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
BRIEF ON EXCEPTIONS

Pursuant to 83 Ill. Adm. Code Section 200.830 and the schedule established by the Administrative Law Judge ("ALJ") in this proceeding, the Retail Energy Supply Association ("RESA")[1] submits its Brief on Exceptions to the ALJ's Proposed Order ("ALJPO"), which was served on June 26, 2013 in this proceeding, concerning the adoption by the Illinois Commerce Commission ("Commission") of rules for governmental aggregation. The ALJPO carefully analyzes the positions of the parties in this proceeding and the proposed rules attached to the ALJPO (the "Proposed First Notice Rules") reflect appropriate modifications to the rules proposed by the Commission Staff in this proceeding (the "Staff's Draft Rules").

In general, Staff's Draft Rules tilted the playing field in favor of those Retail Electric Suppliers ("RES") who emphasize municipal aggregation as their preferred marketing channel, at the expense of those RESs employing direct methods requiring affirmative action on the part of the customer. However, nowhere in the Illinois Power Agency Act (20 ILCS 3855/1-1 *et seq*.) does it

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

state that municipal aggregation shall be the preferred way for residential and small commercial customers to reap the benefits of retail competition. In particular, RESA objected to provisions of the Staff's Draft Rules that would have facilitated the unauthorized switching of, or allow an Aggregation Supplier to market to, customers already being served by a RES. 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.

For this reason, RESA proposed to revise the definition of "Retail Customer" to limit it to bundled service customers of electric utilities. While rejecting RESA's proposed definition of "Retail Customer", the Proposed First Notice Rules create a distinction between the customer information that a Governmental Aggregator 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, prohibits the Aggregation Supplier from sending notices to RES customers and requires the Aggregation Supplier to destroy or return to the Governmental Aggregator any RES customer information that it receives from the Governmental Aggregator. While RESA would prefer that the Proposed First Notice Rules reflect RESA's definition of "Retail Customer", Proposed Section 470.240 helps satisfy RESA's main concern in this proceeding—that governmental aggregation programs not be used as a vehicle for the unauthorized switching of RES customers.

There are three changes to the Proposed First Notice Rules that RESA recommends be made to help ensure a level playing field for all forms of retail competition.

EXCEPTION NO. 1: Section 470.110 of the Proposed First Notice Rules should be revised to require the timely destruction of customer-specific information of customers who opt out of the Aggregation Program.

Proposed Subsection 470.110 (a) (3) of the Proposed First Notice Rules provides some protection against misuse of customer information by Aggregation Suppliers by requiring the disposal, deletion, and/or destruction of customer-specific information in the following two situations: 1) within 30 days following a customer's exit from the Aggregation Program, and 2) within 30 days following the end of the term during which the Aggregation Supplier is providing service to the Aggregation Program. However, there is one additional situation which should be covered: the Aggregation Supplier should dispose of, delete, and/or destroy all customer-specific information within 30 days after a customer opts out of the Aggregation Program. In concept, this is no different from the proposed requirement to destroy customer specific information when a customer exits the Aggregation Program. In addition, while it is appropriate to allow retention of customer-specific information to the extent required by record retention obligations imposed by law, it should be made clear that the Aggregation Supplier may not use such information for marketing purposes. RESA sees no support in the Illinois Power Agency Act for the notion that former Aggregation Suppliers should be allowed to utilize, for marketing purposes, customer information unavailable to other RES serving the competitive residential and small commercial customer retail electric market.

To accomplish this, Proposed Subsection 470.110 (a) (3) should be revised as follows:

> Except as otherwise required by record retention obligations imposed by applicable law, within 30 days following<u>: a customer opting out of the Aggregation Program,</u> a customer's exit from the Aggregation Program or the end of the term during which the Aggregation Supplier is providing service to the Aggregation Program the Aggregation Supplier must dispose of, delete, and/or destroy all customer-specific information in whatever format that is in its possession as a result of having been the Aggregation Supplier to an Aggregation Program. <u>The Aggregation Supplier may not use customer-specific information retained due to record retention obligations to market to customers.</u>

EXCEPTION NO. 2: Section 470.200 of the Proposed First Notice Rules should be revised to require the disclosure of compensation, inducements or other consideration provided by an Aggregation Supplier to a Governmental Authority.

RESA's understanding is that some Aggregation Suppliers provide some form of compensation, inducements or other consideration to the Governmental Authority. RESA believes that, in the interest of full disclosure, any such compensation, inducements or other consideration should be disclosed to the Commission to be made public on the Commission's website, along with the other information required by Section 470.200. Consequently, the following item should be added to Subsection 470.200 (a) of the Proposed First Notice Rules:

> 6) Any payments, inducements or donations, including civic contributions and consulting fees, made by the Aggregation Supplier, either directly or indirectly, to the Governmental Aggregator.

The ALJPO does not address RESA's proposal, but does address, then reject, a similar proposal by the Coalition of Energy Suppliers, stating that the proposed language is "too vague". Instead, the ALJPO adds to the Proposed First Notice Rules a requirement that the Aggregation Supplier file with the Commission a copy of the disclosure that is required pursuant to Subsection 1-92 (f) of the IPA Act.

However, Subsection 1-92 (f) of the IPA Act does not address compensation paid by Aggregation Suppliers to the Governmental Aggregator. It basically requires that consultants retained by the Governmental Aggregator to advise on the selection of an Aggregation Supplier to report any commissions or other remuneration received as a result of the selection of a particular Aggregation Supplier:

> (f) Any person or entity retained by a municipality or county, or jointly by more than one such unit of local government, to provide input, guidance, or advice in the selection of an

> electricity supplier for an aggregation program shall disclose in writing to the involved units of local government the nature of any relationship through which the person or entity may receive, either directly or indirectly, commissions or other remuneration as a result of the selection of any particular electricity supplier. The written disclosure must be made prior to formal approval by the involved units of local government of any professional services agreement with the person or entity, or no later than October 1, 2012 with respect to any such professional services agreement entered into prior to the effective date of this amendatory Act of the 97th General Assembly. The disclosure shall cover all direct and indirect relationships through which commissions or remuneration may result, including the pooling of commissions or remuneration among multiple persons or entities, and shall identify all involved electricity suppliers. The disclosure requirements in this subsection (f) are to be liberally construed to ensure that the nature of financial interests are fully revealed, and these disclosure requirements shall apply regardless of whether the involved person or entity is licensed under Section 16-115C of the Public Utilities Act. Any person or entity that fails to make the disclosure required under this subsection (f) is liable to the involved units of local government in an amount equal to all compensation paid to such person or entity by the units of local government for the input, guidance, or advice in the selection of an electricity supplier, plus reasonable attorneys fees and court costs incurred by the units of local government in connection with obtaining such amount.

Thus, Subsection 1-92 (f) of the IPA Act does not accomplish the same purpose as RESA's proposal to require the Aggregation Supplier to report any compensation paid to the Governmental Aggregator.

Moreover, RESA's proposal is very clear. If the Aggregation Supplier makes any payment or donation to the Governmental Aggregator, it should be reported to the Commission for publication on the Commission's website. Examples of reportable information would include a one-time cash payment from the Aggregation Supplier to the Governmental Aggregator, a donation of some type of property by the Aggregation Supplier to the Governmental Aggregator, and a payment based on the Aggregation Supplier's sales of electricity to customers within the Governmental Aggregator's jurisdiction (*e.g.* a payment per kWh billed to such customers).

EXCEPTION NO. 3: A new Subsection 470.210 (c) should be added to the First Notice Proposed Rules to address the return of customers in Aggregation Programs to utility default service.

It is RESA's understanding that in some Aggregation Programs, participating customers may be returned to default service with the electric utility under certain circumstances. However, such a return to default service triggers the minimum stay provisions of the electric utilities' tariffs. For example, pursuant to the Termination of Service provision in Commonwealth Edison Company's Rate BES, Basic Electric Service, if a customer is switched from service by a Retail Electric Supplier under Rate RDS, Retail Delivery Service, back to supply service under Rate BES, there is a minimum stay provision of one year, unless the customer switches to a different Retail Electric Supplier within two monthly billing periods. Consequently, customers being returned to utility default service from an Aggregation Program could very likely find themselves on the electric utility's default service for a year. To avoid this situation and to make customers aware of all their options, a new Subsection 470.210 (c) should be added which would read as follows:

> c) If the Aggregation Supplier is required by the Governmental Aggregator to return retail customers in the Aggregation Program to supply service with the electric utility, the Aggregation Supplier shall send a disclosure notice to all affected retail customers which shall state that customers have two monthly billing periods to purchase their electricity supply from another RES into order to avoid a twelve-month minimum stay requirement with the electric utility. The disclosure notice shall include the PlugInIllinois.org Internet address.

CONCLUSION

In conclusion, the ALJPO and the Proposed First Notice Rules represent a 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 should adopt the Proposed First Notice Rules, after reflecting the three exceptions raised by RESA in this Brief on Exceptions.

Dated: July 24, 2013

Respectfully submitted,

Retail Energy Supply Association

By: /s/Gerard T. Fox
Gerard T. Fox

Law Offices of Gerard T. Fox
Two Prudential Plaza
180 North Stetson
Suite 3500
Chicago, IL 60601
(312) 268-5674
gerardtfox@aol.com

NOTICE OF FILING

Please take note that on July 24, 2013, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Brief on Exception on behalf of the Retail Energy Supply Association in this proceeding.

Dated: July 24, 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 Brief of Exceptions 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 July 24, 2013.

/s/ GERARD T. FOX
Gerard T. Fox