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	)	

THE RETAIL ENERGY SUPPLY ASSOCIATION
REPLY TO BRIEFS ON EXCEPTIONS

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REPLY TO BRIEFS ON EXCEPTIONS

The Retail Energy Supply Association ("RESA")[1], by and through its attorney, Gerard T. Fox, pursuant to the Administrative Law Judges' ("ALJ") Ruling, hereby submits its Reply to Briefs on Exceptions of other parties on the Second Notice Proposed Rules ("SNPR") filed by the Administrative Law Judges ("ALJs") with their Second Notice Proposed Order ("SNPO") on March 21, 2017. The SNPO and SNPR were filed and served in the Illinois Commerce Commission's ("Commission") Docket 15-0512, its rule making proceeding to consider amendments to 83 Ill. Adm. Code Parts 412, Obligations of Retail Electric Suppliers, and 453, Internet Enrollment Rules.

[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.

I. INTRODUCTION

On March 21, 2017, the ALJs filed and served the SNPO and the SNPR. They set the dates of April 3, 2017 for Briefs on Exceptions and April 10, 2017 for Replies to Briefs on Exceptions.

On April 3, 2017, Briefs on Exceptions were filed by RESA, the Commission Staff ("Staff") and the following other parties: the Illinois Competitive Energy Association ("ICEA"), Nicor Advanced Energy ("NAE"), MidAmerican Energy Company, the Attorney General of Illinois ("AG"), the Citizens Utility Board ("CUB") and the Environmental Law and Policy Center ("ELPC"). RESA files this Reply to Briefs on Exceptions in response to some of the positions of those Parties.

II. RESPONSES TO EXCEPTIONS

A. Section 412.115, Uniform Disclosure Statement

Both the AG and ELPC propose revisions to Section 412.115 of the SNPR.[2] (AG BOE, pp. 10-13; ELPC BOE pp. 1-3) Both propose that the Uniform Disclosure Statement ("UDS") be revised to add the "utility price to compare". While the AG proposes that actual numbers be used, ELPC recommends the addition of a reference to the Commission's pluginillinois.com website and a contact number for the Commission's Consumer Services Division. Both proposals should be rejected. A price to compare is only valid if it's an apples to apples comparison. Electric utilities basically offer a variable price default product. RESs offer a multitude of products including fixed rates, bundled rates, renewable energy power, etc.

[2] ELPC also proposes an amendment to 83 Ill. Admin. Code Part 410, which should be rejected as being outside the scope of this proceeding.

Ironically, ELPC's example is from a RES that only offers renewable energy products. (ELPC BOE, p. 1)

B. Section 412.120, In-person Solicitation

Staff supports a revision proposed by RESA and accepted by the SNPO. (Staff BOE, pp. 3-4) Staff points out an inconsistency between the SNPO and the SNPR and proposes a technical revision to remove the inconsistency. RESA supports Staff's proposed revision.

CUB continues to propose the requirement of audio and video recording of all in-person solicitations. (CUB BOE, pp. 1-3) This proposal was considered and properly rejected by the Commission in its First Notice Order and by the ALJs in the SNPO. CUB offers nothing of merit to warrant a change in the position of the ALJs or the Commission.

C. Section 412.140, Inbound Enrollment Calls

In its Brief on Exceptions, RESA opposed the retention periods set forth in Section 412.140, Inbound Enrollment Calls, as unnecessary. RESA also opposed Proposed Section 412.140's requirement of a TPV for in-bound enrollment calls, which conflicts with Section 2EE of the Consumer Fraud and Deceptive Business Practices Act.

NAE, in its Brief on Exceptions, expressed similar concerns with Proposed Section 412.140. (NAE BOE, pp. 3-14) NAE opposes the proposed TPV requirement. NAE also opposes the retention periods set forth in the First Notice Rules for inbound calls.

RESA agrees with NAE that Section 412.140 should be revised to eliminate the requirement for a TPV and the revised retention periods.

D. Section 412.160, On-Line Marketing

Both the Staff and ICEA propose revisions to this Section to remedy that problem that this revised section, as currently drafted, prevents RESs from making a customer specific product offering because the RES can't request the customer to supply the necessary information in order for the RES to make the customer specific offer. RESA supports ICEA's proposed language to remedy this problem.

E. Section 412.165, Rate Notice to Customers

Staff proposes a correction to Section 412.165 to clarify the section's application to dynamic pricing products. (Staff BOE, pp. 6-7) RESA supports Staff's proposal.

In contrast, ELPC proposes language to extend rate notice provisions to dynamic pricing products. (ELPC BOE, pp. 3-6) ELPC's proposal is not workable with respect to such products and should be rejected.

F. Section 412.170, Training of RES Agents

Staff sponsors a technical correction to the SNPR to clarify that RESs' training programs for their agents do not need to be uniform. (Staff BOE, pp. 7-8) Staff's correction makes the SNPR consistent with the SNPO. Staff's proposal should be accepted.

G. Section 412.190, Renewable Energy Product Disclosures

Staff proposes language changes to clarify Section 412.190. (Staff BOE, p. 8) RESA supports Staff's proposal.

H. Section 412.240, Contract Renewal

Staff states that the proposed requirement of telephonic notice may result in RESs running afoul of the rules of the Federal Communications Commission ("FCC") promulgated pursuant to the Telephone Consumer Protection Act ("TCPA"). (Staff BOE, pp. 9-15) Accordingly, Staff proposes language to remove the telephonic notice requirement from this section.

NAE correctly asserts that the Commission lacks the authority to revise Section 412.240 in the manner contemplated in the SNPR. NAE also explains how the proposed revisions would cause RESs to run afoul of the TCPA. (NAE BOE, pp. 14-18) ICEA also takes the position that the telephonic notice requirements of Section 412.240 should be deleted because of the potential liability under the TCPA. (ICEA BOE, pp. 6-11)

RESA agrees with the Staff, NAE and ICEA that the telephonic notice provisions of Section 412.240 have to be removed. In its Brief on Exceptions, RESA took the position that Section 412.240 does not need to be changed from its current version. If RESA's position is not accepted, the Commission should accept the proposed revisions of ICEA or NAE.

III. CONCLUSION

For the reasons set forth in this Reply to Briefs on Exceptions and RESA's Brief on Exceptions, the Second Notice Proposed Order and the Second Notice Proposed Rules should be modified in the manner described in RESA's Brief on Exceptions. The Second Notice 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. The proposals made by the AG, CUB, and ELPC in their Briefs on Exceptions should be rejected because they would impose burdens on RESs without any meaningful benefit to customers.

Respectfully submitted,

s/s GERARD T. FOX
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NOTICE OF FILING

Please take note that on April 10, 2017, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Retail Energy Supply Association's Reply to Briefs on Exceptions 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 Retail Energy Supply Association's Reply to Briefs on Exceptions 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 April 10, 2017.

/s/ GERARD T. FOX

Gerard T. Fox