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## Compiled Comments

Staff's proposal is to add these new requirements to the existing [Code Part 410](#) (Standards of Service for Electric Utilities and Alternative Retail Electric Suppliers). In addition to the proposed new Subparts F through I below, Staff proposes to add the following two definitions to Section 410.10:

### **AIU Comments:**

Suggests Staff not include these new proposed requirements to the existing Code Part 410; rather, it is the opinion of AIU that these requirements be contained in a new part. This recommendation is made in an effort to expedite this specific rulemaking and not subject other items currently in Part 410 for rulemaking consideration.

### **ComEd Comments:**

#### **Proper Administrative Code for New Rulemaking**

It is unclear that Illinois Administrative Code Part 410 ("Part 410") is the appropriate code part in which to memorialize the DFNR. While it may seem appropriate to house such rules in Part 410 in light of its title (*Standards of Service for Electric Utilities and Alternative Retail Electric Suppliers*), the vast majority of the DFNR's focus is on Retail Electric Supplier ("RES") marketing practices, which warrants a separate new code part -- not an amendment to the existing code part related to electric utilities. Therefore, ComEd suggests that these proposed rules be promulgated under a new code part. Alternatively, ComEd seeks assurances from Staff and the workshop participants that only the sections indicated in the DFNR (e.g., Section 410.10 "Definitions" and new sections 410.500 through 410.810) are the sole subjects of the proceeding and amendments to other sections of Part 410 will not become the subject of the rulemaking.

#### **Questions Concerning Commission Legal Authority**

As reflected in the Commission's Order (at page 47), there may be some question concerning the Commission's authority to promulgate consumer

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protection rules such as those contained in the DFNR. Therefore, ComEd recommends that the workshop process be used to assess the participants' views on the bounds of the Commission's authority, where appropriate. The objective of this recommendation is to avoid unnecessary litigation at the Commission, which may delay implementation, and to prompt parties to address questions concerning Commission jurisdiction in the appropriate forum. Further, the Commission also indicated that certain matters may be appropriately implemented addressed through utility tariffs, while other items may be more appropriately addressed through a rule. ComEd suggests that any items that impact utility requirements within the DFNR should be reviewed to determine if they are better addressed through utility resource guides/handbooks or utility tariffs, thereby avoiding the overburdening of the this nascent rulemaking proceeding.

**"Retail Electric Supplier"** or **"RES"** includes Alternative Retail Electric Suppliers and electric utilities serving retail customers pursuant to Section 16-116 of the Act [220 ILCS 5/16-116].

**ICEA Comments:**

"Retail Electric Supplier" or "RES"<sup>1</sup> shall mean either:

an Alternative Retail Electric Supplier (ARES) certified by the Illinois Commerce Commission pursuant to Section 16-115 of the Public Utilities Act [220 ILCS 5/16-115], meeting all obligations of an ARES pursuant to Section 16-115A of the Public Utilities Act [220 ILCS 5/16-115A], and authorized to provide electric power and energy supply services in an Illinois electric utility's service territory; or an Illinois electric utility as defined in Section 16-102 of the Public Utilities Act [220 ILCS 5/16-102] meeting all obligations provided in Sections 16-115A and 16-116 of the Public Utilities Act [220 ILCS 5/16-115A and 16-116].

**"Small commercial customer"** means the same as that term is defined in Section 16-102 of the Act [220 ILCS 5/16-102]. A Retail Electric Supplier may remove the customer from designation as a "small commercial customer" if the customer consumes

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<sup>1</sup> Definition of "Retail Electric Supplier" or "RES": This definition tracks verbatim from that used in IAC Part 453 Internet Enrollment Rules.

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more than 15,000 kilowatt-hours of electricity in any calendar year after becoming a customer of the RES. In determining whether a customer has consumed 15,000 kilowatt-hours of electricity or less during the previous year, usage by the same commercial customer shall be aggregated to include usage at the same premises even if measured by more than one meter, and to include usage at multiple premises. Nothing in this Section creates an affirmative obligation on an electric utility to monitor or inform customers or RESs as to a customer's status as a small commercial customer as that term is defined herein. Nothing in this Section relieves an electric utility from any obligation to provide information upon request to a customer, RES, the Commission, or others necessary to determine whether a customer meets the classification of small commercial customers as that term is defined herein.

**BlueStar Comments:**

BlueStar agrees with using the existing statutory definition of a "small commercial customer" in the Public Utilities "Act (PUA) (a consumer who consumes no more than 15,000 kilowatt-hours of electricity annually) as the appropriate cut-off for the proposed consumer protections. As with any of the proposed consumer protections, the statutory language is the guide for determining applicability of additional consumer protections.

**ICEA Comments:**

"Small commercial customer" means ~~the same as that term is defined in Section 16-102 of the Act [220 ILCS 5/16-102].~~ a nonresidential retail customer of an electric utility who consumed 15,000 kilowatt-hours of electricity or less during the previous year. A Retail Electric Supplier may remove the customer from designation as a "small commercial customer" if the customer consumes more than 15,000 kilowatt-hours of electricity in any calendar year after becoming a customer of the RES. In determining whether a customer has consumed 15,000 kilowatt-hours of electricity or less during the previous year, usage by the same commercial customer shall be aggregated to include usage at the same premises even if measured by more than one meter, and to include usage at multiple premises. Nothing in this Section ~~Part~~ creates an affirmative obligation on an electric utility to monitor or inform customers or RESs as to a customer's status as a small commercial customer as that term is defined herein. Nothing in this

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Section relieves an electric utility from any obligation to provide information upon request to a customer, RES, the Commission, or others necessary to determine whether a customer meets the classification of small commercial customers as that term is defined herein.

## **SUBPART F: MARKETING PRACTICES AND ENROLLMENT**

### **BlueStar Comments:**

As a beginning point, rather than re-addressing BlueStar's previous comments on Staff specific proposed consumer protection proposals, BlueStar would like to begin by providing general comments related to the creation and implementation of additional consumer protections contained in Staff's proposed rule. BlueStar recommends that the focus of any new or enhanced consumer website protections, including marketing rules, contractual requirements, product or definition standardization, dispute resolution reporting requirements, complaint reporting and enforcement mechanisms should all be guided by and limited to the scope and applicability of existing legislative authority and administrative rules. In fact, BlueStar agrees with ORMD's statutory conclusion and recommendation as it relates to additional customer protection in its June 2009 Annual Report to the General Assembly, the Governor and the Illinois Commerce Commission. In particular, BlueStar shares the opinion expressed in the ORMD report where Staff concluded,

"[T]he Commission lacks the explicit statutory authority to establish these requirements through additional administrative rules. As a result, we recommend the General Assembly either a) amend the Public Utilities Act to provide the Commission with explicit rulemaking authority to establish rules in line with the proposed requirements discussed ....., or b) turn the recommended requirements into statutory mandates."

The focus of any new or enhanced consumer protections should be balanced between measures limited to actually protecting customers and enhancing the development of a competitive retail mass market. Any well intended but unnecessary protections could jeopardize the development of this market. Any new rules should reflect commercial and operational realities regarding the competitive retail electric industry.

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### **Section 410.500 Application of Subpart F**

The provisions of this Subpart shall apply to retail electric suppliers serving or seeking to serve residential or small commercial customers with the following exceptions: Sections 410.560 a), b) and c) and 410.570 shall apply to retail electric suppliers serving or seeking to serve any customer class.

#### **ICEA Comments:**

The provisions of this Subpart shall **only** apply to **Retail Electric Suppliers** serving or seeking to serve residential or small commercial customers, with the following exceptions: Sections 410.560 a), b) and c) and 410.570 shall apply to retail electric suppliers serving or seeking to serve any customer class.

#### **Liberty Power Comments:**

Liberty Power understands the intent of the rule is to apply certain provisions of the rule to residential and small commercial customers, and other provisions of the rule to all customers. However, we recommend the proposed rule language be modified to clarify this intent. As currently drafted, an interpretation and legal argument could be made that if a RES is marketing to residential or small commercial customers then all customers are afforded those same protections regardless of their customer class. In other words, the rule could be interpreted to provide a Fortune 500 company the exact same protections of a residential customer simply because the RES soliciting the Fortune 500 company also serves residents. To clarify the intent of the rule, Liberty Power suggests the following modified language:

#### **Liberty Power Comments:**

The provisions of this Subpart shall apply to retail electric suppliers in connection with the provision of service and marketing to ~~serving or seeking to serve~~

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residential or small commercial customers with the following exceptions: Sections 410.560 a), b) and c) and 410.570 shall apply to retail electric suppliers in connection with the provision of service and marketing to ~~serve or seeking to serve~~ any customer class.

**Liberty Power Comments:**

Other similar sections would also need to be modified in the same way, namely: Section 410.600 (Application of Subpart G), Section 410.700 (Application of Subpart H), and Section 410.800 (Application of Subpart I).

**Section 410.510 In-Person Marketing**

a) Sales agents who contact customers in person at a location other than the RES's place of business for the purpose of selling any product or service offered by the RES shall produce identification as soon as possible and prior to describing any products or services offered by the RES. This identification shall be visible at all times and prominently display the following:

- 1) The sales agent's full name in reasonable size type face;
- 2) A photograph of the sales agent;
- 3) The trade name and logo of the RES they are representing.

**ICEA Comments:**

(a) Sales agents who engage in door-to-door marketing ~~contact customers in person at a location other than the RES's place of business for the purpose of selling power and energy service~~ any product or service offered by the RES shall

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produce identification as soon as possible and prior to describing any products or services offered by the RES. This identification shall be visible at all times and prominently display the following:

**Just Energy Comments:**

a) Sales agents or employees of RES who contact customers in person at a location other than the RES's place of business for the purpose of selling any product or service offered by the RES shall produce identification as soon as possible and prior to describing any products or services offered by the RES. This identification shall be visible at all times and prominently display the following:

[Comment: The rule repeatedly refers to "sales agents" only but does not contemplate marketing by direct employees of the RES. The rule should be revised throughout to cover both agents and direct employees.]

**Liberty Power Comments:** Requirement to Produce Identification

Liberty Power suggests modification be made to Section 410.510(a) and provides suggested edits to the proposed language below. We believe the rule is intended to apply to "cold door-to-door" marketing practices. A requirement for a sales agent to produce identification when they have a prescheduled appointment is unnecessary as their presence is expected and invited:

**Liberty Power Comments:**

a) Sales agents who contact customers in person at a location other than the RES's place of business for the purpose of selling any product or service offered by the RES, without a scheduled appointment, shall produce identification as soon as possible and prior to describing any products or services offered by the RES. This identification shall be visible at all times and prominently display the following:

b) If a customer elects to enroll with the RES, the sales agent shall read to the customer all items within the uniform disclosure statement. The minimum list of

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items to be included in the disclosure statement is contained in Section 410.730.

**ICEA Comments:**

- (b) If a customer elects to enroll with the RES, the sales agent shall encourage the customer to read to the customer all items within the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is contained in Section 410.730.

**Liberty Power Comments:**

- b) If a customer elects to enroll with the RES, the sales agent shall encourage the customer to read to the customer all items within the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is contained in Section 410.730.
- c) If a fixed bill product is being offered, the sales agent shall explain to the customer that the fixed bill amount is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed bill amount is not the total monthly amount for electric service.

**ICEA Comments:**

- ( c) If a fixed bill product for supply charges only is being offered, the sales agent shall explain to the customer that the fixed bill amount is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed bill amount is not the total monthly amount for electric service.

**Just Energy Comments:**

- c) If a fixed bill product is being offered and the fixed bill amount does not include

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[delivery service charges](#), the sales agent shall explain to the customer that the fixed bill amount is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed bill amount is not the total monthly amount for electric service.

[Comment: This disclosure should be revised throughout to recognize that a fixed bill for both delivery and supply is possible under an SBO scenario.]

d) If a customer enrolls by signing a Letter of Authorization, the sales agent shall require the customer to initial the written uniform disclosure statement, of which a copy is to be left with the customer at the conclusion of the sales visit. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document.

**ICEA Comments:**

(d) If a customer's enrollment is authorized, ~~enrolls~~ by signing a Letter of Authorization, the sales agent shall require the customer to initial the written uniform disclosure statement, of which a copy is to be left with the customer at the conclusion of the sales visit. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document.

**Just Energy Comments:**

d) If a customer enrolls by signing a Letter of Authorization, the sales agent shall require the customer to initial the written uniform disclosure statement, of which a copy is to be left with the customer at the conclusion of the sales visit. The uniform disclosure statement can be either part of the first page of the sales contract, [including the Letter of Authorization](#), or a separate document.

[Comment: Customers will benefit if the uniform disclosure statement is included in the letter of authorization because all essential agreement information will be consolidated in one place for the customer to review. Requiring a separate uniform disclosure statement and Letter of Authorization will dilute the information necessary

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for a customer to make an informed choice and require more burdensome contract administration by the RES.]

e) If a customer's enrollment is authorized by a third party verification as a result of in-person marketing, the third party verifier shall require the customer to verbally acknowledge that he or she understands the uniform disclosure statement, and that a copy of the uniform disclosure statement was left with the customer.

**Liberty Power Comments:**

e) If a customer's enrollment is authorized by a third party verification as a result of in-person marketing, the third party verifier shall require the customer to verbally acknowledge that he or she understands the uniform disclosure statement, ~~and that a copy of the uniform disclosure statement was left with the customer.~~

f) If the customer's enrollment is authorized on-line, the requirements of Section 410.550 shall apply.

**Just Energy Comments:**

[Comment: On-line enrollment does not constitute in-person marketing or a telephone solicitation. This is not the appropriate location in the rule for this requirement. None of the provisions in this Section should apply if the customer enrolls online regardless of whether the customer was first contacted by a salesperson in-person or telephonically.]

g) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the sales agent or where the customer or another third party informs the sales agent of this circumstance, the sales agent shall either find a representative in the area who

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is fluent in the customer's language to continue the marketing activity in his/her stead, use an interpreter at the premise, or terminate the in-person contact with the customer. When the use of an interpreter is necessary, a form consistent with Section 2N of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2N] must be completed. The sales agent shall leave the premises of a customer when requested to do so by the customer or the owner or occupant of the premises.

**ICEA Comments:**

(g) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the sales agent or where the customer or another third party informs the sales agent of this circumstance, the sales agent shall either find another sales representative for the RES a representative in the area who is fluent in the customer's language to continue the marketing activity in his/her stead, use an interpreter at the premise or via the phone, or terminate the in-person contact with the customer. When the use of an interpreter is necessary, a form consistent with Section 2N of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2N] must be completed or the content and consent by the customer be recorded.

**Just Energy Comment:**

g) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the sales agent in English or where the customer or another third party informs the sales agent of this circumstance, the sales agent shall either find a representative in the area who is fluent in the customer's language to continue the marketing activity in his/her stead, use an interpreter at the premise, or terminate the in-person contact with the customer. When the use of an interpreter is necessary, a form consistent with Section 2N of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2N] must be completed. The sales agent shall leave the premises of a customer when requested to do so by the customer or the owner or occupant of the premises.

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g) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the sales agent or where the customer or another third party informs the sales agent of this circumstance, the sales agent shall either find [another sales representative of the RES in the area](#) who is fluent in the customer's language to continue the marketing activity in his/her stead, use an interpreter at the premise, or terminate the in-person contact with the customer. When the use of an interpreter is necessary, a form consistent with Section 2N of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2N] must be completed. The sales agent shall leave the premises of a customer when requested to do so by the customer or the owner or occupant of the premises.

h) The sales agent shall add the person's name to the RES's "Do Not Market List" upon that person's request.

**AIU Comments:**

"The sales agent shall refrain from using the name of the electric utility providing delivery service as part of any product offering so as not to suggest any improper representations or utility endorsements."

**BlueStar Comments:**

BlueStar stands by previously submitted comments on this subject.

**ICEA Comments:**

h) i) The sales agent shall add the person's name to the RES's "Do Not Market List" upon that person's request.

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**Just Energy Comments:**

[Comment: The "Do Not Market List" should be centrally maintained by the Utility. If the customer desires not to be contacted by RES, then the customer should contact the Utility to add their customer information to the "Do Not Contact" list. Sales agents should not be required to gather this type of information through personal experience for inclusion in a RES's "Do Not Contact" list.]

**Liberty Power Comments:**

Do Not Market List(s)

Section 410.510(h) alludes to a RES's "Do Not Market List" while Section 410.560(d) alludes to the *electric utility's* "Do Not Market List". To prevent confusion (i.e. which list supersedes the other, do the lists need to be synced, etc.) we believe any "Do Not Market List(s)" be maintained and distributed by the utilities. Therefore, Liberty Power has provided suggested modifications to both subsections mentioned above:

**Liberty Power Comments:**

h) The sales agent shall [provide to the customer information on how to enroll onto the electric utility's](#) ~~add the person's name to the RES's~~ "Do Not Market List" upon that person's request.

**MidAmerican Comments:**

i) A statement that if the customer is currently with a RES, the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable;

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**Section 410.520 Telemarketing**

a) In addition to complying with the Telephone Solicitations Act [815 ILCS 15], RES

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sales agents who contact customers by telephone for the purpose of selling any product or service shall provide the sales agent's name and, on request, the identification number;

**ICEA Comments:**

- (a) In addition to complying with the Telephone Solicitations Act [815 ILCS 413-15] RES sales agents who contact customers by telephone for the purpose of selling power and energy any product or service shall provide the sales agent's their name and, on request, additional the identification information number if available;

**Liberty Power Comments:**

- a) In addition to complying with the Telephone Solicitations Act [815 ILCS 15], RES sales agents who contact customers by telephone for the purpose of selling any product or service shall provide the sales agent's name and, on request, the identification information, if available number;
- b) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand, and the customer or another third party informs the RES sales agent of this circumstance, the sales agent must immediately transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call.

**ICEA Comments:**

- (b) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the sales agent or where<sup>2</sup>, and the customer or another third party informs the

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<sup>2</sup> The added language tracks the similar language in the ORMD's draft 410.510(g).

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RES sales agent of this circumstance, the sales agent must immediately transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call.

**Just Energy Comments:**

b) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand [a telephone solicitation in English](#), and the customer or another third party informs the RES sales agent of this circumstance, the sales agent must immediately transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call.

c) If a customer elects to enroll with the RES, the sales agent must read to the customer all items within the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure requirements Section 410.730.

**BlueStar Comments:**

c) If a customer elects to enroll with the RES, the sales agent ~~must read~~ **must explain or, at the customer's option, send the disclosure statement to the customer via mail, fax or e-mail.**

**Liberty Power Comments:**

Uniform Disclosure Statement Acknowledgement

In general, Liberty Power is concerned about the redundancy of certain provisions regarding the uniform disclosure statement. We recognize that rules should ensure that customers are well informed about their selected products and services, but should not be overly duplicative. The enrollment process should not only clearly disclose pertinent information to the customer, but should also be part of an easy, convenient process to enhance the customer's experience. In order to create a robust competitive market, the enrollment process should be relatively simple, direct process and not leave the customer believing that switching providers is a

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“headache” or overly complicated process, deterring them from switching providers in the future.

Specifically, Section 410.510(b), Section 410.520(c), and Section 410.530(2) all require the sales agent *to read* to the customer the uniform disclosure statement. Sections 410.510(e), 410.520(e), 410.530(3), and 410.540(d) all require the customer to verbally acknowledge they understand the uniform disclosure statement when enrolling a customer through a TPV. Additionally, Section 2EE of 815 ILCS 505 (which governs the third-party verification method) must also be adhered to. From a practical standpoint, this creates several redundancies best illustrated by an example.

Imagine a sales agent is presenting an electric product to a customer. During the sales solicitation the sales agent typically discusses items such the name of the RES, the length of the contract, the price and charges related to the product or service, if any early termination fees apply, the fact that the RES is an independent seller of electricity, and other relevant information. Under the proposed rules, if the customer wants to enroll with the RES, then prior to enrollment the sales agent would have *to read* to the customer the uniform disclosure statement. The statement as contemplated in Section 410.730 would disclose the length of contract, the price and charges related to the product or service, if any early termination fees apply, the fact that the RES is an independent seller of electricity, and other relevant information. Once the sales agent has finished reading the uniform disclosure statement the customer can be transferred to an independent third-party verifier to complete the enrollment process. As currently contemplated, the TPV would then require the customer acknowledge that they understand the uniform disclosure statement as well as ask the customer to verify “the price of the service to be supplied and the material terms and conditions of the service being offered, including if any early termination fees apply” in accordance with Section 2EE of 815 ILCS 505.

At this time, Liberty Power does not have any specific language modifications to address this concern. However, we hope by identifying the problem we can facilitate more robust conversation on this issue at the next scheduled workshop where these drafted rules will be further vetted and discussed.

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d) If a fixed bill product is being offered, the sales agent must explain to the customer that the fixed bill amount is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed bill amount is not the total monthly amount for electric service.

**ICEA Comments:**

(d) If a fixed bill product for supply charges only is being offered, the sales agent must explain to the customer that the fixed bill amount is for supply charges only and that it does not include delivery service charges and applicable taxes; therefore the fixed bill amount is not the total monthly amount for electric service.

**MidAmerican Comments:**

d) The RES sales agent shall inform the customer that if the customer is currently with a RES, the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable

e) If third party verification is used to authorize a customer's enrollment, the third-party verifier must require the customer to verbally acknowledge that he or she understands the uniform disclosure statement.

f) The written disclosure statement and sales contract must be mailed to the customer within 3 business days of the utility confirmation of accepted enrollment. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document.

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**BlueStar Comments:**

f) The written disclosure statement and sales contract must be mailed **or e-mailed** to the customer within 3 business days of the utility confirmation of accepted enrollment. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document.

**Just Energy Comments:**

[Comment: Many customers now prefer to receive all information in electronic form through e-mail or other means. Electronic exchange of information avoids the use of paper and is often more convenient for the customer. Many customers view the unnecessary use of paper as environmentally unfriendly. The rule should specifically account for the possibility that a customer may choose to receive information electronically including the uniform disclosure statement and sales contract and provide a means whereby the customer can authorize the REP to provide the documents and future communications electronically. A requirement to provide written disclosures by mail simply fails to recognize the most efficient means of modern communication, will hamper the development of the market and represents a step backwards for competition.]

**Liberty Power Comments:**

Delivery method of Uniform Disclosure Statement

Liberty Power suggests Section 410.520(f) and similar language in 410.530(4) be modified to allow for other methods for the delivery (i.e. electronic mail or fax) of the uniform disclosure statement and sales contract, if the customer agrees to receive these documents in this manner. This is consistent with arguments both Liberty Power and BlueStar made in previously submitted comments. Suggested modified language is provided below:

(f) The written disclosure statement and sales contract must be provided or mailed to the customer within 3 business days of the utility confirmation of accepted enrollment. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document.

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g) If a customer elects to enroll on-line as a result of an outbound telemarketing call, the requirements of Section 410.550 shall apply.

**AIU Comments:**

“The sales agent shall refrain from using the name of the electric utility providing delivery service as part of any product offering so as not to suggest any improper representations or utility endorsements.”

**Just Energy Comments:**

[Comment: On-line enrollment does not constitute in-person marketing or a telephone solicitation. This is not the appropriate location in the rule for this requirement. None of the provisions in this Section should apply if the customer enrolls online regardless of whether the customer was first contacted by a salesperson in-person or telephonically.]

**MidAmerican Energy Comments:**

i) The sales agent shall add the person's name to the RES's "Do Not Market List" upon that person's request.

**Section 410.530 In-bound Enrollment Calls**

In the event a customer initiates a call to a RES in order to enroll for service, the RES must:

- 1) Follow the requirements in Section 2EE of the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505/2EE]
- 2) Read to the customer all the items included in the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is contained in Section 410.730.

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- 3) Require the customer to verbally acknowledge that he or she understands the uniform disclosure statement.
- 4) Mail the written disclosure statement and sales contract to the customer within 3 business days of the utility confirmation of accepted enrollment.

**Just Energy Comments:**

[Comment: See comment at Section 410.520 (f)]

**MidAmerican Energy Comments:**

5) Inform the customer that if the customer is currently with a RES, the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable;

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**Section 410.540 Direct Mail**

- a) Each RES that contacts customers for enrollment by direct mail shall include a Uniform Disclosure Statement for the product or service being solicited.

**ICEA Comments:**

- (a) ~~Each RES that solicits customers for power and energy service contacts customers for enrollment by direct mail shall include a Uniform Disclosure Statement for the product or service being solicited.~~

**Liberty Power Comments:**

- (a) Each RES that ~~contacts~~ solicits customers for ~~enrollment~~ power and energy services by direct mail shall include a Uniform Disclosure Statement for the

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product or service being solicited.

- b) The Uniform Disclosure Statement shall include (at a minimum) the items listed in Section 410.730. The Uniform Disclosure Statement must be printed on a document that will stay with the customer and is not required to be mailed back to the RES.

**ICEA Comments:**

(b) The Uniform Disclosure Statement shall include (at a minimum) the items listed in Section 410.730. The Uniform Disclosure Statement must be printed on a document that will stay with the customer and that is not required to be mailed back to the RES.

- c) If a written Letter of Agency is being used to verify any subscriber charge, it shall contain a statement that the customer has read and understood the terms and conditions contained in the Uniform Disclosure Statement.

**ICEA Comments:**

~~e) If a written Letter of Agency is being used to verify any subscriber charge, it shall contain a statement that the customer has read and understood the terms and conditions contained in the Uniform Disclosure Statement.<sup>3</sup>~~

**Just Energy Comments:**

[Comment: The rule should account for the possibility of the Uniform Disclosure Statement being included in the Letter of Agency. The best way to ensure that the customer receives all of the essential agreement information is to include the information in the document that the customer signs to execute an agreement.]

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<sup>3</sup> 815 ILCS 505/2EE is fairly specific on what a written authorization can and cannot say. The deleted language does not appear to comport with the requirements of 505/2EE.

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**MidAmerican Energy Comments:**

(c) If a written Letter of Agency is being used to verify any customer change, it shall contain a statement that the customer has read and understood the terms and conditions contained in the Uniform Disclosure Statement.

Deleted: subscriber charge

(d) If third party verification is used to obtain the customer's authorization for enrollment, the third party verifier must comply with 815 ILCS 15 (Telephone Solicitations Act) and require the customer to verbally acknowledge that he or she understands the uniform disclosure statement for this product.

**ICEA Comments:**

~~c) d) If third party verification is used to obtain the customer's authorization for enrollment, the third party verifier must comply with 815 ILCS 505/2EE 45 (Telephone Solicitations Act)<sup>4</sup> and require the customer to verbally acknowledge that he or she understands the uniform disclosure statement for this product.~~

**Just Energy Comments:**

d) If third party voice-recorded verification is used to obtain the customer's authorization for enrollment, the third party verifier must comply with 815 ILCS 15 (Telephone Solicitations Act) and require the customer to verbally acknowledge that he or she understands the uniform disclosure statement for this product.

[Comment: Any reference to third-party verification, where third-party verification is optional, should be revised to account for both "in-house" and third-party verifications.]

<sup>4</sup> The reference to 815 ILCS 15 (Telephone Solicitations Act) does not appear to be appropriate here. TPV agents are not soliciting sales; they are verifying subscriber changes.

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- e) If a customer elects to enroll on-line as a result of an outbound telemarketing call, the requirements of Section 410.550 shall apply.

**AIU Comments:**

“The sales agent shall refrain from using the name of the electric utility providing delivery service as part of any product offering so as not to suggest any improper representations or utility endorsements.”

**BlueStar Comments:**

As noted previously any additional customer protections must be based on existing statutory authority.

**ICEA Comments:**

- ~~d)e)~~ If a customer elects to enroll on-line as a result of a direct mail solicitation ~~an~~ outbound telemarketing call, the requirements of Section 410.550 shall apply.

**Just Energy Comments:**

[Comment: On-line enrollment does not constitute in-person marketing or a telephone solicitation. This is not the appropriate location in the rule for this requirement. None of the provisions in this Section should apply if the customer enrolls online regardless of whether the customer was first contacted by a salesperson in-person or telephonically.]

**Liberty Power Comments:**

- (e) If a customer elects to enroll on-line as a result of a direct mail solicitation ~~an~~ outbound telemarketing call, the requirements of Section 410.550 shall apply.

**MidAmerican Energy Comments:**

- f) The sales agent shall add the person's name to the RES's "Do Not Market List" upon that person's request.
- g) The RES sales agent shall inform the customer that if the customer is currently with a RES, the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable;

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**Section 410.550 Online Marketing**

- a) Each RES offering retail electric products to customers online shall prominently display the Uniform Disclosure Statement for any products offered without requiring the consumer to enter any personal information other than zip code, utility service territory, and/or type of service being sought (residential or commercial).
- b) The Uniform Disclosure Statement must be printable in no more than a two-page format and shall be available for downloading by the customer.

**ICEA Comments:**

- ( b) The Uniform Disclosure Statement must be printable in no more than a two-page format and shall be available for downloading by the customer.<sup>5</sup>
- c) The RES shall obtain, in accordance with 83 Illinois Administrative Code 453 and the procedures outlined below, an authorization to change RES that confirms and includes appropriate verification data by encrypted customer input on a supplier's

<sup>5</sup> Section 410.550b): Suppliers do not have control over how many pages a customer's printer may use to print out the disclosure.

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Internet web site.

**MidAmerican Energy Comment:**

d) The RES sales agent shall inform the customer that if the customer is currently with a RES, the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable

d) The RES shall require the following customer information in an electronic authorization form:

- 1) The customer's name;
- 2) Confirmation that the person completing the form wants to make the supplier change;
- 3) The customer's consent to the price of the service to be supplied and the material terms and conditions of the service being offered;
- 4) The service address affected by the supplier switch;
- 5) The utility account number;
- 6) The billing address if different from service address; and
- 7) The customer's electronic mail address.

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

- 1) All items within the Uniform Disclosure Statement. The minimum list of items to be included in the disclosure statement is contained in Section 410.730;
- 2) A statement that electronic acceptance of a sales contract is an agreement to initiate service and begin enrollment;

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- 3) A statement that if the customer is currently with a RES other than the utility, the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable;

**MidAmerican Energy Comments:**

- 3) A statement that if the customer is currently with a RES, the customer should consult the sales contract and/or contact the existing supplier to learn if any early termination fees are applicable;

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- 4) A requirement that the customer accept or not accept the sales contract by clicking the appropriate box, displayed as part of the terms and conditions;
- 5) An e-mail address where the customer can express his or her decision to rescind the sales contract.

**AIU** “The sales agent shall refrain from using the name of the electric utility providing delivery service as part of any product offering so as not to suggest any improper representations or utility endorsements.”

**BlueStar Comments:**

As noted previously any additional customer protections must fully comply with the statute. BlueStar stands by its previously submitted comments and looks forward to discussing this issue at the workshop.

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### Section 410.560 Training of Sales Agents

- a) All sales agents engaged in sales activity in Illinois (whether directly employed by the RES or otherwise exclusively selling the RES's service) shall be knowledgeable of the requirements contained in Subparts F through I herein and other relevant requirements contained in the Public Utilities Act, the Consumer Fraud and Deceptive Business Practices Act and the Illinois Administrative Code that pertain to the marketing and sales of electric supply service.

#### ICEA Comments:

- a) All sales agents engaged in sales activity in Illinois to residential and small commercial customers (whether directly employed by the RES or otherwise exclusively selling the RES's service) shall be knowledgeable of the requirements contained in Subparts F through I herein and other relevant requirements contained in the Public Utilities Act, the Consumer Fraud and Deceptive Business Practices Act and the Illinois Administrative Code that pertain to the marketing and sales of electric supply service.

#### Liberty Power Comments:

- (e) All sales agents engaged in sales activity in Illinois ~~should~~ shall be familiar with the RES's products and services offered in Illinois, as they pertain to the customer class that the sales agent is actively marketing to, including the rates, applicable termination fees if any, payment options and the customers' right to cancel. In addition, the sales agents shall have the ability to provide the customer with a toll-free number for billing questions, disputes, and complaints, as well as the Commission's toll-free phone number for complaints.

Another possible solution that should be considered to address this issue is modifying Section 410.500 (Application of Subpart F) so that all of Subpart F only applies to residential and small commercial customers:

The provisions of this Subpart shall apply to retail electric suppliers in connection with the provision of service and marketing to ~~servicing or seeking to serve~~ residential or small commercial customers ~~with the following exceptions: Sections 410.560 a), b) and c) and 410.570 shall apply to retail electric suppliers servicing or seeking to serve any customer~~

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~~class.~~

However, it should be noted that if only Section 410.500 is modified, all sales agents would still be required to be familiar with all residential and small commercial customers, even though they may not be actively marketing that product. Liberty Power believes both modifications suggested above are appropriate and should be adopted.

- b) All sales agents should be familiar with the RES's products and services, including the rates, applicable termination fees if any, payment options and the customers' right to cancel. In addition, the sales agents shall have the ability to provide the customer with a toll-free number for billing questions, disputes, and complaints, as well as the Commission's toll-free phone number for complaints.

**BlueStar Comments:**

- b) All sales agents should be familiar with the RES's products and services **that they sell**, including the rates, applicable termination fees if any, payment options and the customers' right to cancel. In addition, the sales agents shall have the ability to provide the customer with a toll-free number for billing questions, disputes, and complaints, as well as the Commission's toll-free phone number for complaints.

**ICEA Comments:**

( b) All sales agents should be generally familiar with the types of RES's products and services offered for sale in Illinois, including the type of rates options, applicable termination fees if any, billing and payment options and other relevant aspects or rules regarding the customers' purchase of retail electricity. right to cancel. In addition, the sales agents shall have the ability to provide the customer with a toll-free number for billing questions, disputes,

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and complaints, as well as the Commission's toll-free phone number for complaints.

**Just Energy Comments:**

b) All sales agents should be familiar with the RES's products and services [that they market](#), including the rates, applicable termination fees if any, payment options and the customers' right to cancel. In addition, the sales agents shall have the ability to provide the customer with a toll-free number for billing questions, disputes, and complaints, as well as the Commission's toll-free phone number for complaints.

[Comment: Sales agents should only be required to be familiar with the RES products that they are authorized to market. RES may offer numerous products and services, which are not available through a particular sales agent.]

**MidAmerican Energy Comments:**

(b) Each sales agent should be familiar with the specific attributes of the RES's products and services for which the agent has been hired to sell, including the rates, applicable termination fees if any, payment options and the customers' right to cancel. In addition, the sales agents shall have the ability to provide the customer with a toll-free number for billing questions, disputes, and complaints, as well as the Commission's toll-free phone number for complaints.

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**Comment [arm1]:** I don't think any party expects the residential sales agent to possess the detailed engineering knowledge required to be familiar with the large industrial products, or vice versa. Anne McGlynn

(c) A RES and its sales agents shall not utilize false, misleading, materially inaccurate, or otherwise deceptive language or materials in soliciting or providing services.

(d) A RES and its sales agents shall refrain from any direct marketing or soliciting of electric supply service to customers on the electric utility's "Do Not Market List", which the RES shall obtain at least monthly on the 15th calendar day of the month from the electric utility. If the 15th calendar day is a non-business day then the RES shall obtain the list on the next business day following the 15th calendar

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day of that month. The "Do Not Market List" maintained by the electric utility shall contain the customer's name, address, and phone number(s).

**BlueStar Comments:**

It is unreasonable to expect all sales agents to be familiar with the specifics of all products and its associated terms and conditions. This language hampers specialization within the sales organization. From an efficiency or competitive perspective, a RES sales team may want to divide the sales team by customer class or by customer class and a specific utility. The services, products and terms and conditions may vary. The rule must allow for customer class specialization as defined by the ARES. In addition, the rules must comply with the statute.

In terms of the Do Not Call List, any rules must reflect commercial and operational realities regarding the retail electric industry. The rule must recognize that these lists are subject to change, and there is a lag time between the sending, receipt and posting of names.

**ICEA Comments:**

( d) A RES and its sales agents shall refrain from any direct marketing or soliciting of electric supply service to customers on the electric utility's "Do Not Market List", which the electric utility shall provide to the RES shall obtain at least monthly on the 15th calendar day of the month from the electric utility. If the 15th calendar day is a non-business day then the electric utility shall provide the RES with shall obtain the list on the next business day following the 15th calendar day of that month. The "Do Not Market List" maintained by the electric utility shall contain the customer's name, address, and phone number(s). RESs shall use the most current version of the "Do Not Market List" available; however, in assessing compliance with this section, 31 days will be afforded to RESs to account for the time required by the RES to disseminate and process the list internally.

**Liberty Power Comments:**

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d) A RES and its sales agents shall refrain from any direct marketing or soliciting of electric supply service to customers on the electric utility's "Do Not Market List", which the electric utility shall provide to the RES ~~shall obtain~~ at least monthly on the 15th calendar day of the month ~~from the electric utility~~. If the 15th calendar day is a non-business day then the electric utility ~~RES shall obtain~~ provide the list to the RES on the next business day following the 15th calendar day of that month. The "Do Not Market List" maintained by the electric utility shall contain the customer's name, address, and phone number(s). A RES shall use the most current version of the "Do Not Market List" available; however, in assessing compliance with this section, 31 days will be afforded to the RES to account for the time required by the RES to disseminate and process the list.

#### **Section 410.570 Records Retention and Availability**

- a) A RES must retain, for a minimum of two years or, for the length of the sales contract, whichever is longer, verifiable proof of authorization to change suppliers for each customer. Authorization records need to be provided by the RES within seven business days after a request is made by the Commission or Commission Staff.
- b) Throughout the duration of the contract, and for two years thereafter, the RES shall retain and, within seven business days of the customer's request, provide the customer a copy of the sales contract via e-mail, U.S. mail, or facsimile.

#### **Just Energy Comments:**

[Comment: This should be revised because it currently offers the customer the ability to request the contract an unlimited number of times during the term of the contract. There should be some limitation on the number of requests such as once annually.]

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## **SUBPART G: RESCISSION, DEPOSITS, EARLY TERMINATION AND AUTOMATIC RENEWAL OF CONTRACT**

### **Section 410.600 Application of Subpart G**

The provisions of this Subpart shall apply to retail electric suppliers serving or seeking to serve residential or small commercial customers.

### **Section 410.610 Rescission of sales contract**

Within one business day after accepting a valid electronic enrollment request from the RES, the electric utility will notify the customer in writing of the scheduled enrollment and the name of the RES that will be providing power and energy service. If the customer wishes to rescind its enrollment with the supplier, the customer will not incur any early termination fees if the customer contacts either the electric utility or the RES within ten calendar days of the electric utility's processing of the enrollment request. If the tenth calendar day falls on a non-business day, the rescission period will be extended through the next business day. The written enrollment notice from the electric utility will state the last day for making a request to rescind the enrollment.

### **BlueStar Comments:**

Within one business day after accepting a valid electronic enrollment request from the RES, the electric utility will notify the customer in writing, **which includes e-mail notification**, of the scheduled enrollment and the name of the RES that will be providing power and energy service. If the customer wishes to rescind its enrollment with the supplier, the customer will not incur any early termination fees if either the customer contacts ~~the electric utility or~~ the RES within ~~ten~~ **three**

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(3) calendar days of the electric utility's processing of the enrollment request. If the ~~ten<sup>th</sup>~~ **third** calendar day falls on a non-business day, the rescission period will be extended through the next business day. The written enrollment notice from the electric utility will state the last day for making a request to rescind the enrollment.

**BlueStar Comments:**

As stated in previous comments, extension of the rescission period is problematic. First, it is not appropriate to characterize such the extended rescission period as "customer protection" measure. Extending the rescission window will result in higher prices because the RES will factor in a risk premium to reflect the increased uncertainty and associated obligation to purchase power based on the customer commitment. Second, Ten calendar days is not consistent with Illinois electric statutory and administrative rules. Third, ten days is needlessly excessive for a rescission window. In its experience, BlueStar has not received any rescission requests from Illinois consumers after the third business day. Fourth, the utility should be required to direct calls to the ARES for all rescission matters. Fifth, the language should explicitly state that written notification includes e-mail correspondence.

**ComEd Comments:**

**Market Relationships**

The DFNR seems to conclude that ICC Staff is the appropriate contact for escalated complaints regarding RES services. ComEd agrees with that policy. However, ComEd continues to object to requiring utilities to offer a rescind service to customers that effectively seek to be released from their enrollment with a RES during a set grace period (Section 410.610). Further, the provision of Section 410.720 which requires RESs to "notify the utility of any informal complaint received" should be revised to detail the more formal and required business practices necessary in order to direct the utility to cancel changes on behalf of the RESs

**ICEA Comments:**

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Within one business day after accepting a valid electronic enrollment request from the RES, the electric utility will notify the customer in writing of the scheduled enrollment and the name of the RES that will be providing power and energy service. If the customer wishes to rescind its enrollment with the supplier, the customer will not incur any early termination fees if the customer contacts either the electric utility or the RES within ten calendar days of the electric utility's processing acceptance of the enrollment request. If the tenth calendar day falls on a non-business day, the rescission period will be extended through the next business day. The written enrollment notice from the electric utility will state the last day for making a request to rescind the enrollment. In the event that the customer provides notice of such rescission to the electric utility, the electric utility shall notify the RES within one business day of receipt of such notice.

**Liberty Power Comments:**

Within one business day after accepting a valid electronic enrollment request from the RES, the electric utility will notify the customer in writing of the scheduled enrollment and the name of the RES that will be providing power and energy service. If the customer wishes to rescind its enrollment with the supplier, the customer will not incur any early termination fees if the customer contacts either the electric utility or the RES within ten calendar days of the electric utility's processing of the enrollment request. If the tenth calendar day falls on a non-business day, the rescission period will be extended through the next business day. The written enrollment notice from the electric utility will state the last day for making a request to rescind the enrollment. In the event the customer provides notice of such rescission to the electric utility, the electric utility shall notify the RES within one business day of receipt of such notice.

**Section 410.620 Deposits**

A RES shall not require a customer deposit if the RES is selling the receivables for power and energy for that customer to the electric utility pursuant to Section 16-118(c) of the Act.

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### **Section 410.630 Early Termination Fee**

Any agreement between a RES and a customer that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee. It must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described above. In addition, any agreement that contains an early termination fee shall provide the customer the opportunity to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES.

#### **BlueStar Comments:**

Any agreement between a RES and a customer that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee. ~~It must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described above. In addition, any agreement that contains an early termination fee shall provide the customer the opportunity to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES.~~

#### **BlueStar Comments:**

If early termination fees are accurately disclosed in an easy-to-understand manner prior to the execution of the contract, then consumers should not be allowed to game the system by canceling their agreement simply because a better deal comes along a month later. This type of provision will discourage suppliers from offering any sort of fixed price product to customers. Early termination fees are part of service contracts that consumers enter into all of the time; there is no reason ARES contracts should be subject to less protection under the law than those of other service providers. See comments in previous section.

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**ICEA Comments:**

Any agreement between a RES and a customer that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee. It must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described above. In addition, any agreement that contains an early termination fee shall provide the customer the opportunity to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES. **This requirement does not relieve the customer of obligations for services rendered under the agreement prior to termination.**

**Liberty Power Comments:**

Any agreement between a RES and a customer that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee. It must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described above. ~~In addition, any agreement that contains an early termination fee shall provide the customer the opportunity to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES.~~

If the alternative to the recommended modifications provided above, Liberty Power offers a second proposal:

Any agreement between a RES and a customer that contains an early termination fee shall disclose the amount of the early termination fee or the formula used to calculate the termination fee. It must also state that the early termination fee does not apply if the customer cancels the contract within the rescission period described above. In addition, any non-fixed contract agreement that contains an early termination fee shall provide the customer the opportunity to terminate the agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES. A non-fixed contract agreement shall refer to any

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[contract agreement where the contracted rate for the electric supply is expected to change over the term of the agreement.](#)

While Liberty Power feels strongly in its principal argument that the language of concern should be struck, the alternative proposal may be a fair compromise in balancing customer protection rules and protecting the competitive marketplace. Liberty Power assumes the main intent of the proposed language is to ensure that if a customer is not fully aware of the applicable rate of their contract agreement and the impact to their electric bill, the customer has additional opportunities to cancel the contract without being subjected to any additional fees. For example, if a customer agreed to a variable product that changed at the discretion of the RES, or was tied to a market index, the customer may not know the exact rate they will experience until they receive their first bill. While the customer should be fully aware that such a product is subject to change, due the variable nature of the product, there will always be some level of uncertainty. Some stakeholders may argue that the added uncertainty warrants additional layers of customer protection rules. While Liberty Power may not necessarily agree with this position, we acknowledge the argument. However, under the scenario when a customer is on a fixed-price contract they know the exact rate they will pay for their electric supply, agreed to that exact rate, and was afforded a ten (10) day rescission period to change their mind. As the customer is 100% certain of their energy-supply rate, any additional "waiver period" of early termination fees and the canceling of a contract is simply unwarranted and only allows for the customer to game the market, creating a detrimental effect on the competitive retail electric market.

#### **Section 410.640 Contract Renewal**

a) Non-Automatic Renewal

The RES shall clearly disclose any renewal terms in their contract including any cancellation procedure. For contracts with an initial term of six months or greater, the RES shall send a notice of contract expiration separate from the bill at least 30 days prior to the date of contract expiration but no more than

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60 days in advance of expiration. Nothing in this section shall preclude a RES from offering a new contract to the customer at any other time during the contract period. The separate written notice of contract expiration shall include:

**ICEA Comments:**

a) Non-Automatic Renewal

The RES shall clearly disclose any renewal terms in their contract including any cancellation procedure. For contracts with an initial term of six months or greater, the RES shall send a notice of contract expiration separate from the bill at least ~~45~~ 30 days prior to the date of contract expiration but no more than ~~90~~ 60 days in advance of expiration. Nothing in this section shall preclude a RES from offering a new contract to the customer at any other time during the contract period. The separate written notice of contract expiration shall include:

- 1) A statement printed or visible from the outside of the envelope or in the subject line of the email (if customer has agreed to receive official documents by e-mail) that states, "Contract Expiration Notice;"
- 2) The date the existing contract will expire;

**ICEA Comments:**

- (1) The date the existing contract will expire<sup>6</sup>:

**Liberty Power Comments:**

The estimated date when the existing contract will expire;

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<sup>6</sup> Section 410.640(a)(2): Stating exact dates are hard to do since meter reading covers 3 days. Just month/year should be sufficient.

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(Note: A similar modification must be made to Section 410.640(a)(5) and 410.640(b)(2))

3) A statement in bold lettering no smaller than 12 point font that establishing service with another electric supplier can take up to 45 days, and failure to enter into a new contract or switch to another RES by the specified date will result in the customer being reverted to the utility default service and provide in the statement the length of the utility tariff minimum stay period if applicable;

4) If the RES is offering a contract renewal, the disclosure of the terms and conditions of the renewal offer maybe combined with the mailing of the contract expiration notice;

5) The RES must provide a full description of any renewal offers available to the customer, including the date service under the new term will begin;

6) Provide a statement in no smaller than 12 point font that the customer must provide affirmative consent to accept the renewal offer and that establishing service with another electric supplier can take up to 45 days, and failure to renew their existing contract or switch to another RES by the specified date will result in the customer being reverted to the utility default service and provide in the statement the length of the utility tariff minimum stay period if applicable.

**BlueStar Comments:**

BlueStar stands by its previously submitted comments.

**Liberty Power Comment:**

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Section should be struck as it is duplication of Section 410.640(3)

b) Automatic Renewal

The RES shall clearly disclose any renewal terms in their contract including any cancellation procedure. For contracts with an initial term of six months or greater, the RES shall send a notice of contract renewal separate from the bill at least 30 days prior to the end of the initial contract term but no more than 60 days in advance of such date. Nothing in this section shall preclude a RES from offering a new contract to the customer at any other time during the contract period. The separate written notice of contract renewal shall include:

**ICEA Comments:**

(b ) Automatic Renewal

The RES shall clearly disclose any renewal terms in their contract including any cancellation procedure. For contracts with an initial term of six months or greater, the RES shall send a notice of contract renewal separate from the bill at least 45 30-days prior to the end of the initial contract term but no more than 90 60-days in advance of such date. Nothing in this section shall preclude a RES from offering a new contract to the customer at any other time during the contract period. The separate written notice of contract renewal shall include:

- 1) A statement printed or visible from the outside of the envelope or in the subject line of the email (if customer has agreed to receive official documents by e-mail) that states, "Contract Renewal Notice;"
- 2) The date service under the new term will begin;

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**ICEA Comments:**

(2) The date service under the new term will begin;<sup>7</sup>

3) A statement in bold lettering no smaller than 12 point font that the contract will automatically renew unless the customer cancels it including the information needed to cancel;

4) If the new contract term includes a termination fee, a statement that the customer has from the date of the contract renewal notice through the end of the existing contract term to notify the RES of their rejection of the new contract term to avoid incurring a termination fee under the new contract term;

**MidAmerican Energy Comments:**

4) If the new contract includes a termination fee, a statement of the date by which the customer must notify the RES of their rejection of the new contract term to avoid incurring a termination fee under the new contract term;

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**Deleted:** has from the date of the contract renewal notice through the end of the existing contract term to

5) Clearly disclose the contract terms including a full description of any renewal offers available to the customer;

6) A statement in bold lettering no smaller than 12 point font that establishing service with another electric supplier can take up to 45 days, and failure to renew their existing contract or switch to another RES by the specified date will result in the customer being reverted to the utility default service and provide in the

<sup>7</sup> Section 410.640(b)(2): Stating exact dates are hard to do since meter reading covers 3 days. Just month/year should be sufficient.

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statement the length of the utility tariff minimum stay period if applicable.

**BlueStar Comments:**

6) A statement in bold lettering no smaller than 12 point font that establishing service with another electric supplier can take up to 45 days, and failure to renew their existing contract or switch to another RES by the specified date will result in the customer ~~being reverted to the utility default service and provide in the statement the length of the utility tariff minimum stay period if applicable.~~ remaining with the current RES.

**BlueStar Comments:**

BlueStar stands by its previously submitted comments.

**Section 410.650 Assignment**

**MidAmerican Energy Comment:**

**MidAmerican believes this section should apply to retail electric suppliers serving or seeking to serve any customer class.**

If a RES is exiting the Illinois retail electric market, surrendering or otherwise cancelling its certificate of service authority, or no longer seeking to serve certain classes of customers, the RES shall not assign the agreement to a different RES unless:

- 1) The new supplier is a RES,
- 2) The new RES is in compliance with all applicable requirements of the Commission and/or the electric utility to provide electric service;

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- 3) The rates, terms, and conditions of the agreement being assigned do not change during the remainder of the time period covered by the agreement; provided however, the assigned agreement may be modified during the term of the agreement if the new RES and the retail customer mutually agree to such changes or revisions of the agreement after assignment of the agreement;
- 4) The customer is given fifteen (15) calendar days prior written notice of the assignment by the current RES; and
- 5) Within thirty (30) days after the assignment, the new RES provides the customer with a toll-free phone number for billing questions, disputes, and complaints.

**ICEA Comments:**

- ~~1)a)~~ The new supplier is a RES.
- ~~2)b)~~ The new RES is in compliance with all applicable requirements of the Commission and/or the electric utility to provide electric service;
- ~~3)c)~~ The rates, terms, and conditions of the agreement being assigned do not change during the remainder of the time period covered by the agreement; provided however, the assigned agreement may be modified during the term of the agreement if the new RES and the retail customer mutually agree to such changes or revisions of the agreement after assignment of the agreement;
- ~~4)d)~~ The customer is given fifteen (15) calendar days prior written notice of the assignment by the current RES; and
- ~~5)e)~~ Within thirty (30) days after the assignment, the new RES provides the customer with a toll-free phone number for billing questions, disputes, and complaints.

**MidAmerican Energy Comments:**

- 1) The utility is notified 60 days in advance of the reassignment;
- 2) The new supplier has been certified as a RES to serve the class of customers being reassigned;

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3) The new RES is registered in the utility's service territory.

2) The new RES is in compliance with all applicable requirements of the Commission and/or the electric utility to provide electric service;

**Comment [arm2]:** This section may have been written to cover the certification and registration requirements added above, but MidAmerican prefers such requirements be spelled out separately. Anne McGlynn

## **SUBPART H: DISPUTE RESOLUTION AND CUSTOMER COMPLAINT REPORTS**

### **Section 410.700 Application of Subpart H**

The provisions of this Subpart shall apply to retail electric suppliers serving or seeking to serve residential or small commercial customers .

### **Section 410.710 Required RES Information**

- a) The RES shall provide the following:
  - 1) A copy of its bill formats (if it bills customers directly rather than using utility consolidated billing);
  - 2) Standard customer contract;
  - 3) Customer complaint and resolution procedures;
  - 4) The name, telephone number and e-mail address of the company representative whom Commission employees may contact to resolve customer complaints and other matters.
- b) In any dispute between a customer and a RES concerning the terms of a contract, any vagueness, obscurity, or ambiguity in the contract will be construed in favor of the customer.

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**ICEA Comments:**

~~(b) In any dispute between a customer and a RES concerning the terms of a contract, any vagueness, obscurity, or ambiguity in the contract will be construed in favor of the customer.~~

**Just Energy Comments:**

[Comment: It is unclear if this section applies to a formal complaint before the Commission or an informal complaint filed with the Consumer Services Division of the Commission. If the latter, it would represent a departure from the Commission Staff's handling of informal complaints. Commission Staff does not rule on the disposition of informal complaints and determine whether the complaint is valid or invalid. Therefore, there would be no need to construe something in the favor of the customer. If this refers to formal complaints under consideration by the Commission, then the Commission should use existing rules and laws to make their determination of whether a complaint is valid. There does not appear to be a need for this clause. If there is a need, then the need should be clarified.]

**Liberty Power Comments:**

~~(b) In any dispute between a customer and a RES concerning the terms of a contract, any vagueness, obscurity, or ambiguity in the contract will be construed in favor of the customer.~~

**MidAmerican Energy Comments:**

(b) In any dispute between a customer and a RES concerning the terms of a contract, any vagueness, obscurity, or ambiguity in the contract will be construed toward the understanding of any reasonable adult.

Deleted: in favor of the customer

c) The supplier must file updated information within 10 business days after changes in any of the documents or information required to be filed by this section.

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## Section 410.720 Dispute Resolution

### a) Complaint Handling

- 1) A residential or small commercial customer has the right to make a formal or informal complaint to the Commission, and a RES contract cannot impair this right. A RES shall not require a residential or small commercial customer as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. A customer other than a residential or small commercial customer may agree as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. However, nothing in this subsection is intended to prevent a customer other than a residential or small commercial customer to file an informal or formal complaint with the Commission if dissatisfied with the results of the alternative dispute resolution.

#### Just Energy Comments:

[Comment: Prohibiting a RES from requiring a customer to engage in alternative dispute resolution may impose unnecessary risks associated with class action that could ultimately raise the cost of doing business or prohibit RESs from operating in the Illinois electricity market altogether. If the intention is to ensure that the customer always has the right to file a formal or informal complaint with the Commission, then the rule should simply require that all contracts contain the following statement, "Nothing in this Agreement shall prohibit a customer from filing a formal or informal complaint with the Commission at any time."]

#### MidAmerican Energy Comments:

- (1) All customers ~~have~~ the right to make a formal or informal complaint to the Commission, and a RES contract cannot impair this right. A RES shall not require a residential or small commercial customer as part of

**Deleted:** residential or small commercial

**Deleted:** has

**Comment [arm3]:** The original sentence removes an important consumer protection. Anne McGlynn

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the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. A customer other than a residential or small commercial customer may agree as part of the terms of service to engage in alternative dispute resolution, including requiring complaints to be submitted to arbitration or mediation by third parties. However, nothing in this subsection is intended to prevent a customer other than a residential or small commercial customer to file an informal or formal complaint with the Commission if dissatisfied with the results of the alternative dispute resolution.

**b) Complaints to RES**

- 1) A customer or applicant for service may submit a complaint by mail, facsimile transmission, e-mail, or by telephone to a RES. The RES shall promptly investigate and advise the complainant of the results within 14 calendar days. If the RES does not respond to the customer's complaint in writing, the RES shall orally inform the customer of the ability to obtain the RES's response in writing upon request. A customer who is dissatisfied with the RES's review shall be informed of the right to file a complaint with the Commission and the Office of Attorney General.

**c) Complaints to the Commission.**

- 1) **Informal complaints.**
  - A) If a complainant is dissatisfied with the results of a RES's complaint investigation, the RES shall inform the complainant of their ability to file a complaint with the Illinois Commerce Commission's Consumer Services Division and provide the following contact information: Illinois (toll-free) (800) 524-0795, from out-of-state (217) 782-2024, website

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address: [www.icc.illinois.gov](http://www.icc.illinois.gov), TTY (800) 858-9277, fax (217) 524-6859. Complaints may be filed with the Consumer Services Division by phone, via the internet, by fax or by mail. Information required to process a customer complaint include:

- i) The customer's name, billing and service addresses, and telephone number;
- ii) The name of the RES;
- iii) The customer account number;
- iv) An explanation of the facts relevant to the complaint;
- v) The complainant's requested resolution; and
- vi) Any documentation that supports the complaint, including copies of bills or terms of service documents.

**Just Energy Comments:**

A) If a complainant is dissatisfied with the results of a RES's complaint investigation, the RES shall inform the complainant of their ability to file a complaint with the Illinois Commerce Commission's Consumer Services Division and provide the following contact information: Illinois (toll-free) (800) 524-0795, from out-of-state (217) 782-2024, website address: [www.icc.illinois.gov](http://www.icc.illinois.gov), TTY (800) 858-9277, fax (217) 524-6859. ~~Complaints may be filed with the Consumer Services Division by phone, via the internet, by fax or by mail. Information required to process a customer complaint include:~~

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- ~~i) The customer's name, billing and service addresses, and telephone number;~~
- ~~ii) The name of the RES;~~
- ~~iii) The customer account number;~~
- ~~iv) An explanation of the facts relevant to the complaint;~~
- ~~v) The complainant's requested resolution; and~~
- ~~vi) Any documentation that supports the complaint, including copies of bills or terms of service documents.~~

[Comment: It appears that the rule requires the RES to provide the customer with a list of information necessary to file a complaint with the Commission. The customer will be provided with the necessary information requirements if the customer does decide to file a complaint. The contact information is sufficient. The requirement to provide a list of the required information is unnecessary. Further, the necessary information may change in the future and would require a rule change in order to ensure that the RES provides the customer with the appropriate information.]

- B) The Commission's Consumer Services Division may resolve a complaint via phone by completing a call between the customer, the Consumer Services staff and the supplier. If no resolution is reached by phone, and a dispute remains, an informal complaint may be sent to the RES. Three-way calling may not be available or Consumer Services staff may determine a three-way call is not the best method to handle the customer's complaint in which case an informal complaint will be sent to the RES. In the case of utility-consolidated billing and the utility purchasing the supplier's receivables, the RES shall notify the utility of any informal complaint received and the utility shall cancel disputed supplier charges and remove those charges from the customer's bill.

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**ComEd Comments:**

**Market Relationships**

The DFNR seems to conclude that ICC Staff is the appropriate contact for escalated complaints regarding RES services. ComEd agrees with that policy. However, ComEd continues to object to requiring utilities to offer a rescind service to customers that effectively seek to be released from their enrollment with a RES during a set grace period (Section 410.610). Further, the provision of Section 410.720 which requires RESs to “notify the utility of any informal complaint received” should be revised to detail the more formal and required business practices necessary in order to direct the utility to cancel changes on behalf of the RESs

**Just Energy Comments:**

[Comment: This section is overly vague and will result in confusion on the part of RES, ICC Consumer Counselors, and the Utility. What constitutes disputed charges? Would Commission Staff make a determination as to whether the charges were in dispute? At what point are charges no longer in dispute? How much should be billed if the dispute is over the level of charges assessed by the RES? What if the customer is disputing metered usage? A dispute over metered usage would ultimately be a dispute over charges because the two go hand-in-hand. There are many questions to be answered regarding this section. The ORMD should obtain additional feedback on this section in the ORMD workshops in order to include the appropriate amount of detail necessary to accomplish the intended results. This requirement could essentially work against customers by removing “disputed” amounts from bills only to create much larger subsequent bills that may be unanticipated by the customer.

- C) The RES shall investigate all informal complaints and advise the Commission in writing of the results of the investigation within 14 days after the complaint is forwarded to the RES.

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- D) The Commission shall review the complaint information and the RES's response and notify the complainant of the results of the Commission's investigation.
- E) While an informal complaint process is pending:
  - 1) The RES (or the electric utility in the case of utility-consolidated billing) shall not initiate collection activities for any disputed portion of the bill until the Commission has taken final action on the complaint.
  - 2) A customer shall be obligated to pay any undisputed portion of the bill and the RES (or the electric utility in the case of utility-consolidated billing) may pursue collection activity for nonpayment of the undisputed portion after appropriate notice.
- F) The RES shall keep a record for two years after closure by the Commission of all informal complaints forwarded to it by the Commission. This record shall show the name and address of the complainant, the date, nature and adjustment or disposition of the complaint.

**BlueStar Comments:**

BlueStar takes the position that any additional complaint rules must comply with the statute. BlueStar has many questions about this section. The draft rule must be able to separate and not elevate meritless informal complaints as reported formal complaints. BlueStar looks forward to discussing these issues at the workshop.

**2) Formal complaints.**

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If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the Commission.

### **3) Disclosure of RESs' level of customer complaints**

The Commission shall, on a quarterly basis, prepare a summary of all formal and informal complaints received and publish it on its World Wide Web site. The summary shall be in an easy-to-read and user friendly format. The Commission shall develop a ranking system of individual RES' complaints ratios in comparison with a RES-wide complaint ratio, as well as the associated ranking methodology.

#### **BlueStar Comments:**

### **3) Disclosure of RESs' level of customer complaints**

The Commission shall, on a quarterly basis, prepare a summary of all formal ~~and informal~~ complaints received and publish it on its World Wide Web site. The summary shall be in an easy-to-read and user friendly format. The Commission shall develop a ~~proposed~~ ranking system of individual RES' complaints ratios in comparison with a RES-wide complaint ratio, as well as the ~~proposed~~ associated ranking methodology. ~~The proposed ranking system will be developed in a subsequent rulemaking.~~

#### **BlueStar Comments:**

As a beginning point, BlueStar takes the position that any complaint procedures must comply with the statute. The disclosure of all "formal and informal customer complaints" to include complaint data for residential as well as small business customers warrants further discussion. In particular, BlueStar would like to understand the distinction between a formal and informal complaint. For

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example, would a resolved or a meritless customer complaint be classified as a complaint? In order to provide more meaningful context to the reporting of complaints, the summary should include resolution, whether the complaint was found to be meritorious and/or a notation indicating that resolution is pending. Similarly, there should be an admonition that the mere act of filing of a complaint should not be construed as meaning that the ARES is actually guilty of any violation. Moreover, BlueStar would need to understand the details of the ranking methodology and ranking system, which should be subject to a further rulemaking so all parties have a meaningful opportunity for comment.

#### **Section 410.730 Uniform Disclosure Requirements**

- a) In addition to providing a copy of the sales contract, a RES must disclose the following information to the customer prior to any enrollment for electric service, regardless of the form of marketing used. The written Uniform Disclosure statement must use a font of 12 point or larger and, if a separate document, must not exceed two pages in length:
- 1) The legal name of the RES;
  - 2) The RES's business address;
  - 3) The RES's toll free telephone number for billing questions, disputes, and complaints;
  - 4) The charges for the service for the length of the contract: if any charges are variable during the term of the contract, an explanation of how the variable charges are determined;

#### **Just Energy Comments:**

- 4 The charges for the service for the length of the contract: if any charges are variable during the term of the contract, an explanation of

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how the variable charges are determined, if applicable, or a statement that the variable charges can change at the RES's discretion;

[Comment: This would account for all possible variable charge scenarios. There is no requirement in Illinois law for variable charges to be reflective of any particular cost or track any index. RESs may charge variable rates that change at their discretion. This practice is common in the Texas retail electric market and was recently at issue in Public Utility Commission of Texas Project No. 35768, Customer Disclosure Rule. The final rule approved by the Commission, Chapter 25, Subchapter R, 25.475, requires Retail Electric Providers to disclose the percentage change by which a variable price product can vary or disclose that the price can change at the REP's discretion.]

- 5) The length of the agreement including the automatic renewal clause, if any;
- 6) The presence or absence of early termination fees or penalties, and applicable amounts or the formula pursuant to which they are calculated;
- 7) For a RES using Dual Billing or SBO, any possible requirement to pay a deposit, the estimated amount of the deposit or basis on which it is calculated, when the deposit will be returned, and if the deposit will accrue interest;

**Liberty Power Comments:**

(7) For a customer that will not be placed on a utility's UCB-POR tariff ~~RES using Dual Billing or SBO~~, any possible requirement to pay a deposit, the estimated amount of the deposit or basis on which it is calculated, when the deposit will be returned, and if the deposit will accrue interest;

- 8) Any fees to the applicant for switching to the RES;

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**Liberty Power Comments:**

(8) Any fees assessed by the RES to the applicant for switching to the RES;

9) The name of the electric service offering for which the customer is being solicited;

10) A statement that the customer may rescind the agreement within ten calendar days of the utility processing the enrollment request by calling either the RES or the utility and provide both phone numbers;

**BlueStar Comment:**

10) A statement that the customer may rescind the agreement within ~~ten~~ **three** calendar days of the utility processing the enrollment request by calling either the RES or the utility and provide both phone numbers;

11) A statement that the RES is an independent seller of electricity and that the RES is not representing or acting on behalf of the electric utility, governmental bodies, or consumer groups;

12) A statement that the utility will continue to deliver the electricity to the customer's premise and will continue to respond to any service calls and emergencies;

**MidAmerican Energy Comments:**

12) A statement that the utility remains the delivery service provider responsible for delivery of power and energy to the customer's premise and will continue to respond to any service calls and emergencies;

**Deleted:** will continue to deliver the electricity

**Comment [arm4]:** To avoid misinterpretation of the previous language which might imply that the utility will continue to deliver energy if the customer fails to pay the supplier or meet other contract obligations.

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13) A statement that the customer will receive written notification from the utility confirming the switch of suppliers;

14) If savings are guaranteed, or guaranteed under only certain circumstances, the RES must provide a written statement which includes a plain language description of the conditions that must be present in order for the savings to occur; and

**Just Energy Comments:**

14) If savings are guaranteed, ~~or guaranteed~~ under only certain circumstances, the RES must provide a written statement which includes a plain language description of the conditions that must be present in order for the savings to occur; and

[Comment: The term "savings" needs to be defined. It is unclear whether "savings" only refers to the difference between what the customer would have paid with the utility and what the customer would pay under the RES product. Additionally, if savings are unconditionally guaranteed, then no such written statement should be required.

15) For products where a customer's charges are a fixed amount per billing period regardless of the market price for electricity or the customer's electricity consumption during the billing period, the billing period covered. In addition, it must state that the fixed bill amount is for supply charges only and does not include delivery service charges and applicable taxes; therefore the fixed bill amount is not the total monthly amount for electric service.

**BlueStar Comments:**

BlueStar stands by previous comments submitted.

**ICEA Comments:**

a) In addition to providing the customer with a copy of the sales contract, a RES must disclose the following information to the customer prior to any enrollment for electric service, regardless of the form of marketing used. The written Uniform Disclosure statement must use a font of 12 point or larger and, if a separate document, must not exceed two pages in length:

- 1)a) The legal name of the RES;
- 2)b) The RES's business address;
- 3)c) The RES's toll free telephone number for billing questions, disputes, and complaints;
- 4)d) The charges for the service for the length of the contract: if any charges are variable during the term of the contract, an explanation of how the variable charges are determined;
- 5)e) The length of the agreement including the automatic renewal clause, if any;
- 6)f) The presence or absence of early termination fees or penalties, and applicable amounts or the formula pursuant to which they are calculated;
- 7)g) For a customer that will not be placed on a utility's POR-UCB tariff, RES using Dual Billing or SBO, any possible requirement to pay a deposit, the estimated amount of the deposit or basis on which it is calculated, when the deposit will be returned, and if the deposit will accrue interest;
- 8)h) Any fees assessed by the RES to the applicant for switching to the RES;
- 9)i) The name of the electric service offering for which the customer is being solicited;
- 10)j) A statement that the customer may rescind the agreement within ten calendar days of the utility processing the enrollment request by calling either the RES or the utility and provide both phone numbers;
- 11)k) A statement that the RES is an independent seller of electricity and that the RES is not representing or acting on behalf of the electric utility, governmental bodies, or consumer groups;
- 12)l) A statement that the utility will continue to deliver the electricity to the customer's premise and will continue to respond to any service calls and emergencies;

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- 13)m) A statement that the customer will receive written notification from the utility confirming the switch of suppliers;
- 14)n) If savings are guaranteed, or guaranteed under only certain circumstances, the RES must provide a written statement which includes a plain language description of the conditions that must be present in order for the savings to occur; and
- 15)o) For products where a customer's charges are a fixed amount per billing period **for supply charges only** regardless of the market price for electricity or the customer's electricity consumption during the billing period, the billing period covered. In addition, **the disclosure** must state that the fixed bill amount is for supply charges only and does not include delivery service charges and applicable taxes; therefore the fixed bill amount is not the total monthly amount for electric service.

### **SUBPART I: ENFORCEMENT**

#### **Section 410.800 Application of Subpart I**

The provisions of this Subpart shall apply to retail electric suppliers serving or seeking to serve any customer class.

#### **Just Energy Comments:**

[General Comment: There are already sufficient and effective provisions in existing laws and rules that provide the Commission with the necessary authority to address the "alleged violations" contemplated in this Subpart. If expedited procedures such as those outlined in this Subpart are adopted, they should only apply to individual customer complaints and not complaints by third-parties or the Commission Staff. All of the timelines in this Subpart are unrealistic and would prevent the respondent from providing the necessary information for the Commission to make an informed decision as well as deny the respondent of due process.]

#### **Section 410.810 Enforcement provisions**

- a) If the Commission Staff or other party believes that a RES has repeatedly violated the requirements contained in Sections 410.500 - 410.730, the following

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additional expedited procedures may be used to enforce these requirements. However, the complainant, the respondent, and the Commission may mutually agree to adjust the procedures established below. No complaint may be filed under this provision until the complainant has first notified the respondent of the alleged violation and offered the respondent 48 hours to correct the situation.

**ICEA Comments:**

- a) If the Commission Staff or other party believes that a RES has repeatedly violated **any applicable** the requirements contained in Sections 410.500 - 410.730, the following additional expedited procedures may be used to enforce these requirements **that apply to the RES**. However, the complainant, the respondent, and the Commission may mutually agree to adjust the procedures established below. No complaint may be filed under this provision until the complainant has first notified the respondent of the alleged violation and offered the respondent 48 hours to correct the situation.

**Just Energy Comment:**

[Comment: Forty-eight hours is an insufficient amount of time to correct an alleged violation. This absurdly short time frame fails to account for normal commercial business processes that would have to be undertaken by to address an alleged violation. The timeline should, at the very least, be in business days. The language raises additional questions. For example, who would determine whether the situation was corrected? What constitutes "repeatedly"? Would the Commission have to issue a ruling in order to adjust the procedures listed below? How would the Commission be consulted in such an instance?]

- 1) Reasonable discovery specific to the issue of the complaint may commence upon filing of the complaint. Requests for discovery must be served in hand and responses to discovery must be provided in hand to the requester within 14 days after a request for discovery is made.

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**Just Energy Comment:**

[Comment: Discovery should not be required until an official ruling by an ALJ allows for discovery.]

2) An answer and any other responsive pleading to the complaint shall be filed with the Commission and served in hand upon the complainant within 7 days after the date on which the complaint is filed.

3) A pre-hearing conference shall be held within 14 days after the date on which the complaint is filed.

4) The hearing shall commence within 30 days of the date on which the complaint is filed. The hearing may be conducted by a hearing examiner or by an arbitrator. Parties shall be entitled to present evidence and legal argument in oral or written form as deemed appropriate by the hearing examiner or arbitrator. The hearing examiner or arbitrator shall issue a written decision within 60 days after the date on which the complaint is filed. The decision shall include reasons for the disposition of the complaint and, if a repeated violation is found, directions and a deadline for correction of the violation.

**Just Energy Comment:**

[Comment: Again, this timeline is entirely unreasonable. This does not allow time for due process. Why should Utilities and all other entities under the jurisdiction of the Commission be afforded reasonable timelines to address complaints alleging violation of Commission rules and laws while RES are subject to an entirely set of rules?]

5) Any party may file a petition requesting the Commission to review the decision of the hearing examiner or arbitrator within 5 days of such decision. Any party may file a response to a petition for review within 3 business days after actual service of the petition. After the time for filing of the petition for review, but no later than 15 days after the decision of the hearing examiner or arbitrator, the

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Commission shall decide to adopt the decision of the hearing examiner or arbitrator or shall issue its own final order.

6) The complainant may include in its complaint a request for an order for emergency relief. The Commission, acting through its designated hearing examiner or arbitrator, shall act upon such a request within 2 business days of the filing of the complaint. An order for emergency relief may be granted, without an evidentiary hearing, upon a verified factual showing that the party seeking relief will likely succeed on the merits and that the order is in the public interest. An order for emergency relief shall include a finding that the requirements of this subsection have been fulfilled and shall specify the directives that must be fulfilled by the respondent and deadlines for meeting those directives. The decision of the hearing examiner or arbitrator to grant or deny emergency relief shall be considered an order of the Commission unless the Commission enters its own order within 2 calendar days of the decision of the hearing examiner or arbitrator. Any action required by an emergency relief order must be technically feasible and economically reasonable and the respondent must be given a reasonable period of time to comply with the order.

**Just Energy Comment:**

[Comment: It appears that this section denies the respondent due process.]

7) In determining the appropriate consequence for a violation, the Commission may take into account the nature, the circumstances, including the scope of harm to individual customers, and the gravity of the violation, as well as the RES's history of previous violations.

8) Consequences for violating one or more of the requirements above may include one or more of the following restrictions on a RES's opportunity to sell electricity to retail customers:

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A) Suspension from a specific Commission approved retail program in either a specific utility service territory or all of Illinois;

**ICEA Comments:**

A) Suspension from the ability to serve retail customers a specific Commission approved retail program in either a specific utility service territory or all of Illinois;

B) Suspension of the ability to enroll new customers in either a specific utility service territory or all of Illinois;

C) Imposition of a requirement to record all telephonic marketing presentations, which shall be made available to Commission Staff for review;

D) Reimbursements to customers who did not receive savings promised in the RES's sales contract/uniform disclosure statement or substantially demonstrated to have been included in the RES's marketing materials or to customers who incurred costs as a result of the RES's failure to comply with the requirements set forth above;

E) Release of customers from sales contracts without imposition of early termination fees;

F) Revocation of a RES's eligibility to operate in Illinois;

**ICEA Comments:**

F) Revocation of a RES's eligibility and certification to operate in Illinois;

G) Any other measures that the Commission may deem appropriate.

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H) Consequences imposed pursuant to this paragraph shall continue to apply until the RES's failure to comply has been cured or the Commission or Commission Staff has determined that no further cure is necessary.

b) A party shall not bring or defend a proceeding brought under this Subpart or assert or dispute an issue in a proceeding brought under this Subpart, unless there is a non-frivolous basis for doing so. By presenting a pleading, written motion, or other paper in complaint or defense of the actions or inactions of a party under this Subpart, a party is certifying to the Commission that to the best of that party's knowledge, information, and belief, formed after a reasonable inquiry of the subject matter of the complaint or defense, that the complaint or defense is well grounded in law and fact, and under the circumstances:

1) it is not being presented to harass the other party, cause unnecessary delay in the provision of competitive electric supply services to customers, or create needless increases in the cost of litigation; and

2) the allegations and other factual contentions have evidentiary support, or if specifically so identified, are likely to have evidentiary support after reasonable opportunity for further investigation or discovery as defined herein.

c) If, after notice and a reasonable opportunity to respond, the Commission determines that subsection (b) has been violated, the Commission shall impose appropriate sanctions upon the party or parties that have violated subsection (b) or are responsible for the violation. The sanctions shall be not more than \$30,000, plus the amount of expenses accrued by the commission for conducting the hearing. Payment of sanctions imposed under this section shall be made to the Common School Fund within 30 days of imposition of such sanctions.

**Just Energy Comments:**

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c) If, after notice and a reasonable opportunity to respond, the Commission determines that subsection (b) has been violated, the Commission shall impose appropriate sanctions upon the party or parties that have violated subsection (b) or are responsible for the violation. The sanctions shall be not more than \$30,000, plus the amount of expenses accrued by the commission for conducting the hearing [and the expenses incurred by the respondent in responding to the complaint](#). Payment of sanctions imposed under this section shall be made to the Common School Fund within 30 days of imposition of such sanctions.

d) In the event of any conflict between these Sections and the requirements for RESs provided in electric utility tariffs on file with the Commission as of the effective date of this Part, this Section shall control.

**BlueStar Comments:**

As a beginning and ending point, all enforcement rules must be based on and comply with the statute. This entire section deserves further discussion. BlueStar looks forward to discussing these issues at the workshop.

**ComEd Comments:**

**Enforcement**

While the intent of certain provisions is unclear, ComEd is concerned about the process laid out in Subpart I: Enforcement. Among other concerns, the process outlined seems overly complex and extremely burdensome to ICC Staff, RESs and even customers. Further, it is unclear to ComEd whether ICC Staff has the resources to fulfill such requirements or whether such a process will result in a self-imposed and potentially unfunded mandate. Additionally, it is unclear that there is a need for "emergency" or "expedited" treatment with respect to topics covered by the DFNR.

**Liberty Power Comments:** Again, Liberty Power would like to express its appreciation in being included in this process. We humbly request that the ORMD and other working

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group participants consider supporting Liberty Power's suggested modifications and we look forward to further cooperative discussions.