

# ORMD Straw Man

## First things first...

[Comment: Direct Energy appreciates the thoughtfulness, time, and effort that the ORMD Staff has so obviously placed into the creation of this consumer protection straw man. Effective consumer protection provisions are integral to the proper functioning of competitive retail energy markets. Effective consumer protection provisions also take into consideration and properly balance any associated burdens they might place on competitive energy providers and the provisioning of competitive retail offers with the potential benefits to be gained by consumers. This balance is evident in many parts of this draft. Below, inserted in blue font, are preliminary comments and questions from Direct Energy. Direct Energy reserves the right to amend, revise, or otherwise add to the comments and questions below. The comments and questions below are meant to further the dialogue on the straw man proposal and may or may not reflect the final positions of Direct Energy regarding this proposal or on any specific proposed provision. ]

### 1. Legal Authority

For those who did not attend the last workshop or the December 15<sup>th</sup> Consumer Protections work group call, the following should help put this document into perspective. It is the ORMD's goal to make discussions on additional retail electricity requirements more productive by focusing on actual language for any proposed requirements. The intent is to move away from "concepts" to something more specific and concrete. By doing that, we also want to keep the discussions on the substantive merits of the proposed requirements

rather than the path by which they might be implemented or the Commission's current legal authority to implement them. In other words, for the time being, we are interested in the "what" rather than the "how." However, if parties wish to further comment on the "how", they are encouraged to refer to Section 2.VI on the [ORMD's previous Request for Comments](#). This document is not meant to be comprehensive and we obviously welcome additional proposed language for discussion purposes.

## **2. Applicability**

In prior workshops there has been discussion about the intended customer group(s) to which certain requirements and/or utility business practices should apply and the same discussion needs to be had for the proposals found in here. In order to receive meaningful feedback from everyone we decided to throw a proposal out there. It should come as no surprise that there likely will not be a cut-off that will be perfect in each and every circumstance. Having said that, we feel that limiting the majority of these proposed requirements to the residential customer class does not sufficiently take into account the fact that the smallest commercial customers do not necessarily have substantially different characteristics than residential customers. At the same time, we recognize that making these requirements apply to larger customers has the potential to create significant inefficiencies for the commercial and industrial customer class and to worsen the competitive shopping process for those customers. With that in mind we would like to get feedback on the proposal to use the statutory definition of a small commercial customer to create the cut-off. Section 16-102 of the Public Utilities Act defines a small commercial retail customer as someone who consumes no more than 15,000 kilowatt-hours of electricity annually. We propose to make all sections of the straw man apply to those small commercial customers, in addition to residential customers. The only exceptions would be sections I.1, I.2, I.3, 2.4, IV.3, and V, which we propose to apply to all customer classes. We recognize that, in the absence of utility-provided customer lists, it will not always be clear to a RES whether or not a particular potential customer falls under the definition of a small commercial customer. We also recognize that there is more customer "movement"

around the 15,000 kWh annual usage cut-off than, say, a 100kW demand cut-off. However, we believe that choosing the 100kW (in ComEd's case) and 150kW (in Ameren's case) demand cut-off would include a substantial number of commercial and industrial customers with characteristics that are very different from that of the residential and smallest commercial customers. With that we invite thoughtful and constructive criticism of such a cut-off for most of the provisions found below.

**Comment:**

- The 15,000 kilowatt-hour cut-off, while not perfect, does currently serve as a convenient break point in the Public Utilities Act for marketing and certification requirements (See Section 16-115A(d) and (e)).
- Please confirm: under the ORMD's proposal, the following proposed sections would be applicable to ARES who serve non-residential customer with greater than 15,000 kWh annual usage.
  - I.1 Training of ARES sales agents
  - I.2 Do Not Contact List
  - I.3. Customer authorization
  - II.4 Assigning customers to a different supplier
  - IV.3 Disclosure of ARES' level of customer complaints
  - V. Enforcement
- The extension of "do not contact lists" to all non-residential customers not just small commercial customers warrants further discussion in the workshop. It is unclear whether there has been a problem with unwanted solicitation among this customer segment; whether this customer segment wants this ability and whether the utilities keep, or are able to maintain, such a list for all non-residential customers. Such lists, by their very nature, limit the ability of customers to hear of potentially beneficial offers and should be used sparingly and with appropriate limitation.
- The "disclosure of ARES' level of customer complaints" to include complaint data for all non-residential customers also merits further discussion in the workshop. It is not clear that there exists today sufficient complaint activity to warrant the proposed additional reporting. In addition, it would be instructive if ORMD Staff could elaborate on how they would envision such a metric would be constructed for all-nonresidential customer complaints.

## **Section I: Marketing Practices**

## 1. Training of ARES sales agents

All ~~relevant~~ sales agents engaged in sales activity in Illinois (whether directly employed by the ARES or otherwise exclusively selling the ARES' electricity supply service) shall be knowledgeable ~~have intimate knowledge~~ of these Retail Electricity Requirements and other relevant statutes, rules, and regulations. All sales agents should be familiar with the supplier's products and services, 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 electric supplier and its sales agents shall not utilize false, misleading, materially inaccurate, or otherwise deceptive language or materials in soliciting or providing services.

### Comment:

- What other "relevant statutes, rules and regulations" does the ORMD have in mind? .

## 2. Do Not Contact List

An electric supplier 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 Contact List", which the electric supplier shall obtain on the 15th calendar day of the month from the electric utility. If the 15th calendar day is a non-business day then the electric supplier shall obtain the list on the next business day following the 15th calendar day of that month. The "Do Not Contact List" maintained by the electric utility shall contain the customer's name, address, and phone number(s).

### Comment:

- This proposed section largely tracks Section 19-115(g)(4) Illinois SB171 Enrolled (the Illinois gas consumer protection bill).

## 3. Customer authorization Records Retention and Availability

(i) An electric supplier 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 electric supplier within seven business days after a request is made by the Commission or Commission Staff.

(ii) Throughout the duration of the contract, and for two years thereafter, the alternative electric supplier 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.

**Comment:**

- We would suggest changing the heading because the substance of requirement is broader than simply authorization.

#### **4. In-Person Marketing**

(i) Sales agents who contact customers in person at a location other than the electric supplier's place of business for the purpose of selling any product or service offered by the electric supplier are required to produce identification, to be visible at all times, which a) prominently displays in reasonable size type face the full name of the marketing representative, b) displays a photograph of the marketing representative and c) depicts the legitimate trade name and logo of the electric supplier they are representing. This identification has to be presented as soon as possible and prior to describing any products or services offered by the electric supplier.

(ii) The sales agent has to 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. Additionally, 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.

(iii) 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, the customer and the interpreter must sign a form consistent with Section 2N of the Consumer Fraud and Deceptive Business Practices Act. 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. The sales agent must remove the person's name from the marketing database upon that person's request.

**Comment:**

- The standards set forth for in person marketing appear in many respects to be more prescriptive than the framework set forth in Section 19-105(c) of SB 171 Enrolled for the gas industry. It would be helpful if the ORMD could elaborate on why they believe a more prescriptive approach is desirable for the electric industry.
- Would the customer be required to initial a uniform disclosure statement if similar information is being recorded in a TPV process?
- Section 2N of the Consumer Fraud and Deceptive Business Practices Act deals with non-English language transactions. The existence of Section 2N would seem to obviate the need for much of (iii).

## 5. Telemarketing

(i) In addition to complying with 815 ILCS 15 (Telephone Solicitations Act), ARES 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;

(ii) 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 ARES 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.

(iii) The sales agent has to 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. Additionally, 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 to the customer within 3 business days of the enrollment. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document.

**Comment:**

- Please confirm the reference to the Telephone Solicitations Act. Is the reference to Section 15 of the Act, 815 ILCS 413? The provisions of the Telephone Solicitations Act would appear to apply without incorporation in an ICC applicable rule, tariff or statutory provision.
- How does Section 2N of the Consumer Fraud and Deceptive Business Act (which deals with non-English Language transactions) interplay with proposed subsection (ii) above-- could a third party be used an interpreter in this situation?

## **6. Direct Mail**

Each ARES that contacts customers for enrollment by direct mail shall include a uniform

disclosure statement for. ~~If the ARES, at the time of the mailing, offers more than one product or service to the customer class being solicited, the ARES must provide a separate uniform disclosure statement for those products and services as well.~~ The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure requirements section below. If a written ~~The~~ Letter of Authorization is being used to verify the subscriber change, it shall contain a statement that the customer has read and understood the terms and conditions contained in the uniform disclosure statement. 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 electric supplier.

**Comment:**

- ARES should only be required to provide in a mailing a uniform disclosure statement for the product(s) offered in the mailing. The proposed language could be read to require ARES to provide a customer with all possible offers that the ARES might have available.

## **7. Online Marketing**

i) Each ARES that offers retail electric products for enrollment on its website shall prominently display the full description for any products offered without the consumer having to enter any personal information other than zip code and type of service being sought (residential or commercial). The ARES shall provide a detailed description of any product and service offered for sale printable in no more than a two page format and shall be available for downloading by the customer.

ii) The alternative electric supplier shall obtain, in accordance with the procedures outlined below, an authorization to change electric suppliers that confirms and includes appropriate verification data by encrypted customer input on a supplier's Internet web site.

(iii) The electric supplier shall require the following customer information in an electronic authorization form:

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

(iv) The Internet enrollment website 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 the uniform disclosure requirements section below.
- (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 an electric supplier 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) Confirmation that the customer has been enrolled with a identification number and date to allow the customer to verify the specific sales agreement to which the customer assents.
- (6) A conspicuous prompt for the customer to print or save a copy of the contract.
- (7) An option for the customer to request a hard copy of the sales contract by U.S. mail.
- (8) An e-mail address where the customer can express his or her decision to rescind the sales contract.

**Comment:**

- Any online marketing requirements for ARES should be reviewed in conjunction with the language in SB 171 Enrolled (gas consumer protection legislation). Consistent requirements should be pursued to the greatest extent possible to minimize financial and programming burdens on suppliers who intend to offer both commodities via their Internet web sites.

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

### **1. Rescission of sales contract**

Within one business day after accepting a valid electronic enrollment request from the electric supplier, the electric utility will notify the customer in writing of the scheduled enrollment and the name of the electric supplier 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 electric supplier 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.

#### **Comment:**

- SB 171 Enrolled (gas consumer protection) uses 10 business days from the date of the utility notice.

### **2. Early Termination Fee**

Any sales contract 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.

#### **Comment:**

- None at this time.

### 3. Contract expiration and renewal offers

i) The ARES shall send a notice of contract expiration separate from the bill at least 50 days prior to the date of contract expiration but no more than 90 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 on 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) 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 from the date that the contract expiration notice is sent through the end of the existing contract term

(4) The contract terms including the full description of any renewal offers available to the customer; and what affirmative action the customer needs to take by the specified date to continue to receive service from the ARES under the terms of the renewal offer;

(5) 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 ARES by the specified date will result in the customer being reverted to the utility default service for 12 months.

iii) 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). Any service renewed through the use of an automatic renewal clause shall be in effect for a maximum of 31 days and may be repeatedly used, unless the customer cancels the service. 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 permitted by this section and consistent with the original contract.

**Comment:**

- Further explanation by the ORMD would be helpful as to why no termination fee should apply from the date the contract expiration notice is sent.
- Given the proposed rule, does an ARES have to receive affirmative consent from a customer in order to provide a new fixed rate at the end of the initial term that stays fixed for greater than 31 days?
- The Automatic Renewal Act does not appear to contain a maximum limitation of 31 days. Further explanation by the ORMD would be helpful as to why such a limitation was chosen.

#### **4. Assigning customers to a different supplier**

The electric supplier must not assign the agreement to a different electric supplier 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;
- (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 a toll-free phone number for billing questions, disputes, and complaints.

**Comment:**

- No comment at this time.

### **Section III: Uniform Disclosure Requirements**

In addition to providing a copy of the sales contract, electric suppliers must disclose the following information prior to enrolling the customer, 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 supplier;
- 2) The supplier's address;
- 3) The supplier'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 basis on which they are calculated;
- 7) Any possible requirement to pay a deposit and the estimated amount of the deposit or basis on which it is calculated;
- 8) Any fees to the applicant for switching to the supplier;
- 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 calendar days by calling either the electric supplier or the utility and provide both phone numbers;
- 11) A statement that the supplier is an independent seller of electricity and that the supplier 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; and
- 14) If savings are guaranteed, or guaranteed under only certain circumstances, the electric supplier 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.

**Comment:**

- No comment at this time.

## **Section IV: Dispute Resolution/Customer Complaint Reports**

### **1. Required Supplier information**

The electric supplier shall provide Commission Staff with a copy of its bill formats (if it bills customers directly as opposed to using utility consolidated billing)~~is a billing party~~, standard customer contract and customer complaint and resolution procedures. It should also provide the name and telephone number of the company representative whom Commission employees may contact to resolve customer complaints and other matters. In any dispute

between a customer and an ARES concerning the terms of a contract, any vagueness, obscurity, or ambiguity in the contract will be construed in favor of the customer. 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.

**Comment:**

- When must these documents be first filed?

## 2. Dispute Resolution

(i) **Complaint handling.** A residential or small commercial customer has the right to make a formal or informal complaint to the Commission, and an electric supplier contract cannot impair this right. An electric supplier 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.

**Comment:**

- Why should a non-residential customer with usage greater than 15,000 kWh annually be able to file a complaint at the ICC if dissatisfied with the results of the alternative dispute resolution?

(ii) **Complaints to electric suppliers.** A customer or applicant for service may submit a complaint in person, or by letter, facsimile transmission, e-mail, or by telephone to an electric

supplier. The electric supplier shall promptly investigate and advise the complainant of the results within 14 calendar days. If the electric supplier does not respond to the customer's complaint in writing, the electric supplier shall orally inform the customer of the ability to obtain the electric supplier's response in writing upon request. A customer who is dissatisfied with the electric supplier's review shall be informed of the right to file a complaint with the Commission and the Office of Attorney General.

**(iii) Complaints to the Commission.**

**(1) Informal complaints.**

(A) If a complainant is dissatisfied with the results of an electric supplier's complaint investigation, the electric supplier shall advise the complainant of the Commission's informal complaint resolution process and the following contact information for the Illinois Commerce Commission's Consumer Services Division: Illinois (toll-free) (800) 524-0795, from out-of-state (217) 782-2024, website address: [www.icc.illinois.gov](http://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 electric supplier;
- (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 three-way call between the customer, the Consumer Services staff and the supplier. If the complaint is resolved on a three-way call, the supplier shall notify the utility of the resolution. If no resolution is reached by phone, and a dispute remains, an informal complaint may be sent to the supplier. 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 supplier. The supplier shall notify the utility of any informal complaint received and remove the disputed charges from the

customer's bill until the complaint is resolved. In the case of utility-consolidated billing and the utility purchasing the supplier's receivables, the utility shall cancel disputed supplier charges and remove those charges from the customer's bill upon notification from the supplier an informal complaint has been filed.

**Comment:**

- **If the complaint is resolved on a three-way call, and no adjustment to the bill is being made, please explain why the supplier should notify the utility of the resolution of the complaint?**
- **Does the provision to cancel disputed charges above track with any related processes envisioned by the CPWG?**

(C) All electric suppliers shall provide the Commission with an email address to receive notification of customer complaints from the Commission.

(D) The electric supplier 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 electric supplier.

(E) The Commission shall review the complaint information and the electric supplier's response and notify the complainant of the results of the Commission's investigation.

(F) While an informal complaint process is pending:

- (1) The electric supplier shall not initiate collection activities for any disputed portion of the bill.
- (2) A customer shall be obligated to pay any undisputed portion of the bill and the electric supplier may pursue collection activity for nonpayment of the undisputed portion after appropriate notice.

(G) The electric supplier 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.

## **(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 within two years of the date on which the Commission closes the informal complaint.

### **3. Disclosure of ARES' level of customer complaints**

i) All ARES are required to submit to the Commission a monthly report of all complaints received and resolved during the month. The monthly complaint report shall be provided to the Commission no later than the 15th day of the following month.

ii) The Commission shall, on a monthly basis, prepare a "consumer complaint report" to be posted on its website for public use. The report 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.

#### **Comment:**

- [Do electric utilities currently submit to the Commission the report proposed in the draft?](#)

## **Section V: Enforcement**

If the Commission Staff or other party believes that an electric supplier has repeatedly violated the requirements above, 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.

(i) 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.

(ii) 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.

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

(iv) 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.

(v) 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.

(vi) 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.

(vii) 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 electric supplier's history of previous violations.

(viii) Consequences for violating one or more of the requirements above may include one or more of the following restrictions on an electric supplier'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 electric supplier's sales contract/uniform disclosure statement or substantially demonstrated to have been included in the electric supplier's marketing materials or to customers who incurred costs as a result of the electric supplier'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 an electric supplier'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 electric supplier's failure to comply has been cured or the Commission or Commission Staff has determined that no further cure is necessary.

**Comment:**

- A mechanism available to address repeated violations of the ICC's code of conduct for ARES is worth pursuing. However, the proposal set forth above raises a number of concerns and questions. For example:
  - a. As proposed, how does the initial notification / 48 hour opportunity to cure work? Is it the intent of the ORMD that an "other party" could provide this notice and "opportunity to cure" without first informing the ICC?
  - b. What protections are afforded to suppliers from abuse of this provision by "other parties"?
  - c. A supplier has must respond within 7 days after the complaint is filed but should a supplier decide to engage in discovery to prepare its response to the complaint discovery responses aren't due until 14 days after the request is made.
  - d. As written, the emergency relief proposal appears to contemplate "directives." What sort of "directives" does the ORMD believe might be issued in an emergency relief order?