

HB6023



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB6023

by Rep. Sam Yingling

SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-115A
220 ILCS 5/19-115

Amends the Public Utilities Act. Provides that an alternative retail electric supplier or an alternative gas supplier may not use the name or logo of a public utility for marketing purposes.

LRB099 19527 JLS 43921 b

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Utilities Act is amended by changing
5 Sections 16-115A and 19-115 as follows:

6 (220 ILCS 5/16-115A)

7 Sec. 16-115A. Obligations of alternative retail electric
8 suppliers.

9 (a) An alternative retail electric supplier shall:

10 (i) comply with the requirements imposed on public
11 utilities by Sections 8-201 through 8-207, 8-301, 8-505 and
12 8-507 of this Act, to the extent that these Sections have
13 application to the services being offered by the
14 alternative retail electric supplier; and

15 (ii) continue to comply with the requirements for
16 certification stated in subsection (d) of Section 16-115.

17 (b) An alternative retail electric supplier shall obtain
18 verifiable authorization from a customer, in a form or manner
19 approved by the Commission consistent with Section 2EE of the
20 Consumer Fraud and Deceptive Business Practices Act, before the
21 customer is switched from another supplier.

22 (c) No alternative retail electric supplier, or electric
23 utility other than the electric utility in whose service area a

1 customer is located, shall (i) enter into or employ any
2 arrangements which have the effect of preventing a retail
3 customer with a maximum electrical demand of less than one
4 megawatt from having access to the services of the electric
5 utility in whose service area the customer is located or (ii)
6 charge retail customers for such access. This subsection shall
7 not be construed to prevent an arms-length agreement between a
8 supplier and a retail customer that sets a term of service,
9 notice period for terminating service and provisions governing
10 early termination through a tariff or contract as allowed by
11 Section 16-119.

12 (d) An alternative retail electric supplier that is
13 certified to serve residential or small commercial retail
14 customers shall not:

15 (1) deny service to a customer or group of customers
16 nor establish any differences as to prices, terms,
17 conditions, services, products, facilities, or in any
18 other respect, whereby such denial or differences are based
19 upon race, gender or income.

20 (2) deny service to a customer or group of customers
21 based on locality nor establish any unreasonable
22 difference as to prices, terms, conditions, services,
23 products, or facilities as between localities.

24 (e) An alternative retail electric supplier shall comply
25 with the following requirements with respect to the marketing,
26 offering and provision of products or services to residential

1 and small commercial retail customers:

2 (i) Any marketing materials which make statements
3 concerning prices, terms and conditions of service shall
4 contain information that adequately discloses the prices,
5 terms and conditions of the products or services that the
6 alternative retail electric supplier is offering or
7 selling to the customer.

8 (ii) Before any customer is switched from another
9 supplier, the alternative retail electric supplier shall
10 give the customer written information that adequately
11 discloses, in plain language, the prices, terms and
12 conditions of the products and services being offered and
13 sold to the customer.

14 (iii) An alternative retail electric supplier shall
15 provide documentation to the Commission and to customers
16 that substantiates any claims made by the alternative
17 retail electric supplier regarding the technologies and
18 fuel types used to generate the electricity offered or sold
19 to customers.

20 (iv) The alternative retail electric supplier shall
21 provide to the customer (1) itemized billing statements
22 that describe the products and services provided to the
23 customer and their prices, and (2) an additional statement,
24 at least annually, that adequately discloses the average
25 monthly prices, and the terms and conditions, of the
26 products and services sold to the customer.

1 (v) An alternative retail electric supplier may not
2 utilize the name or logo of a public utility in connection
3 with any form of marketing. An alternative retail electric
4 supplier may not utilize in any of its materials the name
5 or any other identifying insignia, graphics, or wording
6 that has been used at any time to represent a public
7 utility or its services to identify, label, or define its
8 energy or power offers.

9 (f) An alternative retail electric supplier may limit the
10 overall size or availability of a service offering by
11 specifying one or more of the following: a maximum number of
12 customers, maximum amount of electric load to be served, time
13 period during which the offering will be available, or other
14 comparable limitation, but not including the geographic
15 locations of customers within the area which the alternative
16 retail electric supplier is certificated to serve. The
17 alternative retail electric supplier shall file the terms and
18 conditions of such service offering including the applicable
19 limitations with the Commission prior to making the service
20 offering available to customers.

21 (g) Nothing in this Section shall be construed as
22 preventing an alternative retail electric supplier, which is an
23 affiliate of, or which contracts with, (i) an industry or trade
24 organization or association, (ii) a membership organization or
25 association that exists for a purpose other than the purchase
26 of electricity, or (iii) another organization that meets

1 criteria established in a rule adopted by the Commission, from
2 offering through the organization or association services at
3 prices, terms and conditions that are available solely to the
4 members of the organization or association.

5 (Source: P.A. 90-561, eff. 12-16-97.)

6 (220 ILCS 5/19-115)

7 Sec. 19-115. Obligations of alternative gas suppliers.

8 (a) The provisions of this Section shall apply only to
9 alternative gas suppliers serving or seeking to serve
10 residential or small commercial customers and only to the
11 extent such alternative gas suppliers provide services to
12 residential or small commercial customers.

13 (b) An alternative gas supplier shall:

14 (1) comply with the requirements imposed on public
15 utilities by Sections 8-201 through 8-207, 8-301, 8-505 and
16 8-507 of this Act, to the extent that these Sections have
17 application to the services being offered by the
18 alternative gas supplier;

19 (2) continue to comply with the requirements for
20 certification stated in Section 19-110;

21 (3) comply with complaint procedures established by
22 the Commission;

23 (4) except as provided in subsection (h) of this
24 Section, file with the Chief Clerk of the Commission,
25 within 20 business days after the effective date of this

1 amendatory Act of the 95th General Assembly, a copy of bill
2 formats, standard customer contract and customer complaint
3 and resolution procedures, and the name and telephone
4 number of the company representative whom Commission
5 employees may contact to resolve customer complaints and
6 other matters. In the case of a gas supplier that engages
7 in door-to-door solicitation, the company shall file with
8 the Commission the consumer information disclosure
9 required by item (3) of subsection (c) of Section 2DDD of
10 the Consumer Fraud and Deceptive Business Practices Act and
11 shall file updated information within 10 business days
12 after changes in any of the documents or information
13 required to be filed by this item (4); and

14 (5) maintain a customer call center where customers can
15 reach a representative and receive current information. At
16 least once every 6 months, each alternative gas supplier
17 shall provide written information to customers explaining
18 how to contact the call center. The average answer time for
19 calls placed to the call center shall not exceed 60 seconds
20 where a representative or automated system is ready to
21 render assistance and/or accept information to process
22 calls. The abandon rate for calls placed to the call center
23 shall not exceed 10%. Each alternative gas supplier shall
24 maintain records of the call center's telephone answer time
25 performance and abandon call rate. These records shall be
26 kept for a minimum of 2 years and shall be made available

1 to Commission personnel upon request. In the event that
2 answer times and/or abandon rates exceed the limits
3 established above, the reporting alternative gas supplier
4 may provide the Commission or its personnel with
5 explanatory details. At a minimum, these records shall
6 contain the following information in monthly increments:

7 (A) total number of calls received;

8 (B) number of calls answered;

9 (C) average answer time;

10 (D) number of abandoned calls; and

11 (E) abandon call rate.

12 Alternative gas suppliers that do not have electronic
13 answering capability that meets these requirements shall
14 notify the Manager of the Commission's Consumer Services
15 Division or its successor within 30 days following the
16 effective date of this amendatory Act of the 95th General
17 Assembly and work with Staff to develop individualized
18 reporting requirements as to the call volume and responsiveness
19 of the call center.

20 On or before March 1 of every year, each entity shall file
21 a report with the Chief Clerk of the Commission for the
22 preceding calendar year on its answer time and abandon call
23 rate for its call center. A copy of the report shall be sent to
24 the Manager of the Consumer Services Division or its successor.

25 (c) An alternative gas supplier shall not submit or execute
26 a change in a customer's selection of a natural gas provider

1 unless and until (i) the alternative gas supplier first
2 discloses all material terms and conditions of the offer to the
3 customer; (ii) the alternative gas supplier has obtained the
4 customer's express agreement to accept the offer after the
5 disclosure of all material terms and conditions of the offer;
6 and (iii) the alternative gas supplier has confirmed the
7 request for a change in accordance with one of the following
8 procedures:

9 (1) The alternative gas supplier has obtained the
10 customer's written or electronically signed authorization
11 in a form that meets the following requirements:

12 (A) An alternative gas supplier shall obtain any
13 necessary written or electronically signed
14 authorization from a customer for a change in natural
15 gas service by using a letter of agency as specified in
16 this Section. Any letter of agency that does not
17 conform with this Section is invalid.

18 (B) The letter of agency shall be a separate
19 document (or an easily separable document containing
20 only the authorization language described in item (E)
21 of this paragraph (1)) whose sole purpose is to
22 authorize a natural gas provider change. The letter of
23 agency must be signed and dated by the customer
24 requesting the natural gas provider change.

25 (C) The letter of agency shall not be combined with
26 inducements of any kind on the same document.

1 (D) Notwithstanding items (A) and (B) of this
2 paragraph (1), the letter of agency may be combined
3 with checks that contain only the required letter of
4 agency language prescribed in item (E) of this
5 paragraph (1) and the necessary information to make the
6 check a negotiable instrument. The letter of agency
7 check shall not contain any promotional language or
8 material. The letter of agency check shall contain in
9 easily readable, bold face type on the face of the
10 check a notice that the consumer is authorizing a
11 natural gas provider change by signing the check. The
12 letter of agency language also shall be placed near the
13 signature line on the back of the check.

14 (E) At a minimum, the letter of agency must be
15 printed with a print of sufficient size to be clearly
16 legible and must contain clear and unambiguous
17 language that confirms:

18 (i) the customer's billing name and address;

19 (ii) the decision to change the natural gas
20 provider from the current provider to the
21 prospective alternative gas supplier;

22 (iii) the terms, conditions, and nature of the
23 service to be provided to the customer, including,
24 but not limited to, the rates for the service
25 contracted for by the customer; and

26 (iv) that the customer understands that any

1 natural gas provider selection the customer
2 chooses may involve a charge to the customer for
3 changing the customer's natural gas provider.

4 (F) Letters of agency shall not suggest or require
5 that a customer take some action in order to retain the
6 customer's current natural gas provider.

7 (G) If any portion of a letter of agency is
8 translated into another language, then all portions of
9 the letter of agency must be translated into that
10 language.

11 (2) An appropriately qualified independent third party
12 has obtained, in accordance with the procedures set forth
13 in this paragraph (2), the customer's oral authorization to
14 change natural gas providers that confirms and includes
15 appropriate verification data. The independent third party
16 must (i) not be owned, managed, controlled, or directed by
17 the alternative gas supplier or the alternative gas
18 supplier's marketing agent; (ii) not have any financial
19 incentive to confirm provider change requests for the
20 alternative gas supplier or the alternative gas supplier's
21 marketing agent; and (iii) operate in a location physically
22 separate from the alternative gas supplier or the
23 alternative gas supplier's marketing agent. Automated
24 third-party verification systems and 3-way conference
25 calls may be used for verification purposes so long as the
26 other requirements of this paragraph (2) are satisfied. An

1 alternative gas supplier or alternative gas supplier's
2 sales representative initiating a 3-way conference call or
3 a call through an automated verification system must drop
4 off the call once the 3-way connection has been
5 established. All third-party verification methods shall
6 elicit, at a minimum, the following information:

7 (A) the identity of the customer;

8 (B) confirmation that the person on the call is
9 authorized to make the provider change;

10 (C) confirmation that the person on the call wants
11 to make the provider change;

12 (D) the names of the providers affected by the
13 change;

14 (E) the service address of the service to be
15 switched; and

16 (F) the price of the service to be provided and the
17 material terms and conditions of the service being
18 offered, including whether any early termination fees
19 apply.

20 Third-party verifiers may not market the alternative
21 gas supplier's services by providing additional
22 information. All third-party verifications shall be
23 conducted in the same language that was used in the
24 underlying sales transaction and shall be recorded in their
25 entirety. Submitting alternative gas suppliers shall
26 maintain and preserve audio records of verification of

1 customer authorization for a minimum period of 2 years
2 after obtaining the verification. Automated systems must
3 provide customers with an option to speak with a live
4 person at any time during the call.

5 (3) The alternative gas supplier has obtained the
6 customer's authorization via an automated verification
7 system to change natural gas service via telephone. An
8 automated verification system is an electronic system
9 that, through pre-recorded prompts, elicits voice
10 responses, touchtone responses, or both, from the customer
11 and records both the prompts and the customer's responses.
12 Such authorization must elicit the information in
13 paragraph (2)(A) through (F) of this subsection (c).
14 Alternative gas suppliers electing to confirm sales
15 electronically through an automated verification system
16 shall establish one or more toll-free telephone numbers
17 exclusively for that purpose. Calls to the number or
18 numbers shall connect a customer to a voice response unit,
19 or similar mechanism, that makes a date-stamped,
20 time-stamped recording of the required information
21 regarding the alternative gas supplier change.

22 The alternative gas supplier shall not use such
23 electronic authorization systems to market its services.

24 (4) When a consumer initiates the call to the
25 prospective alternative gas supplier, in order to enroll
26 the consumer as a customer, the prospective alternative gas

1 supplier must, with the consent of the customer, make a
2 date-stamped, time-stamped audio recording that elicits,
3 at a minimum, the following information:

4 (A) the identity of the customer;

5 (B) confirmation that the person on the call is
6 authorized to make the provider change;

7 (C) confirmation that the person on the call wants
8 to make the provider change;

9 (D) the names of the providers affected by the
10 change;

11 (E) the service address of the service to be
12 switched; and

13 (F) the price of the service to be supplied and the
14 material terms and conditions of the service being
15 offered, including whether any early termination fees
16 apply.

17 Submitting alternative gas suppliers shall maintain
18 and preserve the audio records containing the information
19 set forth above for a minimum period of 2 years.

20 (5) In the event that a customer enrolls for service
21 from an alternative gas supplier via an Internet website,
22 the alternative gas supplier shall obtain an
23 electronically signed letter of agency in accordance with
24 paragraph (1) of this subsection (c) and any customer
25 information shall be protected in accordance with all
26 applicable statutes and regulations. In addition, an

1 alternative gas supplier shall provide the following when
2 marketing via an Internet website:

3 (A) The Internet enrollment website shall, at a
4 minimum, include:

5 (i) a copy of the alternative gas supplier's
6 customer contract that clearly and conspicuously
7 discloses all terms and conditions; and

8 (ii) a conspicuous prompt for the customer to
9 print or save a copy of the contract.

10 (B) Any electronic version of the contract shall be
11 identified by version number, in order to ensure the
12 ability to verify the particular contract to which the
13 customer assents.

14 (C) Throughout the duration of the alternative gas
15 supplier's contract with a customer, the alternative
16 gas supplier shall retain and, within 3 business days
17 of the customer's request, provide to the customer an
18 e-mail, paper, or facsimile of the terms and conditions
19 of the numbered contract version to which the customer
20 assents.

21 (D) The alternative gas supplier shall provide a
22 mechanism by which both the submission and receipt of
23 the electronic letter of agency are recorded by time
24 and date.

25 (E) After the customer completes the electronic
26 letter of agency, the alternative gas supplier shall

1 disclose conspicuously through its website that the
2 customer has been enrolled, and the alternative gas
3 supplier shall provide the customer an enrollment
4 confirmation number.

5 (6) When a customer is solicited in person by the
6 alternative gas supplier's sales agent, the alternative
7 gas supplier may only obtain the customer's authorization
8 to change natural gas service through the method provided
9 for in paragraph (2) of this subsection (c).

10 Alternative gas suppliers must be in compliance with this
11 subsection (c) within 90 days after the effective date of this
12 amendatory Act of the 95th General Assembly.

13 (d) Complaints may be filed with the Commission under this
14 Section by a customer whose natural gas service has been
15 provided by an alternative gas supplier in a manner not in
16 compliance with subsection (c) of this Section. If, after
17 notice and hearing, the Commission finds that an alternative
18 gas supplier has violated subsection (c), then the Commission
19 may in its discretion do any one or more of the following:

20 (1) Require the violating alternative gas supplier to
21 refund the customer charges collected in excess of those
22 that would have been charged by the customer's authorized
23 natural gas provider.

24 (2) Require the violating alternative gas supplier to
25 pay to the customer's authorized natural gas provider the
26 amount the authorized natural gas provider would have

1 collected for natural gas service. The Commission is
2 authorized to reduce this payment by any amount already
3 paid by the violating alternative gas supplier to the
4 customer's authorized natural gas provider.

5 (3) Require the violating alternative gas supplier to
6 pay a fine of up to \$1,000 into the Public Utility Fund for
7 each repeated and intentional violation of this Section.

8 (4) Issue a cease and desist order.

9 (5) For a pattern of violation of this Section or for
10 intentionally violating a cease and desist order, revoke
11 the violating alternative gas supplier's certificate of
12 service authority.

13 (e) No alternative gas supplier shall:

14 (1) enter into or employ any arrangements which have
15 the effect of preventing any customer from having access to
16 the services of the gas utility in whose service area the
17 customer is located;

18 (2) charge customers for such access;

19 (3) bill for goods or services not authorized by the
20 customer; or

21 (4) bill for a disputed amount where the alternative
22 gas supplier has been provided notice of such dispute. The
23 supplier shall attempt to resolve a dispute with the
24 customer. When the dispute is not resolved to the
25 customer's satisfaction, the supplier shall inform the
26 customer of the right to file an informal complaint with

1 the Commission and provide contact information. While the
2 pending dispute is active at the Commission, an alternative
3 gas supplier may bill only for the undisputed amount until
4 the Commission has taken final action on the complaint.

5 (f) An alternative gas supplier that is certified to serve
6 residential or small commercial customers shall not:

7 (1) deny service to a customer or group of customers
8 nor establish any differences as to prices, terms,
9 conditions, services, products, facilities, or in any
10 other respect, whereby such denial or differences are based
11 upon race, gender, or income;

12 (2) deny service based on locality, nor establish any
13 unreasonable difference as to prices, terms, conditions,
14 services, products, or facilities as between localities;

15 (3) include in any agreement a provision that obligates
16 a customer to the terms of the agreement if the customer
17 (i) moves outside the State of Illinois; (ii) moves to a
18 location without a transportation service program; or
19 (iii) moves to a location where the customer will not
20 require natural gas service, provided that nothing in this
21 subsection precludes an alternative gas supplier from
22 taking any action otherwise available to it to collect a
23 debt that arises out of service provided to the customer
24 before the customer moved; or

25 (4) assign the agreement to any alternative natural gas
26 supplier, unless:

1 (A) the supplier is an alternative gas supplier
2 certified by the Commission;

3 (B) the rates, terms, and conditions of the
4 agreement being assigned do not change during the
5 remainder of the time covered by the agreement;

6 (C) the customer is given no less than 30 days
7 prior written notice of the assignment and contact
8 information for the new supplier; and

9 (D) the supplier assigning the contract provides
10 contact information that a customer can use to resolve
11 a dispute.

12 (g) An alternative gas supplier shall comply with the
13 following requirements with respect to the marketing,
14 offering, and provision of products or services:

15 (1) Any marketing materials which make statements
16 concerning prices, terms, and conditions of service shall
17 contain information that adequately discloses the prices,
18 terms and conditions of the products or services.

19 (2) Before any customer is switched from another
20 supplier, the alternative gas supplier shall give the
21 customer written information that clearly and
22 conspicuously discloses, in plain language, the prices,
23 terms, and conditions of the products and services being
24 offered and sold to the customer. Nothing in this paragraph
25 (2) may be read to relieve an alternative gas supplier from
26 the duties imposed on it by item (3) of subsection (c) of

1 Section 2DDD of the Consumer Fraud and Deceptive Business
2 Practices Act.

3 (3) The alternative gas supplier shall provide to the
4 customer:

5 (A) accurate, timely, and itemized billing
6 statements that describe the products and services
7 provided to the customer and their prices and that
8 specify the gas consumption amount and any service
9 charges and taxes; provided that this item (g) (3) (A)
10 does not apply to small commercial customers;

11 (B) billing statements that clearly and
12 conspicuously discloses the name and contact
13 information for the alternative gas supplier;

14 (C) an additional statement, at least annually,
15 that adequately discloses the average monthly prices,
16 and the terms and conditions, of the products and
17 services sold to the customer; provided that this item
18 (g) (3) (C) does not apply to small commercial
19 customers;

20 (D) refunds of any deposits with interest within 30
21 days after the date that the customer changes gas
22 suppliers or discontinues service if the customer has
23 satisfied all of his or her outstanding financial
24 obligations to the alternative gas supplier at an
25 interest rate set by the Commission which shall be the
26 same as that required of gas utilities; and

1 (E) refunds, in a timely fashion, of all undisputed
2 overpayments upon the oral or written request of the
3 customer.

4 (4) An alternative gas supplier and its sales agents
5 shall refrain from any direct marketing or soliciting to
6 consumers on the gas utility's "Do Not Contact List", which
7 the alternative gas supplier shall obtain on the 15th
8 calendar day of the month from the gas utility in whose
9 service area the consumer is provided with gas service. If
10 the 15th calendar day is a non-business day, then the
11 alternative gas supplier shall obtain the list on the next
12 business day following the 15th calendar day of that month.

13 (5) Early Termination.

14 (A) Any agreement that contains an early
15 termination clause shall disclose the amount of the
16 early termination fee, provided that any early
17 termination fee or penalty shall not exceed \$50 total,
18 regardless of whether or not the agreement is a
19 multiyear agreement.

20 (B) In any agreement that contains an early
21 termination clause, an alternative gas supplier shall
22 provide the customer the opportunity to terminate the
23 agreement without any termination fee or penalty
24 within 10 business days after the date of the first
25 bill issued to the customer for products or services
26 provided by the alternative gas supplier. The

1 agreement shall disclose the opportunity and provide a
2 toll-free phone number that the customer may call in
3 order to terminate the agreement.

4 (6) Within 2 business days after electronic receipt of
5 a customer switch from the alternative gas supplier and
6 confirmation of eligibility, the gas utility shall provide
7 the customer written notice confirming the switch. The gas
8 utility shall not switch the service until 10 business days
9 after the date on the notice to the customer.

10 (7) The alternative gas supplier shall provide each
11 customer the opportunity to rescind its agreement without
12 penalty within 10 business days after the date on the gas
13 utility notice to the customer. The alternative gas
14 supplier shall disclose all of the following:

15 (A) that the gas utility shall send a notice
16 confirming the switch;

17 (B) that from the date the utility issues the
18 notice confirming the switch, the customer shall have
19 10 business days to rescind the switch without penalty;

20 (C) that the customer shall contact the gas utility
21 or the alternative gas supplier to rescind the switch;
22 and

23 (D) the contact information for the gas utility.

24 The alternative gas supplier disclosure shall be
25 included in its sales solicitations, contracts, and all
26 applicable sales verification scripts.

1 (8) An alternative gas supplier may not utilize the
2 name or logo of a public utility in connection with any
3 form of marketing. An alternative gas supplier may not
4 utilize in any of its materials the name or any other
5 identifying insignia, graphics, or wording that has been
6 used at any time to represent a (1) public utility, (2)
7 parent company, or (3) public utility's or parent company's
8 energy offers.

9 (h) An alternative gas supplier may limit the overall size
10 or availability of a service offering by specifying one or more
11 of the following:

12 (1) a maximum number of customers and maximum amount of
13 gas load to be served;

14 (2) time period during which the offering will be
15 available; or

16 (3) other comparable limitation, but not including the
17 geographic locations of customers within the area which the
18 alternative gas supplier is certificated to serve.

19 The alternative gas supplier shall file the terms and
20 conditions of such service offering including the applicable
21 limitations with the Commission prior to making the service
22 offering available to customers.

23 (i) Nothing in this Section shall be construed as
24 preventing an alternative gas supplier that is an affiliate of,
25 or which contracts with, (i) an industry or trade organization
26 or association, (ii) a membership organization or association

1 that exists for a purpose other than the purchase of gas, or
2 (iii) another organization that meets criteria established in a
3 rule adopted by the Commission from offering through the
4 organization or association services at prices, terms and
5 conditions that are available solely to the members of the
6 organization or association.

7 (Source: P.A. 95-1051, eff. 4-10-09.)