APPENDIX A TO RESA'S COMMENTS
ON STAFF'S PROPOSED RULES

TITLE 83: PUBLIC UTLITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES
PART 412 OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS
SECTION 412.10 DEFINITIONS

Section 412.10 Definitions

"Act" means the Public Utilities Act [220 ILCS 5].

"Alternative retail electric supplier" or "ARES" means an entity *that offers for sale* or *lease, or delivers or furnishes power or energy to retail customers.* (See 220 ILCS 5/16-102.)

"Commission" means the Illinois Commerce Commission.

"Complaint" means an objection made to ~~a~~an RES, by a customer or other entity, as to its charges, facilities or service, the disposal of which complaint requires investigation or analysis.

"Customer" means:

> a *single entity using electric power or energy at a single premises and that either is receiving or is eligible to receive tariffed services from an electric utility or is served by a municipal system or electric cooperative; or*
>
> *an entity* that, *on December 16, 1997, was receiving electric service from a public utility and was engaged in the practice of resale and redistribution of such electricity within a building prior to January 2, 1957, or was providing lighting services to tenants in a multi-occupancy building, but only to the extent such resale, redistribution or lighting service is authorized by the electric utility's tariffs that were on file with the Commission on December 16, 1997.* [220 ILCS 5/16-102]

"Early termination fee" means a fee or penalty for terminating a contract for electric service before the end of the contract term.

"Electric utility" means *a public utility, as defined in Section 3-105 of the Act, that has a franchise, license, permit or right to furnish or sell electricity to retail customers within a service area.* [220 ILCS 5/16-102]

"Inbound Enrollment Call" means the customer initiates a call to a RES agent in order to enroll for power or energy service. This includes calls made to the RES for another reason but where the customer is transferred to the RES agent.

~~"In-person solicitation" means any sale conducted or initiated where the RES agent is physically present with the customer.~~

"Letter of Agency" or "LOA" means the document described in Section 2EE of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE] and referenced in Section 16-115A of the Public Utilities Act.

"Pending enrollment" means a valid direct access service request that has been accepted by an electric utility, for which the meter read switch has not yet occurred.

"Rescind" means the cancellation of a contract with an RES and/or pending customer enrollment to an RES, without the incurrence of an early termination fee.

"Residential customer" means a person receiving gas, electric, water or sanitary sewer utility service for household purposes furnished to a dwelling of one or two units that is billed under a residential rate.

"Retail electric supplier" or "RES" includes both alternative retail electric suppliers and electric utilities serving or seeking to serve retail customers outside their service areas or providing competitive non-tariffed service (see Section 16-116 of the Act).

"Renewable energy resources" means resources as defined in Section 1-10 of the Illinois Power Agency Act.

"RES agent" means any employee, agent, independent contractor, consultant or other person who is engaged by the RES to solicit customers to purchase, enroll in or contract for power and energy service on behalf of an RES.

"Send" or "Sent", when used in this Part to describe the action to be taken by a Retail Electric Supplier of sending a document to a residential customer or small commercial retail customer may include, if agreed to by the receiving customer, transmission of the document to the customer via electronic delivery (e.g., fax or e-mail).

"Small commercial retail customer" means a nonresidential customer of an electric utility consuming 15,000 kilowatt-hours or less of electricity annually in its service area. A ~~n~~ RES may remove the customer from designation as a "small commercial retail 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 is a small commercial retail customer, usage by the same commercial customer shall be aggregated to include usage at the same premises even if measured by more than one meter and to include usage at multiple premises. Nothing in this Part creates an affirmative obligation on an electric utility to monitor or inform customers or RES as to a customer's status as a small retail commercial customer as defined by this definition. Nothing in this Part relieves an electric utility from any obligation to provide information upon request to a customer, a ~~n~~ RES, the Commission or others necessary to determine whether a customer meets the classification of small commercial retail customer.

Comment [A1]: As further described in RESA's Verified Initial Comments, until an appropriate definition is determined for "in-person solicitation" this definition should be deleted.

"Third party verification" or "TPV" means the process described in Section 2EE(b) of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE(b)] and required to be used to verify that the customer wants to make a change in electric supplier. The TPV shall not be described as having any other purpose.

"Time of use rates" mean supply rates that change in a predictable manner and that vary by a combination of hourly, peak, or seasonal time periods.

~~"Variable rate" means that the contract between the RES and the residential customer does not specify a charge for power and energy service that is fixed for six monthly billing periods or longer and the charge for power and energy service does not change more than once a month.~~ "Variable price product" means a retail product for which prices may vary according to a method determined by the RES; however, it does not include any product that is fixed for three months or longer.

"Written" or "Writing" means either a hard copy or electronic copy, unless it is specifically stated a hard copy must be placed in the U.S. Mail or delivered by other means. Where this Part requires information to be "written" or in "writing", an electronic record satisfies that requirement, so long as both RES and customer have agreed to electronic communication.

TITLE 83: PUBLIC UTLITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES
PART 412 OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS
SECTION 412.30 CONSTRUCTION OF THIS PART

[Staff Note – The January 1, 2013 date is dependent upon the effective date of the revised rule. Thus, which the date will be amended, it is not known what the amended date will be.]

Section 412.30 Construction of this Part

In the event of any conflict between this Part and the requirements provided in electric utility tariffs on file with the Commission as of January 1, 2013, this Part shall control. Electric utility tariffs approved after January 1, 2013 shall comply with this Part.

TITLE 83: PUBLIC UTLITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES
PART 412 OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS
SECTION 412.110 MINIMUM CONTRACT TERMS AND CONDITIONS

Section 412.110 Minimum Contract Terms and Conditions

~~The sales contract must disclose the following information to the customer, regardless of the form of marketing used. The sales contract must use 10 point font or larger, and, if it is a separate document, it must not exceed two pages in length. The sales contract shall include~~ Any contract between a RES and a residential or small commercial customer shall disclose the following information to the customer~~. The sales contract shall start with the following information in the order presented in this section, printed in 12 point type or larger. Any additional contract language shall be~~ printed in 10 point type or larger:

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

b) The RES' business address;

c) ~~The RES' toll-free telephone number for billing questions, disputes and complaints, as well as the Commission's toll-free phone number for complaints~~ The charges for service for the length of the contract and, if any charges are variable during the term of the contract, an explanation of how the variable charges are determined;

d) ~~The charges for the service for the length of the contract and, if any charges are variable during the term of the contract, an explanation of how the variable charges are determined~~ For any product that includes a fixed monthly charge that does not change with the customer's usage, and the fixed monthly charge does not include delivery service charges, the RES must provide an estimated price per kWh hour for the power and energy service using sample monthly usage levels of 500, 1,000 and 1,500 kilowatt-hours;

e) ~~The length of the contract, including any possible automatic renewal clause~~ If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, the RES must provide a statement to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore, the fixed monthly charge is not the total monthly amount for electric service;

Comment [A2]: For the reasons stated in RESA's Verified Initial Comments, the Commission's rules should not prescribe the order in which contractual provisions are displayed.

f) ~~The presence or absence of early termination fees or penalties, applicable amounts or the formula pursuant to which they are calculated~~ The length or term of the contract, including any applicable renewal clause disclosed in a manner consistent with this Code Part;

g) ~~Any requirement to pay a deposit for power and energy service, 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~~ Whether an early termination fee or penalty will be imposed for termination of the contract by the customer prior to the expiration of its term, and the manner in which that fee will be calculated;

h) ~~Any fees assessed by the RES to a customer for switching to the RES~~ Whether and under what circumstances a deposit or prepayment will be required, along with a disclosure of the manner in which the deposit or prepayment will be calculated, and the circumstances in which the deposit or prepayment will be refunded;

i) ~~The name of the power and energy service for which the customer is being solicited~~ Any fees assessed by the RES to a customer for switching to the RES;

j) ~~A statement that the customer may rescind the contract, by contacting the RES, before the RES submits the enrollment request to the electric utility~~ If a RES represents that a customer will realize savings under any conditions or circumstances, the RES shall provide a written statement, in plain language, describing the conditions or circumstances that must occur in order for the savings to be realized. The statement shall disclose the entity or entities and price(s) to which the RES is comparing its own offer for purposes of assessing or calculating savings;

k) A statement that the customer may rescind the contract and the pending enrollment, within 10 calendar days after the electric utility processes the enrollment request, by contacting the RES, unless the contract provides for a period greater than 10 calendar days for the customer to rescind, in which case the length of that greater period shall be disclosed. Residential customers may rescind the contract and the pending enrollment by contacting either the RES or the electric utility. The statement shall provide both toll-free phone numbers;

l) A statement that the RES is an independent seller of power and energy service certified by the Illinois Commerce Commission and that the agent is not representing or acting on behalf of the electric utility, governmental bodies (unless the RES has entered into a contractual arrangement with the governmental body and has been authorized by the governmental body to make the statements) or consumer groups;

m) A statement that the electric utility remains responsible for the delivery of power and energy to the customer's premises and will continue to respond to any service calls and emergencies and ~~that switching to an RES will not impact the customer's electric service reliability~~ that the customer will receive written notification from the electric utility confirming a switch of the customer's power and energy supplier; and

n) ~~A statement that the customer will receive written notification from the electric utility confirming a switch of the customer's power and energy supplier;~~ The toll-free telephone numbers for the RES, the electric utility, and the Commission's Consumer Services Division.

~~o) If savings are guaranteed under certain circumstances, the RES must provide a written statement, in plain language, describing the conditions that must be present in order for the savings to occur. In the case of telemarketing and in-bound enrollment calls, the statement shall be provided in accordance with Sections 412.130(e) and 412.140(e); and~~

~~p) A price per kilowatt hour (kWh) for the power and energy service. If a product is being offered at a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, the RES must provide a statement to the customer that the fixed monthly charge is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore, the fixed monthly charge is not the total monthly amount for electric service. For any product that includes a fixed monthly charge that does not change with the customer's usage and the fixed monthly charge does not include delivery service charges, the RES must provide an estimated price per kWh for the power and energy service using sample monthly usage levels of 500, 1000 and 1,500 kWh.~~

TITLE 83: PUBLIC UTLITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES
PART 412 OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS
SECTION 412.115 UNIFORM DISCLOSURE STATEMENT

Section 412.115 Uniform Disclosure Statement

a) All RES offers for residential and small commercial customers require a ~~one-page~~ Uniform Disclosure Statement ("UDS") ~~using~~ based on the form appended to this Part as Appendix A. All text in the UDS shall be printed in a ~~12~~10-point type or larger. The UDS may include a logo of the RES~~ but the UDS shall not contain any items other than the ones found in Appendix A or described in this section~~.

b) The disclosures in the UDS shall ~~conform with Appendix A and~~ include, at a minimum, the following, to the extent they are applicable~~, in the order shown below~~:

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

2) Address: The RES' business address or internet address, or both;

3) Phone: The RES' toll-free telephone number and hours of availability;

4) Price (in cents/kWh) and the number of months this price stays in effect: The price in cents per kilowatt hour and the number of months the price stays in effect. If the price is a fixed monthly charge that does not change with the customer's usage, the fixed monthly charge shall be shown in dollar amounts instead. If the price is a custom price, the UDS shall include the word "custom" and the RES shall replace "custom" with the price offered to a particular customer once the RES has determined the custom price for the customer. If the price is tied to a publicly available index or benchmark, the UDS should state the index or benchmark and include the phrase "refer to contract." If the price is a price that varies more than once a month, the UDS should include the phrase "time of use; refer to contract";

5) Other monthly charges: If the price includes a fixed monthly charge that does not change with the customer's usage, such charge shall be disclosed in dollar amounts;

Comment [A3]: It would be difficult to fit all of Staff's proposed disclosures on one page using 12-point font. Moreover, for the reasons described in RESA's Verified Initial Comments, RESs should be able to add additional information to the UDS.

6) Total price with other monthly charges: If the price includes a fixed monthly charge that does not change with the customer's usage, the UDS shall display the total price in cents per kilowatt hour at sample usage levels of 500, 1,000, and 1,500 kilowatt hours;

7) Length of the contract: The length of the contract in months;

8) Price after the initial price: If the price after the initial price is a fixed price, the UDS shall state such fixed price in cents per kilowatt hours and the number of months such fixed price will stay fixed. If the price after the initial price is a fixed price that includes a fixed monthly charge that does not change with the customer's usage, the UDS shall display the total price in cents per kilowatt hour at sample usage levels of 500, 1,000, and 1,500 kilowatt hours. If the price after the initial price is a variable rate, the UDS shall include the following: "Variable. The variable rate may go up or down from one month to the next and the rate may be higher or lower than the electric utility's rate during any given month." If the price after the initial price is a variable rate, yet one or both of the statements in the preceding sentence do not apply, the UDS shall include the following: "Variable. Refer to contract";

9) Early termination fee: The UDS shall disclose the amount of the early termination fee or penalty, if any. If the early termination fee or penalty is not a set amount, the UDS shall disclose the manner in which the fee or penalty will be calculated;

10) Contract renewal: The UDS shall disclose whether and how the contract renews with or without affirmative action by the customer;

11) Rescission: The UDS shall include the following: "You have a right to rescind (stop) your enrollment within 10 calendar days after your utility has received your order to switch suppliers. You may call us at [insert toll-free number] or your utility at [insert toll free number] to accomplish this." If the contract provides for a period greater than 10 calendar days, the length of that greater period shall be disclosed;

12) Cancellation: The UDS shall include the following: "If your contract contains an early termination fee, you ~~You~~ also have the right to terminate the contract without any termination fee ~~or penalty~~ if you contact us at [insert toll-free number] within 10 business days after the date of your first bill with charges from [insert RES name]." If the contract provides for a period greater than 10 business days, the length of that greater period shall be disclosed;

Comment [A4]: The revised language is consistent with Section 412.230

13) The UDS shall include the following: “This is a sales solicitation and the seller is [insert RES name], an independent retail electric supplier. If you enter into a contract with the seller, you will be changing your retail electric supplier. The seller does not represent, or act on behalf of, your electric utility, a governmental body, or a consumer group”;

14) The UDS shall include the following: “If you have any concerns or questions about this sales solicitation, you may contact the Illinois Commerce Commission’s Consumer Services Division at 800-524-0795. For information about the electric supply price of your electric utility and offers from other retail electric suppliers, please visit PlugInIllinois.org”;

15) The UDS shall be dated~~state the date the customer was solicited~~; and

16) The UDS shall include an agent ID when the UDS is used for door-to-door ~~in-person~~ solicitations.

Comment [A5]: : The term “solicited” is not clear.

TITLE 83: PUBLIC UTLITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES
PART 412 OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS
SECTION 412.120 DOOR-TO-DOOR IN-PERSON SOLICITATION

Section 412.120 ~~Door-to-Door In-Person~~ Door-to-Door Solicitation

a) An RES agent shall state that he or she represents an independent seller of power and energy service certified by the Illinois Commerce Commission. An RES agent shall not state or otherwise imply that he or she is employed by, representing, endorsed by or acting on behalf of the electric utility or electric utility program, a governmental body or program (unless the RES has entered into a contractual arrangement with the governmental body and has been authorized by the governmental body to make the statements), or a consumer group or program.

b) If any sales solicitation, agreement, contract or verification is translated into another language and provided to a customer, all of the documents must be provided to the customer in that other language.

c) ~~RES agents who engage in in-person solicitations for the purpose of selling power and energy service offered by the RES must wear identification visible on an outer garment clearly disclosing that the sales agent is not affiliated with the utility.~~ RES agents who engage in door-to-door solicitation for the purpose of selling power and energy service offered by the RES shall display identification. This identification shall be visible at all times and prominently display the following:

1) The RES agent's full name in reasonable size font;

2) A photograph of the RES agent; and

3) The trade name and logo of the RES the agent is representing. The RES agent shall not wear or display any logotype, badge or identification stating or implying that the RES agent is a representative of the customer's utility. If the agent is selling power and energy services from multiple RES to the customer, the identification shall display the trade name and logo of the agent, broker or consultant entity as that entity is defined in Section 16-115C of the Act.

Comment [A6]: For the reasons stated in RESA's Verified Initial Comments, this section should remain "Door-to-Door Solicitation". Other types of face to face solicitations should be covered, if at all, in a separate section or sections, having requirements appropriate for that particular marketing channel.

Comment [A7]: This sentence should be deleted as "overkill". There is already a requirement that the RES agent have identification which includes the name and logo of his or her RES and a prohibition against wearing any item or logo of the utility.

d) ~~If the solicitation takes place at premises owned or occupied by a customer, the The RES agent shall promptly leave the premises at the customer's, owner's or occupant's request.~~

e) The RES agent shall ~~ensure that~~, during the sales presentation to the customer, ~~items (d) through (p) of the uniform disclosure statement (Section 412.110(d) through (p)) are verbally disclosed~~ verbally make all disclosures required in subsections (a) and (c) through (m) of Section 412.110 to the customer. An RES agent may disclose the items in any order ~~as long as~~ provided that all applicable items are explained to the customer during the sales presentation.

f) ~~The RES agent shall require the customer to initial the RES agent's copy of the uniform disclosure statement.~~ A copy of the uniform disclosure statement ~~is to~~ shall be left with the customer at the conclusion of the visit. ~~The minimum list of items to be included in the uniform disclosure statement is contained in Section 412.110.~~

g) ~~In person~~Door-to-door solicitations that lead to an enrollment require a Letter of Agency and a third-party verification. The ~~If a customer's enrollment is authorized by third party verification during door-to-door solicitation, the~~ third party verification shall ~~require the customer to verbally acknowledge~~ obtain the customer's acknowledgment that he or she understands the ~~applicable items in items (d) through (p) of the uniform disclosure statement~~. disclosures required by subsections (c) and (e) through (m) of Section 412.110. Each disclosure must be made individually with a sufficient pause between each to obtain clear acknowledgment of each disclosure. The RES agent must be in a location physically separate from the customer while the TPV is conducted and shall not approach the customer after the TPV for a period of 24 hours.

h) ~~When it is apparent that a customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the agent in English or when the customer or another person informs the agent of this circumstance, the RES agent shall find another representative fluent in the customer's language, use an interpreter, 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 must be completed~~ Unless the RES agent has received permission from the appropriate party, the~~The~~ RES agent shall not conduct in-person sales solicitations at any building or premises where any sign, notice or declaration of any description whatever is posted which prohibits sales, marketing or solicitations on or at such building or premises.

Comment [A8]: This subsection is not necessary if the section is limited to door-to-door solicitations.

i) ~~Upon a customer's request, the RES shall refrain from any further marketing to that customer~~ The RES agent shall obtain consent to enter multi-unit buildings. Consent obtained to enter a multi-unit building from one prospective customer or occupant within the building shall not constitute consent to market to any other prospective customers within a multi-unit building.

j) When it is apparent that a customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the agent in English or when the customer or another person informs the agent of this circumstance, the RES agent shall find another representative fluent in the customer's language, use an interpreter, 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 must be completed.

k) Upon a customer's request, the RES shall refrain from any further marketing to that customer. The RES shall maintain a record of the customer's request and shall provide notification of the customer's request to all of its agents. The RES shall retain the record of the request for a minimum of two years.

TITLE 83: PUBLIC UTLITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES
PART 412 OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS
SECTION 412.130 TELEMARKETING

Section 412.130 Telemarketing

a) In addition to complying with the Telephone Solicitations Act [815 ILCS 413], an RES agent who contacts customers by telephone for the purpose of selling power and energy service shall provide the agent's name and, on request, the identification number if the RES has assigned one to the agent. The RES agent shall state that he or she represents an independent seller of power and energy service, certified by the Illinois Commerce Commission. An RES agent shall not state or otherwise imply that he or she is employed by, representing, endorsed by or acting on behalf of the electric utility or an electric utility program, a governmental body or program (unless the RES has entered into a contractual arrangement with the governmental body and has been authorized by the governmental body to make the statements), or a consumer group or program.

b) When it is apparent that a customer's English language skills are insufficient to allow the customer to understand a telephone solicitation in English, and the customer or another person informs the agent of this circumstance, the agent must transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call.

c) An RES agent shall ~~ensure that~~, during the sales presentation to the customer, ~~items (d) through (p) of the uniform disclosure statement (Section 412.110(d) through (p)) are~~ verbally make all disclosures required by subsections (a) and (c) through (m) of Section 412.110 to the customer. An RES agent may disclose the items in any order so long as all applicable items are explained to the customer during the sales presentation.

d) ~~If an RES agent engages in telemarketing and third party verification is used to authorize a customer's enrollment, the third party verification must require the customer to verbally acknowledge that he or she understands items (d) through (p) of the uniform disclosure statement in Section 412.110~~ Any telemarketing solicitation that leads to an enrollment must be recorded and retained for a minimum of ~~two~~ one year~~s. or for the entire period the customer takes service with the RES, whichever is longer. Telemarketing that does not lead to a completed enrollment must be recorded and retained for a minimum of six months~~. A ~~statistically significant~~reasonable number of such recordings, as determined by the RES, shall be reviewed by the RES to ensure compliance with

Comment [A9]: There is no valid reason why a RES should have to retain such recordings beyond two years.

Comment [A10]: There is no valid reason why a RES should have to retain recordings of unsuccessful sales calls.

all applicable rules and regulations. The recordings and written information on the compliance reviews shall be provided to Commission Staff ~~upon request~~when there is a reasonable need for such recordings and information.

e) For telemarketing that leads to a completed enrollment, a third party verification must be used to authorize a customer's enrollment. The third party verification must require the customer to verbally acknowledge that he or she understands the disclosures required by subsections (c) through (m) of Section 412.110. Each disclosure must be made individually with a sufficient pause between each disclosure to obtain clear acknowledgment of each disclosure. A RES agent initiating a 3-way conference call or a call through an automated verification system shall drop off the call and shall not participate in or continue to overhear the call once the 3-way connection has been established.

f) The uniform disclosure statement and contract ~~must~~ shall be sent to the customer within three business days after the electric utility's confirmation to the RES of an accepted enrollment.

g) Upon a customer's request, the RES shall refrain from any further marketing to that customer. The RES shall maintain a record of the customer's request and shall provide notification of the customer's request to all of its agents. The RES shall retain the record of the request for a minimum of two years.

TITLE 83: PUBLIC UTLITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES
PART 412 OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS
SECTION 412.140 INBOUND ENROLLMENT CALLS

Section 412.140 Inbound Enrollment Calls

~~If a customer initiates a call to an RES agent in order to enroll for service, the agent must:~~

a) ~~Follow~~The RES agent shall fully comply with the requirements in Section 2EE of the Consumer Fraud and Deceptive Business Practices Act;

b) The RES agent shall ~~V~~verbally ~~disclose to the customer~~ make the disclosures required by subsections (a) and (c) through (m) ~~items (d) through (p) of the uniform disclosure statement~~ (Section 412.110~~(d) through (p)~~) to the customer. A~~n~~ RES agent may disclose the items in any order so long as all applicable items are explained to the customer during the sales presentation; and

c) All inbound enrollment calls that lead to an enrollment shall be recorded, and the recordings shall be retained for a minimum of ~~two years or the length of the customer's service with the RES, whichever is longer~~one year. A ~~statistically significant~~reasonable number of such recordings, as determined by the RES, shall be reviewed by the RES to ensure compliance with all applicable rules and regulations. The recordings and written information on the compliance reviews shall be provided to Commission Staff ~~upon request~~when there is a reasonable need for such recordings and information.

Comment [A11]: A one-year retention period is sufficient. Moreover, it is consistent with the Commission's retention rules with respect to applications for electric service. (83 Ill. Admin Code 420 (Appendix A-Section 35)

d) ~~A third party verification must be used to authorize a customer's enrollment. The third party verification must require the customer to verbally acknowledge that he or she understands the disclosures required by subsections (a) and (c) through (m) of Section 412.110. Each item must be disclosed individually with a sufficient pause between each disclosure to obtain clear acknowledgment of each disclosure.~~ A RES agent initiating a 3-way conference call or a call through an automated verification system shall drop off the call and not participate in or continue to overhear the call once the 3-way connection has been established.

Comment [A12]: For the reasons set forth in RESA's Verified Initial Comments, the Commission should not add redundant requirements to those set forth in the Consumer Fraud and Deceptive Business Practices Act.

~~c~~e) The RES shall ~~S~~send the uniform disclosure statement and contract to the customer within three business days after the electric utility's confirmation to the RES of an accepted enrollment.

TITLE 83: PUBLIC UTLITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES
PART 412 OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS
SECTION 412.150 DIRECT MAIL

Section 412.150 Direct Mail

a) RES agents contacting customers for enrollment for power and energy service by direct mail shall include items (a) and (c) through (m) of Section 412.110 ~~the items of the uniform disclosure statement (Section 412.110)~~ for the service being solicited. Direct mail material shall not make any statements of representation of, endorsement by or acting on behalf of the electric utility or electric utility program, any governmental body or program (unless the RES has entered into a contractual arrangement with the governmental body and has been authorized by the governmental body to make the statements) or any consumer group or program. Direct mail shall not utilize the ~~name or~~ logo of the customer's utility in any manner.

Comment [A13]: You have to be able to identify the electric utility; e.g. ComEd will still be responsible for lines, etc. etc.?

b) If the direct mail solicitation includes a written Letter of Agency, the direct mail solicitation shall include the UDS according to Section 412.115 of this Part. If a written Letter of Agency is being used to authorize a customer's enrollment, it shall comply with Section 2EE of the Consumer Fraud and Deceptive Business Practices Act and shall contain a statement that the customer has read and understood ~~the items~~ each of the disclosures required by subsections (a), (c) and (e) through (m) of ~~contained in the uniform disclosure statement in~~ Section 412.110.

c) If the direct mail solicitation ~~allows~~ requires the customer to enroll via telephone or online, Section 412.140 or Section 412.160 shall apply, ~~in addition to this Section 412.150.~~ respectively.

~~e~~d) A copy of the contract must be sent to the customer within three business days after the electric utility's confirmation to the RES of an accepted enrollment.

TITLE 83: PUBLIC UTLITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES
PART 412 OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS
SECTION 412.160 ONLINE MARKETING

Section 412.160 Online Marketing

a) Each RES offering power and energy service to customers online shall ~~display~~clearly and conspicuously make all disclosures required by subsections ~~the items~~ (a) and (c) through (m) of ~~the uniform disclosure statement~~ ~~(~~Section 412.110~~)~~ for any services offered through online enrollment before requiring the customer to enter any personal information other than zip code, electric utility service territory, and/or type of service sought. The RES internet and electronic material shall not make any statements ~~of~~ to the effect that it is a representative~~on~~ of, is endorse~~d~~ment by or is acting on behalf of the electric utility, or any electric utility program, any governmental body or program (unless the RES has entered into a contractual arrangement with the governmental body and has been authorized by the governmental body to make the statements) or any consumer group or program. Online marketing shall not utilize the ~~name or~~ logo of the customer's utility in any manner.

Comment [A14]: Again, you have to be able to identify the electric utility to meet other requirements of the rules.

b) The ~~document containing the items of the~~ uniform disclosure statement must be printable in a PDF format ~~not to exceed two pages in length~~ and shall be available electronically to the customer.

c) The RES shall obtain, in accordance with 83 Ill. Adm. Code 453 and Section 2EE(b) of the Consumer Fraud and Deceptive Business Practices Act, an authorization to change RES that confirms and includes appropriate verification data by encrypted customer input on the RES website.

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

1) All ~~items~~ disclosures required by subsections (c) through (m) of~~within the uniform disclosure statement~~ ~~(~~Section 412.110~~)~~;

2) A statement that electronic acceptance of the terms is an agreement to initiate service and begin enrollment;

3) A statement that the customer should review the contract and/or contact the current supplier to learn if any early termination fees are applicable; and

4) An e-mail address and toll-free phone number of the RES where the customer can express a decision to rescind the contract.

TITLE 83: PUBLIC UTLITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES
PART 412 OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS
SECTION 412.170 RATE NOTICE TO CUSTOMERS

Section 412.170 Rate Notice to Customers

a) ~~At least 30 days~~ At a reasonable time prior to the start of a calendar month, as determined by the RES, each RES shall publish on its website the variable rate(s) for its residential customers applicable for the calendar month in question. In addition, each RES must provide such rate information by telephone to its variable rate customers who request it. The customer's contract shall contain the website address and toll-free phone number for the customer to obtain variable rate information in accordance with this section.

~~b) If the RES uses the utility's single bill pursuant to Section 16-118(d) of the Act to bill its residential variable rate customers, the RES shall use the allotted space on the bill to disclose the customer's variable rate that is in effect at the time the bill is received by the customer. Where there is insufficient available allotted space on the bill for the RES to make such disclosures each month, the RES shall ensure that no residential variable rate customer receives consecutive monthly bills which fail to disclose upcoming variable rates in the bill's message section. If the RES bills its residential variable rate customers directly, the RES shall ensure that those customers' bills always contain the variable rate information described in this section. If the electric utility's implementation of Section 16-118(d) prevents a RES from complying with this section, the RES shall be required to include a bill message that contains the toll-free phone number and/or website address where the variable rate information can be obtained by the customer.~~

~~c) In addition to the information required by Section 412.170(b), the residential variable rate customers' bills shall express the percentage change, if any, of the variable rate from one monthly billing period to the next. If the electric utility's implementation of Section 16-118(d) prevents a RES from complying with this section, the RES shall be required to include a bill message that contains the toll-free phone number and/or website address where this information can be obtained by the customer.~~

~~d) If a residential variable rate customer's rate increase by more than 30% from one monthly billing period to the next, the RES shall send a separate written notice to such customer, informing the customer of the upcoming rate change.~~

Comment [A15]: For the reasons stated in RESA's Verified Initial Comments, 30 days is not reasonable for all RESs. Each RES should be able to determine how much notice it is able to give to customers.

Comment [A16]: RESs are allotted very little space on utility bills. Requiring them to devote much of that space to variable rate disclosures is inappropriate.

e)b) Subsections (a) ~~through~~ and (~~d~~b) shall not apply to contracts which determine the variable rate, or a component of the variable rate, on a publicly available index or benchmark.

~~f) If a contract includes a provision that results in a residential customer's rate plan changing from a fixed rate to a variable rate during the contract, the RES shall send a separate written notice of the upcoming change to a variable rate at least 30 days but no more than 60 days prior to the switch to a variable rate. The separate written notice shall include:~~

~~1) A statement printed or visible from the outside of the envelope or in the subject line of the e-mail (if customer has agreed to receive official documents by e-mail) that states "Upcoming Switch to a Variable Rate";~~

~~2) The bill cycle in which the change to a variable rate will begin; and~~

~~3) A statement in bold lettering, in at least 12 point type, that the rate will change to a variable rate unless the customer takes a certain action, including the information as to how to take the certain action.~~

~~g) A RES that currently enrolls residential customers on a variable rate and has served at least 200 residential variable rate customers for three consecutive months in any electric utility's service area, must publish on the Commission's PlugInIllinois.org website the monthly variable rate for such customers for the most recent 12-month period, or the period for which the RES had at least 200 residential variable rate customers, whichever is shorter. The RES must publish the most recent monthly residential variable rate, expressed in cents per kWh, within 30 calendar days of the end of the most recent calendar month. When determining the monthly variable rate, the RES shall exclude customers who subscribe to a service offering that exceeds the renewable energy requirements of the renewable portfolio standards applicable to RES under Section 16-115D of the Act. Where a RES has more than one residential variable rate per electric utility service area in any given month, the monthly average rate must be weighted by either number of residential customers subject to each variable rate or residential usage subject to each variable rate.~~

~~h) A RES which has advertised a residential offer within a particular electric utility's service area within the last 30 days, must publish on the Commission's PlugInIllinois.org website at least one residential offer for such electric utility's service area. The RES shall not publish more than three residential offers per electric utility service area at any point in time.~~

Comment [A17]: The requirement of written notices would be very expensive with little or no benefit to customers. Also, it is not clear what action the RES is supposed to advise the customer to take to avoid a change to a variable rate to which the customer has agreed.

Comment [A18]: In addition to the general problem that Staff's proposed requirements relating to variable rates are onerous, this provision is particularly inappropriate in that it may require the disclosure of proprietary information.

Comment [A19]: RESA does not agree with a requirement that a RES post any offers on the Commission's website. This decision, as well as any decision as to how many offers a RES wants to post, should be left to the discretion of the RES.

TITLE 83: PUBLIC UTLITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES
PART 412 OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS
SECTION 412.170~~0~~5 TRAINING OF RES AGENTS

Section 412.170~~0~~5 Training of RES Agents

a) A RES agent shall be knowledgeable of the requirements applicable to the marketing and sale of power and energy service to the customer class that he or she is targeting. In addition to this Part, requirements pertaining to the marketing and sales of power and energy service may be found in other rules, the Act and the Consumer Fraud and Deceptive Business Practices Act.

b) All RES agents should be familiar with power and energy services that they sell, including the rates, payment and billing options, the customers' right to cancel, and applicable termination fees, if any. In addition, the RES 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) RES agents shall not utilize false, misleading, materially inaccurate or otherwise deceptive language or materials in soliciting or providing services.

TITLE 83: PUBLIC UTLITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES
PART 412 OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS
SECTION 412.180 RECORDS RETETION AND AVAILABILITY

Section 412.180 Records Retention and Availability

a) Except as otherwise provided herein, RES must retain, for a minimum of two years or for the length of the contract, whichever is longer, verifiable proof of authorization to change suppliers for each customer. Upon request by the Commission or Commission Staff, the RES shall provide authorization records within seven business days.

b) Throughout the duration of the contract, and for two years thereafter, the RES shall retain the customer's contract. Upon the customer's request, the RES shall provide the customer a copy of the contract via e-mail, U.S. mail or facsimile within seven business days. The RES shall not charge a fee for the copies if a customer requests fewer than three copies in a 12-month period.

TITLE 83: PUBLIC UTLITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES
PART 412 OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS
SECTION 412.190 RENEWABLE ENERGY PRODUCT DESCRIPTIONS

Section 412.190 Renewable Energy Product Descriptions

a) ~~Only~~ No RES shall state or imply in any marketing or promotional material that any power ~~and~~ or energy service marketed or sold by it is "green", "renewable" or "environmentally friendly" or any term or descriptor of like or similar import which conveys that such power or energy service has a reduced impact on the environment ~~that includes~~ unless such power ~~and~~ or energy is purchased ~~entirely separate and apart from~~ in addition to, and over and above, power, renewable energy credits or alternative compliance payments purchased or made to satisfy the renewable portfolio standard requirements applicable to RES under Section 16-115D of the Act ~~can be marketed as "green", "renewable energy" or "environmentally friendly."~~

~~b) A RES marketing "green", "renewable", "environmentally friendly" offers, or other offers of any description whatever which convey the impression that such power or energy service has a reduced impact on the environment shall clearly and conspicuously disclose on all materials used in the marketing of such offers the percentage of renewable energy resources used in supplying power or energy to customers pursuant to each offer.~~

~~c) A RES marketing "green", "renewable", or "environmentally friendly" offers, or other offers of any description whatever which convey the impression that such power or energy service has a reduced impact on the environment shall clearly and conspicuously disclose on such marketing materials the percentage of renewable energy resources generated in the State of Illinois used in supplying power or energy to customers pursuant to each offer.~~

~~d) The disclosures required in subsections (b) through (d) shall apply to offers posted by a RES on the Commission's PlugInIllinois.org website.~~

~~e) A RES marketing "green", "renewable", or "environmentally friendly" offers shall disclose, on its website, the generation sources and the location of such generation sources applicable to each offer. If a particular offer contains a mix of renewable energy resources, the RES shall specify the renewable energy resource that makes up the greatest percentage of the portfolio for that offer.~~

Comment [A20]: For the reasons explained in RESA's Verified Initial Comments, Staff's proposed disclosure requirements are not consistent with the manner in which RESs make offers regarding green products and the manner in which RESs secure renewable energy resources to provide supply to customers taking such offers.

TITLE 83: PUBLIC UTLITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES
PART 412 OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS
SECTION 412.210 RESCISSION OF SALES CONTRACT

Section 412.210 Rescission of Sales Contract

a) The customer has the ability to rescind the contract with the RES before the RES submits the enrollment request to the electric utility. Within one business day after processing a valid electronic enrollment request from the RES, the electric utility shall notify the customer in writing of the scheduled enrollment and provide the name of the RES that will be providing power and energy service. The written enrollment notice from the electric utility shall state the last day to make a request rescinding the enrollment and provide contact information for the RES.

b) A residential customer wishing to rescind the pending enrollment with the RES will not incur any early termination fees if the customer contacts either the electric utility or the RES within 10 calendar days after the electric utility processes the enrollment request.

c) A small commercial retail customer wishing to rescind the pending enrollment with the RES will not incur any early termination fees if the customer contacts the RES within 10 calendar days after the electric utility processes the enrollment request, unless the contract provides for a longer period during which the customer may rescind.

d) If the 10th calendar day falls on a non-business day, the rescission period will be extended through the next business day.

e) In the event the residential customer provides notice of rescission to the electric utility, the electric utility shall notify the RES.

TITLE 83: PUBLIC UTLITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES
PART 412 OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS
SECTION 412.220 DEPOSITS

Section 412.220 Deposits

Any other provision of this Part 412 notwithstanding, an ~~An~~ 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.

TITLE 83: PUBLIC UTLITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER c: ELECTRIC UTILITIES
PART 412 OBLIGATIONS OF RETAIL ELECTRIC SUPPLIERS
SECTION 412.230 EARLY TERMINATION OF SALES CONTRACT

Section 412.230 Early Termination of Sales Contract

Any contract between an 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. *Any early termination fee or penalty shall not exceed $50 for residential customers and $150 for small commercial retail customers. The caps shall not apply to charges or fees for devices, equipment, or other services provided by the utility or alternative retail electric supplier.* Any contract containing an early termination fee shall provide the customer the opportunity to contact the RES to terminate the contract 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. A customer relying on this provision to avoid an early termination fee shall be precluded from relying upon this provision for 12 months following the date the customer terminated his or her sales contract. The contract shall disclose the opportunity and provide a toll-free phone number that the customer may call in order to terminate the contract. This requirement does not relieve the customer of obligations to pay for services rendered under the contract until service is terminated.