STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	)	
On its Own Motion	)	
	)	Docket No. 17-0857
Initiating Proposed Rulemaking	)	
For the Obligations of Alternative	)	
Gas Suppliers	)	

VERIFIED REPLY COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association ("RESA")[1], by and through its attorney, Gerard T. Fox, hereby submits its Verified Reply Comments in this proceeding, the Illinois Commerce Commission's ("Commission") rulemaking to establish 83 Ill. Admin. Code Part 512, Obligations of Alternative Gas Suppliers ("AGS"). On March 7, 2019, the Commission Staff filed it Verified Initial Comments, along with its Proposed Rules. On April 4, 2019, Response Comments were filed by RESA and the following parties: the Illinois Competitive Energy Association ("ICEA"), Illinois Energy USA, LLC ("Illinois Energy"), the Illinois Attorney General ("AG"), and the Citizens Utility Board ("CUB"). RESA herewith replies to the Response Comments of the other parties in this proceeding.

[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.

In general, RESA and the other parties found the Proposed Rules to be a reasonable attempt to resolve differences of the parties which participated in the workshop process in this proceeding. In its Response Comments, RESA took the position that the Part 512 rules ultimately adopted by the Commission in this docket must be compliant with Article XIX of the Public Utilities Act. In addition, they should be consistent, to the extent appropriate, with the rules adopted for Alternative Retail Electric Suppliers ("ARES") in Docket 15-0512—83 Ill. Admin. Code Part 412. To the extent that parties offer revisions to the Proposed Rules that are inconsistent with Part 412 of the Commission's rules, such revisions should be rejected unless those Parties demonstrate a substantial basis for departure.

In its Initial Comments, the Commission Staff addressed seven specific provisions of the Proposed Rules where there was no consensus. RESA indicated its position on those provisions in its Response Comments and will follow the same format in these Reply Comments.

Section 512.10, Definitions

In its Response Comments, RESA recommended a definition of "In Person Solicitation" which clarified that "dinner table" discussions or conversations that cannot result in an enrollment, sometimes referred to as "warm marketing", are not in person solicitations within the meaning of the Commission's rules. This is consistent with the Commission's orders in Ill. C. C. Docket 15-0512, in which the Commission adopted 83 Ill. Admin. Code 412, Obligations of Retail Electric Suppliers. (First Notice Order, dated September 22, 2016, p. 56; and Second Notice Order, dated June 1, 2017, page 63)

ICEA takes the position that the definition of "In Person Solicitation" does not need to be revised, but the Commission should include, in its order, examples of the types of solicitations

that would not fit within that definition. (ICEA Response Comments, pp. 2-4) While RESA agrees with ICEA that providing examples of contacts that do not constitute an in person solicitation would be helpful, RESA still believes that it is important to clarify the definition itself.

In its Response Comments, the AG also proposes a revised definition of "In Person Solicitation", unfortunately one that makes no sense whatsoever. (AG Response Comments, pp. 1-2) The AG does this by focusing on the definition of "solicitation" and ignoring any definition of "in person". By doing so, the AG argues that an in-person takes place whether or not the AGS agent is physically present with the customer. Under the AG's proposed definition, it appears that a postcard or even a billboard could constitute an in person solicitation. The AG's proposed definition has no support in fact or logic and should be rejected.

Section 512.115 (b) (5), Uniform Disclosure Statement

Proposed Section 512.115 (b) (5) would require the Uniform Disclosure Statement ("UDS") used by AGS to include a Price To Compare ("PTC") for the gas utility serving the customer, the purchased gas charges ("PGC") filed with the Commission each month. RESA took the position in its Response Comments that that there is no corresponding requirement in Part 412, Obligations of Retail Electric Suppliers; in fact a similar proposal in Docket 15-0512 was rejected by the Commission. (Second Notice Order in Docket 15-0512, dated June 1, 2017, p. 49) Part 512 should be consistent with Part 412 unless there is some distinction between AGS and ARES that requires a different treatment. No such distinction exists here.

ICEA also takes the position that the UDS should not include the PTC, rather customers should be provided with the Commission's website, which would allow the customer to review a

broad range of information. (ICEA Response Comments, pp. 3-5) RESA agrees with ICEA and does not object to a requirement that the customer be provided with the Commission's website.

Illinois Energy supports the requirement that an AGS include a PTC in its UDS. However, Illinois Energy acknowledges that there is no counterpart to this requirement in Part 412 for ARES and that historical gas supply prices are not particularly good or reliable indicators of future pricing. (Illinois Energy Response Comments, pp. 2-3) It is precisely for these reasons that the PTC should not be on the UDS of AGS.

While the AG does not take a position, CUB supports Staff's proposed requirement of a gas utility's PTC on the UDS. CUB argues that it is consistent with the latest report of the Commission's Office of Retail Market Development ("ORMD") which recommended that ARES be required to include the PTC on solicitations and that electric utilities include the PTC on their bills. (CUB Response Comments, p. 9) However, while it is true that electric utilities have received Commission approval to include a PTC message on their bills, the Commission has not acted on the recommendation that ARES be required to include the PTC on their solicitations. The ORMD Report was directed at ARES, not AGS, and reference to it does not support CUB's argument.

CUB also argues that including the gas utility's PTC on an AGS' UDS would provide customers with a "meaningful metric" upon which to compare an AGS' offer with the gas utility's charges. (*Id*., p. 8) However, this argument appears to be based on CUB's incorrect claim that gas utility's prices are "quite steady". (*Id*., p. 6). This claim is proven false by CUB's own statistics on pages 6 and 7 of its Response Comments. For Nicor Gas, the PTC ranged from a low of 32 cents/therm to a high of 43 cents/therm, a deviation of 34%. The deviation was greater for North Shore Gas, which ranged from a low of 33.2 cents/therm to a high of 48.7

cents/therm, a deviation of 47%. The deviation was the highest for Peoples Gas, which ranged from a low of 25.9 cents/therm to a high of 45.4 cents/therm, a deviation of 75%.

As RESA stated in its Response Comments and shown by CUB's own statistics, the historical PGCs are not a useful tool for the customer. The UDS discloses meaningful information about the offer from the AGS for the term of the proposed contract, which is obviously prospective in nature. A gas utility's PGC is variable, changing monthly and is not a good predictor of what its PGC will be during the term of the AGS' contract with the customer, as demonstrated by CUB itself.

Section 512.150, Direct Mail

Staff proposed a "slight variation" in Section 512.150 from the comparable provision in Part 412. (Staff Initial Comments, p. 6) Staff distinguishes between direct mail that includes a Letter of Agency ("LOA") (which could, therefore, result in an enrollment) and direct mail that does not include an LOA, for example, a postcard that encourages a customer to call for more information about products (which could result in an enrollment under Section 512.140, Inbound Enrollment Calls) or go on-line to the AGS' website (which could result in an enrollment under Section 512.160, Online Marketing). RESA agrees that this is an important distinction and agrees that the required disclosures of the AGS' name and address and a disclaimer that the AGS does not represent the utility, a government agency, or a consumer group, is appropriate for direct mail that does not include an LOA.

Illinois Energy also supports Staff's provision (Illinois Energy Response Comments, p. 4), as does ICEA except that ICEA proposes some clarifying language to delete the references to "enrollment" and "service being solicited" to clarify the distinction between mailings that could

result in an enrollment (such as a mailing that includes a Letter of Agency and those that could not (such as a postcard). (ICEA Response Comments, p. 5-6) RESA agrees with ICEA's proposed language revisions.

Both CUB and the AG take the position that all direct mail, whether or not it seeks an enrollment, should include all of the disclosures required by Section 512.110. However, both CUB and the AG are under the mistaken belief that the comparable provision in 83 Ill. Admin. Code Section 412.150, Direct Mail, requires ARES to include all of the disclosures contained in Section 412.110 in any direct mailing. (CUB Response Comments, pp. 10-13; AG Response Comments, pp. 3-4). That is clearly not the case. Section 412.150 makes a distinction between the disclosures required when there is Letter of Agency contained in the mailing (Section 412.150 (b) applies) and when it does not (Section 412.150 (a) applies). For example, if a mailing did not seek enrollment and did not solicit a particular service, then the ARES mailing would not require any disclosures. Consequently, the language proposed by Staff for Section 512.150 actually requires more disclosures than that in Section 412.150 for ARES.

Section 512.170, Conduct, Training and Compliance of AGS Sales Agents

Staff's Proposed Rules do not include a prohibition of the payment of any form of incentive compensation to sales agents. *(Id.*, p. 7) RESA agrees that, for the reasons stated by the Commission Staff, such a prohibition is inappropriate and should be excluded. Both ICEA (ICEA Response Comments, pp. 6-7) and Illinois Energy (Illinois Energy Response Comments, p. 4) take a similar position. CUB and the AG did not address Section 512.170 in their Response Comments. Staff's Proposed Section 512.170, as drafted, is consistent with Section 412.170 for ARES, and should be adopted.

Section 512.220, Early Termination of Sales Contract (Part 1)

Staff rejected a proposal to allow a customer to terminate a sales contract without payment of an early termination fee within the first six months of a contract term for any customer who enrolled through a door-to-door solicitation. (*Id*., pp. 7-8) There is no comparable provision in Part 412 for ARES and RESA does not see any distinction in this regard between marketing by ARES and marketing by AGS. ICEA (ICEA Response Comments, p. 7) and Illinois Energy (Illinois Energy Response Comments, p. 4) also support Staff's rejection of this proposal.

Both CUB (CUB Response Comments, pp. 13-17) and the AG (AG Response Comments, pp. 4-6) recommend that the Part 512 rules include a provision which would allow a customer enrolled via door-to-door solicitation six months to terminate the sales contract without an early termination fee. However, they do not provide any reason why this provision, which is not in Part 412 for ARES, should be in Part 512. Moreover, both CUB and the AG rely heavily on an inapposite opinion of an appellate court. As stated by ICEA, that opinion provide the Commission with broader authority in the context of approving a utility's tariffs, not more generally in the context of a rulemaking such as this proceeding. (ICEA Response Comments, p. 7)

Section 512.220, Early Termination of Sales Contract (Part 2)

Staff proposed language in Section 512.220 addresses the circumstances in which an early termination fee should be waived and how any such early termination fees, if collected, would be refunded if they were imposed in error. (*Id*., p. 9) While this provision is not in Part 412, RESA agrees that this is a helpful addition to the rule and should be adopted. ICEA, Illinois

Energy and CUB also support Staff's proposed language. The AG did not address this in its Response Comments.

Respectfully submitted,

Retail Energy Supply Association
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NOTICE OF FILING

Please take note that on April 25, 2019, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Verified Reply 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 Reply Comments of the Retail Energy Supply Association upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for the instant docket via electronic delivery on April 25, 2019.

/s/ GERARD T. FOX
Gerard T. Fox