STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	)	
On its Own Motion	)	Docket No. 15-0512
	)	
Amendment of 83 Ill. Adm. Code 412 and	)	
83 Ill. Adm. Code 453	)	

BRIEF ON EXCEPTIONS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association ("RESA")[1], by and through its attorney, Gerard T. Fox, pursuant to 83 Ill. Admin. Code Section 200.830 and the Administrative Law Judges' ("ALJ") Ruling, hereby submits its Brief on Exceptions to the ALJs' Proposed Order ("ALJPO") in the above-captioned proceeding, the Illinois Commerce Commission's ("Commission") rule making proceeding to consider amendments to 83 Ill. Adm. Code Parts 412, Obligations of Retail Electric Suppliers, and 453, Internet Enrollment Rules. Attachment A to this Brief on Exceptions sets forth RESA's proposed revisions to the ALJPO. Attachment B to this Brief on Exceptions contains RESA's proposed revisions to the ALJPO's Proposed First Notice Rules (Appendix A to the ALJPO).

I. INTRODUCTION

[1] The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

On September 10, 2015, the Commission entered its initiating order in this proceeding. That initiating order references a Staff Report regarding a previously conducted Notice of Inquiry ("NOI") proceeding, Docket 14-NOI-01, concerning retail electric market issues. RESA participated fully in Docket 14-NOI-01, including participating in workshops and filing four sets of comments.

On October 9, 2015, Staff filed its Proposed Rules for Parts 412 and 453. Pursuant to the procedural schedule established by the ALJs, RESA has submitted Verified Initial Comments, Verified Reply Comments, and Verified Sur-Reply Comments in this proceeding.

In general, the ALJPO's First Notice Proposed Rules are an improvement on Staff's latest version of Staff's Proposed Rules, attached to Staff's Sur-Reply Comments, which themselves were an improvement over the draft filed by Staff on October 9, 2015. The ALJPO, for the most part, reasonably disposes of most of the many contested issues raised in this rule making proceeding. At this stage of this proceeding, RESA will limit itself to nine exceptions to the ALJPO—the nine exceptions that RESA believes are most important and, if implemented, will result in proposed rules that are a reasonable balance of the interests of Retail Electric Suppliers ("RES") and their customers.

As stated previously, Attachment A to this Brief on Exceptions sets forth RESA's proposed exceptions to the ALJPO, in legislative fashion. Attachment B to this Brief on Exceptions contains RESA's proposed revisions, in red-lined format, to the Staff's Proposed Rules for Part 412. At this time, RESA is not proposing any exceptions regarding the ALJPO's First Notice Proposed Rules for Part 453.

II. EXCEPTIONS

A. Exception 1: Commission Authority to Modify Part 412

The Public Utilities Act provides substantial authority to the Commission to regulate important aspects of the operations of RESs. However, there are certain provisions of the ALJPO's Proposed First Notice Rules which appear to exceed that authority or conflict with other statutes. One of these provisions, the required use of Third Party Verification ("TPV") for inbound enrollment calls, will be addressed in Exception 8, *infra*.

In general, RESA believes that the Section III, Commission Authority to Modify Part 412, of the ALJPO is overstated. In particular, reliance on Sections 8-501 and 10-101 of the Public Utilities Act is misplaced because those sections apply to public utilities, not RESs.

RESs are not public utilities. Public utilities are defined in Section 3-105 of the PUA, which specifically exempts Alternative Retail Electric Suppliers from the definition: "'Public utility' does not include, however, alternative retail electric suppliers as defined in Article XVI".[2]

The ALJPO accepts Staff's extension of the application of Section 8-501 beyond public utilities to RESs "to the extent that they provide service of the 'character' supplied or furnished by utilities". However, this leap in logic does not detract from the fact that the General Assembly clearly stated that RESs are not public utilities. This logic would suggest that electric co-operatives, gas co-operatives, municipally owned gas companies, municipally owned electric companies, municipally owned water and sewer companies, and even propane dealers are public utilities because they provide service of the "character" supplied or furnished by utilities.

[2] Alternative Retail Electric Suppliers are also Retail Electric Suppliers, which includes electric utilities selling electricity outside their service territories.

However, they are certainly not public utilities under the PUA and the Commission has never sought to regulate these entities as public utilities.

The authority to regulate RESs is found in Article XVI of the PUA. Section 16-115 (f) gives the Commission authority to promulgate rules to carry out the provisions of Section 16-115. For example, Section 16-115 (f) states in pertinent part: "The Commission shall have the authority to promulgate rules and regulations to carry out the provisions of this Section." In fact, the Commission did so in adopting 83 Ill. Admin. Code Part 451, Certification of Alternative Retail Electric Suppliers.

In conclusion, the Commission, as a creature of statute, has no general powers except those expressly conferred by the legislature. As stated by the Illinois Supreme Court in *Business and Professional People*, "Since the Commission is a statutory creature, its powers are dependent thereon, and it must find within the statute the authority which it claims. [Citations omitted] Such agencies have no general or common law powers." *Business and Professional People for the Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 244, 555 N.E.2d 693, 716-17 (Ill. 1990).

Consequently, the ALJPO must rely on its authority under Article XVI of the Public Utilities Act to enact proposed rules in this proceeding. In Attachment A, RESA proposes exceptions language to Section III of the ALJPO to accomplish this.

B. Exception 2: Competitive Parity

The ALJPO appears to reflect only a partial understanding of RESA's argument regarding competitive parity. When considering additional requirements in Illinois retail electric markets it is important to consider the effect such requirements have on the competitive parity

between RES products and default supply service from electric utilities. RESA supports consumer protection, but there is a cost to comply with consumer protection rules. If all products in the market abide by the same rules, and are subject to the same costs, additional standards can benefit the market and customers. However, as is the case in the current retail electric market, regulatory requirements that apply to all RES products often do not apply to default supply service. Moreover, the costs of regulatory requirements that apply to utilities are recovered by them through their distribution rates, not their supply charges, in contrast to RESs which must recover their costs through their supply prices.

For example, proposed new section 412.170, Rate Notice to Customers, contains numerous additional notice requirements for RESs which offer variable rate products. However, electric utilities, which themselves have variable supply charges, do not have such additional notice requirements imposed on them. Moreover, even if they did, they would recover these additional costs through their delivery charges (from all ratepayers) and not their supply charges, which would distort the price to compare. It is worth noting that if such costs are recovered by utilities through delivery charges from all customers, and RES recover compliance costs through their supply charges from their customers, RES customers will be subject to double payment of these additional compliance charges, decreasing the value of competition to customers.

As another example, electric utilities, as monopolies with certificated service areas, do not have to market to acquire customers. Customers have no choice other than the electric utility for delivery services. However, RESs have to compete for customers and choose the marketing channels to acquire customers. The ALJPO's proposed rules revise the existing rules relating to every marketing channel employed by RESs, making customer acquisition more expensive and more burdensome.

RESA believes that the presence of a robust and vibrant competitive retail electric market benefits all customers and encourages innovation. However, if the Commission continues to add requirements for RESs' products, and requires no corresponding efforts to create parity between RESs' products and default service, a situation could one day arise where RESs' products are no longer able to compete in the market or against default service. Ultimately, this will greatly diminish the benefits competition has brought consumers in Illinois.

The ALJPO addresses RESA's competitive parity argument and states that the Commission does consider the costs to RESs of proposed changes in rules and provides some examples. (ALJPO, p. 7) RESA appreciates the ALJPO's consideration of RESs' costs in this rule making process and respectfully submits that there should be greater comparison of the costs to RESs of proposed revisions to Part 412 and the expected benefits, if any, to customers of those revisions. In particular, acceptance of RESA's proposed revisions to the ALJPO and the ALJPO's Proposed Rules (Exceptions 3 through 9) would eliminate requirements that would impose significant costs on RESs, with minimal, if any, benefit for customers. However, the competitive parity point is that if the proposed rules, for example, increase the costs of retaining customer calls for RESs, RESs are at a greater comparative disadvantage to the electric utilities which will not experience those costs (and, even if they did, would recover such costs in their distribution rates).

The ALJPO goes on to state that if RESA is suggesting that more of electric utility supply costs should be recovered through their supply rates, then this suggestion goes beyond the scope of this rulemaking proceeding. (*Id*.) RESA is not making that suggestion. RESA understands that this would have to be done if an electric utility distribution rate case.

RESA's proposed language to implement this exception to the ALJPO on the competitive parity argument is contained in Attachment A to this Brief on Exceptions.

C. Exception 3: Section 412.10, Definitions

1. Inbound Enrollment Call

Staff proposed to add a definition of "Inbound enrollment call" and the ALJPO modifies it by accepting a proposal from the AG, which expands the definition beyond calls that do not request enrollment with the RES: "'Inbound enrollment call' means a telephone call to a RES agent initiated by a customer that results in an enrollment or change of provision of their power or energy service."

A review of Section 412.140, Inbound Enrollment Calls, demonstrates that the definition of "Inbound Enrollment Call" in Section 412.10 makes no sense. Subsection 412.140 (a) requires the RES agent to fully comply with the requirements of Section 2EE of the Consumer Fraud and Deceptive Business Practices Act. However, Section 2EE only applies to customers who are switching their electric service provider. A customer of a RES who calls that RES is obviously not switching his or her electric service provider. For example, a customer could call his or her RES and request that the RES place the customer on the RES' budget billing plan. This would appear to result in a "change of provision" of the customer's power or energy service. However, it would not require authorization in the manner contemplated by Section 2EE, nor should it require the duplicative authorization proposed in Section 412.140 (which will be discussed, *infra*)—an audio recording of the call and a third party verification.

RESA's proposed language to modify the ALJPO on this subject is set forth as part of Exception No. 3 in Attachment A to this Brief on Exceptions. RESA's proposed definition of inbound enrollment call is set forth in Attachment B to this Brief on Exceptions, Section 412.110.

2. In-person solicitation

During this proceeding, RESA recommended the deletion of a new definition proposed by Staff-- "In person solicitation". RESA argued that the requirements for door-to-door solicitation should not be combined with other types of in person solicitation and that until sufficient scrutiny was given to other types of in person solicitation, a definition of in person solicitation was premature.

However, in its Sur-Reply Comments, RESA proposed the addition of a new section, Section 412.125, In-Person Solicitation, while retaining the current Section 412.120, Door to Door Solicitation. Thus, there is no need for a definition of "In person solicitation".

3. Variable Rate

The ALJPO accepts a modified version of Staff's definition of "Variable rate", including the limitation that a charge that is not fixed for at least six monthly billing periods must be considered a variable rate. The significance of this is that when a rate is considered a "variable rate", then many of the requirements of proposed new section 412.170, Rate Notice, would apply. (RESA addresses its major concerns with Section 412.170 in Exception 9, *infra*.) The ALJPO accepts the modified version of Staff's proposed definition with virtually no analysis,

simply stating that the "determination that a variable rate is one where the terms change in the first six months is reasonable". (ALJPO, p. 21)

RESA and other parties addressed their concerns regarding Staff's definition of "variable rate" in their comments. There is nothing magical about six months as compared to five months, or four months, or even three months; six months is an arbitrary figure. There is nothing reasonable about it. However, while one can claim that three months is similarly arbitrary, considering the onerous requirements applied to variable rates in proposed new Section 412.170, it is appropriate to limit their applicability to three months.

RESA's proposed modification of the discussion of definition of "variable rate" in the ALJPO is included as part of Exception 3 in Attachment A to this Brief on Exceptions. RESA's revised definition is contained in Attachment B to this Brief on Exceptions, Section 412.110.

D. <u>Exception 4: Section 412.110, Minimum Contract Terms and Conditions</u>

The ALJPO accepts the Staff's proposed requirement that the terms of the sales contract must be in the order presented in Section 412.110. However, the ALJPO does not demonstrate that it is necessary for the Commission to not only require what language must be in a sales contract, but also in what order it must appear. The ALJPO merely states: "Most likely, the new Rule will require RESs to rewrite their contracts anyway, so conforming to the required order can be addressed at that time." (ALJPO, pp. 30-31)

This requirement should be deleted for the following reasons. As long as the information required for sales contracts is included and clearly articulated in such contracts, the RES should be able to put such information in the order it sees fit. First, RESs already have contracts that they have submitted to the Commission's Consumer Services Division. Those contracts may

already meet the proposed requirements of the Staff's Proposed Rules or require very little revision to do so. (For the most part, there are no substantive revisions to the terms and conditions set forth in Section 412.110.) Therefore, subjecting those contracts to major revisions, simply to put them in the order that the ALJPO desires, is an expensive undertaking, with no meaningful benefit to customers. Second, many RESs operate in different states and attempt to make their sales contracts as uniform as possible for efficiency purposes. The ALJPO's proposed requirement would defeat this purpose, again without any customer benefit to justify it. Thus, the ALJPO's proposed requirement would add costs but provide no benefit.

The revisions to the ALJPO necessary to effectuate this exception are contained in Exception No. 4 of Attachment A to this Brief on Exceptions. The corresponding, necessary revisions to the ALJPO's Proposed Rules are contained in Attachment B to this Brief on Exceptions.

E. Exception 5: Section 412.115, Uniform Disclosure Statement

The ALJPO's proposed Section 412.115 would be a new addition to Part 412. It is helpful in that while the current version of Part 412 refers repeatedly to a Uniform Disclosure Statement, the current version does not contain a Uniform Disclosure Statement. RESA does not object to providing a Uniform Disclosure Statement, however, the last sentence of the first paragraph should be modified to delete the words "but the UDS shall not contain any items other than the ones found in Appendix A or described in this section". In support of excluding any information other that specifically found in Section 412.115 or Appendix A, Uniform Disclosure Statement, the ALJPO claims, incorrectly, that the "Staff has already proposed a format for Appendix A that

is clear, concise and contains the relevant disclosures needed for a customer to review a sales offer". (ALJPO, p. 40)

On the contrary, the UDS does not contain the "relevant disclosures" that a customer needs to review a sales offer. For example, the offer may be for a renewable energy product. This is certainly a "relevant" disclosure, but the RES would be prohibited from indicating on the UDS, that the offer is for a renewable energy product. The offer may be for a combined product, for example, an offer of electricity coupled with the provision of an advanced thermostat or other energy conservation measure at no additional charge. Again, this is clearly a relevant disclosure, but the RES would be prohibited from indicating this on the UDS. While the ALJPO asserts that limiting the content of the UDS assists the customer to evaluate the market (*Id*., p. 39), this is far from true. A customer comparing two UDS forms, one for a standard product and one for a renewable product (which most likely carries a somewhat higher price) would be making an apples-to-oranges comparison. As long as the UDS covers the information required by Section 412.110, the RES should be able to add other pertinent information.

In addition, given that the disclosure requirements for the UDS and the minimum disclosure requirements for sales contracts set forth in Section 412.110 are substantially identical, it would make sense to avoid redundant documents. Thus, if an offer includes a copy of the sales contract, there is no benefit to include the UDS. In fact, it may dissuade the customer from reading the contract since the UDS is shorter.

RESA's proposed revisions to the ALJPO are set forth in Exception 5 in Attachment A to this Brief on Exceptions, while the necessary revisions to the ALJPO's Proposed Rules are set forth in Attachment B.

F. Exception 6: Section 412.120, In-person Solicitation

The ALJPO's Section 412.120 should be revised by changing the heading back to the current one--Door-to-Door Solicitation--and making conforming changes throughout that section. Other types of face-to-face solicitations should be covered Section 412.125, as proposed by RESA in its Sur-Reply Comments.

In support of applying a modified version of the requirements that are currently limited to door-to-door solicitation, the ALJPO points, incorrectly, to the Affidavit of Mr. Peter Muntaner, the Commission's Director of the Consumer Services Division: "Mr. Muntaner has observed trends of common allegations and problems, many of which are face-to-face interactions." (ALJPO, p. 54, referencing Mr. Muntaner's Affidavit, which was attached to Staff's Verified Initial Comments, at pages 2-11). On the contrary, a review of Mr. Muntaner's affidavit at those pages shows only the following two allegations related to face-to-face interactions and both of those concern door-to-door marketing:

- (k) RES agents' failure or refusal to observe signs or notices which prohibit soliciting on customer premises. Customers allege that RES agents disregard such notices, and attempt to solicit enrollment on premises where customers have specifically requested that it not take place; and
- (l) Marketing in restricted areas, including in communities where marketing is restricted and in limited access high-rise living centers. Consumers allege that RES agents gain access to a limited-access building either by obtaining the permission of one resident, or based on some pretext, and then attempt to enroll other residents throughout the building without consent to do so.

RESA acknowledges that these are problems; however, they are adequately addressed in proposed Subsections 412.120 (h) and (i), but appropriately limited to door-to-door solicitation.

In short, RESA objects to the ALJPO's attempt to treat all forms of face-to-face contact in the same manner as traditional door-to-door solicitation. There needs to be some distinction between the situation in which a RES agent goes to a potential customer's residence and other face-to-face contacts in which the customer can choose to initiate the sales discussion. There are numerous other examples of face to face interactions that, in RESA's view, do not warrant the same treatment as an unsolicited door-to-door interaction. For instance:

- Permanent store locations operated by a RES
- Temporary or seasonal kiosks, such as in a shopping mall or airport
- Pre-scheduled appointments at locations other than the customer's premises
- RES booths/tables at trade shows or community fairs or other venues to which the RES has been invited
- In home meetings through "friends and family" network marketing

RESA is not asserting that these types of in-person contacts do not require governing rules, simply that those rules should be different than those for traditional door-to-door solicitations, which the customer did not solicit. RESA proposes appropriate requirements in its new Section 412.125, In-person solicitation.

Expanding current Section 412.120 to apply to in-person solicitations other than door-to-door would lead to some requirements that defy common sense. For example, Subsection 412.120 (d) would require the RES agent to "leave the premises at the customer's, owner's, or occupant's request". This requirement makes no sense in the context of a RES-operated kiosk.

Similarly, Subsection 412.110 (h) would prohibit RES agents from conducting "in-person sales solicitations" in a building with signage that prohibits solicitation. This prohibition would make no sense in the context of a RES agent working out of a kiosk in a supermarket which has such signage, but which has an arrangement for the RES to operate a kiosk there.

Regarding Subsection 412.120 (g), RESA has one other proposed revision. The requirement that the RES agent be in a place where he or she "cannot hear the customer while the TPV is conducted" is ambiguous and could result in unnecessary disputes. RESA recommends that such disputes be minimized by adding language that allows the customer to consent to the presence of the RES agent during the TPV so long as that consent is properly recorded on the TPV.

The ALJPO raises certain questions or seeks some clarification regarding the scope and meaning of RESA's proposed Section 412.125. (ALJPO, pp. 55-56) In response to the ALJPO, Section 412.125, as set forth in Attachment B to this Brief on Exceptions, is modified to address the ALJPO's concerns. Revisions to the ALJPO necessary to effectuate RESA's Exception 6 are contained in Attachment A to this Brief on Exceptions.

G. Exception 7: Section 412.130, Telemarketing

Subsection 412.130 (d) has unreasonable retention requirements. The ALJPO does not explain why a RES should have to retain recordings of successful sales calls for the longer of two years or the length of time the customer stays with the RES. Is the ALJPO attempting to remedy a situation where a customer who has received service from the same RES for ten years claims that he or she was slammed? If so, the ALJPO offers no analysis of how the costs RESs would incur to implement such record retention requirements would be offset by the value

afforded those hypothetical individuals who would have apparently ignored billing statements contents for a decade before claiming they have been slammed.

Similarly, the ALJPO does not explain why a RES should have to keep a recording of an unsuccessful sales call for six months. There are costs associated with retaining sales recordings and Staff has provided no explanation as to why such increased costs are justified. RESA notes that it is the nature of sales that there often are many unsuccessful calls, thus a six month retention obligation could apply to a massive volume of calls. This imposes a heavy burden without any corresponding benefit to customers. The ALJPO's limiting the retention requirement to calls lasting longer than two minutes lessens the problem, but does not eliminate it.

Additionally, a RES requires some finite definition of the retention requirement in order to build a record retention and data storage policy. Under typical data retention policies, electronic records are stored in bulk based on the date of creation of the record. For example, all records would be held for two years or three years after creation with older records deleted on a rolling basis. The ALJPO's Proposed Rules would impose an open ended retention requirement based on the length of time the customer is receiving service, which would be for an indefinite, and theoretically infinite, period. It is not practical to build an effective data retention policy without a finite time period. While RESA originally recommended that the retention period for successful sales calls be limited to one year, RESA is willing to accept the two-year limitation set forth in the ALJPO's Proposed Rules, or even a longer finite period, but not the greater of that finite period of time or the amount of time a customer remains with the RES.

RESA's revisions can be accomplished by revising the ALJPO in the manner set forth in Exception 7 of Attachment A to this Brief on Exceptions. The necessary changes to the ALJPO's Proposed Rules are set forth in Attachment B to this Brief on Exceptions.

H. <u>Exception 8: Section 412.140, Inbound Enrollment Calls</u>

Similar to its opposition to the retention periods set forth in Section 412.130, Telemarketing, RESA opposes the substantially identical retention periods set forth in Section 412.140, Inbound Enrollment Calls. Subsection 412.140 (c) should be revised to limit the retention period for successful sales calls to two years (or a longer finite period of time) and to eliminate any retention period that would be based on a period time that is not finite—the length of the customer's service with the RES. In addition, there should be no retention period for unsuccessful sales calls.

Subsection 412.140 (d) should be deleted as imposing unnecessary requirements when the customer has called the RES to request service. Section 2EE of the Consumer Fraud and Deceptive Business Practices Act recognizes the difference between inbound calls and telemarketing. For telemarketing, Section 2EE requires a TPV; for inbound enrollment calls, Section 2EE requires that the RES retain a recording of the call. The Commission's rules should also recognize the difference.

The ALJPO does not provide any valid basis for the Commission's authority to expand the requirements of the Consumer Fraud and Deceptive Business Practices Act. The ALJPO states that Section 2EE "clearly states the six requirements are the *minimum* the RES must record. There is no prohibition on requiring additional information". (ALJPO, p. 74, emphasis in original) However, the ALJPO has already added an information requirement; Subsection

412.140 (b) requires the RES agent to make the disclosures required by Subsections 412.110 (a) and (c) through (n). By requiring a TPV, the ALJPO is not requiring additional information, it is requiring a second, redundant form of verification. The ALJPO does not provide any basis for its authority to require this second, redundant form of verification for inbound enrollment calls.

RESA's proposed revisions to the ALJPO's discussion of proposed Section 412.140 are set forth in Attachment A to this Brief on Exceptions. The necessary revisions to the ALJPO's Proposed Rules to reflect this exception are set forth in Attachment B to this Brief on Exceptions.

I. Exception 9: Section 412.170, Rate Notice to Customers

During this proceeding, RESA recommended deleting most of the subsections of this new section of Part 412, leaving the following:

> **Section 412.170 Rate Notice to Customers**
>
> At a reasonable time prior to the start of a calendar month, the RES must publish on its website the variable rate(s) for its residential customers applicable for the calendar month in question. In addition, the RES must provide requesting variable rate customers with this rate information via telephone. The customer's contract must contain the website address and toll-free phone number for the customer to retrieve the variable rate information in accordance with this section.

As drafted by the Commission Staff, and accepted for the most part by the ALJPO, Proposed Section 412.170 is an example of inappropriate over-regulation of competitively priced services. Subsection (a) would require RESs to publish variable rates on their websites at least one month in advance. There is no explanation as to why a 30-day requirement is appropriate. Moreover, a 30-day requirement may be reasonable for some RESs, but not others. That is why RESA's proposed language requires a "reasonable" time period. In addition, the longer the period of

advance notice required for a RES to publish its variable rates, the greater the risk that the RES must hedge, which will result in higher prices for customers.

Subsection (b) would dictate how RESs use their limited bill message space on a utility's bill. However, a RES has other messages that are equally as important or more important than this information.

Subsection (c) would require a separate written notice of a variable rate increase of more than 30% from one billing period to the next. This is information that is obvious on the face of the bills.

Subsection (d) would create an appropriate exception for variable price products that are based on an index. Consequently, RESA has added this language as subsection (b) of its proposed Section 412.170.

Subsection (e) would require written notices of matters that are already spelled out in the sales contract between the RES and its customer, *e.g.* the time at which a fixed rate switches to a variable rate.

Subsection (f) would mandate RESs to post on their websites and through toll-free numbers up to a year of historical price data, data which, as pointed out by RESA and other parties in the NOI proceeding and in the instant proceeding, provides no value to customers as to future rates.

RESA's proposed revisions to the ALJPO's discussion of Section 412.170 are set forth in Attachment A to RESA's Brief on Exceptions. The necessary revisions to the ALJPO's Proposed Rules are contained in Attachment B to this Brief on Exceptions.

III. CONCLUSION

For the reasons set forth in this Brief on Exceptions, RESA requests that the ALJPO be modified in the manner set forth in Attachment A to this Brief on Exceptions and that the ALJPO's Proposed Rules be modified as set forth in Attachment B to this Brief on Exceptions. The ALJPO's Proposed Rules, as currently drafted, do not represent a fair balance of the interests of Retail Electric Suppliers and their customers. Rather, they would impose significant financial burdens on Retail Electric Suppliers, without supplying any measurable benefit to their customers.

Respectfully submitted,

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NOTICE OF FILING

Please take note that on February 9, 2016, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Brief on Exceptions of the Retail Energy Supply Association, including Attachments A and B, in this proceeding.

/s/GERARD T. FOX
Gerard T. Fox

CERTIFICATE OF SERVICE

I, Gerard T. Fox, certify that I caused to be served copies of the foregoing Brief on Exceptions, including Attachments A and B, of the Retail Energy Supply Association upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for Ill. C. C. Docket 15-0512 via electronic delivery on February 9, 2016.

/s/ GERARD T. FOX

Gerard T. Fox