

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission	:	
On Its Own Motion	:	
	:	
Development and adoption of rules	:	12-0456
concerning municipal aggregation	:	
	:	

**VERIFIED INITIAL COMMENTS BY METROPOLITAN MAYORS CAUCUS
ON FIRST NOTICE ORDER ON MUNICIPAL AGGREGATION**

Metropolitan Mayors Caucus (“Caucus”) hereby presents its Initial Comments on the First Notice Order and proposed new Part 470 of Title 83 of the Illinois Administrative Code regarding municipal electrical aggregation (“Proposed Rule”) as issued by the Illinois Commerce Commission (“Commission”) on November 6, 2013.

I. INTRODUCTION

In reviewing the First Notice Order and Proposed Rule, the Caucus finds two areas of concern for initial comment—both discussed by the Commission at its November 2013 meeting at which it entered this Order: the duration of the opt-out period, and notices to non-aggregation customers of Retail Electric Suppliers.

Key to the Caucus’ comments is that the Commission must exercise care to adopt a rule that is within the Commission’s legal authority, but that does not tread on the authority that the General Assembly has left to Governmental Aggregators. The Commission has only those powers expressly granted to it. *City of Chicago v. Illinois Commerce Commission*, 79 Ill.2d 213, 217-18, 402 N.E.2d 595, 597-98 (1980).

Section 1-92 of the Illinois Power Agency Act vests the Governmental Aggregator with the ability to determine if to adopt an ordinance establishing an aggregation program (Section 1-92(a)) and to adopt the plan of operation and governance for the aggregation program (Section 1-

92(b)). Plans of operation and governance may be adopted by Governmental Aggregators only after public notice and two public hearings—much like the process that the Commission is required to undertake to establish rules like the Proposed Rule.

Governmental Aggregators are units of local government whose elected officials are chosen by the voters in each community. The Governmental Aggregators' role is to provide for the health, safety and welfare of the public within its community, and Governmental Aggregators are uniquely positioned to do so. Rather than adopting fixed, one-size-fits-all, State-wide rules, the Commission should recognize (as has the General Assembly) that there are circumstances during the aggregation process where the Governmental Aggregators should be making decisions about Aggregation Programs as the party delegated to do so by the General Assembly, and the Governmental Aggregators should be allowed to do so with the best interests of their residents and businesses in mind.

With these principles in mind, the Caucus has identified two provisions on which it must respectfully comment, as itemized below.

II. COMMENTS ON SECTION 470.220(b) (Opt-Out Period)

The Caucus objects to Section 470.220(b) of the Proposed Rule because it improperly infringes on the Governmental Aggregator's discretion to select the time period in which customers are allowed to "opt-out" of an Aggregation Program. The Commission's Proposed Rule increases the opt-out period to "a minimum of 21 calendar days after the date of the disclosure postmark"—a three day increase, up from 18 days in the Administrative Law Judge's proposed rule.

The duration of the opt-out period is a decision over which the Commission has no jurisdiction. Rather, this decision has been left to the local community by the General Assembly as part of its plan of governance and operation for the Aggregation Program. It should be made

on a local basis by the Governmental Aggregator, based on each government unit's knowledge of local residents and businesses and the time period for opting-out that would best suit the needs of the local community.

As noted in the Introduction, the Commission has only those powers expressly granted to it. *City of Chicago v. Illinois Commerce Commission*, 79 Ill.2d 213, 217-18, 402 N.E.2d 595, 597-98 (1980). Thus, the Illinois Power Agency Act should be carefully examined in determining if there is authority to adopt various components of the Proposed Rules.

If the General Assembly had intended to establish a specific, State-wide opt-out time period, whether the number of days is set at a fixed or a minimum number, the General Assembly could have done so in Section 1-92(e) of the Illinois Power Agency Act, 20 ILCS 3855/1-92(e). That provision specifies a number of details about the notice and the required disclosures, including that the notice must contain the right to opt-out, disclosure of aggregation charges, and disclosure of supply costs under Section 16-603 of the Public Utilities Act—but it is silent on the number of days to be given for notice to customers to opt-out.

The Commission's explanation for the increase to a minimum opt-out notice period of 21 days is based on two factors:

- that the longer time period “will give the people some flexibility and account for the possibility of various intervening events that could impact a customer's ability to reply to the opt-out disclosure in a timely manner”, and
- that “it makes more sense . . . to have it in weekly increments.”

Transcript of November 6, 2013 Commission Meeting, at page 11, lines 8-16, 17-23.

There is no evidence in the record before the Commission that supports a 21-day minimum opt-out notice period as opposed to some other number of days. The Caucus has objected to including a specific opt-out notice period in the Proposed Rule, having previously

noted that the 18-day minimum period included in the Proposed First Notice Order represented a compromise of the range of opt-out time frames included by Caucus Governmental Aggregators in their plans of operation and governance. Caucus Reply Brief on Exceptions at 10. The Commission's increase of this period to 21 days is an action without evidentiary support.

The best place for this decision to be made is at the local government level—where the elected officials who know their constituents and the schedules and rhythms of their communities can determine the best opt-out period. Governmental Aggregators must balance the need for customers to have sufficient time to consider the Aggregation Program's terms with the objective of maximizing the amount of cost savings to electricity customers by implementing the Program after a shorter opt-out period.

Accordingly, the Caucus objects to the Proposed Rule's increase of the opt-out period to a minimum of 21 days. If the Commission is insistent on including a minimum opt-out time period, it should be set at no more than 10 or 14 days, which would allow Governmental Aggregators flexibility in balancing the customers' time for considering the aggregation program with the benefit of those customers receiving cost savings earlier.

III. COMMENT ON SECTION 470.240(a) (Notice to Non-Aggregation Customers)

The Proposed Rule now requires that notice about the Aggregation Program be given to customers receiving, or pending to receive, non-aggregation RES service from a RES Supplier other than the Aggregation Supplier for that community. The Caucus supports this provision for several reasons:

First, after notice about the Aggregation Program is sent to customers receiving service from the electric utility, Governmental Aggregators have found that other RES customers ask why they did not receive the same notice. Many of these RES customers thought they were still customers of the electric utility and had, in fact, been switched to another RES provider without

their knowledge or consent. For these customers, this is the first time they have discovered that they have been “slammed” by a RES Supplier away from the electric utility. In these cases, the Governmental Aggregator assists its residents and local businesses in determining what has occurred and how they may be able to remedy the supplier switch that the customer did not want. Providing a separate notice to these other RES customers will provide a valuable protection to these customers.

Second, if there are customers of a non-aggregation RES who wish to make a change to a new electric supplier, this notice allows them to evaluate their current arrangement with the non-aggregation RES to determine whether they might be eligible for cost-savings under the Aggregation Program. For example, a customer may have reached the end of his or her minimum contract period or may find that the cost to terminate his or her contract with the non-aggregation RES is less than the savings anticipated under the Aggregation Program.

Third, the Caucus recognizes that there may be concern about the Aggregation Supplier’s potential misuse of customer information provided to it when the Aggregation Supplier gives the notice. However, the Caucus points out that the Commission has provided protocols governing the purpose for using customer information in Section 470.110 of the Proposed Rule.

Fourth, the Caucus recognizes the Commission’s concern about providing appropriate notice to this category of customers, and will work with its members that are Governmental Aggregators to make sure that proper and accurate notice is, in fact, given.

IV. CONCLUSION

The Caucus respectfully requests that the Commission consider the comments included in this Brief and modify the First Notice Order and Rule accordingly.

Dated this 10th day of February, 2014.

Respectfully submitted,

METROPOLITAN MAYORS CAUCUS

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VERIFICATION

I, David E. Bennett, being duly sworn, hereby affirm that I am the Executive Director of the Metropolitan Mayors Caucus and have knowledge of the contents of these Verified Initial Comments By Metropolitan Mayors Caucus To The First Notice Order on Municipal Aggregation, and they are true and accurate to the best of my knowledge and belief.

David E. Bennett

Subscribed and sworn to before me
this 10th day of February, 2014.

Jerry Lane

Notary Public

my commission

expires 8/30/2015

