STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On its Own Motion	)	
	)	Docket No. 12-0456
Development and adoption of rules concerning municipal aggregation	)	

THE RETAIL ENERGY SUPPLY ASSOCIATION
VERIFIED INITIAL COMMENTS ON PROPOSED FIRST NOTICE RULES

I. INTRODUCTION

Pursuant to the schedule established by the Administrative Law Judge ("ALJ") in this proceeding, the Retail Energy Supply Association ("RESA")[1] submits its Verified Initial Comments on the Illinois Commerce Commission's ("Commission") Proposed First Notice Rules for governmental aggregation, which were attached to the Commission's November 6, 2013 First Notice Order ("First Notice Order") and published in the *Illinois Register* on December 27, 2013 ("Proposed First Notice Rules"). In one major respect, the Proposed First Notice Rules are significantly worse than the proposed rules which were attached to the ALJ's Proposed Order ("ALJPO"), dated June 26, 2013, in this proceeding ("ALJPO Proposed Rules"). The ALJPO carefully analyzed the positions of the parties in this proceeding and the ALJPO Proposed Rules reflected appropriate modifications to the rules proposed by the Commission Staff in this proceeding, which would have tilted the playing field in favor of those Retail Electric Suppliers ("RES") who emphasize municipal aggregation as

[1] RESA's members include AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc., Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

their preferred marketing channel, at the expense of those RESs employing direct methods requiring affirmative action on the part of the customer.

The Proposed First Notice Rules inappropriately, and without justification, reverse the competitively neutral position of the ALJPO Proposed Rules, and provide a competitive advantage to Aggregation Suppliers, those RESs who have obtained customers through Aggregation Programs. However, nowhere in the Illinois Power Agency Act (20 ILCS 3855/1-1 *et seq.*) ("IPA Act") does it state that municipal aggregation shall be the preferred way for residential and small commercial customers to reap the benefits of retail competition. If Illinois is to have a dynamic, competitive market that supports both municipal aggregation as well as direct marketing, then the Commission needs to ensure that both types of competitive activity operate on a level playing field.

The ALJPO Proposed Rules created a distinction between the customer information that a Governmental Aggregator (the governmental authority operating an Aggregation Program) can receive and the customer information that an Aggregation Supplier (the RES chosen by the Governmental Aggregator for its Aggregation Program) can receive. Proposed Section 470.240, RES Customers, of the ALJPO Proposed Rules prohibited the Aggregation Supplier from sending notices to RES customers and required the Aggregation Supplier to destroy or return to the Governmental Aggregator any RES customer information that it receives from the Governmental Aggregator. In contrast, the Proposed First Notice Rules, by removing the distinction between the customer information the Governmental Aggregator can receive and the customer information the Aggregation Supplier can receive, would facilitate the unauthorized switching of, or allow an Aggregation Supplier to market to, customers already being served by a RES. Thus, under the Proposed First Notice Rules, governmental aggregation programs may become a vehicle for the unauthorized switching of RES customers. Moreover, the Proposed First Notice Rules do this despite the fact that

the First Notice Order professes concerns for protecting RES customer information and avoiding the slamming of customers.

II. THE FIRST NOTICE ORDER IS INTERNALLY INCONSISTENT ON THE SUBJECT OF RES CUSTOMER INFORMATION.

The First Notice Order is internally inconsistent on the subject of disclosing RES customer information to Aggregation Suppliers. In its discussion of Proposed Section 470.100, Transfer of Information, in the First Notice Order, the Commission notes that a "primary concern" for the Commission is protecting customer-specific information that electric utilities are required to provide to Governmental Aggregators pursuant to Section 1-92 of the IPA Act:

> A primary concern for the Commission in promulgating these rules is protecting customer-specific information that electric utilities are required to provide to Governmental Aggregators pursuant to Section 1-92 of the IPA Act. There is no specific statutory basis for providing any customer information to Aggregation Suppliers prior to a customer joining the Aggregation Program. The Commission recognizes, however, that Governmental Aggregators have the option to enter into contracts with Aggregation Suppliers for electric power and 'related services' which could arguably encompass the sending of notices and performing the actual Opt-out of Opt-in process. **The Commission is very concerned with the protection of customer information and the avoidance of 'slamming' of customers. It is the Aggregator [sic] Suppliers' receipt of information that could enable illegal switching that drives the need for regulation.**

(First Notice Order, p. 19, emphasis added)

The Commission goes on, in the next paragraph, to agree with Dominion Retail that the Aggregation Supplier should not receive any customer information for existing RES customers and if it receives such information it should destroy it immediately. (*Id.*) Moreover, in the following paragraph the Commission rejects a RESA proposal that a RES receive notice from the utility when its customer is about to be switched to an Aggregation Program because "Aggregation Suppliers, under the Proposed Rule, will not be receiving the customer information either. **The IPA Act only**

provides for the Governmental Aggregator to receive the customer information." (*Id.*, emphasis added)

RESA agrees with the Commission's analysis in addressing Proposed Section 470.100 of the Proposed First Notice Rules. The IPA Act does not provide any authority for the receipt of customer information about existing RES customers by Aggregation Suppliers and the receipt of that information by Aggregation Suppliers may result in illegal switching. Unfortunately, the Commission did not follow its own analysis in totally rewriting Proposed Section 470.240, RES Customers, in the Proposed First Notice Rules.

III. THE COMMISSION'S REVISED SECTION 470.240, RES CUSTOMERS, PROVIDES, WITHOUT ANY RATIONALE, A COMPETITIVE ADVANTAGE TO AGGREGATION SUPPLIERS.

Proposed Section 470.240, RES Customers, of the ALJPO Proposed Rules provided appropriate safeguards for existing RES customers. Proposed Subsection 470.240 (a) prohibited Aggregation Suppliers from sending out customer disclosure notices to RES customers. Proposed Subsection 470.240 (b) required Aggregation Suppliers to destroy, or return to the Governmental Aggregator, customer information of RES customers if it received such information from the Governmental Aggregator.

In drafting Proposed Section 470.240, the ALJPO disagreed with the position of the Commission Staff that the IPA Act requires notice to all residential and small commercial customers, including RES customers, if the Aggregation Supplier is sending the notices. The ALJPO justified the requirement of the ALJPO Proposed Rules that the Aggregation Suppliers should not send disclosures to RES customers, nor even receive RES customer information and, if it does receive

such information, it should be destroyed. The ALJPO stated, that to do otherwise, would "unfairly tilt the competitive playing field". (ALJPO, p. 46)

The First Notice Order completely reversed the ALJPO--Proposed Section 470.240 was revised to require existing RES customers to receive notices of the Aggregation Program, informing them how they can join the program, even when such notices are sent by the Aggregation Supplier. Without any analysis, the Commission simply states that it agrees with the Commission Staff that notice to all residential and small commercial customers is "required under the law", presumably referring to the IPA Act. However, the Commission completely ignores the fact that the ALJPO Proposed Rules did not prohibit Governmental Aggregators from sending notices of the Aggregation Program to RES customers; the ALJPO Proposed Rules simply prohibited Aggregation Suppliers from sending notices of the Aggregation Program to RES customers because Aggregation Suppliers should not be receiving customer information about RES customers:

> These customers have chosen a RES Supplier already; the Commission is reluctant to require this notice to be sent which would require Governmental Aggregators to give information regarding RES customers to their competitors—Aggregation Suppliers. (ALJPO, pp. 45-46)

There is absolutely nothing in the IPA Act that provides authority for Aggregation Suppliers to receive RES customer information. The Commission itself, in the First Notice Order, apparently recognizes this problem when it "strongly recommends" that the Governmental Aggregators, not the Aggregation Suppliers, send disclosure notices to RES customers; however, the Commission acknowledges that it has no regulatory control over Governmental Aggregators to prevent this improper disclosure of RES customer information to Aggregation Suppliers. (First Notice Order, p. 47)

The Commission provides no analysis nor any citation to any law that supports its position that Aggregation Suppliers should receive RES customer information. In fact, there is no support in

Section 1-92 of the IPA Act for the Commission's position. Section 1-92, *inter alia*, requires electric utilities to provide names, addresses, and account numbers of customers to **Governmental Aggregators**. Moreover, the ALJPO Proposed Rules did not attempt to restrict the use of Governmental Aggregators of such information, nor to set forth requirements for use of such information; *e.g.* that a Governmental Aggregator must send out Opt-In or Opt-Out notifications to all customers in its area. Simply put, there is nothing in Section 1-92 of the IPA Act that contemplates, let alone requires, that Aggregation Suppliers (the RESs selected by Governmental Aggregators for their Aggregation Programs) are to receive the names, addresses and account numbers of RES customers and the First Notice Proposed Rules are wrong in allowing Aggregation Suppliers to receive such information.

IV. CONCLUSION

In conclusion, the Proposed First Notice Rules are an adverse departure from the ALJPO's reasonable effort to create competitive neutrality between those Retail Electric Suppliers which favor municipal aggregation as their marketing channel and those Retail Electric Suppliers which use direct marketing channels. The Commission's revisions to the ALJPO Proposed Rules completely undermine the reasoned analysis of the ALJPO and facilitate the unauthorized switching of RES customers. The Commission should reverse its position on this important matter and reinstate the provisions of the ALJPO relating to RES customers, namely Section 470.240 of the ALJPO Proposed Rules.

Dated: February 10, 2014

Respectfully submitted,
Retail Energy Supply Association

By: /s/Gerard T. Fox
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STATE OF ILLINOIS)
) **SS**
COUNTY OF DUPAGE)

VERIFICATION

Roy Boston, being first duly sworn, on oath deposes and says that he is the Strategic Planning & Policy Manager- East for Noble Americas Energy Solutions - a member of the Retail Energy Supply Association, that he has read the foregoing Verified Initial Comments of the Retail Energy Supply Association, that he knows of the contents thereof, and that the same are true and accurate to the best of his knowledge, information, and belief.

/s/Roy Boston
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OFFICIAL SEAL
GINA L BATTAGLIA
Notary Public - State of Illinois
My Commission Expires Jun 15, 2017

Subscribed and sworn to me
This 10th day of February 2014

NOTICE OF FILING

Please take note that on February 10, 2014, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Verified Initial Comments of the Retail Energy Supply Association in this proceeding.

Dated: February 10, 2014

/s/GERARD T. FOX
Gerard T. Fox

CERTIFICATE OF SERVICE

I, Gerard T. Fox, certify that I caused to be served copies of the foregoing Verified Initial Comments of the Retail Energy Supply Association upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for Ill. C. C. Docket 12-0456 via electronic delivery on February 10, 2014.

/s/ GERARD T. FOX
Gerard T. Fox