

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	Docket No. 15-0512
)	
Amendment of 83 Ill. Admin. Code 412)	
and Ill. Adm. Code 453)	

**VERIFIED COMMENTS OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION**

The National Energy Marketers Association (NEM) hereby respectfully submits its Comments on the First Notice Order issued in the above-referenced proceeding pursuant to its publication in the November 4, 2016, Illinois Register. In its Comments, NEM will address the following issues:

- The scope of the current door-to-door solicitation provisions set forth in Section 412.120 should not be expanded to include in-person solicitations.
- Suppliers should not be required to obtain both a Letter of Agency and a Third Party Verification to verify sales under Section 412.120(g) inasmuch as either method is independently adequate to obtain informed customer authorization.
- The proposed variable rate notice requirements set forth in Section 412.170 should not be adopted. Rules should appropriately focus on the adequacy of consumer disclosures made at the time of initial contracting.
- The excessive and unnecessary proposal to require suppliers to provide phone call notice of a contract renewal and retain extensive records of those calls, in addition to the written notice of renewal that is required to be provided to customers, should not be adopted.

I. Section 412.120 – In-person Solicitation

The First Notice Order would expand the scope and coverage of Section 412.120 from its current regulation of door-to-door solicitation to include in-person solicitation. The proposed definition of “in-person solicitation” included in Section 412.10 would include, “any sale initiated or conducted where the RES agent is physically present with the customer.” NEM opposes the expansion of the current door-to-door solicitation provisions to include in-person solicitations. NEM recommends that the Commission should decline to adopt this change.

The proposed definition of “in-person solicitation” is framed very broadly. Not only would it encompass door-to-door sales for which there is a legitimate need for strong consumer protections. It would also include sales in which it is the *consumer* that is *initiating* the contact in *public* venues and from where the consumer can readily terminate the discussion by walking away. This would include consumer interactions with RESs at fairs, mall kiosks, public events and the like. These types of consumer-initiated and publicly conducted solicitations are not as susceptible to high pressure sales tactics because of the consumer’s ability to readily extricate themselves from the discussion, the consumer’s decision in the first place to initiate the contact, and the public nature of the venues. The extensive requirements currently and proposed to be applied to door-to-door sales are unnecessarily burdensome and costly in the context of these other forms of sales and simply do not implicate the same level of consumer protection concerns. Accordingly, the current door-to-door solicitation provisions should not be expanded to include in-person solicitations.

NEM recommends that the proposed references in Section 412.120 to “in-person solicitation” be deleted and that such references instead be reverted to the language as utilized in the current regulation for “door-to-door solicitation.”

II. Section 412.120(g) – Requirement for a Letter of Agency and Third-Party Verification

The First Notice Order would revise Section 412.120(g) such that, “in-person solicitations that lead to an enrollment require a Letter of Agency and a third-party verification.” The proposal to require both a Letter of Agency (LOA) and a third-party verification (TPV) expands the requirement set forth both in Illinois law (815 ILCS 505/2EE) and the Commission’s current regulations at Section 412.120(g) that a customer’s authorization to change electric suppliers be obtained through either a LOA or a TPV. NEM recommends that the Commission decline to adopt this duplicative and unjustified requirement.

Mandating that RESs obtain both a LOA and a TPV to verify in-person sales will unnecessarily impose an additional expense in the choice process that will ultimately increase the cost of rendering energy service to consumers. Consistent with their individual business models, some RESs may want to utilize a LOA to obtain customer authorization of the sale while other RESs may want to utilize a third party to perform this function. Either methodology is adequate and appropriate in and of itself to obtain informed customer authorization. Requiring RESs to perform both methodologies, when either methodology on its own can independently and fully satisfy the need to verify the consumer’s authorization to switch suppliers, will needlessly increase the costs of doing business and result in increased energy costs to consumers.

NEM recommends that the first sentence of Section 412.120(g) be revised as follows, and incorporating our recommendation in Section I of our comments above that Section 412.120 be limited to door-to-door solicitations (changes indicated in bold and strikethrough):

“Door-to-door solicitations that lead to an enrollment require **either** a Letter of Agency **or ~~and~~** a third-party verification. . . .

III. Section 412.170 Rate Notice to Customers

The First Notice Order includes a new Section 412.170 on Rate Notice to Customers. In particular, Section 412.170 pertains to rate notice requirements specific to variable rate products. The proposed requirements in this Section include: RES provision of customers’ variable rate information on RES websites and by phone; use of utility consolidated billing messages to display RES variable rates; additional notice requirements when a variable rate increases by 20% from one monthly billing period to the next; RES posting of variable rate calculation information; a separate written notice of upcoming rate change; and a requirement for RESs to post the one year price history of variable price products.

It bears noting as an initial matter, that by enrolling with a supplier for a variable rate plan, a customer is on notice that their rates are subject to change due to market forces. Products with a variable rate component need to be adequately disclosed to the customer upfront at the time of contracting. However, subsequent notice requirements must be tailored to the actual variable nature of the product. Otherwise, suppliers will not be able to offer variable rate products. Consumers are not well-served by a market that is overly reliant solely on fixed rate products, or variable rate products. As market conditions

change, different products offer different value to consumers. Moreover, if notice requirements are designed such that compliance is overly burdensome and difficult to achieve, it can effectively eliminate variable rate offers to consumers. It is foreseeable that at some point consumers will be dissatisfied by fixed rates that lock them into a price when market conditions cycle downward. In other words, to best protect Illinois consumers, the Commission should focus its rules on the adequacy of consumer disclosures at the *initial time of contracting* about the nature of the product and the terms and conditions.

Indeed, this entire Section appears aimed at fixing a problem as to whether the consumer received adequate disclosure *at the time of enrollment* as to a material term of the contract, namely that it will be subject to a variable rate. If the Commission is concerned about the nature of disclosures that are being made at the time of enrollment, then it should adopt rules that affect those disclosures, at that point in the contracting process. In NEM's view, the use of a Uniform Disclosure Statement, as is also being considered in this rulemaking in Section 412.115, should appropriately address these concerns. Conversely, imposing new disclosure requirements that apply on *an on-going basis after the point of sale* will not address the perceived problem. It will however impose a costly burden on competitive suppliers that will likely result in the elimination of the availability of variable rate products to consumers.

Overly burdensome on-going notice requirements that are not appropriately tailored to the nature of the product, variable or fixed or otherwise, will not serve consumers well because it will distort and diminish the competitive offerings that are available to them. This is because burdensome notice requirements impose upward pricing pressure on suppliers to anticipate future market price increases and increase the need for supplier

hedging to avoid unanticipated price increases. Moreover, suppliers will factor these increased unnecessary costs into their pricing in order to avoid costly notice requirements.

Supplier price posting rules should be focused on the posting of current, generally available offers. The purpose of online posting and transparency should be to inform the public of actual purchase prices that are reasonably recent and updated. With respect to the provision of historical RES rates, NEM submits that this information is highly sensitive and confidential information that suppliers should not be required to post on a public website. Additionally, historical rates are not an indicator of future performance and could be a source of consumer confusion. Moreover, if the Commission is concerned about the ability to verify supplier offers, it has other tools within its authority and under its regulations to remedy perceived unfair marketing practices.

For the foregoing reasons, NEM recommends that proposed Section 412.170 should not be adopted into the Commission's regulations.

IV. Section 412.240(b) Contract Renewal – Automatic Renewal

The proposed language at the end of Section 412.240(b) would require a supplier, in addition to the written notice of contract renewal that is required to be provided to the customer, to contact a customer by phone to provide an additional renewal notice. The supplier would be required to make two phone call attempts and retain a record of the phone calls for two years. NEM submits that the proposal to require suppliers to call customers, in addition to supplying separate written notice, of contract renewal is excessive and unnecessary. It is important to note that the customer's original contract

will disclose the renewal terms, and the customer will also receive a written notice of renewal between thirty to sixty days prior to the end of the original contract term. Applying another regulatory compliance requirement associated with the contract renewal will be a costly burden that does not yield a commensurate additional measure of consumer protection. NEM is not aware of any other jurisdiction that has adopted such a requirement.

NEM recommends that the language appearing at the end of Section 412.240(b) pertaining to phone call notice of contract renewals should be stricken as follows (changes indicated in bold and strikethrough):

~~In addition to the written notice required per Section 412.170(e), unless the customer has no phone number on record with the RES, the RES shall call the customer at least 30 days but no more than 60 days prior to the end of the initial contract term. The call may be live or automated and it shall provide the information required in Subsections (b)(2)-(5) herein in addition to the impending end of the initial contract term. A second call shall be required within 14 days of the first call if the first call does not reach a person or an answering machine. The RES agent shall provide the customer with the toll free number that the customer may use to contact the RES to discuss the automatic renewal. The RES shall make a record of the date and time of the call(s), and its success or failure in reaching the customer. The RES shall retain the record for two years. Calls made pursuant to this Subsection shall also comply with the requirements of Section 412.130.~~

V. Conclusion

For the reasons discussed herein, NEM respectfully requests that the Commission modify the First Notice Order and proposed regulations in accordance with the recommendations set forth herein.

Respectfully submitted,

THE NATIONAL ENERGY MARKETERS
ASSOCIATION

s/Craig G. Goodman

By _____

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Dated: December 19, 2016.

NOTICE OF FILING

Please take note that on December 19, 2016, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Verified Comments of the National Energy Marketers Association in this proceeding.

s/Craig G. Goodman

Craig G. Goodman, Esq.

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the Verified Comments of the National Energy Marketers Association upon the service list for Docket No. 15-0512 by email on December 19, 2016.

s/Craig G. Goodman

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