STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission
On Its Own Motion
: 09-0592


FIRST NOTICE ORDER

July 7, 2011
Table of Contents

I. PROCEDURAL BACKGROUND  1
II. Section 412.10 – Definitions  2

A. “Complaint”  2
B. “Do Not Market List”  3
C. “Material Terms”  4
D. “Pending Enrollment”  4
E. “Rescind”  4
F. “Residential Customer”  5
G. “Retail Customer”  6
H. “Sales Agent”  6
I. “Letter of Agency”  7
J. “Small Commercial Retail Customer”  8
K. Proposed Section Applicability  9
L. Section 412.20 - Waiver  9
M. Section 412.30 Construction of This Part  10
N. Proposed Section 412.40 Determination of Small Commercial Customer  11

III. Section 100  11

A. Section 412.100 Application of Subpart B  11
B. Section 412.110 Uniform Disclosure Statement  13
C. Proposed Section Customer Solicitation  18
D. Proposed Section Uniform Disclosure Label  18
E. Proposed Section Customer Solicitation 19
F. Section 412.120 Door-to-Door Solicitation  19
G. Section 412.130 Telemarketing  20
H. Section 412.140 Inbound Enrollment Calls  20
I. Section 412.150 Direct Mail  21
J. Proposed Section Customer Authorization  22
K. Section 412.160 Online Marketing  22
L. Section 412.170 Training of RES Agents  22
M. Section 412.180 Records Retention and Availability  22
N. Proposed Section Affiliate Name and Logo Use  23
O. Proposed Section Product Descriptions  23

IV. Section 200  23
A. Proposed Section 412.200 Application of Subpart C 23
B. Section 412.210 Rescission of Sales Contract 24
C. Section 412.220 Deposits 25
D. Section 412.230 Early Termination of Sales Contract 25
E. Section 412.240 Contract Renewal 26
F. Section 412.250 Assignment 27
G. Section 412.300 Application of Subpart D 27
H. Section 412.310 Required RES Information 27
I. Section 412.320 Dispute Resolution 28
J. Applicability of Subpart E (Section 412.40 and Section 412.400 et al.) 29

V. Part 453 Internet Enrollment Rules 29

A. Section 453.10 Definitions 29
B. Section 453.20 Criteria by Which to Judge the Validity of an Electronic Signature 29
C. Section 453.30 Method by Which the Authenticity of Electronic Signatures may be proven 29
D. Section 453.40 Additional Requirements for an Electronic LOA 30

VI. Findings and Ordering Paragraphs 30
FIRST NOTICE ORDER

By the Commission:

PROCEDURAL BACKGROUND


On March 4, 2010, the CUB/AG, ComEd, Ameren, BlueStar, Dominion, ICEA, IIEC, and RESA filed verified initial comments; followed by the verified reply comments filed by Staff, AG, ComEd, Ameren, BlueStar, Dominion, ICEA, IIEC, and RESA on April 22, 2010. The Administrative Law Judge held a status hearing on May 6, 2010 where the parties established a schedule for filing verified surreply comments. Staff, AG, ComEd, Ameren, BlueStar, Dominion, ICEA, and RESA filed verified surreply comments on June 23, 2010. Commission Staff, AG, ComEd, Ameren, BlueStar, Dominion, ICEA, IIEC, NEMA, and RESA filed initial briefs on August 27, 2010. An additional intervenor, Interstate Gas Supply of Illinois, Inc. (“IGS”), filed a Verified Petition to Intervene and Verified Initial Brief on August 30, 2010. The Administrative Law Judge issued a ruling granting the Verified Petition to Intervene without objection and noting the Verified Initial Brief of IGS on September 15, 2010. Staff offered the current versions of the proposed rule and amendment as Corrected Attachment A to its Corrected Verified Reply Comments filed on April 22, 2010. Staff subsequently proposed additional revisions to the proposed language via an e-mail to the parties on August 23, 2010. These revisions are memorialized in Attachment A to Staff’s Initial Brief. Given the heavily contested nature of this rulemaking, the Commission entered an Interim Order of Withdrawal on October 26, 2010 to withdraw the current draft of Part 412 and Part 453 and allow this docket to remain open for further adjudication. Thus, the Administrative Law Judge issued a proposed First Notice Order on February 18, 2011 and a corrected First Notice Order on March 18, 2011. Briefs on Exceptions and Reply Briefs on Exceptions were filed by the parties. Two final intervenors, Energy Services Providers, Inc. d/b/a Illinois Gas and Electric and Interstate Gas Supply, Inc. filed Brief on Exceptions, without objection.

ADOPTION OF 83 ILL. ADM. CODE 412 – OBLIGATION OF RETAIL ELECTRIC SUPPLIERS

Section 412.10 – Definitions

1 “Complaint”

In its Initial Comments, ICEA proposed to amend the definition of “Complaint” to specifically include the RES along with other entities and to point out that complaints require investigation or analysis directly from the Commission.

Staff agreed with ICEA’s recommendation to clarify its objection from “an entity” to an objection to a “RES”. Staff and CUB/AG disagree with ICEA’s recommendation to include the phrase “by the Commission”. Staff stated its intended definition includes any complaint requiring investigation and analysis by the RES and/or Commission Staff. Staff also proposed changing “another entity” to “other entity”. CUB/AG opined that “Complaint” should be broadly defined.
Commission Analysis & Conclusion
The Commission finds the proposed definition for “Complaint” as recommended by Staff and CUB/AG to be reasonable and adopts the language as revised.
2 “Do Not Market List”

In its Reply Comments, Staff adopted ComEd’s proposal to include a “Do Not Market List” definition in this Section. ICEA does not believe that a definition of "Do Not Market List" is necessary-- either in Section 412.10 or as a sentence in Section 412.170(d); however, ICEA is not opposed to the concept of a Do Not Market List being part of the Proposed Rule. Rather, ICEA believes the Commission should retain the flexibility that leaving the term undefined allows. Specifically, by not locking the definition of the Do Not Market List into a rule that could potentially remain unchanged for years, the Commission, the Office of Retail Market Development (“OMRD”), electric utilities and interested parties will be better able to address and refine appropriate parameters for how a utility’s Do Not Market List should function in light of ongoing market conditions. Further, ICEA notes that the parameters for the Do Not Market List are set forth in Section 412.170(d) so the lack of a definition in the rule does not negate the Section 412.70(d) requirement.

ICEA argued that if the Commission adopted a definition of "Do Not Market List" in this rulemaking, it should define the term to allow greater customer choice and control and should be broad enough to easily permit future revision and refinement in light of ongoing market conditions. As such, ICEA proposed to revise the definition to afford customers the opportunity to choose the marketing channels they wish to keep open and allow customers the opportunity to remove or modify their listing without restriction. ICEA noted that overall it did not see the necessity for this definition, however if one is adopted, it should be broad enough to allow for future revision and refinement in light of ongoing marketing conditions. BlueStar supported ICEA’s proposal however, ComEd disagreed with ICEA’s proposal to give customers a menu of options for blocking marketing media and pointed to the fact that a national “Do Not Call” registry already exists. Furthermore, ComEd argued there is no reason to believe the “menu” would provide any real additional benefit to customers or even be used by them or otherwise justifies the costs associated with utilities offering such multiple listings. Notwithstanding a later discussion of the propriety of Section 412.410 itself, Staff rejected ICEA’s proposal as a procedural matter because ICEA failed to tender its proposal in its Initial Comments. Staff noted that although ICEA argued for flexibility in the onset, it instead offered a very detailed provision, leaving little to no room for future revision. Staff recommends the Commission incorporate its proposed definition of the Do Not Market List along with Section 412.170(d) as sufficient for the purposes of this rule.

**Commission Analysis & Conclusion**

The Commission agrees with the proposed definition recommended by Staff. When adopting new rules or amending current sections of the Illinois Administrative Code, every effort should be made to create clear and concise language, particularly in instances where consumer protection is involved. The language proffered by Staff is more reasonable and allows for future flexibility. As such, this definition is adopted.
3 “Material Terms”

In its Initial Comments, CUB/AG proposed adding a definition for “Material Terms”. The use of the term “material terms” only appeared in CUB/AG’s proposed Section 412.160 Customer Authorization. Since the Commission is not adopting CUB/AG’s proposed Section 412.160 there is no longer a reason to include a definition for “material terms”

4 “Pending Enrollment”

In its Initial Brief, RESA proposed adding a definition for “Pending Enrollment”. The use of the word “enrollment” is superfluous and uses part of the definition to define the phrase, thus it could be confusing and should be replaced. The rule should avoid use of the term “enrollment”. Since the parties have not stated any objection to this definition, the Commission adopts the definition with modification:

“Pending enrollment” means a valid direct access service request that has been accepted by utility, for which the meter read switch has not yet occurred.

5 “Rescind”

The initial version of this rule did not include a definition for "Rescind". ComEd argued this definition is necessary to distinguish between the proposed ten-calendar day rescission period in Section 412.210 and the proposed ten-business day penalty-free cancellation period in Section 412.230. Staff recommended modifying ComEd’s proposed definition to include the cancellation of a pending customer enrollment with a RES.

RESA, in surreply, noted a number of examples where there was confusion around the term “rescission” or “rescind” and argued the term should not be used at all. RESA stated that the general understanding is that when a customer rescinds a contract, early termination fees do not apply. RESA notes that Staff’s proposed language does not draw a distinction for early termination fee waivers, but instead it is suggested that a “rescission” must occur prior to the execution of a pending enrollment, whereas a “cancellation” may happened after an enrollment request is processed. RESA believes a “cancellation” of an enrollment is distinct from a “rescission” of a contract. In RESA’s opinion, the timing for when a contract is “rescinded” is generally understood, and therefore when there is a pending enrollment, early termination fees should not apply.

As RESA pointed out, Staff’s proposed definition of “rescind” draws no such distinction regarding the prohibition of early termination fees, and is not directly related to the contract, but the enrollment. While RESA’s primary position was that rescission
rights are tied to execution of a contract, to be prudent, Staff argued RESA must also address the proposed language with the assumption that the rescission time periods will be tied to enrollments and not contracts.

BlueStar agreed with RESA and further noted that cancelling a pending enrollment is a separate and distinct event that should not be confused with the right to rescind an agreement. BlueStar further suggested that it may be necessary to distinguish the process for cancelling a pending enrollment and it should be called a “cancellation of a Direct Access Service Request”.

Staff proposed further revisions to include rescission of a contract or cancellation of a pending customer enrollment with an RES without the incurrence of an early termination fee. ComEd, in turn offered another version of the language which termed “rescind” as the cancellation of a pending enrollment prior to the start of service with the RES.

**Commission Analysis & Conclusion**

The Commission rejects ComEd’s proposed definition and finds the language is redundant. It is understood that a pending enrollment occur prior to the start of service. Notwithstanding the 10-day rescission period issue that is addressed separately here, the Commission finds Staff’s definition as revised in its Initial Brief is sufficient for the purposes of this Rule. The Commission finds it is generally understood that rescinding a pending customer enrollment should not result in early termination fees. The Commission therefore adopts the definition as proposed by Staff.

6 “Residential Customer”

Staff proposed a definition of “residential customer” in its Reply Comments that states:

“Residential Customer” means the same as that term is defined in 83 Ill. Adm. Code 280.

ICEA pointed out that 83 Ill. Adm. Code 280 does not define “residential customer”. Instead, Part 280 defines “customer” and “residential service”. ICEA proposed a modified version of the definition that is similar to one used in Docket 06-0703 and denoted that the definition includes customers receiving retail electric service for household purposes, including service provided through a single meter to one or two dwelling units. Staff, in
response, offered a definition that incorporates the definition of residential service as found in Part 280.

**Commission Analysis & Conclusion**

The Commission adopts the following definition of “residential customer”.

“Residential customer” is a customer receiving residential service as defined in 83 Ill. Adm. Code 280.

The Commission finds using consistent terminology between Administrative Codes where applicable makes the most sense.

7 “Retail Customer”

CUB/AG proposed to add a definition for “retail customer” that references the identical term in Section 16-102 of the Illinois Public Utilities Act [220 ILCS 5/16-102] (“Act”). Although there were no objections to this definition, the Commission will not adopt the definition as stated, and finds that the definition is a restatement of the definition as referenced in Section 16-102 of the Act. The Commission finds it would be prudent to fully define any proposed definition in this rule in lieu of directing readers elsewhere.

8 “Sales Agent”

RESA recommended that agents, broker, and consultants (“ABCs”) engaged in the procurement or sale of retail electricity should be excluded from the definition of a “sales agent”. RESA offered two arguments in support of its position. RESA initially pointed to Sections 412.120 (g) and 412.130 (f) which state that “upon a customer’s request, the RES shall refrain from any further marketing to that customer.” While Staff agreed the language could be seen as ambiguous when applied to marketing by non-exclusive ABCs, it argued the better solution to avoid any potential ambiguity was to modify the language in Sections 412.120 (g) and 412.130 (f) rather than revising the definition offered in this rulemaking. Staff believed modifying the definition here would have a considerable impact on several Sections of this rule where the term appears.

RESA along with BlueStar further argued, that the requirements for ABCs are best addressed in Section 454. Therefore RESA proposed ABC’s should be excluded from the definition of “sales agent” in Part 412. RESA believed the rules for consumer protection should apply equally to all mass marketers and supported the language in Part 454 that would require ABCs to adhere to the provisions in Part 412 as adopted. RESA argued that including the ABC requirements in Part 454 would ensure that all mass marketers selling
retail electric products and services in Illinois would adhere to the same consumer protection provisions and would avoid unnecessary confusion.

Staff countered by arguing that including ABCs in the definition of “sales agent” would ensure all RES selling retail products or services in Illinois would adhere to the consumer protection rules. Staff, in its Reply Comments, saw no compelling reason to modify another section of the Code to accomplish what could be addressed in Part 412 itself. Staff distinguished Part 454 and Part 412 as it related to mass marketing entities, by noting that Part 454 applied solely to non-exclusive ABCs whose sole source was recent legislation requiring ABC’s to seek certification from the Commission. Alternatively, Part 412 applied to all RESs who sell to residential and small commercial customers, regardless of the sales method. Staff maintained it would be confusing to the consumer to exclude ABCs from the definition of “sales agent” in Part 412 and noted that whether marketing and sales are conducted by its employees, exclusive or non-exclusive ABCs, the RES is ultimately responsible for complying with consumer protection statutes under Section 16-115A of the Act.

Staff noted the inconsistency between the applicability requirements of Part 454 and Part 412 pointing out that the present rule will apply to RESs using ABC’s who solicit or serve residential and small commercial customers, while Part 454 applies to ABCs who market retail electric service to a third party with an aggregate billing demand of up to one-and-a-half megawatts. As a result, Staff rejected the Part 454 language proposed by RESA as inconsistent with the applicability limits set forth in Part 412. Staff argued the inconsistency would call for additional revisions to Part 454 to be made and suggested the Commission adopt the all-inclusive definition of “sales agent” to achieve the same result more efficiently.

Commission Analysis & Conclusion

The Commission adopts the definition of “Sales Agent” as proposed, however, the Commission finds that the term shall be changed from “Sales Agent” to “RES Agent”. The Commission finds the best opportunity to adequately define the meaning of this term is in Part 412. While RESA and BlueStar’s arguments serve to highlight the potential ambiguities in the definition, the solution is not to revise limited sections of Part 412 or exclude certain types of mass marketers from this definition in favor of incorporating language in Part 454, which is not part of this proceeding. The Commission agrees that the most efficient means to clarify the applicability requirements for exclusive and non-exclusive ABCs is to address it directly by defining the term in Part 412, instead of making future revisions to inconsistent provisions in Part 454.

9 “Letter of Agency”

RESA noted that several sections of the proposed rule (412.110, 412.130(f),
that use the term “sales contract”, but that it was not defined. In contrast, there is a definition for “Letter of Agency” (“LOA”). RESA requested the Commission clarify the distinction between the two terms or, assuming they are identical, to replace the term “sales contract” with the term “Letter of Agency”. BlueStar also requested the Commission to clarify the distinction.

Staff stated the term “Letter of Agency” was clearly defined in the Consumer Fraud Act (815 ILCS 505/2EE). Staff pointed out a letter of agency is not identical to a sales contract for the purposes of power and energy service and disagreed with RESA’s recommendation.
Commission Analysis & Conclusion

The Commission finds that the term “letter of agency” is clearly defined in the Consumer Fraud Act (815 ILCS 505/2EE) as a means by which an alternative retail electric supplier may gain a customer’s authorization to change their electric supplier either in writing or electronically. The Commission further finds the term “Contract” is more appropriate and should be used instead of the term “Sales Contract” for consistency. The Commission finds that the term “Contract” is reasonably understood and does not call for a separate definition in this Part if one has not been previously offered by the parties.

10 “Small Commercial Retail Customer”

RESA proposed revising the initial definition of “Small Commercial Customer” and suggested applying a 15,000 kilowatt-hour usage benchmark statewide instead of limiting it to the RES’s service area. RESA recommended the Commission modify this language to highlight the actual intent of the rule, i.e. --- to focus the applicability of marketing standards in Part 412 to residential and small commercial customers. RESA argued that without this change, the determination of what entities constitute a small commercial customer will be determined by location, rather than on usage as set forth in the definition. RESA noted that the “service area” language is subject to create a situation where a customer could be designated as a “small commercial customer” by one RES, while simultaneously defined as a large commercial customer to another, solely because of the size of the service area as set forth by the respective RES.

ComEd sought to eliminate language that removed the “small commercial customer” designation when the customer’s usage exceeds 15,000 kilowatt-hours in any calendar year. ComEd reasoned utilities should not have a role in determining whether the consumer falls within the parameters under this designation. Staff rejected this proposal as not being parallel to the definition of “small commercial retail customers” set forth in Section 16-102 of the Act. Moreover, ComEd sought to strike the language that stated the underlying utility did not have an affirmative obligation to inform the RES or its customers of the consumer’s status as a small commercial customer. ComEd suggested this language should be included instead in a new section, Section 412.40. ComEd argued that allowing the language to remain incorporated in Section 412.10 confuses the parameters of a “small commercial customer” with the RES’s obligations and unnecessarily addresses existing requirement for the underlying utility. Staff argued ComEd’s definition failed to incorporate the final sentence that it believed was an essential portion of the definition. The language referred to the electric utility’s continuing obligation to provide information to regarding the consumer’s status as a small commercial customer upon request from the consumer, the RES or the Commission.
Commission Analysis & Conclusion

The Commission finds that while RESA and ComEd have each offered a viable argument for modifying the definition as proposed, the paradoxical situation described by the parties is only a hypothetical. Neither company presented evidence this problem affected the existing small commercial retail customers defined in Section 16-102 of the Act. The Commission cannot allow a revision to the proposed definition that would create an inconsistency with an existing definition in the Act. The Commission also notes that there seems to be no apparent distinction between the definition of a “small commercial customer” in the proposed language and a “small commercial retail customer” in Section 16-102. The Commission finds the proposed definition shall be re-titled to be identical with the existing Section 16-102 and will adopt the “service area” language in the proposed definition.

The Commission also finds that the utility company should not bear the responsibility of removing a customer from the “small commercial customer” designation and disagrees that the electric utilities will find it difficult and/or costly to denote a small commercial customer account. The Commission finds that the electric utility is in the best position to inform the consumer or RES of a customer’s classification. The Commission also finds that since there is no objection to using a 15,000 kWh usage standard as the threshold for making the determination of “small commercial retail customer”, it will be adopted in the language. Therefore, the Commission adopts the language as modified.

11 Proposed Section Applicability

ComEd proposed adding an “applicability” section before the “waiver” section. ComEd argued the purpose is to clearly identify and separate RES obligations from utility obligations under the proposed rule.

Commission Analysis & Conclusion

The Commission will not adopt the proposed language presented by ComEd. The Commission finds the language in Subpart E to be repetitive and note that Subparts A through D include utility obligations.

12 Section 412.20 - Waiver

Staff argued the Commission’s rules include a number of waiver provisions, many of which mirror several sections in the Act. Staff proposed defining “waiver” in this Section based upon on Section 13-513 of the Public Utility Act [220 ILCS 5/13-513]. Staff believed
the main purpose for defining “waiver” here is to provide some protection in anticipation of the unknown and to eliminate the need to account for every occurrence that may arise in the future. Staff argued that absent a waiver provision, well-intentioned rules could otherwise work injustice or disservice to the customer, placing the entire intent of this rule at risk. Staff also pointed out that the identical language has been approved by the Commission and the Joint Committee on Administrative Rules without objection in several other rulemakings.

ComEd argued against the proposed language and Staff countered by maintaining the Commission cannot waive a requirement mandated by statute. Further the language provides the RES an opportunity to oppose waiver by intervening in the proceedings before the Commission by alleging an injury as a result of the proposed waiver. Staff argued this provision serves to aid the Commission since it sets forth the legal standard for the proceeding and the appropriate measure for due process overall.

Staff argued against including the “just and reasonable” language in subsection (a) and believed that if the Commission were to grant a waiver pursuant to the rule as proposed, the Commission’s ruling would intrinsically be deemed to be reasonable under the circumstances. Staff believed, proposed language provided the proper balance to the competing interests of the petitioner and intervenors. CUB/AG joined Staff in rejecting ComEd’s proposal.

CUB/AG and ICEA supported language that called for a party seeking a waiver to file a petition with the Commission. However, ICEA sought to modify CUB/AG’s language for 412.100(c) as follows:

c) A waiver petition shall be filed pursuant to 83 Ill. Adm. Code 200 and shall include specific reasons and facts in support of the requested waiver.

Staff argued the Commission should also reject CUB/AG’s revisions for the same reasons as the ComEd language. First, Staff believed any petition should be filed pursuant to the Commission’s Rules of Practice. Second, Staff argued that any party seeking a waiver would also need to plead specific facts and present an argument as to why it requires an exemption under this Section.

Commission Analysis & Conclusion
The Commission agrees with Staff that its proposed waiver language strikes the right balance between rule provisions that have already been found just and reasonable and a petitioner seeking a waiver from such a provision. ComEd’s proposal would inappropriately diminish the waiver standard the Illinois General Assembly provided in the PUA and one that has repeatedly been adopted in our rules. The Commission also agrees that the party seeking relief through a waiver is required to file a petition as set forth by the Rules of Practice, as is implied by Staff’s language. Staff’s language, consequently, is adopted for the waiver provision in Section 412.20.
13 Section 412.30  Construction of This Part

Staff argued and RESA agreed that Part 412 should supersede any existing utility tariffs, particularly as they pertain to areas related to customer protections upon adoption. To further clarify the relationship between this rule and existing electric utility tariffs, Staff proposed adding Section 412.30, which includes language similar to that found in existing Section 453.40(c). Staff, ICEA, RESA, and ComEd all argued that Section 412 should control over conflicting tariffs once it takes effect. While no substantive objections were raised regarding Section 412.30, Ameren proposed a modification to Section 412.210 which included a blanket exemption that contradicted this Section. The parties collectively argued Ameren’s modification clearly conflicts with the spirit of Section 412.30, and believed that the purpose of this Section is to have utility tariffs conform to the consumer protection standards established by this Part. Ameren argued its revision was intended to allow the RES to continue with the current 10-day enrollment rescission period for all customers, including those with annual usage in excess of 15,000 kWh as reflected by the current Ameren tariffs. Ameren wanted to be assured the rescission period for consumers who consume more than 15,000 kWh give rise to a scenario where a RES would be precluded from enforcing a 10-day enrollment rescission period for all customers.

Commission Analysis & Conclusion

The Commission agrees that this rulemaking is the appropriate proceeding to address consumer protection issues such as right of rescission. The Commission finds that Part 412 should be the ultimate authority in matters of consumer protection those customers being served by RESs. The Commission rejects Ameren’s proposed language in Section 412.210 as it conflicts with this Section. The Commission finds that the rule shall control in the event of any conflict between this rule and a utility tariff.

14 Proposed Section 412.40 Determination of Small Commercial Customer

ComEd responded to Staff’s proposed definition of “small commercial customer.” ComEd argued utilities have no role in determining whether a customer can be designated a small commercial customer pursuant to this Section. ComEd introduced supplemental language which sought to determine characteristic of the small commercial customer. The Commission finds the utilities are best positioned to make this determination, thus rejects the language proposed by ComEd.

Section 100

1 Section 412.100 Application of Subpart B

Subpart B of Part 412 provides rules and regulations for Retail Electric Suppliers
concerning marketing practices to customers. Specifically Subpart B deals with the provision of a Uniform Disclosure Statement (412.110) and rules regarding Door-to-Door Solicitation (412.120), Telemarketing (412.130), Inbound Enrollment Calls (412.140), Direct Mail (412.150), Online Marketing (412.160), Training of RES Agents (412.170), Records Retention and Availability (412.180), and Affiliate Name and Logo Use (412.190). The Commission Staff has recommended that with the exception of Section 412.170(a), (b) and (c) and Section 180, subpart B of Part 412 should apply only to RESs serving or seeking to serve residential and small commercial customers.

ICEA and Bluestar argued the RES should differentiate its marketing practices to the consumer based upon usage levels. Staff also introduced language modifying section 412.100 to apply Section 412.170(d) to the utilities. IIIEC originally proposed modifying Section 412.100(b) to provide exceptions to the applicability of Section 412.180 for RESs that are certified under subparts B, or C or E of the 83 Ill. Adm. Code 451.

ICEA argued that applying Section 170(a), (b) and (c) of Subpart B to RESs who serve larger customers runs contrary to the established framework of differentiating requirements based on customer usage levels in Illinois. BlueStar argued further that more sophisticated consumers do not necessarily require the same level of consumer protection.

Staff rejected ICEAs’s argument, in part. Staff argued Sections 412.170(a), (b) and (c) should apply to RESs and stated Section 412.170 includes basic requirements that any RES marketing electric service to retail customers should meet, regardless of the type of customer being targeted.

IIIEC argued that IIIEC companies in this proceeding, or their affiliates, are certified as Alternative Retail Electric Suppliers (“ARES”) under subparts B, C or E of the Commission’s rules on certification of ARES. (83 Ill. Adm. Code 451.10 et seq.). IIIEC points out that subpart B, C and E ARES are certified to serve their own load or the load of a corporate affiliate and as such do not actually serve a customer as contemplated by the proposed rule. Therefore, IIIEC argues that Companies that are certified as ARES under subparts B, C or E of the Commission’s rules on certification of ARES to serve their own load or the load of a corporate affiliate should be exempt from the application of Section 412.170(a), (b) and (c) and 412.180 of Subpart B of Paragraph 412. The Staff agrees with IIIEC.

Commission Analysis & Conclusion

The Commission rejects language that would generally exempt RESs serving large industrial and commercial customers from the provision of 412.170(a), (b) ad (c) for the reasons identified by the Staff. The Commission finds this Section should be drafted to make the provisions of 412.170(a), (b) and (c) of Subpart B applicable to all RES customers except as provided below.
The Commission also recognizes the unique position of companies certified as ARES under (i) subpart E of the Commission’s rules (83 Ill. Adm. Code 451.451) to serve their own load or the load of a corporate affiliate and (ii) those certified under Subparts B or C of the Commission Rule (83 Ill. Adm. Code 451.100 and 400.200) to serve their own load and/or the load of a corporate affiliate and/or the load of an entity located on the site of a manufacturing or refining facility of the Subpart B or C ARES, that is fully integrated into the existing electrical distribution system of the subject refining or manufacturing facility. Such ARES do not serve retail customers generally. They essentially serve themselves and they do not require the protections that other retail customers may require. Furthermore, they do not generally market or sell electricity to retail customers. Therefore, rules regulating the marketing and sale of electricity to retail customers should not apply to them.

The Commission recognizes the protections contemplated under the Section 412.100 Application of Subpart B are not necessary for companies certified to serve their own load or the load of an affiliate or the load of entities electrically integrated into the distribution facilities for their manufacturing or refining facilities and find that Section 412.170(a), (b) and (c) and 412.180 of the Proposed Rule should not be applicable to them pursuant to 412.100(b).

2 Section 412.110 Uniform Disclosure Statement

The Commission finds that the Uniform Disclosure Statement should provide standardized information to the consumer overall. Uniform disclosures will ensure continuity of service throughout the industry. The Commission finds it is in the consumer’s best interest for the RES to provide a standard and reliable method to allow the consumer to make an informed price comparison for RES service. The Commission disagrees with the arguments set forth by BlueStar, RESA and Staff and finds that the consumer is best served by receiving a Uniform Disclosure Statement prior to enrollment in the service. Furthermore, the Commission finds that Part 412 is not redundant. Nor will it lengthen the enrollment process or further confuse the customer. The Commission sees no need to direct the consumer to other provisions when the pertinent information is best included in a Uniform Disclosure Statement pursuant to this proposed Section. The Commission further finds that the Commission’s contact information shall be incorporated in the disclosure. Thus, the Commission adopts the proposed language as revised below.

1. 412.110 (c)
   Staff proposed the following changes to 412.110(c) in its Reply Comments.
The RES’s toll-free telephone number for billing questions, disputes, and complaints as well as the Commission’s toll-free phone number for complaints.

**Commission Analysis & Conclusion**
Having noted no objections, the Commission accepts Staff’s proposal.
2. 412.110 (j)

In its Initial Comments, RESA proposed the following changes to 412.110(j):

A statement that the customer may rescind the agreement within ten calendar days of the date of the agreement by contacting either the RES or the electric utility and provide both phone numbers.

In contrast, BlueStar proposed the following changes to 412.110(k) in its Initial Brief:

A statement that the customer may rescind the agreement within three (3) business days following that day on which the contract was signed by notifying the RES and provide its phone numbers;

Staff in its Initial Brief proposed modifications to 412.110(j) and a new rescission disclosure in 412.110(k) that coincide with changes Staff proposed in Section 412.210 to clarify the rescission issues. Staff’s proposed 412.110 (j) reads:

(j) A statement that the customer may rescind the contract, by contacting the RES before the RES submits the enrollment request to the electric utility;

Staff’s proposed 412.110 (K) reads:

(k) A statement that the customer may rescind the contract and the pending enrollment within ten calendar days after the electric utility processes the enrollment request by contacting the RES and that residential customers may rescind the contract and the pending enrollment by contacting either the RES or the electric utility and provide both phone numbers;

Commission Analysis & Conclusion

The Commission agrees with Staff’s proposal.

3. 412.110 (l)
ComEd included in its redline of Staff’s Initial Proposed Rule a new disclosure in 412.110(n) which read:

A statement that the RES has been certified by the Commission to provide power and energy service, that the Commission has been informed that the RES is seeking to enroll customers, and providing a phone number and the website of the Commission upon request;

Staff in its Reply Brief incorporated these additional disclosures proposed by ComEd, however not as 412.110(n) but in existing disclosure requirement or in Section 412.310 Required RES information. Staff’s Proposed Rule attached as Appendix A to its Reply Comments Section 412.110(K) read:

A statement that the RES is an independent seller of power and energy service certified by the Commission, and that that the RES agent is not representing or acting on behalf of the electric utility, governmental bodies, or consumer groups;

In its Reply Comments, RESA proposed the following changes to 412.110(l):

A statement that the RES is an independent seller of power and energy service, licensed by the Illinois Commerce Commission, and that the RES agent is not representing or acting on behalf of the electric utility, governmental bodies, or consumer groups.

RESA modified this section in response to ComEd’s proposal to incorporate additional language to the Uniform Disclosure Statement which informs the customer that the RES must be certified by the Commission. RESA stated its concern for the length of the Uniform Disclosure Statement and as an objection to adding language to the Uniform Disclosure Statement, RESA amended the language as stated above.

**Commission Analysis & Conclusion**

Staff uses the term “certified” whereas RESA uses the term “licensed” however, RESs are not licensed by the Commission but certified by the Commission per Section 16-115 of the Public Utilities Act Certification of alternative retail electric suppliers. The Commission agrees with Staff’s proposal.

4. 412.110(m)

ComEd proposed to modify subsection 412.110(m) to state that the customer will receive written notification from the electric utility confirming a pending enrollment to a RES.
Commission Analysis & Conclusion
The Commission finds the original language in this subsection is more clear and reasonable for the customer to understand. Therefore, the Commission adopts the language as originally drafted.

5. **412.110(n)**
BlueStar and RESA insisted its telemarketing agents have no opportunity to provide the consumer with a written Uniform Disclosure Statement prior to enrollment, and BlueStar also argued the RES should only be required to disclose certain applicable sections of the Uniform Disclosure Statement. BlueStar, ICEA and RESA maintained of the Uniform Disclosure Statement and Section 2EE of 815 ILCS 505 are redundant and may create customer confusion and lengthen the enrollment process.

RESA proposed to revise Section 412.110(n) eliminating the requirement that the RES using telemarketing or online marketing to provide the consumer with a written statement describing the conditions that must be present to earn guaranteed savings. RESA maintained that if adopted, the subsection would imply the Commission favored door-to-door solicitation over other marketing methods.

Staff in its Reply Comments modified Section 412.110(n) takings RESA’s recommendation into consideration. Staff’s proposed 412.110(n) reads:

If savings are guaranteed under certain circumstances, the RES must provide a written statement, in plain language, describing the conditions that must be present in order for the savings to occur. In the case of telemarketing and inbound enrollment calls, such statement shall be provided in accordance with Sections 412.130(e) and 412.140 (c); and

Commission Analysis & Conclusion
The Commission will adopt the language as drafted by Staff without revision. The Commission believes that it is reasonable to require the RES to mail a copy of the Uniform Disclosure Statement to the customer regardless of the marketing method used.

6. **412.110(o)**
CUB/AG with support from BlueStar proposed the customer should have the opportunity to compare the price for utility service with the price for RES service with as much accuracy as possible. CUB/AG argued these comparisons would promote transparency in the marketplace. Dominion argued Section 412.110(p) should mandate the RESs to fully disclose all cost components involved in the service; however, it rejected the notion that disclosure should be mandated in the regulatory process. Dominion also rejected CUB/AG’s proposal for price comparisons between fixed monthly charges and per kWh charges. Dominion argued CUB/AG’s proposal would only provide an illusion of an “apples
to apples" comparison, when the data is actually different. Dominion argued that any
calculation that converted non-kilowatt hour charges into single kilowatt hour charges would
depend on certain assumptions within the RESs discretion. Lastly, Dominion maintained that
if RESs are required to provide a single kilowatt hour figure for their products, the utilities
should be required to do the same.

Commission Analysis & Conclusion

The Commission finds that RESs must fully disclose their pricing components. The
Commission believes that it is best to regulate the method the RES uses to disclose their
pricing to consumers in an effort to maintain continuity. The Commission will adopt Section
412.110(p) as follows:

p) A price-per-kilowatt hour (kWh) for the power and energy service. If a product
is being offered at a fixed monthly charge that does not change with the
customer’s usage and the fixed monthly charge does not include delivery
service charges, the RES must provide a statement to the customer that the
fixed monthly charge is for supply charges only and that it does not include
delivery service charges and applicable taxes; therefore, the fixed monthly
charge is not the total monthly amount for electric service. For any product that
includes a fixed monthly charge that does not change with the customer’s
usage, the RES must provide an estimated price-per-kilowatt hour for the
power and energy service using sample monthly usage levels of 500, 1,000
and 1,500 kWh.

7. Proposed Subsection 412.110(p)

CUB/AG proposed Section 412.110(p); Disclosure of Force Majeure. The proposed
section reads as follows:

A statement of whether or not the RES has declared force majeure within the past ten
years in relation to any contractual obligations to deliver power and energy service.

CUB/AG argued the purpose of this section is to provide potential customers with
information as to whether a RES sufficiently manages the risk of force majeure. CUB/AG
argued there had been a trend in Illinois where other competitive retail suppliers have
declared force majeure as a tactic to unfairly cancel customers’ fixed price contracts, and
replace it with higher-priced variable rate contracts. CUB/AG also contended that if the RES
has access to the probability of the customer’s ability to pay, then the customer should
expect the RES to have the ability to provide dated on its reliability to provide service.

Dominion stated that, assuming the Commission adopts CUB/AG’s proposal, the
underlying utility should also be required to do the same in an effort to equalize the RES and utility when it comes to force majeure declarations. ICEA recommended the Commission reject CUB/AG’s proposal and argued suppliers have no control over occurrences of force majeure.

ICEA believed there was no predicative value in providing information on the RESs past force majeure events to the consumer as an assumption that the RES would be unable to provide service in the future. ICEA argued that if CUB/AG was concerned a RES would develop a pattern of declaring questionable force majeure events, the more suitable venue to challenge the RES would be in circuit court or via a complaint filed with the Commission. Also, ICEA suggested the Commission could investigate a RES who is accused of instituting questionable force majeure declarations on its own motion. Staff also rejected CUB/AG’s proposal on the basis that the language was ill-advised. Staff noted the term “force majeure” is foreign to the average consumer and did not understand how a RES force majeure declaration from nine years ago would be useful to customers today.

**Commission Analysis & Conclusion**

The Commission rejects this subsection as unnecessary, misleading, and providing no direct value to the customer. The Commission agrees with Staff’s reasoning that most non-lawyers will not understand the provision; nor does the Commission find the provision beneficial.

3 Proposed Section Customer Solicitation

CUB/AG introduced the language designed to regulate the RES customer solicitation. ICEA objected and argued that this section appears to be redundant and unnecessary.

**Commission Analysis & Conclusion**

The Commission agrees with the spirit of the proposed language however the Commission finds it is repetitive when compared to other sections. Therefore, the Commission rejects the language proposed by CUB/AG and also declines impose a $50 cap on the early termination fee. The Commission recognizes further discussion of the early termination fee appears under Section 412.230 and will reserve any further findings for that Section.

4 Proposed Section Uniform Disclosure Label

RESA argued the term “early termination fee waiver” should be eliminated in favor of
the term “uniform disclosure label”. RESA contended the early termination fee waiver mentioned in the proposal would result in customers invoking the waiver to “game” the system in an effort to find the lowest priced service. Further, RESA believed that these tactics, whether brought on by a competitor or the customer itself, will serve to limit fixed rate offerings and increase costs to consumers. Additionally, RESA argued it should be the utility’s responsibility to provide the RESs with delivery charge information. RESA suggested the utility provide the information via an easy-to-access website and notify the RESs whenever a revision to the utility charges would impact the uniform disclosure label. Should a utility refuse to provide this information, RESA argued that the RES, in turn, would not be required to disclose the delivery charges the consumer. Further discussion of this can be found in section 412.230.

Commission Analysis & Conclusion
The Commission rejects the proposed section Uniform Disclosure Label.

5 Proposed Section Customer Solicitation

CUB/AG proposed additional language in this section to offer the consumer protection from a RES which may attempt to misrepresent its services. BlueStar and Staff offered objections to this language. BlueStar argued that this Section mirrors amended language in the Consumer Fraud and Deceptive Business Practices Act [815 ILCS 505.1 et seq.] and Section 19-115 of the Public Utilities Act. BlueStar believed that given the fact gas and electricity are separate commodities, each utility should require different and distinct rules for consumer solicitation. Thus, BlueStar concluded and Staff agreed, the existing statutes along with Part 412 adequately addresses the RESs responsibilities for customer solicitation. Staff also commented that CUB/AG’s proposal failed to bring any substantive value to this section other than the $50 cap on early termination fees.

Commission Analysis & Conclusion

The Commission notes that although the underlying theory in this Section is similar to language in Section 412.120, it will adopt the proposed Section in an effort to provide maximum protection to the consumer and to set forth the guidelines for customer solicitation in a clear fashion. The Commission notes, however, that the language in this Section should be reconciled and incorporated with Section 412.120.

6 Section 412.120 Door-to-Door Solicitation

Section 412.120 sets forth guidelines for door-to-door solicitation. This section is
amended to change all references of “sales agent” to “RES agent”. Additionally a new Paragraph (a) has been added to require RES agents to disclose they are an independent seller of power and energy service, certified by the Illinois Commerce Commission, and the agent is not representing or acting on behalf of the electric utility, governmental body, or consumer groups. Additionally, paragraph (b) has been added to require that if any sales solicitation, agreement, contract or verification translated into another language and provided to the customer then all of the documents must be provided to the customer in that other language.

Moreover, Dominion proposed adding two new paragraphs, now (j) and (k). The Commission adopts (j) to ensure RESs are aware of their agent’s backgrounds before sending them to a customer’s home. Furthermore, (k) limits sales solicitations to reasonable hours unless local ordinances are stricter.
Commission Analysis & Conclusion

The Commission will adopt Section 412.120 as amended by Staff and Dominion.

7 Section 412.130 Telemarketing

Section 412.130 is designed to provide the RES with guidelines for its telemarketers to follow during phone solicitations. ICEA stated the purpose of Section 412.130 (d) was to require the agent to verbally disclose Section 412.110 (d) – (p) to the customer. ComEd, ICEA and RESA suggested revising Section 412.110 (d) to remove the requirement that the customer has to articulate his or her understanding of the Uniform Disclosure Statement. ComEd further noted, and Staff agreed that only the “applicable” portions of Section 412.110 (d) – (p) should be reviewed by the RES agent during the telemarketing call. RESA stated that the term “Uniform Disclosure Statement” should be changed to “Uniform Disclosure Label” within this Section; however they failed to offer a substantive rationale for this revision.

Commission Analysis & Conclusion

The Commission will adopt Section 412.130. The Commission finds the preamble of this Section shall be revised to change the term “Sales Agent”, to “RES Agent” so as to use that term consistently throughout this rule. Furthermore, the Commission finds Section 412.130 (d) should require the agent to disclose the applicable sections in the Uniform Disclosure Statement. Although there was no objection to the requirement in Section 412.130(f) that the RES provide the Uniform Disclosure Statement and contract to the consumer within 3 business days, the Commission finds this language should be revised so that it is consistent with language contained in Section 412.140 that requires the RES to “Send the Uniform Disclosure Statement within 3 days.”

The Commission does not believe it is reasonable to expect the customer will receive the Uniform Disclosure Statement and contract unless the materials are sent electronically. Since the Commission cannot assume all consumers have access to receive documents electronically, the Commission finds this section should be revised to remove the term “provided” and add the term “send”. The Commission will also strike the reference to the RES and its “sales agents” and limit the description to the RES only.

8 Section 412.140 Inbound Enrollment Calls

Section 412.140 sets the parameters for the agent who responds to a consumer’s enrollment call. ComEd proposed the RES send the Uniform Disclosure Statement and contract to the customer within 3 business days following enrollment.
Commission Analysis & Conclusion

The Commission will adopt this Section with minor revisions for clarifications. The Commission believes that it is imperative that the customer is able to verbally articulate whether he or she understands the items contained in the Uniform Disclosure Statement, particularly when a customer is enrolling via telephone. The Commission also finds that the customers should have the opportunity to review the Uniform Disclosure Statement prior to the expiration of the rescission window. Therefore, Section 412.140 will be included in this Part.

9 Section 412.150 Direct Mail

Section 412.150 requires the RES agent who utilizes direct mail marketing to solicit customers. RESA argued an enrollment contact should be clearly defined in this Section. RESA argued Section 412.150 requires the RES to include the full Uniform Disclosure Statement with its mailing. RESA stated it is not clear whether which marketing materials can be considered to be for “enrollment purposes”, and which materials could be for “informational purposes”. RESA also was concerned whether it was feasible for the RES to include the full Uniform Disclosure Statement in a direct mailing, stating the language in the Uniform Disclosure Statement is too lengthy to fit within the size constraints required by a 5 x 7 postcard. RESA suggested the RESs include a web link where the Uniform Disclosure Statement could be posted for the customer’s review.

Staff responded by stating the RES should be required to include the Uniform Disclosure Statement with its direct mailing. Staff believed that while there is no guarantee the customer will read the disclosure statement, it is more unlikely that the consumer will make the effort to use a website to review the Uniform Disclosure Statement. Staff reasoned full disclosure to the customer is the primary purpose for this rule. Staff was also hesitant to recommend specific parameters for the RESs direct mailings. Consequently, Staff proposed rejecting RESA’s revision to Section 412.150. BlueStar argued there should be an affirmative statement to limit distribution of the Uniform Disclosure Statement to customers who have agreed to switch service to the RES Staff rejected this argument and stated that the overriding concern is that the Uniform Disclosure Statement should be given to the customer before he or she authorizes the RES to switch servicers.

Commission Analysis & Conclusion

The Commission will adopt this Section as stated, but will add an explicit requirement that the customer receives a copy of the sales contract, consistent with other marketing methods. It is appropriate to include a link to a website where the customer could review the Uniform Disclosure Statement. The Commission believes the RES should give the customer
an option to receive a copy of the Uniform Disclosure Statement in a paper or electronic version. Further, the Commission finds the Uniform Disclosure Statement should be provided to the consumer only when he or she has been solicited by the RES and not during its general marketing campaign. The Commission will require the Uniform Disclosure Statement to be available to the customer upon request and recognizes the importance of ensuring the Uniform Disclosure Statement is provided to consumers prior to the expiration of their rescission rights. As such, the Commission adopts the language in this Section as stated.

10 Proposed Section Customer Authorization

CUB/AG introduced this Section to set forth the constraints for the RES to have the customer authorize enrollment. Staff argued CUB/AG failed to clarify whether a letter of authorization or signed third-party verification is required before validating the contract. CUB/AG pointed to customer authorization rules for retail gas suppliers as the model for this Section and noted this section mimics Section 19-115(c) of the Act and Section 2DDD of the Consumer Fraud and Deceptive Business Practices Act. Dominion supported CUB/AG but noted it was concerned that enforcement of this section would impose unnecessary costs on the RES. Dominion and BlueStar argued the requirements set for retail gas suppliers are not automatically appropriate for RESs. Staff stated it did not see the benefit in regurgitating rules in this section that already exist in the Consumer Fraud and Deceptive Business Practices Act or Public Utilities Act.

Commission Analysis & Conclusion

The Commission finds CUB/AG’s proposed section is unnecessary and redundant and it will not be adopted.

11 Section 412.160 Online Marketing

The Commission will adopt Staff’s proposed Section 412.160 as submitted in Staff’s Initial Brief.

12 Section 412.170 Training of RES Agents

The Commission will adopt this Section as proposed by Staff in its Initial Brief with an amendment to 412.170(d) from Staff’s Reply Comment.
13 Section 412.180 Records Retention and Availability

The Commission will adopt this Section.

14 Proposed Section Affiliate Name and Logo Use

CUB/AG recommended that the proposed rules include a provision prohibiting RESs from using a name or logo similar to that of an electric utility. However, the language proposed by CUB/AG appears to have broader application than being limited to RESs and affiliated Illinois electric utilities. RESA proposed language prohibiting RESs affiliated with Illinois electric utilities; however, this language potentially created a loophole exempting subsequent RESs affiliated with electric utilities. Therefore, the Commission adopts the proposed language as modified by RESA but consistent with the intent expressed by CUB/AG.

15 Proposed Section Product Descriptions

CUB and the AG proposed in Comments in this case the inclusion in Part 412 of a provision to protect customers from general, deceptive claims that energy purchased comes from renewable resources and/or is environmentally friendly. CUB/AG argued that the use of “green” products should be restricted to renewable energy purchased separate and apart from that which is required under Section 16-115D of the Act. 220 ILCS 5/16-115D.

The Commission agrees that with the ever growing prevalence of “green washing”, that is, characterizing products as environmentally friendly when they may not necessarily be so, it is important for the Commission to address what does not constitute a “green” product offering. RESs are already subject to a renewable portfolio standard which requires the purchase of qualified renewable energy resources or alternative compliance payments. See 20 ILCS 3855/1-75; 220 ILCS 5/16-115D.

Commission Analysis & Conclusion

In order to promote product transparency, the Commission adopts an additional requirement be added to Section 412 which limits the definition of a “green” or “renewable” product to one that includes power and energy purchased entirely separate and apart from existing renewable portfolio standards. This proposal will help ensure that customers, who are likely to be unaware of these statutory obligations, are not lured into purchasing supply under false pretenses.
Section 200

1 Proposed Section 412.200 Application of Subpart C

Section 200 shall only apply to RESs who provide services to residential or small commercial customers and Section 412.210 will apply to electric utilities. CUB/AG, ComEd, Dominion, and ICEA all concurred with application of this Section on the RES and electric utility. Therefore, the Commission will adopt this Section as drafted.

2 Section 412.210 Rescission of Sales Contract

The proposed Section informs residential customers they are given 10 calendar days to rescind the contract from the date the utility processes their enrollment request. RESA objected to the 10 calendar day rescission period found in Sections 412.110(j) and 412.210. RESA argued the 10 calendar day rescission period could evolve to a much longer rescission period in the future. RESA sought to revise the timing for the start of the rescission period. RESA primarily proposed this change for potential contracts with a forward starting date; i.e., a start date ahead of the customer’s next meter read date. RESA argued that providing the consumers with a forward start date would be advantageous for the customer. Conversely, restricting the forward start date would have a negative impact.

Both ComEd and Ameren argued to limit the time between submitting an enrollment request and the start of the enrollment to a maximum of 45 days. RESA proposed to start the rescission period on “the date of the agreement,” instead of the date the utility accepts the enrollment request.

While Staff did not refute RESA’s claim the consumer could benefit from a forward start date, it argued the proposal would fundamentally change the structure of the rescission period and would be impossible to implement solely with the changes proposed by RESA.

Staff maintained that two of the modifications set forth by ComEd mirrors the Uniform Disclosure Statement. The first modification allows the consumer to rescind the contract before the RES submits the enrollment request to the utility. The second modification revised this section to prohibit consumers other than residential customers from cancelling an enrollment or rescinding the contract. ComEd also sought to incorporate the requirement that the consumer is notified when there is pending switch to a new supplier. Staff does not seek to include the full text of the enrollment notice in this Section, but it argued there some benefit to incorporating certain special circumstances for non-residential customers. Staff recommended the consumer letter include a statement that informs consumers they may incur early termination fees should they rescind the contract within 10 calendar days after the utility has processed the enrollment request. It also believed the letter should state that the consumer can contact the RES if they are not aware of their annual usage.
Staff and Ameren argued that the 10-day cancellation timeframe is appropriate, since it is present in the current residential and small commercial Ameren tariffs. Ameren saw no value in augmenting the utilities’ rescission/enrollment timetable for the purpose of the present rulemaking.

CUB/AG proposed to revise this section to include four additional disclosure statements; however, its revisions were not included in its Initial Comments.
Commission Analysis & Conclusion

The Commission finds the 10-day enrollment rescission period is reasonable and appropriate for this Rule. The Commission believes that the consumer should be afforded an adequate amount of time to receive confirmation of enrollment and determine whether they will rescind the contract. The Commission finds a 3-day rescission period is not sufficient to determine when a customer should cancel his or her enrollment. Therefore, the Commission will adopt this Section.

3 Section 412.220 Deposits

The Commission shall adopt this Section as written.

4 Section 412.230 Early Termination of Sales Contract

Section 412.230 requires that the early termination fee or the formula used to calculate the termination fee shall be disclosed to the customer within 10 business days from the issuance of the initial bill and allow the consumer to terminate the contract without any fee or penalty. This Section also prohibits the customer from using the early termination option more than once in a 12-month period. This waiver does not relieve the customer of his or her obligation to pay for service prior to termination.

Staff supported the proposed section and stated it would prevent customers from frequently cancelling their contracts without incurring a penalty. Staff recognized it was important to discourage the customer from switching servicers to minimize the cost of service at the expense of the RES. Staff opposed the $50 cap on the termination fee proposed by CUB/AG. Staff argued the cap would adversely affect consumer pricing overall because the RESs remaining customers would have to absorb the difference between the cap and actual costs. Staff also argued Section 412.110(f) should be enforced strictly to eliminate confusion about the early termination fee.

Staff and ICEA proposed limiting the customer’s ability to rescind the contract without a fee if the rescission occurs within 10 business days after the first billing statement is issued. ICEA described this limitation in more detail, and Staff incorporated the language in the final draft of Section 412.230. RESA argued that Section 412.230 would cause the RES to consider raising prices or limiting product offerings, which in turn would harm the competitive market. RESA argued waiving the termination fee once in a 12-month period is not feasible because the RES would be required to collaborate to enforce this limitation on the consumer. Because of the lack of detail regarding the above issue, RESA and BlueStar
both argued that there is a high potential that the customer will use the fee waiver to “game” the market.

CUB/AG argued for imposing the cap on the early termination fee despite the timing of rescission. CUB/AG argued that failing to cap the fees will cause the RES to substantially increase its fees to the consumer overall. NEMA opposed the early termination fee waiver and argued the RES should focus on fully disclosing the contract terms and conditions, since accurate disclosure to the customer would eliminate the need for a fee waiver altogether.

**Commission Analysis & Conclusion**

The Commission will adopt this Section consistent with the revisions suggested by CUB/AG. The Commission finds that residential consumers, who are not accustomed to purchasing their electric supply from entities other than their utility, require additional protection from inordinately high early termination fees. CUB/AG propose that Part 412 include a cap on cancellation/termination fees at $50 for the term of the contract. This proposal mirrors the protections afforded customers in Section 19-115(g)(5)(A) of the Act and Section 2DDD(e)(1) of the Consumer Fraud and Deceptive Practices Act. 220 ILCS 5/19-115(g)(5)(A); 815 ILCS 505/2DDD(e)(1). These statutory protections, along with the General Assembly’s declaration in Section 1-102 of the Act that the provision of utility service is an essential service which should be provided to citizens of the State at the least possible cost to the citizens of the State, recognize that ensuring the affordability of utility service is a paramount goal. 220 ILCS 5/1-102. In addition, no party to the instant proceeding presented any specific evidence regarding how the $50 cap would affect the pricing of RES contracts. Finally, full disclosure of the terms and conditions of the contract should be provided to each customer. These issues have been addressed as set forth in Section 412.110.

**5 Section 412.240 Contract Renewal**

Section 412.240 requires the RES to clearly disclose its terms for contract. The proposed language calls for notice to the customer at least 30 days prior to the expiration or renewal of the contract. RESA offered a revision that stated, “[i]f the customer enters into a new contract prior to the end of the contract expiration notice period, the notice of contract expiration under this Section is not required.” Staff and ICEA supported this change. IEMC proposed modifying Section 412.240(a)(4) to allow the consumer to automatically renew the contract without consent only in instances where the price has changed, as long as the consumer was giving proper notice.

Dominion proposed modifying Section 412.240(b) to maintain consistency with the Automatic Renewal Act. This revision would allow a customer’s contract to automatically renew for terms of one month or shorter.
Commission Analysis & Conclusion

The Commission will adopt this language with the revisions as stated. A RES will be required to send notice to the customer confirming renewal or expiration of the contract except when renewal would be for one month or less. The Commission further requires the notice to clearly explain to the consumer their terms and conditions and how to cancel the contract. The Commission disagrees with the arguments set forth by IEMC and ICEA on the basis that pricing and notice of renewal are important determining factors when considering whether to renew with a RES.

6 Section 412.250 Assignment

Staff and ICEA revised this section to strike the term “agreement” and use the term “contract” instead. Since there was no opposition, the Commission will adopt this section as revised.

7 Section 412.300 Application of Subpart D

Section 412.300 states Subpart D shall apply to RESs serving residential or small commercial customers. In addition, Section 412.320 (c)(1)(B) and 412.320 (c)(1)(E) shall apply to electric utilities. ICEA supported this position. The Commission will adopt this section as proposed by Staff in its Initial Brief.

8 Section 412.310 Required RES Information

This Section sets forth the information the RES is required to provide the Commission. CUB/AG proposed adding a disclosure to the Uniform Disclosure Statement contained in Section 412.310(c) which Staff opposed the use of the term “force majeure” as proposed by CUB/AG in Section 412.310(c). Staff argued that force majeure is a legal term, and not interchangeable with an “Act of God,” since force majeure also includes man-made events such as terrorism and war. Staff believed the average consumer would not understand this terminology. Further, the Commission agrees that it is unlikely the knowledge of a RES who declared force majeure nine years ago would be useful to a consumer when determining whether to switch electricity suppliers today. However, Staff recommended that reporting occurrences of force majeure is beneficial to the Commission to maintain RES standards. ICEA supported Staff’s recommendation that the Commission limit distribution of its force majeure data to residential and small commercial retail customers.
ComEd requested the RES provide the customers with notice of the force majeure data provided to the Commission in its marketing. ComEd also proposed the utility should be notified so there would be an opportunity to prepare for an influx of customer inquiries. BlueStar and Staff opposed ComEd’s position and argued it would raise additional concerns that have not been fully considered in this Section. Staff opposed notifying the utility since it is assumed the call center is already prepared to handle consumer inquiries.

RESA argued that requiring the RES to update the information submitted to the Commission upon revision is redundant and unnecessary. BlueStar supported RESA and proposed amending this Section to limit the informational updates to address material changes only. Staff countered and stated the Commission should have sole authority to determine whether a material change exists that would require the RES to re-file its information under this Section.

Commission Analysis & Conclusion

The Commission will adopt this Section as proposed by Staff in its Initial Brief. The authority to determine whether there has been a material change to the RES information rests with the Commission. Giving the RES the power to decide whether certain revisions result in material changes will serve to minimize the Commission’s authority.

9 Section 412.320 Dispute Resolution

Section 412.320 allows the consumer the opportunity to file an informal or formal complaint with the Commission without requiring the consumer to engage in alternative dispute resolution. The Section also requires the RES to investigate all informal complaints and report the results to the Commission within 14 days.

CUB/AG argued to reduce the RESs response time to 5 business days. Staff countered by stating that providing the RES with 14 days to respond is reasonable under the circumstances. Staff noted the Commission’s current standard requires the utility to respond to informal complaints within 14 days. Staff argued it is imperative that the RES has a reasonable amount of time to adequately investigate and resolve consumer complaints.

Dominion sought to amend Section 412.320(c)(1)(B) which requires the consumer to notify the underlying utility when an informal complaint is filed. Dominion reasoned that the utility is the primary source for information related to the complaint since it provides the underlying billing service to the RES. Staff disagreed, and argued that since the consumer’s complaint is likely to be triggered by the RESs charges, the RES must respond and the utility should not be expected to be party to the complaint.

Dominion argued Section 412.320(c)(3) should be revised to limit Commission reporting to formal complaints only and should include a precise method for analyzing complaints. Dominion
argued that failing to limit reporting to formal complaints would cause the Commission data to be misleading and skewed. Staff argued the Commission should not adopt a rigid methodology for analyzing complaints. Rather, Staff stated the process should be flexible and efficient since only an “investigation or analysis by the Commission” is required. RESA and BlueStar proposed to further define the meaning of the RES “call center” in Section 412.320. ICEA noted there should be a clarification such that the Commission will only publish Complaints actually received by the Consumer Services Division under this Section. Section 412.320(c)(3) was amended to include this language.
Commission Analysis & Conclusion

The Commission will adopt this Section with the proposed revision to Section 412.320(c)(3). The Commission finds it should be flexible and efficient when addressing consumer complaints, thus the Commission will not develop a specific method of analysis as suggested by Dominion. The Commission finds that the RES will be given 14 days to investigate and resolve complaints, and conclude that a 5-day review period is unreasonable under the circumstances. The Commission will not require the utility to respond to complaints filed against the RES and will only report data based upon the complaints filed with the Commission’s Consumer Services Division. The Commission finds the utility is not the best resource for investigating and resolving the consumer’s complaint. That responsibility ultimately lies with the RES, since it is best equipped to respond to consumer. The Commission does not find it necessary to define the meaning of a “complaint” or “call center” and believe these are general terms that are reasonably understood in the industry. The Commission will also adopt the revisions to Section 412.320(c)(1)(B).

10 Applicability of Subpart E (Section 412.40 and Section 412.400 et al.)

CUB/AG proposed an additional subsection which would require the RES to notify the Commission, ORMD, and the customers whenever there is a material change to the RES’s application for a certificate of authority with the Commission. Dominion opposed CUB/AG and stated the language was superfluous and redundant. Staff, BlueStar and RESA argued the proposed language is better addressed in Part 451.

Commission Analysis & Conclusion

The Commission finds this language to be inappropriate and it will not be adopted.

Part 453 Internet Enrollment Rules

1 Section 453.10 Definitions

2 Section 453.20 Criteria by Which to Judge the Validity of an Electronic Signature

3 Section 453.30 Method by Which the Authenticity of Electronic Signatures may be proven
Since there were no amendments presented the Commission will not comment on the above sections in this rulemaking.

4 Section 453.40 Additional Requirements for an Electronic LOA

Dominion took exception to Section 453.40(b)(3) noting that customers already make several affirmative statements when enrolling online and this subsection is duplicative and senseless. Dominion proposed incorporating Section 453.40(b)(3) with Section 453.40(b)(2) allowing the customer to affirm the whole statement at once.

Commission Analysis & Conclusion

The Commission finds this proposal reasonable and adopts the revisions to Section 453.40(b)(2) and Section 453.40(b)(3).

Findings and Ordering Paragraphs

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) the Commission has jurisdiction over the subject matter herein;

(2) the recitals of fact set forth in the prefatory portion of this order are supported by the record and are hereby adopted as findings of fact;

(3) the proposed rule at 83 Ill. Adm. Code 412, as reflected in the attached Appendix A, and the proposed amendment to 83 Ill. Adm. Code 453, as reflected in the attached Appendix B, should be submitted to Illinois Secretary of State to begin the first notice period;

(4) this proceeding is a rulemaking and should be conducted as such.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the proposed rule at 83 Ill. Adm. Code 412, as reflected in the attached Appendix A, and the proposed amendment to 83 Ill. Adm. Code 453, as reflected in the attached Appendix B, should be submitted to the Joint Committee on Administrative Rules of the Illinois General Assembly, pursuant to Section 5-40(c) of the Illinois Administrative Procedure Act.
IT IS FURTHER ORDERED that this order is not final and is not subject to the Administrative Review Law.

By Order of the Commission this 7th day of July, 2011.

(SIGNED) DOUGLAS P. SCOTT

Chairman