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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
ILLINOIS COMMERCE)
COMMISSION ON ITS OWN)
MOTION,)
Petitioner,) No. 12-0456
)
Development and adoption)
of rules concerning)
municipal aggregation.)

Chicago, Illinois
March 8, 2013

Met, pursuant to adjournment, at 9:33 a.m.,
in Conference Room N-808, 160 North LaSalle Street,
Chicago, Illinois.

BEFORE:

Ms. Leslie Haynes, Administrative Law Judge

1 APPEARANCES:

2 ILLINOIS COMMERCE COMMISSION,
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3 LAW OFFICES OF GERARD T. FOX,
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1 APPEARANCES: (Via telephone) (CONT.)

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Also Present:

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ILLINOIS COMMERCE COMMISSION,
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I N D E X

WITNESS	DX	CX	RDX	RCX	By Judge
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None.

S T A F F E X H I B I T S

NUMBER	MARKED FOR ID	IN EVIDENCE
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None.

1 JUDGE HAYNES: Pursuant to the direction of the
2 Illinois Commerce Commission, I now call Docket
3 12-0456. This is the Illinois Commerce Commission on
4 its own motion, development and adoption of rules
5 concerning municipal aggregation.

6 May I have the appearances for the
7 record, please, starting with the hearing room in
8 Chicago?

9 MS. SWAN: On behalf of staff of the Illinois
10 Commerce Commission, Kimberly Swan, Jessica Cardoni,
11 and Michael Lannon, 160 North LaSalle Street, Suite
12 C-800, Chicago, Illinois, 60601.

13 MS. ADAMS: On behalf of the Metropolitan
14 Mayors Caucus, Barbara Adams, Holland & Knight, 131
15 South Dearborn Street, Chicago, Illinois.

16 MR. FOX: Gerald T. Fox, Two Prudential Plaza,
17 180 North Stetson, Suite 3500, Chicago, Illinois,
18 60601, appearing on behalf of the Retail Energy
19 Supply Association.

20 MR. SKEY: Good morning. On behalf of the
21 Coalition of Energy Suppliers, Christopher Skey,
22 S-k-e-y, law firm of Quarles & Brady, 300 North

1 LaSalle, Chicago, 60654.

2 MR. FOSCO: Carmen Fosco, Rooney, Rippie &
3 Ratnaswamy, LLP, appearing on behalf of the Prairie
4 Point Energy doing business as Nicor Advanced Energy.

5 MR. BLUME: Benjamin Blume of Cozen O'Connor,
6 333 West Wacker, Suite 1900 in Chicago 60606. And
7 I'm appearing on behalf of FirstEnergy Solutions.

8 MR. JOHNSON: And on behalf of Commonwealth
9 Edison Company, Mark R. Johnson and Jonathan M. Wier,
10 Eimer Stahl, LLP, 224 South Michigan Avenue, Suite
11 1100, Chicago, Illinois, 60604.

12 MS. SCHALLER: Shefsky & Froelich appearing on
13 behalf of the Illinois Competitive Energy
14 Association, 111 East Wacker, Suite 2800.

15 JUDGE HAYNES: And what's your name?

16 MS. SCHALLER: Oh, I'm sorry. Rachel Schaller.

17 JUDGE HAYNES: Thank you.

18 MR. BRADY: Good morning. Appearing on behalf
19 of Wind on the Wires, Sean R. Brady. Our address is
20 P.O. Box 4072, Wheaton, Illinois, 60189.

21 JUDGE HAYNES: And on the telephone?

22 MR. BRADY: Three one -- oh, I'm sorry.

1 JUDGE HAYNES: And who do we have on the
2 telephone today?

3 MR. O'BRIEN: On behalf of the People of the
4 State of Illinois, Timothy O'Brien, Office of the
5 Illinois Attorney General, 100 West Randolph, Floor
6 11, Chicago, Illinois, 60601.

7 MR. DEARMONT: This is Eric Dearmont on behalf
8 of Ameren Illinois Company d/b/a Ameren Illinois. My
9 business address is 1901 Chouteau Avenue, St. Louis,
10 Missouri, 63166.

11 MR. STRONG: On behalf of the Illinois Power
12 Agency, Michael Strong, 160 North LaSalle Street,
13 Suite C-504, Chicago, Illinois, 60601.

14 MR. GHOSHAL: On behalf of the Citizens Utility
15 Board, Orijit Ghoshal, G-h-o-s-h-a-l, 309 West
16 Washington Street, Suite 800, Chicago, Illinois,
17 60606.

18 JUDGE HAYNES: Are there any further
19 appearances? Let the record reflect that there are
20 none.

21 So I understand the parties got
22 together and spoke earlier this week and have

1 requested the status hearing. So who would like to
2 bring me up to date?

3 MR. LANNON: Well, I'll start.

4 JUDGE HAYNES: Okay.

5 MR. LANNON: Pursuant to your January 25
6 ruling, we followed your ruling and the suggestion by
7 ComEd to hold further workshops. We did clarify some
8 language in what would be staff's proposed draft rule
9 that I think most people, if not everyone, is on
10 board with just these clarifications. And we -- we
11 ran into a -- well, you know what? I'll let Barbara
12 explain that. I don't want to put -- I don't want to
13 characterize it wrongly. I'm not exactly sure what
14 we ran into.

15 JUDGE HAYNES: So, Ms. Adams -- and this is the
16 Mayors, right?

17 MS. ADAMS: Yes. I represent the Metropolitan
18 Mayors Caucus. And in response to some of the
19 comments that were made by the various parties in
20 their comments on our motion to dismiss and then
21 their reply comments on the rule, they asked
22 specifically that the Mayors Caucus provide some more

1 detailed comments on the rule, which the caucus was
2 hesitant to do before your Honor ruled on the motion
3 to dismiss. Once you ruled on the motion to dismiss,
4 they said we will take into account what you've said,
5 appreciate the guidance that you gave. We prepared
6 some comments, which we shared with the group. We
7 could not reach an agreement among ourselves about a
8 schedule for how comments could be shared with you as
9 far as there were some staff changes that are
10 proposed. The caucus had some changes that we
11 propose that we believe clarify and follow on your
12 order. We couldn't reach an agreement on a schedule
13 for how to allow various comments to be made. There
14 were also other parties in the room who said, well,
15 they might also have an interest in adding some
16 additional comments at this point in time. The
17 caucus would very much appreciate the opportunity to
18 place its comments in the record and allow your Honor
19 to have the opportunity to see our suggestions now
20 that we understand your thinking a little bit better
21 after your January 25 order. And we don't intend to
22 delay the proceeding. We're happy to move on an

1 expedited schedule to file those and to allow folks
2 to reply.

3 MR. LANNON: Your Honor, I'd just like to
4 respond and clarify that we had a schedule in place,
5 you know, per your order. Everyone's filed comments.
6 It's -- we didn't have a problem with a schedule in
7 the sense that we couldn't agree on a date. We have
8 a problem with whether there should be any more
9 formal comments at all. Now, we do have some
10 clarifications that we think would benefit everybody
11 in staff's proposed rule. However, the Mayors Caucus
12 wants to bring in these new comments. And frankly,
13 we would forego the opportunity to give you -- to
14 provide you with the clarifying language, if need be,
15 if the Mayors Caucus is going to get another
16 opportunity to provide comments, which I think
17 everyone else would then want to respond to. We --
18 muni aggregation is going on right now -- you know,
19 outside of the Commerce Commission. So we would like
20 to see this move forward as quickly as possible.

21 JUDGE HAYNES: So staff's clarifying language,
22 is that agreed to by everybody?

1 MR. LANNON: Well, I'm not a hundred percent
2 sure if it's agreed to by everybody. I think I'll
3 let everyone else speak for themselves on that.

4 MR. JOHNSON: It's agreed to by ComEd.

5 MR. FOX: We believe that the changes help
6 clarify. They're not very -- they're not really
7 major changes in the rule, and we agree with what
8 staff is proposing.

9 MR. SKEY: Your Honor, The Coalition of Energy
10 Suppliers' understanding was that there would be,
11 perhaps, a recirculation of those just so that
12 everybody's on the same page about what they are. I
13 think the characterization that they're relatively
14 minor is our understanding, but I don't think we have
15 an objection assuming that they are what we think
16 they are.

17 I would like to just make a quick
18 comment respectfully in response to Ms. Adams. I
19 think in contrast to the -- what I think we all agree
20 are relatively minor modifications that staff has
21 suggested, I think to be fair, the comments that MMC
22 is putting forward here is a substantial revision to

1 the rule that has already been proposed and commented
2 on by folks. So I would not -- we would view their,
3 quote, comments very differently than we would review
4 the -- than we would view the minor comments that
5 staff has now put forward. They're in a different
6 category.

7 JUDGE HAYNES: I see lots of nodding heads.

8 So, Ms. Adams, I don't know what
9 specificity you want to go into, but what nature of
10 comments are you looking to file?

11 MS. ADAMS: We have -- I guess you could call
12 it several -- there are several categories of
13 comments that we had suggested. Some were in the
14 nature of -- some go to what we see is the heart of
15 the matter here, which is what is the relative
16 jurisdiction of the Commerce Commission as regulator
17 of various parties to aggregation and the
18 regulator -- and the powers of the local government
19 aggregators, which we believe the general assembly
20 has assigned to them and not to the commission. And
21 so we have some fairly fundamental philosophical
22 issue, I think, about what did the general assembly

1 give to each of the parties here and how do we best
2 implement that in the rule. We made some suggestions
3 that actually are just in a couple of provisions of
4 the rule that recognize -- that would recognize the
5 local aggregator's authority to make certain
6 decisions that we feel that the commission is taking
7 on and mandating to local governments, and we feel
8 that that's beyond their scope as everybody knows
9 from the papers that we filed. So that's one
10 category. I think there's probably a handful of
11 provisions that that affects.

12 We've made some other suggestions that
13 we think are much more in the nature of sort of
14 getting the process right, practical things that our
15 municipalities have encountered in dealing with
16 aggregation and that they foresee in dealing with
17 aggregation in trying to organize -- there's a series
18 of provisions about notices and disclosure that the
19 Mayors found confusing and, I think, some other
20 parties made similar comments that they were
21 confusing. We have proposed a really -- just a
22 rearrangement of much of the text of those into a

1 much more -- into a more concise structure that
2 provides for what general disclosures are made to
3 everybody, what disclosures are made in certain opt
4 in and opt out situations, so that parties can more
5 easily see what are mandates to the suppliers from
6 the commission and what are things that are left to
7 be locally determined. So although it looks -- if
8 you black line it, it looks like a lot of stuff is
9 going on. If you actually look at what is -- at
10 least, in my compare program -- green text simply
11 means it's moved around. There's a lot of green.
12 There's a lot of stuff that is simply being moved
13 from one place to another to try to make it more
14 comfortable. Part of the reason that the caucus
15 opted not to give extensive comments at the beginning
16 of the proceeding in detail like this was because
17 they found the rule so dense that they found it
18 extremely difficult to even understand what was going
19 on in it. Once we had your order and your Honor
20 said -- you know, you saw that there were some
21 distinctions -- we took it to mean there's some
22 distinctions that you would see within the process --

1 the caucus then said, okay, we're willing to spend
2 some public funds to help sort this out. And so
3 that's really the nature of the comments, one goes to
4 the general question of who has the authority to
5 regulate what, which we think might help your Honor
6 to figure out what you want to put in your first
7 order. The others are things that we think if folks
8 could get past the first question I think they might
9 think that some of these other things are actually
10 clarifying.

11 MR. LANNON: Your Honor, if I could just
12 respond briefly.

13 JUDGE HAYNES: Sure.

14 MR. LANNON: I agree with Barbara that there is
15 the threshold legal issue of authority. Now, that
16 has been fully briefed. Our comments all address
17 that.

18 The second point I'd like to make, as
19 far as staff proposing a dense rule, that rule came
20 out of many workshops where everybody participated.
21 And I don't know. How long did they go on, Torsten?
22 Months of workshops. Now ,the Mayors Caucus for

1 whatever reason didn't deem it advisable for them to
2 be at these workshops. They came in late, and they
3 have to take the record as it is or was. But they
4 have had the full opportunity to already provide
5 comments.

6 JUDGE HAYNES: I'm -- the question I'm
7 wondering is -- well, I never know how much I should
8 say either. But I've been working on this
9 extensively, and I intend to address the jurisdiction
10 issue. My rewrite of the rule will similarly look
11 like I've completely written the whole thing. And
12 I'm just wondering now -- because as staff points
13 out, the jurisdictional issue is fully briefed, and I
14 don't think I want to read more briefs on that before
15 I write my rule again. And I'm wondering why it
16 couldn't -- the briefs on exceptions, why you think
17 that the briefs on exceptions or replies to
18 exceptions wouldn't provide enough of an opportunity
19 for the caucus to get your position on the record
20 because you would have the opportunity to provide --
21 offer language at that point.

22 MS. ADAMS: And we understand that. And I

1 think that given that -- and I think I'm allowed to
2 say this without violating our understanding of the
3 workshops -- given that we were encouraged strongly
4 by the parties to tell the parties everything we saw
5 in the rules in detail, that's what we did.

6 JUDGE HAYNES: Ah-huh.

7 MS. ADAMS: I think -- I think maybe people are
8 surprised by that, you know. And I can understand
9 that they might be a little surprised by it. But I
10 think the caucus's view was -- since they've asked us
11 to do the work -- we'd like your Honor to have the
12 benefit of the work. And our view was that if it was
13 available to you earlier rather than later, it might
14 ultimately speed up the exceptions process a little
15 bit because you might be closer to some -- to some
16 consensus. But, you know, I understand people have
17 different views of the matter. But I was not
18 authorized by my client to agree to a staff filing
19 unless we were allowed to do a parallel filing, and I
20 don't have an opportunity to talk to my client until
21 Monday about that when there's an executive board
22 meeting, so that's the predicament that I am in.

1 JUDGE HAYNES: And I'd have to say it's either
2 both or neither because I have rewritten so much
3 already that any agreed language that staff has come
4 up with at this point, just because the comments are
5 so diverse on policy issues, and then I've also
6 addressed, perhaps, what Ms. Adams talks about with
7 the organization of what should be included in the
8 notices, and I'm wondering at this point if even
9 agreed to language, clarifying language is -- would
10 be even helpful.

11 MR. LANNON: Your Honor, like I said -- I think
12 I said earlier -- we would forego that if we would
13 just move on to your proposed order and exceptions,
14 that it seems like since you're already -- it sounds
15 like you're pretty far down the road yourself -- that
16 we may have already missed that opportunity so --

17 JUDGE HAYNES: I mean, don't get me wrong.
18 It's not written. But, you know, part of what I'm
19 afraid of is I've done so much thinking about it and
20 then if I get more thrown in and then it's just -- I
21 have to think about all of that and then --

22 MR. LANNON: And I also want to point out, you

1 know, we did have not just the one workshop this
2 week. We had another one, and did we have a phone
3 call, too, Torsten?

4 MR. CLAUSEN: Well, we had one phone call and
5 one workshop.

6 MR. LANNON: One phone call and one workshop.
7 And really, we're at the same place we were before.

8 JUDGE HAYNES: Yes. And my hope in suggesting,
9 perhaps, workshops was that people could come to some
10 agreement. But, you know, if that's not going to
11 happen, getting more stuff now I'm afraid will just
12 muddle everything.

13 MR. LANNON: Yeah. I mean, we did come to an
14 agreement on some clarifying language, but the
15 threshold issue just keeps getting in the way.

16 JUDGE HAYNES: Right.

17 MS. ADAMS: And the caucus did appreciate the
18 opportunity to have the conversation. I think -- I
19 think the parties shared some of their concerns from
20 their perspective, which I think is helpful to the
21 Mayors in understanding where they're coming from. I
22 think that was useful. But we do have this threshold

1 issue of what exactly did the general assembly mean
2 to have us all be doing. And, you know, we thought
3 that our suggestions would help you see, at least,
4 where the Mayors were coming from on the point. But,
5 perhaps, you feel that you know enough from our
6 various other filings that you have a pretty good
7 idea, and we would respect that as well.

8 JUDGE HAYNES: You know, let me take a break.
9 Let's take like a 10-minute break, and I'll come
10 back.

11 MR. LANNON: Thank you, your Honor.

12 JUDGE HAYNES: Thank you.

13

14 (After a short break, the
15 proceedings were resumed as
16 follows:)

17

18 JUDGE HAYNES: Okay. We're back on the record.

19 So I think that -- I don't want
20 additional comments at this point. The caucus -- I
21 believe you even said that you chose not to file more
22 comprehensive comments earlier. And for that reason,

1 I'm reluctant to open this up again to more comments.
2 But it also sounds as though I may be addressing some
3 of the issues -- obviously, I don't know everything
4 you'd be proposing -- some of the issues that you
5 raised in my version of the rule. And so for that
6 reason, I don't think I want more comments. But I
7 also think that would make it easier because it
8 sounds like I would just end up with lots of
9 versions -- more versions of the rule to consider.
10 And if there was just one version now coming out of
11 all of these comments, I think it would be easier for
12 the parties to all work off of now my version, which
13 you can all unite together to hate, I'm sure. And I
14 think on exceptions it would be cleaner, and
15 everybody will have the opportunity to tell me
16 everything I've done wrong at that point. And so I
17 guess that I don't want additional comments, and I'm
18 just trying to get an order out at this point. So is
19 there anything else that we need to talk about? I
20 think that the record is just being continued
21 generally, and I don't have -- you know, because
22 there are so many issues and I'm trying to get this

1 thing out, but it is a dense rule. So I can't give
2 you an exact date. And if there's nothing else, then
3 this is continued generally.

4 MR. FOSCO: Carmen Fosco on behalf of Nicor
5 Advanced Energy.

6 JUDGE HAYNES: Ah-huh.

7 MR. FOSCO: I figured if we had a brief on
8 exceptions schedule, maybe that would be the only
9 thing worth discussing given what was discussed
10 today, what sort of schedule we were anticipating for
11 briefs on exceptions.

12 JUDGE HAYNES: You mean just like how many
13 weeks because I don't have a date?

14 MR. FOSCO: Yes. It sounds like maybe slightly
15 longer than normal would be fine.

16 MR. LANNON: Yes, we -- I mean, our position is
17 we'd like to move this along as quick as possible.
18 But we understand, your Honor, that, you know, you're
19 going to need a certain amount of time to do your
20 proposed order and along with what sounds like
21 substantive changes, many changes to your rule,
22 which, of course, we don't mind but we accept. But

1 if you'd like to -- when you issue the PO, if you'd
2 like to schedule exceptions at that time, I think we
3 could live with that and maybe a two-week is --

4 MR. FOSCO: Yes, my concern was on the reply
5 exceptions. If there were going to be lots of new
6 language, I just think the parties --

7 JUDGE HAYNES: Normally, it's two weeks and one
8 week, which I could see would be very short. Anybody
9 have an alternate?

10 MR. LANNON: Two weeks two weeks?

11 JUDGE HAYNES: Two weeks two weeks? That's
12 fine. And if I forget to do that in the order, I'm
13 sure you'll let me know.

14 Anything else? Okay. This matter is
15 continued generally, then. Thank you.

16 MR. LANNON: Thank you, your Honor.

17 MS. ADAMS: Thank you, your Honor.

18

19 (WHEREUPON, the proceedings have
20 been continued generally.)

21

22