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
RESPONSE TO MOTION TO DISMISS

Pursuant to the schedule established by the Administrative Law Judge in this proceeding, the Retail Energy Supply Association ("RESA")[1] submits its Response to the Motion to Dismiss filed by the Metropolitan Mayors Caucus ("Caucus") on December 12, 2012. That motion should be denied for the following reasons.

I. BACKGROUND

On January 1, 2010, Section 1-92 of the Illinois Power Agency Act (the "IPA Act") became effective. Section 1-92 provided for the aggregation of electric load by municipalities and counties. Subsection 1-92 (c) (2) of the IPA Act required an electric utility to submit to a requesting Governmental Authority the names and addresses of residential and small commercial retail customers in the aggregate area.

On March 3, 2011, Commonwealth Edison Company ("ComEd") filed with the Commission tariff sheets, proposing to create Rate GAP-Government Aggregation Protocols. The Commission voted not to suspend ComEd's filing and Rate GAP took effect on April 17, 2011.

[1] RESA's members include Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; GDF SUEZ Energy Resources NA, Inc.;; Hess Corporation; 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.

On May 18, 2011, the Commission initiated an investigation of Rate GAP pursuant to Section 9-250 of the Public Utilities Act. The investigation was docketed as Ill. C. C. Docket No. 11-0434.

On August 12, 2011, Subsection 1-92 (c) (2) of the IPA Act was amended to require an electric utility to submit to a requesting Governmental Authority the names, addresses, and account numbers of residential and small commercial retail customers in the aggregate area.

On March 12, 2012, Ameren Illinois Company ("Ameren") made a tariff filing with the Commission to revise its Schedule of Rates to add provisions for Governmental Aggregation Services in order to implement municipal aggregation. The Commission voted not to suspend that tariff filing and it became effective April 15, 2012.

On April 4, 2012, the Commission entered its Final Order in Ill. C. C. Docket 11-0434, requiring ComEd to file certain tariff changes to Rate GAP within ten days of the effective date of that Order. ComEd filed those revisions to Rate GAP to conform to the Commission's Final Order on April 11, 2012.

The Commission's Final Order in Docket 11-0434 also noted that ComEd, RESA and the Illinois Competitive Energy Association ("ICEA") supported a rulemaking proceeding. While Staff concurred that a rulemaking would be beneficial in developing statewide standards for governmental aggregation programs, Staff was unsure as to statutory authority and requested time to further investigate the issue and make a recommendation. The Commission agreed with its Staff and directed Staff to provide its findings and recommendations on this "important matter" within 60 days of the date of the Final Order. (Final Order, p. 27)

In response to the Commission's Final Order, Staff prepared a report, dated July 18, 2012, which concluded that the Commission has the statutory authority to promulgate rules regarding

governmental aggregation. Staff's report also identified a non-exclusive list of issues to be considered during the rulemaking.

On July 31, 2012, the Commission entered its initiating order in this proceeding, Ill. C. C. Docket 12-0456, to develop rules regarding municipal aggregation to implement the appropriate provisions of the IPA Act and the Public Utilities Act. To date, 21 petitions for leave to intervene have been filed in this proceeding; in addition, appearances have been entered by the Illinois Attorney General and the City of Chicago. Several workshops have been held in Docket 12-0456 regarding development of the proposed rules for governmental aggregation. Subsequent to those workshops, Staff filed and served its proposed rules on November 1, 2012 ("Staff's Proposed Rules"). Thereafter, pursuant to the schedule established by the Administrative Law Judge ("ALJ"), nine parties filed Verified Initial Comments on Staff's Proposed Rules and 13 parties and the Staff filed Verified Reply Comments. In addition to filing Reply Comments, the Caucus filed its Motion to Dismiss and a Memorandum in support of that motion.

II. THE CAUCUS' ARGUMENTS ARE WITHOUT MERIT.

The basic argument of the Caucus is that the Commission does not have the authority to issue rules to supervise and regulate governmental aggregators. (Memorandum, p. 1) In the Staff's Proposed Rules, a governmental aggregator is defined as "the corporate authorities of a municipality, a township board, or a country board in the aggregation area". (Section 470.10 of the Staff's Proposed Rules)

A. Contrary to the Caucus' arguments, the Commission is not attempting to usurp the authority of the Illinois Power Agency.

The first argument of the Caucus is that the Illinois Power Agency ("IPA") has authority over governmental aggregation programs. (Caucus Memorandum, pp. 2-5) This argument is incorrect. Under Section 1-92 of the IPA Act, the IPA has very limited authority. In fact, the IPA, which is an

Intervenor in this proceeding, acknowledges its limited authority: "Under Section 1-92 of the IPA Act, the IPA has two basic duties: (1) assist governments **upon request** with drafting plans of operation and governance and with bidding processes, and (2) provide residents information about price offers **upon request**." (IPA's Verified Reply Comments, p. 2, emphasis added) Thus, the IPA's "authority" under Section 1-92 of the IPA Act only comes into play when a governmental aggregator or a resident makes a request. As the IPA itself notes: "Due to the advisory nature of the IPA's duties under Section 1-92 of the IPA Act, the IPA has no current plans to undertake a complementary or competing rulemaking regarding municipal aggregation." (*Id.*) Moreover, with respect to Staff's Proposed Rules, the IPA found that they memorialize existing best practices and don't unduly restrict governmental aggregators: "the IPA notes that the proposed Commission rules, where they are applicable to governmental entities appear to memorialize the best practices that the IPA has observed and recommended, and do not appear to the IPA to unduly restrict governmental aggregators under Section 1-92". (*Id.*)

B. The Commission has authority to adopt governmental aggregation rules for electric utilities and Retail Electric Suppliers.

The second argument of the Caucus is that the Commission is relying on "implied powers' to regulate governmental aggregators. (Caucus Memorandum, pp. 5-8) This argument is also incorrect. As the Commission Staff has pointed out in its Reply Comments, Staff's Proposed Rules do not attempt to regulate governmental aggregators. In fact, Staff acknowledges that the Commission does not have jurisdiction over governmental aggregators. Rather, Staff's Proposed Rules would regulate electric utilities and Retail Electric Suppliers, entities which the Commission clearly has authority to regulate. (Staff's Verified Reply Comments, pp. 8-9) In fact, as demonstrated above, the Commission has already exercised this authority in relation to the governmental aggregation tariffs of Ameren and ComEd.

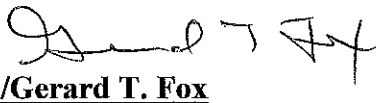
CONCLUSION

In conclusion, the Motion to Dismiss of the Metropolitan Mayors Caucus should be denied. The Commission clearly has authority to adopt rules governing electric utilities and Retail Electric Suppliers in relation to municipal aggregation programs.

Dated: January 9, 2013

Respectfully submitted,

Retail Energy Supply Association



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

VERIFICATION

Gerard T. Fox, being first duly sworn, on oath deposes and says that he is an attorney for the Retail Energy Supply Association, that he has read the foregoing Response of the Retail Energy Supply Association to the Motion to Dismiss of the Metropolitan Mayors Caucus, that he knows of the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

/s/Gerard T. Fox
Gerard T. Fox

Subscribed and sworn to me
This 9th day of January, 2013

OFFICIAL SEAL
BARBARA A HENDRICKSON
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/10/16

NOTICE OF FILING

Please take note that on January 9, 2013 I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Response of the Retail Energy Supply Association to the Motion to Dismiss of the Metropolitan Mayors Caucus in this proceeding.

Dated: January 9, 2013

/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 Reply Comments of the Retail Energy Supply Association upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for the instant docket via electronic delivery on January 9, 2013.

/s/Gerard T. Fox
Gerard T. Fox