete thought?). 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.

Comment [arm3]: Anne McGlynn [MET]
Section IV: Dispute Resolution/Customer Complaint Reports

1. Required ARES information

2. Dispute Resolution

Liberty Power:
Liberty Power echoes remarks made by many of the stakeholders in their comments to version 1.1 of the ORMD straw man. There needs to be a clear understanding of what constitutes a complaint since this will ultimately have an impact on the individual ARES' complaint ratio that is contemplated in Section IV.3. As previously stated by Integrys, “this section [should be] clarified to mean only those complaints within the supplier's services. For example, complaints related to incorrect meter reads, high usage, or other items not part of a supplier service should not become a supplier complaint”.

(i) Complaint handling.

MidAmerican:
A residential or small commercial customer has All customers have the right to make an informal or formal complaint to the Commission, and an ARES contract cannot does not impair this right. An ARES 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 section is intended to prevent a customer other than a residential or small commercial customer to may file an informal or formal complaint with the Commission if dissatisfied with the results of the alternative dispute resolution.
(ii) Complaints to ARES.

**MidAmerican:**
A customer or applicant for service may submit a complaint by phone, via the internet, by fax or by mail to an ARES. The ARES shall promptly investigate and advise the complainant of the results within 14 calendar days. If the ARES does not respond to the customer’s complaint in writing, the ARES shall orally inform the customer of the ability to obtain the ARES’s response in writing upon request. A customer who is dissatisfied with the ARES’s review shall be informed of the right to file a complaint with the Commission and the Office of Attorney General.

**MidAmerican:**

(iii) Complaints to the Commission Regarding ARES.

(1) Informal complaints.

**MidAmerican:**

(A) If a complainant is dissatisfied with the results of an ARES’s complaint investigation, the ARES 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: substitute current language in Part 280.170

(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 ARES. At times, three-way calling may not be available or Consumer Services staff may determine a three-way call is not necessary for resolution.
not the best method to handle the customer’s complaint. In these circumstances an informal complaint will be sent to the ARES. In the case of utility-consolidated billing and the utility purchasing the supplier’s receivables, the ARES 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. If the ARES is utilizing the Single Bill Option (SBO), the utility will notify the ARES if an applicable informal complaint is received, and the supplier shall cancel disputed delivery services charges and any associated supplier charges, and remove those charges from the customer’s bill.

**ICEA:**
The ICEA supports the new language that is based on the recently-enacted SB 171.

**MidAmerican:**
No ARES shall bill for a disputed amount where the alternative electric supplier has been provided notice of such dispute. The supplier shall attempt to resolve a dispute with the customer. When the dispute is not resolved to the customer's satisfaction, the supplier shall inform the customer of the right to file an informal complaint with the Commission and provide contact information. While the pending dispute is active at the Commission, an alternative electric supplier (or the electric utility in the case of utility-consolidated billing) may bill only for the undisputed amount until the Commission has taken final action on the complaint.

**Agreed**

(2) **Formal complaints.**

**Liberty Power:**
Section IV.2(iii)(2) – Liberty Power believes the timeframe contemplated in the proposed rule is too long and offers the following modified language:

If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the Commission within
two years six months of the date on which the Commission closes the informal complaint.

**MidAmerican:**
If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the Commission within two years of the date on which the Commission closes the informal complaint.

3. **Disclosure of ARES’ level of customer complaints**

**BlueStar:**
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 ranking system of individual ARES’ complaints ratios in comparison with an ARES-wide complaint ratio, as well as the associated ranking methodology.

**BlueStar comment:** 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 or not, 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.

**ICEA:**
ICEA is concerned about the purpose and specific type of reporting that is sought here, as no additional clarity or language has been offered. For example:

- What is meant by the term “complaints”? For example, would a call inquiring about a specific charge on a bill be considered a complaint? Similarly, would a call inquiring about the distribution portion of the bill be considered a complaint? Would the answer be different if the ARES was or was not an SBO supplier?
• Is the requirement seeking to substitute a monthly customer call center report in the place of the current annual call center requirement?

In any event, with greater specificity, such a reporting requirement may have some value for ARES seeking to serve or serving residential and small commercial customers. However, based upon the fact that there have been virtually no complaints against ARES or RES since the advent of retail competition over 9 years ago, there has been no demonstrated need or value for that type of enhanced consumer protection for larger commercial and industrial customers and reporting obligation on the part of ARES and RES. No similar requirements are imposed in the natural gas or telecommunications industries in Illinois, especially for competitive providers serving or seeking to serve commercial and industrial customers.

**Liberty Power:**

As referenced above there needs to be a clear indication of what constitutes a complaint. Any complaint made against the ARES that is found to be false or unjustified should not be included in the ARES complaint ratio.

Liberty Power wants to clarify and ensure that the “ARES-wide complaint ratio” is disclosed to the ARES. This enables each ARES to have a clear and quantifiable goal that needs to be achieved in order to reach and outperform the “ARES-wide complaint ratio”.

Additionally, Liberty Power suggests that a disclaimer is included with the associated ranking methodology that is posted to the Commission’s website that explains to the customer that such a ratio is statistically biased against ARES that may not have a large number of customers. For example, an ARES may have only 1 complaint, but if that ARES is only serving 100 customers their complaint ratio is 1% which could potentially be ten times (10x) greater than the “ARES-wide complaint ratio”.

**Section V: Enforcement**
BlueStar:
(viii) Consequences for violating one or more of the requirements above may include one or more of the following restrictions on an ARES’s opportunity to sell electricity to retail customers:

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

BlueStar comment: This provision will need to comply with the Illinois Criminal Code as it relates to eavesdropping (720 ILCS 5/Article 14).

Liberty Power:
Section 5 provides for an expedited complaint procedure. The Commission Staff ties the need for such a procedure to the quantity of prior violations that the ARES has been accused of. The timeframes outlined in the proposal are excessively expedited.

Liberty Power believes that the need for any expedited procedure should not be based on the prior violations of an ARES, but rather an evaluation of the critical and urgent nature of a situation which may require quick resolution.

Section IV(viii)(c) – Liberty Power seeks clarification on the intent of the Commission Staff in regards to the potential “imposition of a requirement to record all telephonic marketing presentations” [emphasis added]. Since the term “telephonic marketing presentations” is not defined, Liberty Power wants to ensure the intent is to not force the recording of an unscripted call between an in-house account manager and a current or potential medium or large commercial customer.