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September 8, 2014

Joint Committee on Administrative Rules
700 Stratton Office Building
Springfield, Illinois 62706

Re: Governmental Electric Aggregation—Proposed Rulemaking
83 Ill. Adm. Code 470

Dear Honorable Co-Chairmen Harmon and Schmitz and Members of the Committee:

We are providing comments on behalf of the Metropolitan Mayors Caucus (“*Caucus*”) in connection with the proposed rulemaking for Governmental Electric Aggregation (“*Proposed Aggregation Rule*”), which is included on your agenda for your September 16, 2014 meeting. The Caucus is an association of 272 mayors representing municipalities and nine municipal associations of government in the Chicago region. Since the Caucus intervened in the proceedings at the Illinois Commerce Commission (“*Commission*”) regarding the Proposed Aggregation Rule in November, 2012, the Caucus has received financial support and other assistance in its efforts from 119 municipalities that are governmental aggregators or considering governmental aggregation, and eleven other governmental organizations—not just in the Chicago region, but all around Illinois. A list of the supporting municipalities and organizations is attached as Exhibit A.

I. OVERVIEW/EXECUTIVE SUMMARY

The Proposed Aggregation Rule as presented in the Second Notice exceed the Commission’s authority to regulate governmental aggregators. The evolution of the language of both the Public Utility Act and the Illinois Power Agency Act clearly demonstrate that while the Commission had limited authority over governmental aggregation programs at one time, that limited authority was repealed and has not been restored.

The Proposed Aggregation Rule turns portions of the aggregation process on its head, creating a confusing process in which aggregation suppliers selected by a governmental aggregator are in the position of evaluating whether disclosure notices that may be given by governmental aggregators comply with applicable requirements.

The Proposed Aggregation Rule also interferes with choices that the General Assembly vested in governmental aggregators about their local aggregation programs, including the required

minimum time period for opt-out program notices and requiring governmental aggregators to allow suppliers to use the government's logo when the suppliers provide notice.

With unclear and overreaching language, the Proposed Aggregation Rule should be prohibited unless modified. Suggested revisions to address the Caucus' concerns are included in Exhibit E.

In addition, the Caucus objects to proposed revisions to Section 470.240(a) that have been proposed for reasons explained below.

II. THE COMMISSION DOES NOT HAVE AUTHORITY TO REGULATE GOVERNMENTAL AGGREGATORS

The power of municipalities and counties to engage in aggregation of electrical loads is established and contained in Section 1-92 ("Section 1-92") of the Illinois Power Agency Act, 20 ILCS 3855/1-92 ("IPA Act"), and has been in place since the adoption of Public Act 96-0176, which became effective on January 1, 2010. A copy of Public Act 96-0176 is attached as Exhibit B. Prior to January 1, 2010, the power of municipalities and counties to aggregate electricity was contained in Section 17-800 ("Section 17-800") of the Public Utilities Act ("PUA"). Public Act 96-0176 adopted Section 1-92 of the IPA Act and repealed Section 17-800 of the PUA, taking the regulation of electric aggregation out of the PUA and out of the scope of the Commission's powers.

When the General Assembly originally adopted Section 17-800 in Public Act 95-0311, it explicitly stated that governmental aggregators are not public utilities or alternative retail electric suppliers. Further, the General Assembly established limited Commission powers in the field of governmental aggregation, stating that aggregation "shall be subject to supervision and regulation by the Commission only to the extent provided in this Section." A copy of Public Act 95-0311 is attached as Exhibit C. Section 17-800 limited the Commission's authority to the review of certain aspects of the municipal aggregator's aggregation process, as follows:

- Each governmental aggregator was required to submit to the Commission for review and approval its local plan for operation and governance of its electric aggregation program. The Commission was granted the power to issue an order approving the plan, or rejecting the plan if certain specified minimum requirements for the local plans contained in Section 17-800 were not met.
- Bids for electricity received by the municipal or county aggregator were required to be reported to the Commission, and the municipality or county was required to wait 15 days after filing the bids with the Commission before awarding the proposed agreement. The Commission had the authority to suspend the award of any agreement based on those bids if the Commission found that the solicitation of bids or the award "are not in conformance with the plan or if the cost for energy in the first year would exceed the cost" of energy under Section 16-103 of the PUA.

When Section 17-800 was repealed, the General Assembly completely removed the Commission's supervision and regulatory powers over these aspects of the electric aggregation process. The concurrent adoption of Section 1-92 vested these key local decisions with the elected

officials of municipalities (their corporate authorities) and counties (the county board), allowing these officials to make appropriate local decisions regarding whether to aggregate the electrical loads of their residential and small commercial retail customers in their communities and on what terms. 20 ILCS 3855/1-92(a), (b). The Illinois Power Agency is now the state agency authorized to assist municipal and county aggregators in developing their local plans of operation and governance. Section 1-92(b).

It is significant that the Senate sponsor of Public Act 96-0176, Senator Koehler, expressly stated that this Public Act (House Bill 722) “removes the regulation of an electric aggregation program from the Illinois Commerce Commission and gives it to the Illinois Power Agency” as well as changing the aggregation process to allow both “opt-in” and “opt-out” aggregation programs. A copy of the Senate Transcript for May 13, 2009, pages 128-129, is attached as Exhibit D.

Section 1-92(a) further supports the lack of Commission authority and jurisdiction over governmental aggregation, stating that “A governmental aggregator under this Section is not a public utility or an alternative retail electric supplier.” This language is consistent with the long-standing definition in the PUA that utilities of municipal corporations and political subdivisions are not public utilities that are subject to the jurisdiction of the Illinois Commerce Commission. 220 ILCS 5/3-105(b).

While the Commission has general supervisory authority over public utilities under the PUA (*see* 20 ILCS 5/4-101) and has jurisdiction over alternative retail electric suppliers (*see* 20 ILCS 5/16-115), the lack of any delegation to the Commission in the language of Section 1-92 makes it clear that the Commission has no jurisdiction over municipal and county aggregators. Also, although the Commission has authority over certain aspects of electric regulation under the IPA Act, such as the power to deal with the renewable portfolio standard and the clean coal portfolio standard, *see* 20 ILCS 3855/1-75(c), (d), those powers do not extend the Commission’s powers to the subject matter of Section 1-92, which governs municipal and county aggregation. Indeed, the Commission is not mentioned in Section 1-92. Because the Commission must receive its authority from the General Assembly by statute, *City of Chicago v. Illinois Commerce Commission*, 79 Ill.2d 213, 402 N.E.2d 595 (1980), the silence in Section 1-92 as to any Commission role makes it clear that the Commission has no authority and jurisdiction over municipal and county aggregation.¹

III. THE PROPOSED AGGREGATION RULE CONTINUES TO REGULATE GOVERNMENTAL AGGREGATORS WITHOUT AUTHORITY

The Caucus presented the law and reasoning in part II above during the Commission’s rulemaking proceeding. While the Proposed Aggregation Rule has been modified by the Commission to reduce the regulation of governmental aggregators, the Proposed Aggregation Rule continues to regulate governmental aggregators in various important respects.

Governmental aggregators have the sole authority to determine what is included in their plan of operation and governance for the aggregation program in their respective communities.

¹ Townships were added as governmental aggregators in Public Act 97-823.

Governmental aggregators also have the power to enter into contracts with the chosen aggregation supplier. The Proposed Aggregation Rule improperly takes away from governmental aggregators key points of discretion that should be locally-made decisions of the municipality, county or township as part of its plan of operation and governance as well as the terms of the contract with its chosen aggregation supplier. These subjects are expressly vested in the municipal aggregators by Section 1-92, and Section 1-92 does not provide any authority to the Commission over these functions.

A. Notice Provisions Improperly Reverse the Roles of Aggregator and Supplier. The Proposed Aggregation Rule reverses the legal relationship between governmental aggregator and aggregation supplier. It places the supplier in the position of determining whether the governmental aggregator's notice to its residents was properly done in compliance with state law—making the supplier a regulator rather than the regulated entity. Section 470.210(a) [lines 267-272] provides that “the Aggregation Supplier shall verify that retail customers have been sent disclosures as required by Section 1-92 of the IPA Act evidenced by: 1) a written verification from the Governmental Aggregator that the required disclosure has been sent.” The rule requires these notices “whenever there is a change in the rates, end date or choice of Aggregation Supplier” and prior to enrolling or re-enrolling customers in either Opt-out or Opt-in programs. [lines 265-268]

Similar language is used in Section 470.240(a) [lines 370-374], requiring the aggregation supplier to “verify” that certain disclosures have been sent to RES customers based on “written verification from the Governmental Aggregator”—once again turning the General Assembly's desired structure for aggregation programs on its head.

The Caucus objects to these requirements because they interfere with the power vested in governmental aggregators by the General Assembly in Section 1-92 in the following ways:

- The supplier is placed in the position of determining whether the notices by the government aggregator that hired the supplier comply with Section 1-92(e) [pursuant to Section 470.210(a)] or Section 470.240(a)(1)-(4) [pursuant to Section 470.240(a)];
- How is the supplier to “verify” the aggregator's “verification”? Even if it were consistent with Section 1-92 for the supplier to be looking over the aggregator's shoulder, this language is not clear—what is the standard to be used to determine whether the aggregator's verification is good enough? And the use of the terms “verify” and “verification” with two different meanings in the same provision adds to the confusion; and
- The notices required by Section 470.210(a) extend beyond what is required by Section 1-92(e), which requires a governmental aggregator to “fully inform” customers of the opt-out rights and other relevant information.

Revised language that would eliminate these problems from the Proposed Aggregation Rule is attached in Exhibit E. The proposed language is, in part, a return to some text from the Commission's First Notice Order, which allowed the governmental aggregator to address issues in the contract with the aggregation supplier.

B. Mandated 21-Day Minimum Opt-Out Period Exceeds Commission Authority. The Proposed Aggregation Rule's attempt to set a minimum duration of the opt-out period directly interferes with local control by the governmental aggregator. Section 470.220(b) [lines 340-341] requires that when suppliers provide notice of opt-out programs, the "opt-out due date" cannot be less than a minimum of 21 calendar days from the postmark date. But this date is to be established as part of the aggregator's plan of operation and governance based on the notice necessary for each local community.

The proposed 21-day minimum period is significantly longer than the typical standard for notice in aggregation programs to date. In a review of opt-out notices for new aggregation programs as well as renewals, the Northern Illinois Municipal Electric Collaborative found that in more than 160 instances, a minimum opt-out period of 14 days was used, with no material level of complaints or resistance from residents.

While the Caucus continues to object to the inclusion of a minimum number of days for this notice, Exhibit E includes a revision to the Proposed Aggregation Rule with a 14-day minimum for the Opt-out Period, as experience has demonstrated that 14 days has worked successfully for many governmental aggregators.

C. Mandated Use of Government Logo is Improper. Section 470.210(b)(2) [lines 278-279, 285-288] of the Proposed Aggregation Rule mandates that governments allow aggregation suppliers to use the government aggregator's logo on the envelope and first page of any disclosures sent by the aggregation supplier about the program. This provision ignores that a governmental logo is the property of that government, and that the Commission has no authority to require the government aggregator to use its property for this purpose.

The attached Exhibit E shows the proposed deletion of this requirement from the Proposed Aggregation Rule.

D. Proposed Amendment Regarding Notice to RES Customers is Beyond the Commission's Authority. The Caucus has been advised that the following text has been proposed as an addition to Section 470.240(a):

5) In addition to the above disclosures, this notice shall contain, in type size no smaller than the largest type size used elsewhere, the following statement on the front of the notice:

This notice is informational only and does not constitute an endorsement of any particular product or supplier including the aggregation supplier. If you are currently being severed by a competitive electric supplier, you will continue to receive service from your chosen supplier and you do not need to take any additional action. Contact your chosen supplier for further details if you have questions about your contract, including whether you have a cancellation fee for early termination.

With respect to those residential and small commercial retail customers receiving, or pending to receive, non-aggregation RES service, the utility may not provide the

Aggregation Supplier with customer-specific information beyond what it makes generally available to all retail electric suppliers regarding such customer classes.

The Caucus objects to this language for several reasons:

- It imputes an opinion to the governmental aggregator (“does not constitute an endorsement”) that is likely untrue, given that the aggregator has just entered into a contract with the aggregation supplier. Also, that sentence is opinion rather than factual in nature like the required notice items in subsections 1-4 of Section 470.240(a).
- It conflicts with Section 470.240(a)(4), which requires that the affirmative action needed to join the aggregation program be provided.
- The text following proposed subsection (5) attempts to dictate the manner in which customer information is provided and handled. However, these subjects are already covered in detail in Sections 470.100 and 470.110, and the proposed new text is duplicative. It would create confusion to place customer information requirements in Section 470.240.

For these reasons, the Caucus objects to the Proposed Rules and respectfully requests that the Joint Committee on Administrative Rules prohibit the filing of the Proposed Rules unless they are modified to correct these attempts to exceed the Commission’s authority as granted by the General Assembly.

We would be happy to discuss these comments and any questions you may have.

Very truly yours,



Barbara A. Adams

BAA/rls

Enclosures

cc: Metropolitan Mayors Caucus (with enclosures)

Exhibit A
Municipalities and Organizations Supporting the Metropolitan Mayors Caucus
On Governmental Electric Aggregation Rules

Supporting Organizations

DuPage Mayors and Managers Conference
Illinois Municipal League
Lake County Municipal League
McHenry County Council of Governments
Metro West Council of Governments
Northern Illinois Municipal Electric Collaborative
Northwest Municipal Conference
South Suburban Mayors and Managers Association
Southwest Conference of Mayors
West Central Municipal Conference
Will County Governmental League

Participating Municipalities

Addison	Hanover Park	New Lenox	Schaumburg
Arlington Heights	Harvard	Niles	Schiller Park
Aurora	Hawthorn Woods	Norridge	Shorewood
Bannockburn	Hickory Hills	North Aurora	Skokie
Barrington	Highland Park	North Barrington	South Barrington
Bedford Park	Highwood	Northbrook	South Chicago Heights
Bensenville	Hinsdale	Northfield	Stickney
Berwyn	Hoffman Estates	Oak Brook	Sugar Grove
Braidwood	Homer Glen	Oak Park	Tinley Park
Bolingbrook	Island Lake	O'Fallon*	Trenton*
Buffalo*	Itasca	Orland Hills	Vernon Hills
Buffalo Grove	Joliet	Orland Park	Villa Park
Carol Stream	Kappa*	Oswego	Warrenville
Clarendon Hills	LaGrange	Palatine	Wayne
Columbia*	LaGrange Park	Palos Heights	West Chicago
Crest Hill	Lake Barrington	Palos Hills	West Dundee
Crystal Lake	Lake Bluff	Palos Park	Westchester
Deerfield	Lake Forest	Paris*	Westmont
Deer Park	Lake Zurich	Park Ridge	Wheeling
DeKalb*	Lemont	Pingree Grove	Willowbrook
Delavan*	Lincoln*	Plainfield	Wilmette
Diamond	Lindenhurst	Prairie Grove	Wilmington
Downers Grove	Lisle	River Forest	Wood Dale
Elmhurst	Lombard	Riverside	Woodridge
Forest Park	Loves Park*	Riverwoods	Woodstock
Frankfort	McCook	Rockford*	Worth
Glen Carbon*	Machesney Park*	Rolling Meadows	
Glencoe	Morris*	Roselle	
Glen Ellyn	Mt. Prospect	Rosemont	
Glenwood	Mt. Zion*	Round Lake Beach	
Grayslake	New Baden*	Savoy*	

*Downstate Illinois/Non-Chicago Area municipality

Public Act 096-0176

Public Act 096-0176

HB0722 Enrolled

LRB096 08034 MJR 18140 b

AN ACT concerning utilities.

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

Section 5. The Illinois Power Agency Act is amended by adding Section 1-92 as follows:

(20 ILCS 3855/1-92 new)

Sec. 1-92. Aggregation of electrical load by municipalities and counties.

(a) The corporate authorities of a municipality or county board of a county may adopt an ordinance under which it may aggregate in accordance with this Section residential and small commercial retail electrical loads located, respectively, within the municipality or the unincorporated areas of the county and, for that purpose, may solicit bids and enter into service agreements to facilitate for those loads the sale and purchase of electricity and related services and equipment.

The corporate authorities or county board may also exercise such authority jointly with any other municipality or county. Two or more municipalities or counties, or a combination of both, may initiate a process jointly to authorize aggregation by a majority vote of each particular municipality or county as required by this Section.

If the corporate authorities or the county board seek to operate the aggregation program as an opt-out program for residential and small commercial retail customers, then prior to the adoption of an ordinance with respect to aggregation of residential and small commercial retail electric loads, the corporate authorities of a municipality or the county board of a county shall submit a referendum to its residents to determine whether or not the aggregation program shall operate as an opt-out program for residential and small commercial retail customers.

In addition to the notice and conduct requirements of the general election law, notice of the referendum shall state briefly the purpose of the referendum. The question of whether the corporate authorities or the county board shall adopt an opt-out aggregation program for residential and small commercial retail customers shall be submitted to the electors of the municipality or county board at a regular election and approved by a majority of the electors voting on the question. The corporate authorities or county board must certify to the proper election authority, which must submit the question at an election in accordance with the Election Code.

The election authority must submit the question in

substantially the following form:

Shall the (municipality or county in which the question is being voted upon) have the authority to arrange for the supply of electricity for its residential and small commercial retail customers who have not opted out of such program?

The election authority must record the votes as "Yes" or "No".

If a majority of the electors voting on the question vote in the affirmative, then the corporate authorities or county board may implement an opt-out aggregation program for residential and small commercial retail customers.

A referendum must pass in each particular municipality or county that is engaged in the aggregation program. If the referendum fails, then the corporate authorities or county board shall operate the aggregation program as an opt-in program for residential and small commercial retail customers.

An ordinance under this Section shall specify whether the aggregation will occur only with the prior consent of each person owning, occupying, controlling, or using an electric load center proposed to be aggregated. Nothing in this Section, however, authorizes the aggregation of electric loads that are served or authorized to be served by an electric cooperative as defined by and pursuant to the Electric Supplier Act or loads served by a municipality that owns and operates its own electric distribution system. No aggregation shall take effect unless approved by a majority of the members of the corporate authority or county board voting upon the ordinance.

A governmental aggregator under this Section is not a public utility or an alternative retail electric supplier.

(b) Upon the applicable requisite authority under this Section, the corporate authorities or the county board, with assistance from the Illinois Power Agency, shall develop a plan of operation and governance for the aggregation program so authorized. Before adopting a plan under this Section, the corporate authorities or county board shall hold at least 2 public hearings on the plan. Before the first hearing, the corporate authorities or county board shall publish notice of the hearings once a week for 2 consecutive weeks in a newspaper of general circulation in the jurisdiction. The notice shall summarize the plan and state the date, time, and location of each hearing. Any load aggregation plan established pursuant to this Section shall:

(1) provide for universal access to all applicable residential customers and equitable treatment of applicable residential customers;

(2) describe demand management and energy efficiency services to be provided to each class of customers; and

(3) meet any requirements established by law concerning aggregated service offered pursuant to this Section.

(c) The process for soliciting bids for electricity and other related services and awarding proposed agreements for the purchase of electricity and other related services shall be conducted in the following order:

(1) The corporate authorities or county board may solicit bids for electricity and other related services.

(2) Notwithstanding Section 16-122 of the Public Utilities Act and Section 2HH of the Consumer Fraud and Deceptive Business Practices Act, an electric utility that provides residential and small commercial retail electric service in the aggregate area must, upon request of the corporate authorities or the county board in the aggregate

area, submit to the requesting party, in an electronic format, those names and addresses of residential and small commercial retail customers in the aggregate area that are reflected in the electric utility's records at the time of the request. Any corporate authority or county board receiving customer information from an electric utility shall be subject to the limitations on the disclosure of the information described in Section 16-122 of the Public Utilities Act and Section 2HH of the Consumer Fraud and Deceptive Business Practices Act, and an electric utility shall not be held liable for any claims arising out of the provision of information pursuant to this item (2).

(d) If the corporate authorities or county board operate under an opt-in program for residential and small commercial retail customers, then the corporate authorities or county board shall comply with all of the following:

(1) Within 60 days after receiving the bids, the corporate authorities or county board shall allow residential and small commercial retail customers to commit to the terms and conditions of a bid that has been selected by the corporate authorities or county board.

(2) If (A) the corporate authorities or county board award proposed agreements for the purchase of electricity and other related services and (B) an agreement is reached between the corporate authorities or county board for those services, then customers committed to the terms and conditions according to item (1) of this subsection (d) shall be committed to the agreement.

(e) If the corporate authorities or county board operate as an opt-out program for residential and small commercial retail customers, then it shall be the duty of the aggregated entity to fully inform residential and small commercial retail customers in advance that they have the right to opt out of the aggregation program. The disclosure shall prominently state all charges to be made and shall include full disclosure of the cost to obtain service pursuant to Section 16-103 of the Public Utilities Act, how to access it, and the fact that it is available to them without penalty, if they are currently receiving service under that Section. The Illinois Power Agency shall furnish, without charge, to any citizen a list of all supply options available to them in a format that allows comparison of prices and products.

The Illinois Power Agency shall provide assistance to municipalities, counties, or associations working with municipalities to help complete the plan and bidding process.

This Section does not prohibit municipalities or counties from entering into an intergovernmental agreement to aggregate residential and small commercial retail electric loads.

(220 ILCS 5/17-800 rep.)

Section 10. The Public Utilities Act is amended by repealing Section 17-800.

Effective Date: 1/1/2010

Public Act 095-0311

Public Act 095-0311

HB0351 Enrolled

LRB095 05290 MJR 25368 b

AN ACT concerning regulation.

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

Section 5. The Public Utilities Act is amended by adding Section 17-800 as follows:

(220 ILCS 5/17-800 new)

Sec. 17-800. Aggregation of electrical load by municipalities and counties. The corporate authorities of a municipality or county board of a county may adopt an ordinance, under which it may aggregate in accordance with this Section residential retail electrical loads located, respectively, within the municipality or county and, for that purpose, may solicit bids and enter into service agreements to facilitate for those loads the sale and purchase of electricity and related services and equipment. The corporate authorities or county board also may exercise such authority jointly with any other municipality or county. An ordinance under this Section shall specify whether the aggregation will occur only with the prior consent of each person owning, occupying, controlling, or using an electric load center proposed to be aggregated. Nothing in this Section, however, authorizes the aggregation of electric loads that are served or authorized to be served by an electric cooperative as defined by and pursuant to the Electric Supplier Act or loads served by a municipality that owns and operates its own electric distribution system. No aggregation pursuant to an ordinance adopted under this Section that provides for an election under this Section shall take effect unless approved by a majority of the electors voting upon the ordinance at the election held pursuant to this Section.

A governmental aggregator under this Section is not a public utility or an alternative retail electric supplier and shall be subject to supervision and regulation by the Commission only to the extent provided in this Section.

A municipality may initiate a process to authorize aggregation by a majority vote of the municipal council, with the approval of the mayor. A county may initiate the process to authorize aggregation by a majority vote of the county board. Two or more municipalities or counties, or a combination of both, may initiate a process jointly to authorize aggregation by a majority vote of each particular municipality or county as herein required.

Upon the applicable requisite authority under this Section, the corporate authorities or the county board shall develop a plan of operation and governance for the aggregation

program so authorized. Before adopting a plan under this Section, the corporate authorities or county board shall hold at least 2 public hearings on the plan. Before the first hearing, the corporate authorities or county board shall publish notice of the hearings once a week for 2 consecutive weeks in a newspaper of general circulation in the jurisdiction. The notice shall summarize the plan and state the date, time, and location of each hearing. Any load aggregation plan established pursuant to this Section shall:

(1) provide for universal access to all applicable residential customers and equitable treatment of applicable residential customers;

(2) describe demand management and energy efficiency services to be provided to each class of customers; and

(3) meet any requirements established by law or the Commission concerning aggregated service offered pursuant to this Section.

The plan shall be filed with the Commission for review and approval and shall include, without limitation, an organizational structure of the program, its operations, and funding; the methods of establishing rates and allocating costs among participants; the methods for entering and terminating agreements with other entities; the rights and responsibilities of program participants; and procedures for termination of the program. Within 120 days after receipt of the plan, the Commission shall issue an order either approving or rejecting the plan. If the Commission rejects the plan, it shall state detailed reasons for rejecting the plan in its order. Upon approval of the plan, the corporate authorities or county board may solicit bids for electricity and other related services pursuant to the methods established in the plan. The corporate authorities or county board shall report the results of this solicitation and proposed agreement awards to the Commission, which shall have 15 business days to suspend such awards if the solicitation or awards are not in conformance with the plan or if the cost for energy would in the first year exceed the cost of that energy if that energy was obtained from an electric utility under Section 16-103 of this Act by citizens in the municipality or county or group of municipalities and counties, unless the applicant can demonstrate that the cost for energy under the aggregation plan will be lower in the subsequent years or the applicant can demonstrate that such excess cost is due to the purchase of renewable energy. If the Commission does not suspend the proposed contract awards within 15 business days after filing, the corporate authorities or county board shall have the right to award the proposed agreements.

It shall be the duty of the aggregated entity to fully inform residential retail customers in advance that they have the right to opt in to the aggregation program. The disclosure shall prominently state all charges to be made and shall include full disclosure of the cost to obtain service pursuant to Section 16-103 of this Act, how to access it, and the fact that it is available to them without penalty, if they are currently receiving service under that Section. The Commission shall furnish, without charge, to any citizen a list of all supply options available to them in a format that allows comparison of prices and products.

This Section does not prohibit municipalities or counties from entering into an intergovernmental agreement to aggregate residential retail electric loads.

Effective Date: 1/1/2008

STATE OF ILLINOIS
96th GENERAL ASSEMBLY
REGULAR SESSION
SENATE TRANSCRIPT

47th Legislative Day

5/13/2009

vote.

PRESIDING OFFICER: (SENATOR HENDON)

Is there any discussion? Seeing none, the question is, shall House Bill 706 pass. All those in favor will vote Aye. Opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? I'm giving you a little extra time, because I don't want any broken ankles or anything like that before the softball game. But be ready. Take the record. On that question, there are 58 voting Aye, none voting Nay, none voting Present. House Bill 706, having received the required constitutional majority, is declared passed. Especially you two, 'cause you're expendable. House Bill 722. Senator Koehler. 722, sir? Madam Secretary, read the gentleman's bill.

SECRETARY ROCK:

House Bill 722.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR HENDON)

Senator Koehler.

SENATOR KOEHLER:

Thank you, Mr. President, Members of the Senate. House Bill 722 moves a current Section that permits municipalities and counties to aggregate their electrical load from the Public Utilities Act into the Illinois Power Agency Act, which removes the regulation of an aggregation program from the Illinois Commerce Commission and gives it to the Illinois Power Agency. This bill changes the aggregation process and allows municipalities and counties to implement an opt-in or an opt-out

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program, whereas current law only permits an opt-in program. The opt-out provisions require a municipal or a county to submit a referendum seeking residential approval to operate an opt-out program. In addition, it lays out the steps required for an opt-in program. The bill was included on the House Agreed Bill List and I would appreciate an Aye vote...

PRESIDING OFFICER: (SENATOR HENDON)

Is there any discussion? Seeing none, the question is, shall House Bill 722 pass. All those in favor will say -- vote Aye. Opposed, vote Nay. Voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 57 voting Aye, none voting Nay, none voting Present. House Bill 722, having received the required constitutional majority, is declared passed. It is the intention of the Chair to go for about another thirty minutes. If we keep up with this pace, we can make that. If not, we're going to go to about 6. I know you want to get out of here, so let's keep up this pace. House Bill 740. Senator Steans. Madam Secretary, read the bill. House Bill 740 is returned to 2nd -- to the Order of 2nd Reading for the purpose of amendment. Hearing no objection, leave is granted. Now on the Order of 2nd Reading is House Bill 740. Madam Secretary, are there any amendments approved for consideration?

SECRETARY ROCK:

Floor Amendment 1, offered by Senator Steans.

PRESIDING OFFICER: (SENATOR HENDON)

Senator Steans.

SENATOR STEANS:

EXHIBIT E
MMC PROPOSED REVISIONS TO THE JCAR SECOND NOTICE RULE

Section 470.210 Customer Disclosures

- a) ~~Prior to enrolling or re-enrolling retail customers in an Opt-in or Opt-out Aggregation Program, or whenever there is a change in the rates, end date or choice of Aggregation Supplier of the Aggregation Program, the Aggregation Supplier shall verify that retail customers have been sent~~ **sends the** disclosures as required by Section 1-92 of the IPA Act **for an Opt-out or Opt-in Aggregation Program,** evidenced by:
- 1) ~~a written verification from the Governmental Aggregator that the required disclosure has been sent; or~~
 - 2) ~~the Aggregation Supplier has sent the required disclosures in compliance with subsection (b) of this Section, Section 470.220, Section 470.230 and Section 470.240.~~
- b) ~~If the Aggregation Supplier sends the required disclosure to retail customers, the disclosure shall state~~ **the following:**
- 1) the legal name of the Aggregation Supplier, the name under which the Aggregation Supplier will market its products, if different, and its business address;
 - 2) the Governmental Aggregator's name and, if available, ~~the Governmental Aggregator's logo~~ to be included on the envelope and first page of any disclosures, and the statement "Important Electricity Aggregation Information Enclosed" must be printed conspicuously on the envelope;
 - 3) that customers may purchase their electricity supply from a RES (without providing a price comparison) or the electric utility (either utility fixed-price or hourly service) and the PlugInIllinois.org Internet address;
 - 4) that customers may request from the Illinois Power Agency, without charge, a list of all supply options available to them in a format that allows comparison of prices and products;
 - 5) the cost to obtain service pursuant to Section 16-103 of the PUA, how to access it, and the fact that it is available to customers without penalty if the customer is currently receiving service under that Section; the disclosure shall not contain a comparison of the proposed aggregation rate to the electric utility's fixed-price service rate;
 - 6) the Aggregation Supplier's toll-free telephone number for billing questions, disputes and complaints;

- 7) a local or toll-free telephone number, with the available calling hours, that customers may call with any questions regarding the Aggregation Program; this number shall be provided by the Aggregation Supplier unless otherwise agreed to with the Government Aggregator and shall not be an electric utility number;
- 8) the prices, terms and conditions of the products and services being offered to the customer;
- 9) the presence or absence of early termination fees or penalties and applicable amounts or the formula pursuant to which they are calculated; and
- 10) that net metering customers, pursuant to Section 16-107.5(d)(3) and (e)(3) of the PUA, may forfeit credits for electric supply service and delivery service, or both, if they switch to the Aggregation Supplier.

Section 470.220 Opt-out Aggregation Provisions

If the Aggregation Supplier sends the disclosures required by Section 1-92 of the IPA Act:

- a) the customer disclosure sent for Opt-out Aggregation Programs shall also:
 - 1) describe the method to opt-out and the opt-out due date expressed as month, day and year;
 - 2) include a statement that those customers who do not opt-out of the Opt-~~out~~ Aggregation Program will have been deemed to have authorized and agreed to being enrolled in the Opt-~~out~~ Aggregation Program and to having their electric supply service switched to the Aggregation Supplier under the terms and conditions applicable to the opt-out aggregation program;
- b) the opt-out due date shall be a minimum of ~~21~~14 calendar days after the date of the disclosure postmark;
- c) the Aggregation Supplier shall allow customers to opt-out by the following methods:
 - 1) by returning a postage paid postcard or similar notice supplied by the Aggregation Supplier; and
 - 2) by at least one of the following additional methods:
 - A) telephone;
 - B) e-mail; or
 - C) Aggregation Supplier or Governmental Aggregator website.

Section 470.240 RES Customers

- a) Unless otherwise agreed to with the Governmental Aggregator, if the ~~The~~ Aggregation Supplier shall verify that residential and small commercial retail sends the required disclosures, the disclosures shall be sent to customers receiving, or pending to receive, non-aggregation RES service and ~~have been sent the disclosures identified below, as evidenced by a written verification from the Governmental Aggregator, or by the Aggregation Supplier having sent the disclosures. The disclosures to customers receiving or pending to receive non-aggregation RES service shall contain the following information:~~
- 1) Notification that an Aggregation Program is currently on-going in their municipality, township or unincorporated area;
 - 2) A disclosure that adequately describes, in plain language, the prices, terms and conditions of the products and services being offered to the customer;
 - 3) If the Aggregation Program contains a fee for the early termination from the program by the customer, the amount of that fee;
 - 4) A description of the affirmative action necessary for the customer to join the Aggregation Program.
- b) Disclosures sent to customers receiving, or pending to receive, non-aggregation RES service shall not contain a comparison of the proposed aggregation rate to the customer's current RES rate.
- c) If an Aggregation Supplier receives a request from a RES customer to join the Aggregation Program, the Aggregation Supplier shall inform the RES customer that he/she may be subject to fees for early termination pursuant to his/her current RES contract.
- d) The Aggregation Supplier shall not switch RES customers to the Aggregation Program unless the RES customer elects to opt-in. The Aggregation Supplier shall verify a RES customer's request to join the Aggregation Program in the same manner as an electric service provider confirms a change in a customer's selection of a provider of electric service under Section 2EE(a) through (c) of the Consumer Fraud and Deceptive Business Practices Act.