

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
on its Own Motion:)	
)	Docket No. 20-0310
In the Matter of a Moratorium on In-person)	
marketing of services by Alternative Retail)	
Electric Suppliers during the Public Health)	
Emergency Declared on March 9, 2020)	
pursuant to Sections 4 and 7 of the)	
Illinois Emergency Management Agency Act)	

EMERGENCY ORDER

By the Commission:

On March 9, 2020, Governor JB Pritzker issued a Declaration under Sections 4 and 7 of the Illinois Emergency Management Agency Act (IEMA Act), finding that as a result of the global COVID-19 epidemic and the presence of COVID-19 cases in Illinois, a public health emergency exists in the State of Illinois within the meaning of Section 4 of the IEMA Act, and declaring all 102 counties within the State to be disaster areas within the meaning of Section 7 of the IEMA Act.

I. The COVID-19 Outbreak

On March 11, 2020, the World Health Organization (“WHO”) declared coronavirus and the disease it causes, COVID-19, a pandemic.¹ More than 118,000 cases of infection in 114 countries have been identified, and more than 4,290 persons have died as a result of the virus as of this same date, according to the WHO.² The number of coronavirus cases, the number of deaths and the number of affected countries are expected to “climb even higher.”³

It is unknown when a vaccine will be available.⁴ Elders and those with underlying medical conditions are most at risk.⁵ The Center for Disease Control recommends that persons self-monitor and remain at home if ill.⁶ Schools in Illinois and universities across

¹ See WHO Director-General's opening remarks at the media briefing on COVID-19, March 11, 2020 <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>

² <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

³ *Id.*

⁴ Jenni Fink, *Coronavirus Vaccine at Least a Year Away, but Treatment Could be Here in Months*, Newsweek (March 19, 2020). Available at <https://www.newsweek.com/coronavirus-vaccine-treatment-antiviral-speed-covid-19-1491292>.

⁵ See World Health Organization’s, *Q&A on Coronaviruses (COVID-19)*. Available at <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>.

⁶ CDC, *Coronavirus Disease (COVID-2019) Steps to Prevent Illness*. Available at <https://www.cdc.gov/coronavirus/2019-ncov/about/prevention.html>; CDC, *Coronavirus Disease 2019 (COVID-19)*

the country are closing for indefinite time, with on-line education replacing in-person instruction. On March 9, 2020, Illinois joined 13 other states that have declared a state of emergency in response to the growing number of identified COVID-19 cases.⁷ Millions have lost wages due to the economic downturn stemming from the disruptions of COVID-19.⁸

II. Declaration of Public Health Emergency

On March 13, 2020, Governor J. B. Pritzker, Chicago Mayor Lori Lightfoot and public health officials issued guidance for Illinois residents related to the COVID-19 pandemic.⁹

In light of the pandemic and the resulting actions and directives, it is critical that, to minimize the spread of the virus people avoid large assemblies and close contact with one another to the extent possible, and to put physical distance between themselves and other people to the extent possible.¹⁰ To that end, the Governor is urging businesses, governmental units, and other employers to permit teleworking and other remote working to the extent possible.¹¹

III. Powers of the Commission

The Commission is authorized by the General Assembly to oversee the operations of public utilities in the State of Illinois. Section 8-505 of the Illinois Public Utilities Act provides in relevant part that:

The Commission shall have power, after a hearing or without a hearing as provided in this Section and upon its own motion, ... by general or special orders ... to require the performance of any ... act which the health or safety of its employees, customers or the public may demand. 220 ILCS 5/8-505.

Pursuant to Section 16-115A(a) of the Illinois Public Utilities Act, Alternative Retail Electric Suppliers (ARES) are subject to Section 8-505. 220 ILCS 5/16-115A(a).

Further, Section 4-301 of the Public Utilities Act (“the Act”) provides that “(t)he Commission shall, at such times as the Governor, the General Assembly, or either branch

Risk Assessment and Public Health Management Decision Making Each question refers to within the past 14 days (Feb. 28, 2020). Available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/public-health-management-decision-making.pdf>.

⁷ Press release, State of Illinois, “Gov. Pritzker Issues Disaster Proclamation to Build on State's COVID-19 Response, Unlock Additional Federal Resources.” See <https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=21220>

⁸ See *Request for Emergency Low-Income Residential Shut-Off Protections as Part of the COVID-19 Response*, filed with California Public Service Commission, National Consumer Law Center, TURN, March 12, 2020.

⁹ *State of Illinois and City of Chicago Issue New Guidance to Minimize COVID-19 Spread*, Office of the Governor press release, March 12, 2020. See <https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=21245>

¹⁰ U.S. Centers for Disease Control (CDC), “How to Protect Yourself.” <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>

¹¹ *State of Illinois and City of Chicago Issue New Guidance to Minimize COVID-19 Spread*, Office of the Governor press release, March 12, 2020. See <https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=21245>

of the General Assembly shall direct, examine any particular subject connected with the condition and management of public utilities, and report to the Governor or the General Assembly, as the case may be, in writing its opinion thereon with its reasons therefor.” 220 ILCS 5/4-301.

In this instance, it is vital that the Commission ensure that entities over which it has regulatory authority, such as ARES, conduct their business in a manner which first and foremost protects the health and safety of the public, and ARES employees, agents and representatives.

IV. Commission Analysis and Conclusions

The Commission finds that there are a number of compelling reasons for ordering a moratorium on in-person solicitations of Illinois customers by ARES. An in-person solicitation is defined by 83 Ill. Adm. Code 412.10 as “any sale initiated or conducted when the [A]RES agent is physically present with the customer.”

A moratorium on such solicitations will be necessary to slow the spread of the disease and to protect public health. Preventing or minimizing the spread of COVID-19 necessitates reducing personal contact as much as is possible. In contrast, each ARES representative engaged in in-person solicitation attempts to personally contact and solicit, while generally in close physical proximity to, as many potential customers as he or she can. It appears to the Commission that conducting in-person solicitations during the public health emergency is not consistent with and may very well have a highly detrimental effect upon, the efforts of public health officials to limit the spread of COVID-19. Further, such solicitation is inessential during a period of public health emergency. Those customers who particularly wish to begin taking service from ARES can almost certainly complete such transactions online, by mail, or by telephone, and ARES are free to continue marketing activities online, by mail or by telemarketing, provided that such activities are conducted in a manner consistent with the Commission’s Part 412 rules, and otherwise lawfully.

While the Commission is confident that most ARES have ceased or will cease in-person solicitations because doing so is in the public interest and the interest of ARES employees and agents engaged in such solicitation, it is nonetheless vital to issue an order requiring all to do so. This is especially true when, as now, an unusually large number of Illinoisans are avoiding public spaces and staying in their homes.

Accordingly, the Commission finds, and hereby orders, that all Illinois ARES should immediately cease all in-person solicitation activities in Illinois for the duration of the public health emergency.

V. Findings and Ordering Paragraphs

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

- (1) The Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (2) The facts recited and conclusions reached in the prefatory portion of this Emergency Order are immediately necessary to ensure the convenience, necessity, safety and welfare of the public and are hereby adopted as findings of fact and law;
- (3) Governor J.B. Pritzker issued a Declaration, finding that a public health emergency exists in the State of Illinois within the meaning of the IEMA Act due to COVID-19 epidemic, and declaring all 102 counties within the State to be disaster areas;
- (4) For the duration of the public health emergency, all certificated ARES should cease and desist from conducting any in-person solicitations in Illinois, as that term is defined in 83 Ill. Adm. Code 412.10;
- (5) In light of the public health emergency in effect, circumstances currently in effect do not reasonably permit convening a hearing prior to entry of this Emergency Order;
- (6) Each Illinois ARES should be made respondent to this proceeding, and should be served with a copy of this Emergency Order;
- (7) This Emergency Order should remain in effect for the duration of the public health emergency declared by the Governor; and
- (8) This matter should be assigned to an Administrative Law Judge for resolution of any further proceedings necessary. Should further proceedings be required, they should be convened on an expedited basis.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that all certificated Alternative Retail Electric Suppliers (ARES) are directed to cease and desist from conducting any in-person solicitations in Illinois, as that term is defined in 83 Ill. Adm. Code 412.10;

IT IS FURTHER ORDERED that each Illinois ARES shall be made respondent to this proceeding, and the Clerk of the Commission shall serve a copy of this Emergency Order upon each ARES;

IT IS FURTHER ORDERED THAT this Emergency Order shall remain in force and effect for the duration of the public health emergency declared by the Governor;

IT IS FURTHER ORDERED THAT this matter shall be assigned to an Administrative Law Judge for resolution of any further proceedings necessary, and should further proceedings be required, they shall be convened on an expedited basis; and

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Act and 83 Ill. Adm. Code 200.880, this Emergency Order is not final; it is not subject to the Administrative Review Law.

By order of the Commission this 18th day of March, 2020.