

ICEA strongly disagrees with the basis for granting the Motions in the Proposed Order for the reasons outlined in its Response to RESA's and Staff's Motions to Dismiss (ICEA Response to Motions to Dismiss at 3-8). ICEA respectfully requests that the Proposed Order be revised to include that the additional issues raised by ComEd and ICEA provide ample reasons to deny the Motions. Correspondingly, ICEA requests that the Proposed Order also be revised to deny the Motions. The Proposed Order relies almost exclusively on Staff's and RESA's contentions that efficiency and economy would be harmed by addressing the provision of data to communities with municipal aggregation programs by ComEd, when the rules as currently proposed in Docket 12-0456 also address this issue. By relying on these contentions to support granting the Motions, the Proposed Order ignores the operational inefficiencies to government aggregation programs -- many of which are occurring in 2013 and early 2014 -- and the delay and disruption of customer benefits that will result if the tariff revisions proposed by ComEd are not more quickly adopted. Moreover, the Proposed Order fails to consider current law and Commission precedent.

Exception 1: The Proposed Order Should be Revised to Recognize the Inefficiency of Waiting for Final Rules in Docket 12-0456

The Proposed Order ignores the uncertainty and inefficiencies that will result if Revised Rate GAP Petition is not approved in an expeditious manner. Despite the fact that the most recent draft of proposed rules in Docket 12-0456 addresses the same issues dealt with in the Revised Rate GAP Petition, the relevant provisions of the proposed rules are subject to change throughout the Commission's rulemaking process. The resulting rules, if any, may also be subject to jurisdictional and Illinois Procedures Act challenges even after final rules are issued by the Commission. The uncertainties related to relying

on an incomplete rulemaking docket were noted in both ComEd and ICEA's responses to the Motions. Also covered in both responses were details about the continued inefficiencies of the current process for distributing the customer information necessary to carry out municipal aggregations in accordance with law. Yet, the Proposed Order fails to address or even mention the uncertainties of the rulemaking process or the inefficiencies that result from ComEd's current Rate GAP procedures.

An example of the length of time it may take for the adoption of new Commission rules can be found in another Commission rulemaking proceeding also related to retail competition. The Commission's rulemaking proceeding to adopt 83 Ill. Admin. Code § 412 under Commission Docket 09-0592 ("Part 412") took over three years from the initial filing until the issuance of final rules. Even with final rules issued, Part 412 still appears to require correction by the Commission to bring the rules into compliance with the Illinois Administrative Procedures Act and to avoid a potential challenge. Like Docket 12-0456, Part 412 relates to retail electric service. Unlike Docket 12-0456, the Commission's jurisdiction over entities subject to Part 412 was not nearly as controversial as they are in the Docket 12-0456 rulemaking. While particular aspects of the Commission's authority were questioned in that rulemaking, its jurisdiction over ARES in general was not at issue in Part 412. Taking this added controversy into account, the timing and uncertainty of the outcome in Docket 12-0456 is perhaps even greater than is was for Part 412.

Similarly, ICEA observes that Docket 12-0456 appears to be taking the same lengthy procedural and contentious path as Docket 09-0592. ICEA notes that the Commission entered its Initiating Order in Docket 12-0456 on July 31, 2012. Intervening

parties and Staff conducted several workshops throughout the months of September and October, 2012, and Staff filed its Verified Comments on November 1, 2012. Going into the rulemaking, a number of parties envisioned a timely Docket schedule that would result in the implementation of municipal aggregation rules to guide government aggregation programs going-forward and to further the competitive retail electric market. ICEA, whose member companies have won virtually all of the government aggregation programs, is highly pessimistic that the Docket 12-0456 rulemaking will be concluded in a timely manner to be of measurable benefit to these government aggregation programs with expiring contracts or to those government aggregation programs that have been approved recently by referenda. Given the uncertainty surrounding Docket 12-0456, ICEA believes that it would be prudent, efficient and judicious for the Commission to approve ComEd's Rate GAP Petition.

The establishment and voter approval of new municipal aggregations continues at a steady pace in ComEd's service territory. Likewise, existing municipal aggregations are soliciting bids from new alternative retail electric suppliers ("ARES") as their current retail electric supply contracts expire. Efficient provision of data by ComEd, and the corresponding reduced risk of inadvertent enrollment or opt-out notice process errors, would benefit communities and customers through more efficient opt-out notification processes with a minimized risk of data errors. Both ICEA and ComEd provided ample information in their responses to the Motions on why the changes in Revised Rate GAP would enhance efficiency. On the flip-side, granting the Motions would only serve to perpetuate these same inefficiencies. Any errors in processing the customer information under ComEd's current Rate GAP would likely require Commission time and attention.

Issues between incumbent ARES serving an existing municipal aggregation community and any new ARES selected by the community after the expiration of the incumbent's agreement could also end up before the Commission or the courts taking up yet more resources.

Assuming that, like Part 412, after 3 years of rulemaking, Docket 12-0456 ultimately results in a rule that addresses the single list format for municipal aggregation, it makes little sense to wait to approve a tariff that improves processes so important to the smooth functioning of municipal aggregations. The relatively nominal burden of having to update Rate GAP should it end up inconsistent with whatever rules are ultimately adopted in Docket 12-0456, is certainly more efficient than risking data errors and contract disputes that are sure to demand Commission and possibly court resources in the meantime.

Exception 2: The Proposed Order Should be Revised to Reflect the Current State of the Law with Respect to Provision of Data By ComEd to Municipal Aggregations

The Proposed Order fails to recognize that the provision of account numbers through a single list under Revised Rate GAP is supported by both statute and Commission precedent, and that Revised Rate GAP is consistent and compliant with the current state of law on the issue. Instead the Proposed Order points to the Docket 12-0456 rulemaking proceeding. As discussed above, Docket 12-0456 is an ongoing process that may or may not ultimately address the more efficient process for the provision of customer data to municipal aggregations that can be readily accomplished through ComEd's Revised Rate GAP. The threshold question that begs for an answer is as follows: Should the Commission look to current law and its own precedent to make

decisions that are beneficial to the market and consumers today or, instead, should the Commission allow these identified inefficiencies to linger indefinitely while an unsettled and uncertain rulemaking proceeding plays out? By failing to consider or include any analysis of the current state of the law, the Proposed Order presents a misleading picture and fails to properly answer this question. The Proposed Order should be revised to reflect the current state of the law with respect to the revisions to the tariff ComEd proposes. To start with, the statute governing municipal aggregation provides that:

[A]n electric utility that provides residential and small commercial retail electric service in the aggregate area must, upon request of the corporate authorities, township board, or the county board in the aggregate area, submit to the requesting party, in an electronic format, *those account numbers, names, and addresses* of residential and small commercial retail customers in the aggregate area that are reflected in the electric utility's records at the time of the request...20 ILCS 3855/1-92 (emphasis added).

Thus, the statute requires a utility like ComEd to provide customer account information, including account numbers, to municipal aggregators. There is no portion of the statute that requires the information be provided in separate lists as it is currently done under ComEd's tariff. Indeed, use of the word "and" suggests the statute contemplates the information be provided all together as it would be under ComEd's Revised Rate GAP. As an additional consideration, the Commission's own precedent supports this view. Ameren's Rate-GA tariff was filed on March 1, 2012, the Commission approved Staff's Do Not Suspend Recommendation on April 4, 2012 and the tariff became effective on April 15, 2012. Under Ameren's tariff, customer data is provided to municipal aggregators in a single list format just as ComEd's Revised Rate GAP would. While the Docket 12-0456 rulemaking is an ongoing proceeding with many unsettled issues that have yet to benefit from a final determination of the Commission,

the question of whether a single list format for municipal aggregation is lawful has been squarely addressed by both the legislature and this Commission.

The Proposed Order should be revised to include references to the governing statutes and more discussion of the Commission's approval of Ameren's Rate-GA tariff. The statute and Ameren's existing Rate-GA tariff do provide certainty; a single list format is lawful, and the unchallenged Rate-GA tariff that the Commission approved for Ameren service territory confirms this. The fact is that current law supports ComEd's Revised Rate GAP, and that current law should guide the Proposed Order, not speculation about what may or may not result from a rulemaking that will take some time to conclude.

Exception 3: The Proposed Order Should be Revised to Deny the Motions.

As discussed above, a complete analysis and exposition in the Proposed Order of the inefficiencies that would be imposed upon, and potential risks to, municipal aggregation programs by delaying the single list format (including account numbers) is lacking in the Proposed Order granting the Motions. ICEA respectfully suggests, supported by the arguments set forth above, that it would be more inefficient to grant the Motions and delay ComEd's tariff changes. The Proposed Order should be revised to deny the Motions, avoid the corresponding administrative inefficiencies in ComEd's current process, and allow ComEd's Revised Rate GAP tariff to move forward.

Current law and practice also support the single list process that is currently successfully used in Ameren's service territory. The Ameren Rate GA process was raised by ICEA in its response and should have been more fully addressed in the Proposed Order. ICEA believes that current law and practice clearly warrant a revision to the Proposed Order to deny the Motions.

CONCLUSION

ICEA respectfully requests that the Proposed Order be revised as set forth above, and that the ALJ issue a ruling denying Staff and RESA's Motions to Dismiss in this matter.

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Respectfully Submitted,

THE ILLINOIS COMPETITIVE ENERGY
ASSOCIATION

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