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	)	

VERIFIED INITIAL COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association ("RESA")[1], by and through its attorney, Gerard T. Fox, pursuant to the Administrative Law Judge's Ruling, hereby submits its Verified Initial Comments 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.

I. BACKGROUND

On September 30, 2014, the Illinois Commerce Commission ("Commission") entered an order initiating a Notice of Inquiry ("NOI") proceeding, 14-NOI-01, regarding retail electric market issues. In its NOI Order, the Commission requested comments on numerous questions related to various topics. Subsequently, the Commission's Office of Retail Market Development

[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.

("ORMD") led three workshops and received three rounds of written comments, as well as the responses of some parties to ORMD's follow-up questions. RESA participated in all of the workshops, filed three rounds of comments, and submitted responses to ORMD's follow-up questions. On August 12, 2015, ORMD circulated the Commission Staff's Draft Report in the NOI proceeding and requested any feedback by August 21, 2015. RESA submitted Comments on August 21, 2015.

On September 14, 2015, Staff circulated proposed amendments to 83 Ill. Admin. Code Part 412, Obligations of Retail Electric Suppliers, with the exception of Section 412.190. On September 16, 2015, Staff held a workshop on those proposed amendments, at which RESA participated. At the close of that workshop, Staff requested comments on its Draft Rules by September 28, 2015. On September 25, 2015, Staff circulated proposed amendments to Section 412.190, "Product Descriptions", which Staff proposes to re-name "Renewable Energy Product Descriptions" and 83 Ill. Admin. Code Part 453, Internet Enrollment Rules. RESA submitted detailed comments on both the Staff draft rules circulated on September 16 and September 25, including proposed revisions to those draft rules.

On September 28, 2015, a pre-hearing conference was held in this proceeding and the ALJ established a procedural schedule in this docket, including the filing of Staff's Proposed Rules on October 9, 2015 and the filing of Verified Initial Comments on November 5, 2015. On October 9, 2015, Staff filed its Proposed Rules for Parts 412 and 453. RESA respectfully submits these Verified Initial Comments. Appendix A to these Verified Initial Comments contains RESA's proposed revisions to the Staff's Proposed Rules for Part 412. Appendix B to these Verified Initial Comments contains RESA's proposed revisions to the Staff's Proposed

Rules for Part 453. Both Appendices A and B include commentary in the margins supporting RESA's proposed revisions.

II. INTRODUCTION

As previously stated, RESA participated fully in the NOI proceeding. From the very beginning of the NOI proceeding, RESA questioned whether there was a need for adoption of additional rules, as opposed to the Commission utilizing the authority it has under the Public Utilities Act to enforce its existing rules. In RESA's opinion, the comments filed and the workshops held in the NOI proceeding did not disclose any specific problems that cannot be addressed by enforcing the Commission's existing rules. Consequently, RESA generally questions the need for the proposed rulemaking. In particular, RESA questions the numerous substantive revisions proposed by Staff, revisions which will be costly and burdensome for RESs to implement. Moreover, Staff has provided no explanation of any benefits to be derived from the additional burdens it seeks to impose on RESs.

In this regard, the ALJ at the September 18, 2015 Prehearing Conference, requested that the Staff, as part of its October 9 filing, provide explanations for the proposed revisions from the current Parts 412 and 453. However, instead of providing explanations for its proposed revisions to the current Parts 412 and 453, Staff submitted a "Summary of Changes Made to Existing Rule by Staff Proposed Rule" ("Staff's Summary"). For the most part, Staff's Summary describes the changes proposed to be made to the existing rules; Staff, with limited exceptions, does not explain why its proposed revisions to the existing rules are necessary, beneficial to customers or appropriate for some other reason. Absent an explanation by the Staff as to how the existing rules are deficient and how its proposed rules would provide

additional benefits that outweigh the increase in costs, the existing rules should not be revised. At a minimum, Staff's Proposed Rules should be revised to reflect the modifications proposed by RESA.

III. GENERAL COMMENTS

Before responding to the specific proposed amendments contained in the Staff's Proposed Rules, RESA would like to make three general comments.

A. Competitive Parity Should be Considered in this Rulemaking

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 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 (in essence, 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 served 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. Staff'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, but offers no justification as to what circumstances compel such change 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.

B. The Commission should utilize the authority it has under the Public Utilities Act and its existing rules before considering the adoption of additional rules.

The Public Utilities Act provides substantial authority to the Commission to regulate important aspects of the operations of RESs. Indeed, pursuant to that authority, the Commission

has adopted rules to regulate RESs including 83 Ill. Admin. Code Part 451, Certification of Alternative Retail Electric Suppliers, and 83 Ill. Admin. Code Part 412, Obligations of Retail Electric Suppliers, which the Commission is considering amending in the instant proceeding.[2] In particular, RESA points out that Part 412 was adopted by the Commission's Order in Docket 09-0592, dated December 5, 2012, with an effective date of January 1, 2013. Thus, the Part 412 Rules have been in place for less than three years. Moreover, the Part 412 rules were adopted in a proceeding which was initiated by an Order dated December 2, 2009 and which included numerous workshops, numerous rounds of comments, numerous rounds of briefs, and a reworking of rules after the Commission's proposed second notice rules were prohibited by the Joint Committee on Administrative Rules.[3] While RESA is not opposed to adopting additional rules or revising existing rules if the result will be beneficial to customers, Staff has not demonstrated any benefits that would result from its proposed revisions.

For this reason, the Commission should closely examine the actions it can take under its existing rules. For example, if a RES were violating the Commission's existing rules, such as rules relating to marketing its products, the Commission should enforce those existing rules against that RES before considering whether to impose more stringent rules on all RESs. By way of analogy, if the Commission regulated stop signs in Illinois and the vast majority of drivers obeyed stop signs but a few did not, the appropriate solution would not be to add more stop signs.

[2] There are additional restrictions on RESs such as the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505//2EE through 2GG).

[3] This is in contrast to this rulemaking in which the Commission has requested a proposed first notice order in 180 days from the date of its Initiating Order. However, one similarity is that the Proposed Rules, if not substantially revised, could provoke a JCAR prohibition.

C. This Rulemaking Should not be Viewed as an Opportunity to Regulate RES Prices.

The Commission's authority over RESs is more limited than its authority over public utilities, including electric public utilities. Most importantly, while the Commission regulates the rates of public utilities (see, generally, Article IX of the Public Utilities Act), the Commission does not have the authority to regulate the price RESs offer customers. For example, unlike public utilities, RESs do not provide non-competitive service to customers and thus are not required to charge cost-based rates. This makes sense because, unlike public utilities, RESs do not possess monopoly rights over a certificated service territory. RESs must compete with other RESs (and the default supply rate) for customers on the basis of price, customer service, and other important factors. If customers are not satisfied with the delivery rates or service of their electric utility, they cannot switch to another electric utility. However, if customers are not satisfied with the charges or service provided by their RES, they can, and do, switch to another RES or even back to their electric utility for supply service. In essence, RES customers can vote with their feet by leaving relationships they do not like or going to relationships they believe to be more beneficial. That is why it is of paramount importance that the Commission balances the appropriate consumer protections against the potential decrease in customer value by making unnecessary and unwarranted changes to its consumer protection rules.

RESA's point in this regard is that the Commission should be careful not to attempt to over-regulate or micromanage RESs' products, prices and services. The results of any attempt at such over-regulation would be to limit the number of electric suppliers willing to operate as RESs in the state of Illinois and to limit the products and choices that RESs are willing to offer to customers. RESs must be responsive to customer preference and expectations. The pressures

brought to bear by consumer behavior on RES activities provide the basis for a more efficacious manner in which to promote consumer wellbeing.

In particular, as discussed below, while the Commission cannot prohibit RESs from offering variable rate products, it appears that the Staff may be effectively attempting to achieve that end by proposing onerous provisions regarding variable products, including an entirely new section—Section 412.170 (Rate Notice to Customers)—which would impose numerous requirements relating to variable offers, requirements which appear to add little value to customers while adding great expense to RESs.

IV. COMMENTS ON SPECIFIC PROPOSED AMENDMENTS TO PART 412

Section 412.10, Definitions

As shown on Appendix A, RESA proposes to revise two definitions and to delete a third definition.

Staff proposes to add a definition of "Inbound enrollment call" which, according to the Staff, is intended to "provide clarity". (Staff's Summary, p. 1) However, as currently drafted, the definition is ambiguous. RESA proposes the following revision to Staff' definition to provide greater clarity:

> "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.

RESA proposes to delete Staff's definition of "In person solicitation", a new definition proposed by Staff. According to Staff, it "reflects the title and substance of Section 412.120 in light of the expanding use of solicitations that occur in the direct physical presence of the customer, but not necessarily at the customer's home or place of business". (*Id.*) However,

Staff's definition is overly broad and inappropriately would apply requirements that may be pertinent for traditional door-to-door solicitation, but not for other forms of face-to-face interactions. For example, Staff's definition of "in person solicitation" would include the situation in which a customer goes to the RES' place of business and asks to enroll with that RES. First, in this instance, the RES is not soliciting the customer. Second, it makes no sense to apply protections the Staff views to be necessary for door-to-door solicitation to a situation in which a customer walks into the RES' office and requests to enroll with that RES.

In short, RESA objects to Staff'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
- RES booths/tables at trade shows or community fairs or other venues to which the RES has been invited
- Pre-scheduled appointments
- In home meetings through "friends and family" network marketing

Until an appropriate definition can be developed in this proceeding that differentiates these types of interactions from traditional door-to-door solicitations, Staff's proposed definition should be deleted. Moreover, different rules should apply to different types of interactions.

For example, for face-to-face contacts that occur outside a customer's residence, consideration should be given to use of an "enroll from your wallet" capability, which would allow a customer who does not have his or her utility account number with him or her to apply for RES service with another unique identifier other than the account number. A prospective customer may approach a RES agent at a table at a farmer's market and want to sign up for service with that RES, however he or she does not have the account number handy. Enroll from your wallet capability would allow the customer to sign up for service by use of another unique identifier, for example, the last four digits of a customer's Social Security Number or the telephone number on record with the utility. This unique identifier would be submitted to the utility as an additional field in the electronic enrollment transaction and then be mapped to the customer's account number in the utility's database in order to complete the enrollment. There would be no sacrifice of consumer protection against slamming because: a) the RES has obtained the customer's authorization for the switch; and b) the unique identifier is likely known only by the customer. This recommendation is advanced in response to feedback from customers who wish to shop for electric service but are hindered by not having their account number when away from home. Additionally it is proposed that this functionality be limited to in-person sales at locations away from the customer's residence, such as malls, airports, farmers markets, events and other similar venues. The point here is that the existing rules should not be revised to make it more difficult for customers to sign up with RESs; the existing rules can be revised to make it easier for customers to sign up with RESs, while making sure that the switch is authorized.

As another example, some RESs are working on a mobile data application which could be used in face-to-face contacts, including door-to-door, which would eliminate some of the

concerns about the inability to verify exactly what a door-to-door RES agent says to the customer. RESA will be able to provide more information about this in subsequent comments.

RESA proposes to revise the definition of "Variable rate" to change the six month demarcation point to three months. Staff has not offered any explanation as to why six months is the appropriate cut-off point for a fixed rate product. Staff's Summary simply states that this new definition "includes language which defines a variable rate as a rate that can change after one to five months". (*Id.*, p. 2) Instead of any attempt to explain why this new definition is appropriate, Staff simply offers the following example: "For example, a rate that is initially fixed, but then changes after 3 months is described as variable". (*Id.*)

RESA's proposed definition of "Variable rate" is as follows:

> "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 the rate for which is fixed for three months or longer.

Considering the onerous requirements proposed by Staff with respect to variable rates in proposed new Section 412.170, it is appropriate to limit their applicability as accomplished by RESA's proposed definition.

Finally, consideration should be given to a definition of "Time of Use" Rates to distinguish such rates from variable rates. Although Time of Use pricing is a variable rate structure, the price of energy is dependent on the time of day and season the energy is used. Generally, Time of Use rates change in a predictable manner and in a combination of hourly, peak, or seasonal time periods. Thus, index pricing that varies by a published industry-recognized index is not a Time of Use rate. Similarly, a rate that varies according to variables other than those mentioned could generally be described as a variable rate.

Section 412.110, Minimum Contract Terms and Conditions

Regarding the first paragraph of Section 412.110 of Staff's Proposed Rules, the requirement that "the sales contract shall start with the following information in the order presented in this section" should be deleted. Staff's Summary provides no explanation as to why 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.

As long as the information required for sales contracts is included and clearly articulated in sales contracts, the RES should be able to put such information in the order it sees fit for the following reasons. 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. Therefore, subjecting those contracts to major revisions, simply to put them in the order that Staff desires, is an expensive undertaking, with no benefit to customers. Second, many RESs operate in different states and attempt to make their sales contracts as uniform as possible for efficiency purposes. Staff's proposed requirement would defeat this purpose, again without any customer benefit to justify it. These changes add costs but provide no benefit.

Section 412.115, Uniform Disclosure Statement

Staff's proposed Section 412.115 would be a new addition to Part 412 and 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".

Staff's Summary does not explain the reason why a UDS should not contain any items other than the ones found in Appendix A or described in Section 412.115. This is another example of inappropriate micromanagement of a RES' operations. As long as the UDS covers the information required by Section 412.110, the RES should be able to add other pertinent information. For example, the product may be a renewable energy product or a bundled product or a time of use product. Staff's form UDS does not provide necessary information to the customer for those types of products. In addition, the UDS is a communication from a RES to a potential customer. The RES' provision of additional information on a UDS is commercial free speech and a preemptive prohibition against such speech treads dangerous ground.

Section 412.120, In-person Solicitation

The current Section 412.120, Door-to-Door Solicitation, should not be revised. Other types of face-to-face solicitations should be covered in a separate section or sections, which can be developed during this rulemaking proceeding. Otherwise certain provisions will be impractical. For example, Subsection 412.110 (h) which would prohibit RES agents from conducting "in-person sales solicitations" in a building with signage that prohibits solicitation 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. A customer who switches supply service in this situation makes a conscious decision not to walk past the kiosk. Staff's proposed revisions to Section 412.120 fail to take into consideration the many ways that potential customers and RES may communicate.

Section 412.130, Telemarketing

Staff's Subsection 412.130 (d) has unreasonable retention requirements. Staff's Summary 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 Staff 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? And, if so, why has Staff offered no justification illustrating the costs to implement such onerous record retention requirements which would be offset by the value afforded those few individuals who would have apparently ignored billing statements contents for a decade? Similarly, Staff's Summary 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.

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. Staff'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. RESA recommends that the retention period for successful sales calls be limited to one year.

RESA makes an additional recommendation to this Section as well as Sec. 412.140, Inbound Enrollment Calls, concerning authorization to access customer data for non-billing purposes under the Commission's Order in Docket 14-0701. Staff should allow for flexibility regarding the presentation to telephonic customers of the authorization language for access to interval data for non-billing purposes (Appendix A, Docket 14-0701). Reading the lengthy authorization language verbatim would be inconvenient to customers, especially when combined with the disclosures required under Section 412.110. RES agents should be allowed to explain the authorization in a manner that covers the key elements without being strictly bound to reciting the Appendix A language.

Section 412.140, Inbound Enrollment Calls

Subsection 412.140 (c) should be revised, as follows, to eliminate a retention period in excess of one year:

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

A period of one year should be adequate to address any claims that a switch was unauthorized, particularly in the context of inbound enrollment calls. Moreover, such a requirement is expensive and burdensome to implement and Staff has not suggested any customer benefit associated with this requirement. Requiring the review of a "statistically significant" number of recordings suggests the need to hire statisticians. A RES should be able to determine what

number of calls it needs to review in order to be comfortable that it is in compliance with the Commission's rules.

Subsection 412.140 (d) should be deleted as imposing unnecessary requirements when the customer has called the RES to request service. Section 2 EE of the Consumer Fraud and Deceptive Business Practices Act recognizes the difference between inbound calls and telemarketing. The Commission's rules should also recognize the difference. Moreover, despite requests, Staff has not provided any basis for the Commission's authority to expand the requirements of the Consumer Fraud and Deceptive Business Practices Act.

Section 412.150, Direct Mail

Section 412.50 (c) should be revised, as follows, to recognize a distinction between direct mail which seeks the customer to enroll via the direct mail and mail which seeks the customer to enroll via an inbound call or via the internet.

> 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~~ instead of this Section 412.150.

Staff's Summary merely describes its proposal for redundant disclosure requirements. It does not explain why such redundancy is necessary or appropriate or why existing provisions are inadequate.

Section 412.170, Rate Notice to Customers

In Appendix A to these Comments, RESA has deleted most of the subsections of this new section of Part 412, leaving the following which represents a reasonable compromise:

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, Proposed Section 412.170 is an example of inappropriate over-regulation of competitively priced services. It would dictate how RESs use their limited bill message space on a utility's bill. It 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. It would require phone calls to customers advising them of matters already covered by the contracts the customers signed. It would mandate certain RESs to post twelve months of historical rate data, data which, as pointed out by RESA and other parties in the NOI proceeding, provides no value to customers as to future rates. It would require RESs that do not want to post residential offers to do so, while limiting RESs that want to post residential offers to three such offers at any point in time.

As pointed out in RESA's General Comments, *supra*, one concern of RESA is competitive parity. The Commission does not require utilities to send bill messages regarding changes in purchased electricity prices nor changes in base rates, nor does it require letters or phone calls. All of these requirements would cause RESs to incur substantial costs without any commensurate benefit to customers. It appears to RESA that the Staff is attempting to indirectly prohibit variable rates by exposing RESs that wish to make variable offers to extreme increases

in the cost of doing business. In short, whether or not it is Staff's intent, its proposed rule changes threaten to regulate variable rate offers out of the marketplace.

Section 412.190, Renewable Energy Product Descriptions

RESA questions the need for the proposed revisions to Subsection (a) of Section 412.190, but does not generally oppose them. However, subsections (b) through (e) should be deleted for the following reasons. Subsection 412.190 (b) would requires a RES which markets a green product to "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". Subsection 412.190 (c) would require a RES marketing a green product to disclose on all of its marketing materials and its website "the percentage of renewable energy resources generated in the State of Illinois used in supplying power or energy to customers pursuant to each offer". Subsection 412.190 (d) would require RESs that post green offers on the PlugInIllinois website to include the information required by Subsections 412.190 (b) and (c). Subsection 412.190 (e) would require a RES marketing green energy to disclose, on its website, "the generation sources and the location of such generation sources applicable to each offer".

The above mentioned renewable obligation would recast how green products are created and structured in a competitive market. By recasting how those products are structured, these changes also completely change the costs, risks and charges for such products. Renewable products are not generally kept in a pre-purchased inventory of costs that await customers to sign up and then, through supply charges, those customers then reimburse the RES for a portion of that held inventory. Although that is perhaps how the grocery, or firewood businesses operate,

that is decidedly not the way the retail energy market works. A RES will not know the percentage of Renewable Energy Credits ("RECS", or individually described as a Renewable Energy Credit ("REC")) that come from Illinois sources at the time the RES is marketing the product. Most green products are sourced using national RECS or regional RECS, typically from the PJM footprint. When a RES markets a green product, it does not typically pre-purchase the RECS that it will use to satisfy the green content. This is because the RES does not know how many customers will enroll. Instead, most RESs will enroll customers on the product throughout the year and will then make REC purchases either according to a specific schedule (annually or quarterly) or when it is advantageous to do so (*i.e.* when REC prices are low), in sufficient quantities to match the amount of load enrolled. Moreover, RESs may purchase different types of RECS to satisfy the green content based on the market price.

As long as the RES procures RECS (or other renewable resources) that are consistent with how the product is marketed, it should be allowed to market the product as "green" energy. For example, if a RES markets a product as being 50% sourced from wind energy, the RES must procure wind RECs (or wind energy purchased under a contract) equal to the load that results from that offer, otherwise, it has misrepresented the offer, which is a violation of existing rules. If a RES markets a product as being 50% sourced from Illinois wind, the RES must procure RECs (or wind energy purchased under a contract) from Illinois wind sources equal to the load that results from the offer.

In addition, the compliance requirements contemplated by the proposed revisions to Section 412.190 are inconsistent with the procurement of other "environmentally friendly" resources. For example, carbon offset products are not tied to any particular source.

Section 412.310, Required RES Information

Section 412.310 requires RESs to provide certain documents to the Commission's Consumer Services Division, as well as revisions to such documents. However, it appears that when a RES submits such information and does not hear back from Staff, such non-response is not an indication that the documents submitted are compliant in the opinion of Staff. Section 412.310 should include a provision that if the Commission's Consumer Service Division does not respond within a specified reasonable period of time, there is a presumption that the documents comply with the Commission's rules. If, as RESA believes, that RES compliance is the goal, then it is appropriate that RES should have notice whether their submittal conforms to Staff's opinion of compliance, so that any non-compliance can be corrected in a timely manner. Therefore, RESA proposes to add the following subsection to Section 412.310:

> (c) If for good cause the Commission Staff finds that any materials provided by the RES are not compliant with the Commission's rules, the Commission Staff shall advise the RES within 10 business days.

Section 412.30, Dispute Resolution

Section 412.320 (c) (3) should be revised to require the Commission's complaint summaries to provide customers with meaningful information. Currently, the summaries can be misleading in that there may be very little difference between a "five star RES" and a "four star RES" or possibly even a five star RES over a "one star RES". The difference may be fractions of a decimal point. The type of information that would be meaningful and not misleading can be developed during this rulemaking proceeding. One possibility would be to provide information regarding the ratio of a RES' complaint to the number of RES' customers, but without disclosing

the RES' market share. Consequently, RESA offers the following proposed revision to Section 412.320 (c) (3):

> Disclosure of RES' Level of Customer Complaints. The Commission shall, on at least a quarterly basis, prepare summaries of all formal and informal complaints received by it and publish those summaries on its website. The summaries shall be in an easy-to-read and user friendly format and shall provide customers with meaningful information.

V. COMMENTS ON PROPOSED REVISIONS TO PART 453

First, the definition of "Electronic Signature" in Section 453.10 should be revised as follows:

> "Electronic signature" shall mean a digitized recording of the handwritten signature of the executing person, an electronic sound, symbol, or process attached to or logically associated with a Letter of Agency (LOA) and executed by a person with the intent to sign the LOA. A recording of oral assent is not an electronic signature.

Second, a new Subsection 453.20 (b) (1) should be added and current Subsection 453.20 (b) (2) revised as follows:

1) A digitized version of the handwritten signature of the executing person shall be self-authenticating
2) For any other form of Electronic Signature, a security procedure shall require unique and private information from the signer. This information may ~~shall~~ include:

Staff's proposal to substitute "shall" for "may" makes the provision overly restrictive and is unnecessary. RESA is not aware of any complaints from customers enrolling over the internet that they have been "slammed".

Third, the last sentence of Subsection 453.20 (b) (1) should be revised as follows: "This information may not include ~~any information that is also necessary to effect a switch of RESs~~ the customer's account number." As written the sentence is overly broad. It should be sufficient to prohibit the inclusion of the customer's account number.

Fourth, consideration should be given to amending Part 453 to include the ability to validate an internet enrollment by use of an independent third party or in the alternative through the customer's provision of his/her electronic signature (to be distinguished from a unique identifier). RESA will develop this proposal in future comments.

VI. STAFF HAS GIVEN NO CONSIDERATION TO THE BURDENS THE PROPOSED RULES, INCLUDING COST INCREASES, WOULD PLACE ON RETAIL ELECTRIC SUPPLIERS.

The proposed rules impact virtually every significant cost center for a RES -- information system development and data storage for record retention and retrieval, personnel costs for newly required and repetitive telephone calls, template redesign and printing costs for contract standardization, supply costs for hedging strategies, and overhead costs to audit compliance with the proposed rules to name a few. Equally important, there are opportunity costs associated with the time and effort dedicated to the implementation of new processes and activities mandated without demonstration of any benefit to be derived. Some of the burdensome, and potentially expensive, additional requirements contained in Staff's Proposed Rules include the following:

- **REVISING FORM CONTRACTS TO PUT TEXT IN STAFF'S PROPOSED ORDER (SECTION 412.110)**
- **REQUIRING A UNIFORM DISCLOSURE STATEMENT TO FOLLOW STAFF'S EXACT LANGUAGE AND ORDER PRESENTED (SECTION 412.115)**
- **EXTENSION OF THE DOOR-TO-DOOR REQUIREMENTS TO ALL "IN-PERSON SOLICITATIONS (SECTION 412.120)**
- **RETAINING RECORDINGS OF SUCCESSFUL SALES CALLS FOR THE LONGER OF 2 YEARS OR AS LONG AS THE CUSTOMER STAYS A CUSTOMER (SECTION 412.130 (d))**
- **RETAINING RECORDINGS OF UNSUCCESSFUL SALE CALLS FOR SIX MONTHS (SECTION 412.130 (d))**

- **RETAINING RECORDINGS OF SUCCESSFUL IN-BOUND SALES CALLS FOR THE LONGER OF 2 YEARS OR AS LONG AS THE CUSTOMER STAYS A CUSTOMER (SECTION 412.140 (c))**
- **REQUIRING TPVS ON IN-BOUND SALES CALLS (SECTION 412.140 (d))**
- **IN A DIRECT MAIL SITUATION, REQUIRING THE RES TO COMPLY WITH SECTION 412.140 IF THE DIRECT MAIL SOLICITATION ALLOWS THE CUSTOMER TO ENROLL VIA TELEPHONE OR SECTION 412.160 IF IT ALLOWS THE CUSTOMER TO ENROLL VIA THE INTERNET IN ADDITION TO MEETING THE REQUIREMENTS OF SECTION 412.150 FOR DIRECT MAIL (SECTION 412.150 (c)**
- **PROVIDING NOTICE OF VARIABLE RATES ON THE RES' WEBSITE AND/OR PHONE AT LEAST 30 DAYS PRIOR TO THE START OF A CALENDAR MONTH (SECTION 412.170 (a))**
- **USING THE RES' BILL MESSAGE SPACE IN A UCB SITUATION TO DISCLOSE VARIABLE RATES (SECTION 412.170 (b))**
- **SHOWING THE PERCENTAGE CHANGE OF THE VARIABLE RATE FROM MONTH TO MONTH (SECTION 412.170 (c))**
- **PROVIDING A SEPARATE WRITTEN NOTICE TO CUSTOMERS WHEN THE VARIABLE RATE WILL INCREASE MORE THAN 30% (SECTION 412.170 (d))**
- **PROVIDING SEPARATE WRITTEN NOTICE WHEN A CUSTOMER'S RATE CHANGES FROM A FIXED RATE TO A VARIABLE RATE (SECTION 412.170 (f))**
- **PUBLISHING ON THE COMMISSION'S WEBSITE THE RES' MONTHLY VARIABLE RATES FOR THE PAST 12 MONTHS (SECTION 412.170 (g))**
- **DISCLOSURE OF THE PERCENTAGE OF RENEWABLE ENERGY RESOURCES FOR A "GREEN" PRODUCT OFFERS(SECTION 412.190)**
- **DISCLOSURE OF THE PERCENTAGE OF RENEWABLE ENERGY RESOURCES GENERATED IN ILLINOIS FOR "GREEN" PRODUCT OFFERS (SECTION 412.190)**
- **LIMITING THE INFORMATION THAT CAN BE USED FOR AN ELECTRONIC SIGNATURE (SECTION 453.20 (b) (1))**

VI. CONCLUSION

RESA appreciates the opportunity to submit these Verified Initial Comments on Staff's Proposed Rules. RESA requests that the Staff accept the revisions proposed in these Verified Initial Comments and attached Appendices A and B and reflect them in a revised version of Staff's Proposed Rules.

Respectfully submitted,

s/s GERARD T. FOX
Gerard T. Fox
An Attorney for the Retail Energy Supply Association

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NOTICE OF FILING

Please take note that on November 5, 2015, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Verified Initial Comments of the Retail Energy Supply Association 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 Verified Initial Comments 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 November 5, 2015.

/s/ GERARD T. FOX

Gerard T. Fox