**STATE OF ILLINOIS**
**ILLINOIS COMMERCE COMMISSION**

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

**THE RETAIL ENERGY SUPPLY ASSOCIATION**
**VERIFIED REPLY COMMENTS ON**
**THE COMMISSION STAFF'S DRAFT RULE**

Pursuant to the schedule established by the Administrative Law Judge in this proceeding, the Retail Energy Supply Association ("RESA")[1] submits its Verified Reply Comments on the Illinois Commerce Commission ("Commission") Staff's Proposed Rules ("Staff's Draft") filed, on November 1, 2012. In general, as demonstrated by RESA's Verified Comments, filed on November 28, 2012, Staff's Draft is unacceptable and requires substantive revision.

In addition to RESA, Verified Comments were also filed by the following parties: Ameren Illinois Utilities ("AIU"), Center for Neighborhood Technology, Coalition of Energy Suppliers ("CES"), Commonwealth Edison Company ("ComEd"), Illinois Competitive Energy Association ("ICEA"), the Metropolitan Mayors Caucus, Nicor Advanced Energy, and Wind on the Wires. In these Reply Comments, RESA will reply to the Comments of the CES, ICEA, the Metropolitan Mayors Caucus and Nicor Advanced Energy.

[1] RESA's members include Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; 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); PPL EnergyPlus, LLC; Reliant; 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.

In its Comments filed on November 28, 2012, RESA proposed modifications necessary to make Staff's Draft more competitively neutral. As drafted, Staff's Draft heavily tilts 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 does it state that municipal aggregation shall be the preferred way for residential and small commercial customers to reap the benefits of retail competition.

Before addressing specific comments of the other Parties, RESA would like to provide some background on the different approaches to customer acquisition. Unlike opt-out aggregation, all other sales efforts focus on customer acquisition through marketing methods requiring the affirmative response of customers. Such methods include direct mail, telemarketing, internet enrollment, and door to door solicitation. All of these methods require verification that the customer has made an informed decision to switch suppliers through compliance with Section 2EE of the Illinois Consumer Fraud and Deceptive Business Practices Act. In addition, internet enrollments must be in compliance with 83 Ill. Admin. Code Part 453. Moreover, the Commission, on December 5, 2012, adopted 83 Ill. Admin. Code Part 412, Obligations of Retail Electric Suppliers, effective January 1, 2013. Part 412 sets out specific procedures for all forms of marketing, except governmental aggregation. Also, unlike opt-out aggregation, all other sales efforts start with overt consumer authorization for the RES to obtain confidential account information. It is important that the rules adopted by the Commission in this proceeding establish appropriate protections for customers defaulting into governmental aggregation programs while also protecting the affirmative choice of a customer who shops with a RES.

**RESPONSE TO CES**

In general, CES has the same concerns of RESA that the Staff's Draft is not competitively neutral and favors those RESs emphasizing municipal aggregation as their marketing channel. (CES Comments, pp. 2-5)

Specifically, CES recommends that Staff's Draft should be revised to prohibit an early termination fee on opt-out customers. (*Id.*, p. 4) RESA agrees with this recommendation because customers obtained through opt-out municipal aggregation have not affirmatively signed up for service with the Aggregation Supplier.

CES would add a requirement that Aggregation Suppliers destroy all customer-specific information within 30 days after the end of the aggregation program. (CES Comments, Appendix A, p. 4) RESA agrees with this recommendation.

CES would add a requirement that Aggregation Suppliers disclose fees, *etc.*, paid by the Aggregation Supplier to the Governmental Aggregator. (*Id.*) RESA agrees with this recommendation and, in fact, proposed a similar requirement in its Verified Comments. (RESA Comments, pp. 7-8)

CES does not object to the disclosure of RES customer information to the Aggregation Suppliers, but would not allow RES customers to be part of the opt-out program and would allow Aggregation Suppliers to send information to RES customers about the aggregation program only upon such customers' request. (CES Comments, Appendix A, p. 6) RESA agrees in concept with CES' position, but supports its own position: customers being served by RESs are not "retail customers" eligible for opt-out municipal aggregation programs and the names, addresses and, most

importantly, the account numbers of such customers should not be provided to Governmental Aggregators for the reasons set forth in Section I of RESA's Verified Comments.

## RESPONSE TO NICOR ADVANCED ENERGY

Nicor Advanced Energy requests additional language to clarify that an existing or pending RES customer cannot be automatically enrolled as part of the opt-out program. (NAE Comments, p. 2) RESA agrees that the existing language should be clarified, but again supports its own position: customers being served by RESs are not "retail customers" eligible for opt-out municipal aggregation programs and the names, addresses and, most importantly, the account numbers of such customers should not be provided to Governmental Aggregators.

## RESPONSE TO ICEA

As currently drafted, the Staff's Draft seriously tilts the playing field in favor of those RESs which prefer municipal aggregation as their marketing channel. Consequently, RESA, in its Verified Comments, made recommendations to level the playing field. In sharp contrast, ICEA wants to tilt the playing field even further in favor of those RESs which prefer municipal aggregation as their marketing channel, by making the following recommendations:

- ICEA recommends deletion of the requirement that opt out letters contain the name and logo of the government entity. ICEA believes this is an issue for a government entity to address in its Plan of Governance and/or its contract with its chosen supplier. (ICEA Comments, pp. 3-4) RESA disagrees—this requirement would make opt-out aggregation programs less confusing to customers.

- ICEA recommends deletion of the requirement that aggregation disclosures include a statement regarding the customer's ability to purchase supply from a RES. (*Id.*, pp. 4-5) RESA disagrees-customers should be advised of their options so they can make an informed choice.

- ICEA recommends deletion of the requirement that the customer has two ways to opt-out, claiming this goes beyond the Commission's authority. (*Id.*, pp. 5-6) RESA disagrees—the opt-out process should not be burdensome to customers.

- ICEA recommends deletion of the minimum opt-out period, claiming this should be left to the discretion of the Governmental Aggregator. (*Id.*, pp. 6-7) RESA disagrees-customers should be given a reasonable time to exercise their rights to opt-out of a program.

- ICEA recommends deletion of the requirement that disclosure notices require information with respect to forfeiting net metering credits. (*Id.*, pp. 7-9) RESA disagrees—this information is necessary for net metering customers, or customers contemplating net metering, to make an informed decision.

- ICEA states that the decision whether to send a notice to customers receiving hourly service or service from a RES should be left to the discretion of the Governmental Aggregator. (*Id.*, pp. 9-11) RESA disagrees. ICEA's position is inconsistent with its request that Governmental Aggregators be granted all customer data and raises the question of why ICEA wants to have access to highly valuable data on competitors' customers if it does not even want to inform them about the municipal aggregation programs.

- ICEA recommends deletion of the requirement that customers have the ability to opt out every two years without paying an early termination fee, claiming that they are "opposed to the notion of standardized renewable periods during which customer must be...provided additional reminders of their ability to exit an aggregation program" (*Id*, p. 11) and also stating that this may be beyond the Commission's authority. (*Id.* pp. 11-12) RESA disagrees—governmental aggregation programs do not grant government aggregators a full-fledged utility monopoly on providing electricity supply to those aggregation customers. Customers should absolutely have the right to know about their options to switch away from the program and be able to switch away without paying an early termination fee for a program that they have not proactively joined.

In summary, the Commission should reject all of ICEA's proposed modifications. Those modifications are neither in the best interest of a competitive marketplace, nor in the best interest of customers.

**RESPONSE TO METROPOLITAN MAYORS CAUCUS**

The Metropolitan Mayors Caucus requests that the Commission withdraw Staff's Draft and take no further action in this proceeding because the Commission is exceeding its authority. (Mayors Caucus Comments, p. 15)

While having no rules would probably to preferable to Staff's Draft if ICEA's recommendations were accepted, RESA is confident that the Commission will reject the customer-unfriendly proposals of ICEA. RESA believes that Staff's Report demonstrates that the Commission has the necessary authority to adopt rules in this proceeding. (Staff Report, pp. 2-4)

## CONCLUSION

In conclusion, Staff's Draft is not in the best interest of promoting retail competition in Illinois. Rather it is in the best interest of those Retail Electric Suppliers which favor municipal aggregation as their marketing channel and extremely prejudicial against those Retail Electric Suppliers who use direct marketing channels. Staff's Draft should be revised to incorporate the revisions recommended by RESA in these Verified Comments. In contrast, the proposals of ICEA, which would be detrimental to customers and the competitive marketplace, should be rejected.

Dated: December 12, 2012

Respectfully submitted,
Retail Energy Supply Association

**By: /s/Gerard T. Fox**
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**STATE OF ILLINOIS** )
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**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 Reply 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 6/15/2013

Subscribed and sworn to me
This 12th day of December 2012

## NOTICE OF FILING

Please take note that on December 12, 2012 I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Verified Reply Comments of the Retail Energy Supply Association in this proceeding.

Dated: December 12, 2012

/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 December 12, 2012.

/s/Gerard T. Fox
Gerard T. Fox