

**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.**    )

**AMEREN ILLINOIS COMPANY'S BRIEF ON EXCEPTIONS  
TO THE PROPOSED FIRST NOTICE ORDER**

COMES NOW Ameren Illinois Company d/b/a Ameren Illinois (“Ameren Illinois”, “AIC”, or “Company”), by and through counsel, and respectfully submits its Brief on Exceptions (“BOE”) to the Proposed First Notice Order (“the Proposed Order”) issued by the Administrative Law Judge (“ALJ”) in the above-captioned docket. In support of its BOE, and the changes recommended herein, Ameren Illinois states as follows:

**I. INTRODUCTION AND BACKGROUND**

**A. OVERVIEW OF EXCEPTIONS OFFERED**

To date, Ameren Illinois has worked together with municipal leaders, Retail Electric Suppliers (“RESs”), and Agents, Brokers and Consultants (“ABCs”) to facilitate municipal aggregation of retail electric load in over 320 communities in central and southern Illinois. The procedures memorializing this facilitation (i.e. Ameren Illinois' role in municipal aggregation) are currently found in the Company's Aggregation Services tariff (“the Aggregation Tariff”).

Unfortunately, Ameren Illinois is concerned that certain portions of proposed Part 470 (“the Proposed Rule”) and/or the Proposed Order may be read to conflict with the Company's established practices and its Commission-approved Aggregation Tariff. The purpose of this filing is (1) to convey Ameren Illinois' interpretation of the Proposed Rule and the Proposed Order as applied to the Company's Aggregation Tariff; (2) to seek clarification in the event the

ALJ disagrees with such interpretation; and, (3) to take exception to the Proposed Order and Proposed Rule where harmonizing these documents with Ameren Illinois' practices may not be possible and/or where additional language may help clarify the intent of the Proposed Rule and/or Proposed Order. In addition, Ameren Illinois takes exception to two additional items where amended language will better promote market flexibility and process evolution in the future.

In placing these comments in context, Ameren Illinois is concerned that the Proposed Order and/or the Proposed Rule may have the intentional or unintentional effect of unraveling a process that has proven extremely successful in practice. In the interests of ensuring clarity and effective operation of a rule governing municipal aggregation, the Company offers three enumerated exceptions as well as two exhibits reflecting the related changes to the Proposed Rule and the Proposed Order resulting from the exceptions taken.

**B. BACKGROUND - AMEREN ILLINOIS' GOVERNMENT AGGREGATION SERVICES TARIFF**

As explained in Ameren Illinois' Verified Reply Comments and recognized in the Proposed Order, Ameren Illinois currently employs a two-step process in exchanging information necessary to facilitate an aggregation event. This process is memorialized in an effective tariff, which was approved by operation of law pursuant to 220 ILCS 5/9-201. "Under the first step of this process Ameren Illinois creates and distributes a list of premises to the [Governmental Aggregator ("GA")] for the GA to review and verify as containing premises eligible for the aggregation event (i.e. within the GA's aggregation-eligible boundaries). Verified Reply Comments, p. 5. As part of this "first step", "the GA has the option of obtaining preliminary, aggregate load data and a preliminary customer list." Id. To be clear, this "step one" information does not contain customer account numbers, but does contain customer names

and addresses, as well as basic supply type information. This information is the type of information that would be used by a GA to determine the pool of consumers eligible for aggregation and to ensure the accuracy of bids generated by suppliers.

In respect to timing, "Ameren Illinois will provide this [step-one] information upon receiving information indicating that an ordinance or referendum has been certified to be placed on an upcoming ballot, but before the vote pertaining to the aggregation event." Id. (emphasis in original). To be clear, even in the case of opt-out aggregation (which requires a referendum to be placed on an upcoming ballot) Ameren Illinois will not release this information until an ordinance has been passed approving the referendum language to be placed on the ballot. In this respect, an ordinance to be passed in both the case of opt-in and opt-out aggregation prior to the Company provide the "step one" information described herein. "Upon receiving the certified results of the [opt-in] ordinance or [opt-out] referendum approving aggregation, Ameren Illinois will then engage in the second step of its two-step process and transmit to the GA what Ameren Illinois terms as 'customer information,' and which includes but is not limited to customer account numbers and other billing-related data and information." Id.

### **C. PROPOSED RULE SECTION 470.100 - TRANSFER OF CUSTOMER INFORMATION**

For ease of reference, Proposed Rule Section 470.100 – the section providing for the transfer of customer information and which is the focal point of this filing – is reproduced in full as follows:

- a) Upon request of a Governmental Aggregator and receipt of a verification from the Governmental Aggregator that either an ordinance has been adopted authorizing an Opt-in Aggregation Program, pursuant to Section 1-92 of the IPA Act, or an ordinance has been adopted and a referendum passed authorizing an Opt-out Aggregation Program, pursuant to Section 1-92 of the IPA Act, the electric utility shall provide the information required in this subsection. If, however, the Governmental Aggregator is a township board, then the electric utility's obligation to provide customer

account numbers is contingent upon the township board first providing an accurate customer list to the electric utility. The electric utility shall provide to the Governmental Aggregator, in electronic format, the following:

- 1) the account numbers, names, and addresses of all residential and small commercial retail customers on utility fixed price service in the Aggregate Area that are reflected in the electric utility's records at the time of the request;
  - 2) the account numbers, names, and addresses of every residential and small commercial retail customer in the Aggregate Area that receives, or has applied to receive, RES service. The identification of customers that receive RES service, or who have applied to receive RES service, shall not include the name of the RES providing such services; and
  - 3) the account numbers, names, and addresses of every residential and small commercial retail customer in the Aggregate Area that receives, or has applied to receive, utility hourly service.
- b) If requested by the Governmental Aggregator, the Incumbent Aggregation Supplier shall provide the Governmental Aggregator with information that allows the Governmental Aggregator to identify Aggregation Customers. Unless otherwise agreed upon between the Governmental Aggregator and the Incumbent Aggregation Supplier, the identifying information shall be provided within 10 business days after the request.

Proposed Rule § 470.100.

## **II. EXCEPTIONS**

### **A. EXCEPTION NO. 1 – POTENTIAL CONFLICT BETWEEN PROPOSED RULE SECTION 470.100 AND AMEREN ILLINOIS' AGGREGATION TARIFF**

#### **i. TIMING OF TRANSFER**

Ameren Illinois does not read the Proposed Rule, in isolation, as to conflict with its Aggregation Tariff, but is concerned that the discussion in the Proposed Order may reflect a differing interpretation of these provisions. As reproduced above, Proposed Rule Section 470.100(a) provides the circumstances under which a utility "shall" provide certain types of

information, including customer names, addresses and account numbers. The Proposed Rule does not provide that such information, or at least certain types thereof, "may not" or "shall not" be provided prior to the events described therein. And this is consistent with the IPA Act, namely Subsection 1-92(c)(2), which merely ties providing such information to a request received by an electric utility from corporate authorities ("...an 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; provided, however, that any township board has first provided an accurate customer list to the electric utility as provided for herein.).

The Proposed Order, however, may be read to reflect a different interpretation of Proposed Rule Section 470.100(a). Specifically, the Proposed Order begins by noting the access of GAs to "general load data" pursuant to 16-122(c) of the Public Utilities Act ("the Act"), codified at 220 ILCS 16-122(c). The Proposed Order then states as follows:

After the ordinance is passed, and referendum if it is an opt-out program, the Governmental Aggregator can receive the names, addresses and account numbers from the utility. It is not explained why a local government would need more information before it is actually a Governmental Aggregator. Until it has passed the ordinance, and possibly referendum, it is not qualified to receive any additional information. In other words, the Commission agrees with ComEd. The Proposed Rule requires that the Governmental Aggregator must verify that either an ordinance has been adopted authorizing an Opt-in Aggregation Program or an ordinance has been adopted and a referendum passed authorizing an Opt-out Aggregation Program before it can receive the customer specific information.

Proposed Order, pp. 17-18.

As applied to Ameren Illinois' Aggregation Tariff, and as indicated above, Ameren Illinois will provide customer names, addresses and basic supply type information prior to passage of an opt-out referendum. Ameren Illinois will not, however, provide account numbers until after it receives certification of opt-out referendum results.

With this in mind, Ameren Illinois deconstructs the related Proposed Order discussion as follows:

- After the [opt-in] ordinance is passed, and referendum if it is an opt-out program, the Governmental Aggregator can receive the names, addresses and account numbers from the utility.

Ameren Illinois agrees, and this interpretation is consistent with its Aggregation Tariff. As with the language of the Proposed Rule, the statement does not appear to reflect an intention to prohibit providing customer names and/or addresses to a GA prior to passage of an opt-out referendum.

- It is not explained why a local government would need more information before it is actually a Governmental Aggregator.

Ameren Illinois agrees that a GA does not need account numbers prior to passage of an opt-in ordinance or opt-out referendum and said account numbers are not provided by Ameren Illinois until passage of such. Ameren Illinois would, however, point out the practical utility in providing in providing (1) customer names and addresses and (2) the additional "step one" information prior to passage of and opt-in ordinance or opt-out referendum, as has been the Company's tariffed practices.

In respect to names and address, as is discussed below, providing this information sooner than later helps reduce delay in determining which customers are, in fact, eligible to be

aggregated. This determination has to be made prior to switching. Delaying such determination until after passage of an ordinance or referendum only means that as a practical matter, more time will elapse between the time the governmental authorities (in the case of an ordinance) or the voters (in the case of a referendum) express their intent to aggregate and when they can actually do it.

In respect to the additional supply type information transmitted by Ameren Illinois during "step one" of its tariffed process, this information helps ensure that governmental authorities have at their disposal additional information designed to help them obtain accurate and appropriate forecasts and estimates from potential aggregation suppliers in respect to the loads that are eligible for aggregation. Perhaps more importantly, the early information significantly helps the GA prepare educational materials, aggregation-related communication materials, and, potentially, rules of governance. Early information also helps the GA understand utility rate impacts to consumers. These all have a positive impact for consumers.

- Until it has passed the ordinance, and possibly referendum, it is not qualified to receive any additional information.

Ameren Illinois agrees that a governmental authority does not need customer account numbers prior to passage of an opt-in ordinance or an opt-out referendum, but disagrees in respect to the additional information currently provided by Ameren Illinois for the reasons expressed herein.

- In other words, the Commission agrees with ComEd.

Ameren Illinois is uncertain about the effect of this statement, or the intent behind it. As contained in ComEd's Verified Initial Comments, ComEd sought clarification indicating that a GA "may only request customer information following passage of an ordinance authorizing municipal aggregation." See ComEd Verified Initial Comments, p. 5. However, "customer

information" is not defined therein. Therefore, as stated in Ameren Illinois' Verified Reply Comments, "[t]o the extent ComEd defines 'customer information' to include information provided by Ameren Illinois during the first step of its process (i.e. a customer list), Ameren Illinois cannot agree that this information cannot be transmitted until the utility has received the certified results of the aggregation-related ordinance or referendum." Ameren Illinois' Verified Reply Comments, p. 5. "To the extent ComEd defines 'customer information' as containing the type of information provide by Ameren Illinois during the second step of its aggregation process (account numbers, etc.) Ameren Illinois would support ComEd's suggestion, which, if interpreted in this manner would fall in line with Ameren Illinois' Municipal Aggregation Services tariff and its interpretation of the IPA Act." Id. at 6.

- The Proposed Rule requires that the Governmental Aggregator must verify that either an ordinance has been adopted authorizing an Opt-in Aggregation Program or an ordinance has been adopted and a referendum passed authorizing an Opt-out Aggregation Program before it can receive the customer specific information.

As indicated above, Ameren Illinois agrees to the extent that the "customer specific information" is construed to mean customer account numbers. This is consistent with Ameren Illinois' Government Aggregation Tariff and its comments in response to ComEd's Verified Initial Comments. It is also consistent with the obligations imposed on Ameren Illinois by the municipal aggregation law, which requires the Company to cooperate with municipal authorities in furtherance of conducting an opt-out aggregation event. See 220 ILCS 5/16-104(b).

## **ii. THE ADDRESS "CLEAN-UP" PROCESS**

In continuing its discussion of the prerequisites necessary to obtain data for use in an aggregation event, the ALJ, in response to a comment from ComEd, discusses briefly the extent to which different types of GAs (municipalities, county boards and townships) must "provide" a

list of customers to their respective electric utility prior to accessing data. The related discussion from the Proposed Order is as follows:

ComEd proposes that in addition to townships, all Governmental Aggregators must provide a customer list before receiving information from a utility. The IPA Act requires utilities to do certain things, but only after certain conditions have been met. The IPA Act is clear that it is only townships that must provide a list before receiving customer information. Perhaps this is because of the difficulty in identifying customers in these areas without clearly defined borders. Regardless, this statutory requirement only falls on townships and the Commission finds that this is correctly reflected in the Proposed Rule.

Proposed Order, p. 18. This discussion results in a provision of the Proposed Rule which states that "If...the Governmental Aggregator is a township board, then the electric utility's obligation to provide customer account numbers is contingent upon the township board first providing an accurate customer list to the electric utility." Proposed Rule § 170.100(a).

Much like the above discussion involving the transfer of information, Ameren Illinois does not read to the language of the Proposed Rule to conflict with the processes currently embodied in its Aggregation Tariff. By way of background, Ameren Illinois requires GAs to "clean-up" a list of premises in order to ensure that the premises reflected in Ameren Illinois' records at the time of the aggregation event are, in fact, those premises that are eligible for aggregation in the respective jurisdiction. In order to perform these "clean-up" activities, Ameren Illinois provides each GA with an electronic file for their review and verification. This process is embodied in Ameren Illinois' Aggregation Tariff, which states that "[t]he Company must provide a list to the GA in accordance with the provisions of this tariff and the IPA Act, in electronic format, which includes information pertaining to Customers located within the boundaries over which the GA has jurisdiction that are eligible for government aggregation." See Electric Service

Schedule III. C. C. No. 1, 2<sup>nd</sup> Revised Sheet No. 6. To be clear, Ameren Illinois provides access to the clean-up file to each respective GA, as opposed to requiring the GA to submit such file to the utility. In the case of municipalities and county boards, Ameren Illinois does not require "clean-up" prior to accessing the general load information provided in "step-one" of its process (but does require clean up prior to accessing the information containing customer account numbers). In the case of townships, Ameren Illinois requires this "clean-up" to be completed prior to accessing the "step-one" data. Ameren Illinois views this process as consistent with the Proposed Rule and the IPA Act, which, as noted in the Proposed Order, generally requires townships to submit a proposed list of eligible customers prior to accessing data given the slightly more amorphous nature of township boundaries.

Ameren Illinois is concerned, however, given the comment in the Proposed Order that this obligation applies "only" to townships, that the Proposed Rule may be read to imply that GAs other than townships, i.e. municipalities and county boards, need never "clean-up" their list of premises in order to access information. This would conflict with Ameren Illinois' Aggregation Tariff and its established practices. As reflected in the IPA Act, the intent of aggregation is to allow governmental entities to aggregate load within their respective jurisdictions, and only their respective jurisdictions. See Subsection 1-92(a) of the IPA Act (each governmental entity "may aggregate in accordance with this Section residential and small commercial retail electrical loads located, respectively, within the municipality, the township, or the unincorporated areas of the county..."). The understanding is captured in the Proposed Rule's use and definition of "aggregate area", which is defined as "the area within the geographic boundaries of a municipality, a township, or the unincorporated areas of a county that has adopted an ordinance to aggregate residential and/or small commercial retail electric loads." See Proposed Rule § 470.10 (definition of "Aggregate Area"). To be blunt, without some form of "clean up" or similar verification

provided by each and every GA, it will be impossible for utilities facilitating aggregation to ensure that the information provided to the aggregator is, in fact, tied to those individuals, and only those individuals, eligible to be aggregated. This outcome would be a step backwards in respect to consumer protections.

In conjunction with this BOE, Ameren Illinois submits Exhibits 1 and 2, representing the Company's proposed changes to the Proposed Order and the Proposed Rule, respectively. Specific to Ameren Illinois' first enumerated exception, language addressing these concerns can be found on pages 17-18 of Exhibit 1 and pages 3-4 of Exhibit 2.

**B. EXCEPTION NO. 2 - PROPOSED RULE SECTION 470.220 – OPT-OUT AGGREGATION PROVISIONS**

In respect to Proposed Rule Section 470.220, Ameren Illinois offers one minor exception to the language presented in Subsection b(2)(C). This language would currently require Aggregation Suppliers to permit customers to opt-out using methods including internet "notice". Ameren Illinois recommends that the word "notice" be replaced with the word "application" in order to afford suppliers with additional flexibility in developing web-based enrollment and opt-out procedures in the future. Although prior comments may not have been provided on this specific topic, as recognized in the Proposed Order, "[t]he Commission is concerned that the term 'internet notice' is vague. The Commission welcomes suggestions to make this more specific." As discussed below, this proposed substitution is reflected on page 8 Ameren Exhibit 2. Ameren Illinois does not believe the Proposed Order requires addition language on this point, except for removal of the above-reproduced sentences inviting addition clarification.

**C. EXCEPTION NO.3 - PROPOSED RULE SECTION 470.250 – CUSTOMERS ON UTILITY HOURLY SERVICE**

Finally, Ameren Illinois takes exception to a provision of Proposed Rule Section 470.250 dealing with disclosures required to be sent to customers on Utility Hourly Service. In specific, Subsection (a)(1) of this Section currently provides that such disclosures must contain information indicating "that a customer may be denied his/her request to join the Aggregation Program if the customer is still within the first year of receiving utility hourly service." While this is currently true, Ameren Illinois recommends amending this provision in order to give utilities additional flexibility in developing products and services for both residential and non-residential customers in the future, and, in particular, in an AMI-enabled future. Ameren Illinois recommends that the required disclosures inform customers that they may be denied a request to join an Aggregation Program "based on the terms and conditions of the electric utility's applicable hourly service tariff." This revision recognizes that tariffs are slightly more fluid than rule provisions and, if adopted, would avoid a situation whereby the language of the rule prevented utilities from developing, altering or amended hourly service offerings in the future. As discussed below, this proposed substitution is reflected on page 9 of Ameren Exhibit 2. Ameren Illinois does not believe the Proposed Order requires addition language on this point.

**III. CONCLUSION - PROPOSED LANGUAGE AND REQUEST FOR RELIEF**

As indicated above, the purpose of this filing is (1) to convey Ameren Illinois' interpretation of the Proposed Rule and the Proposed Order as applied to the Company's Aggregation Tariff (2) to seek clarification in the event the ALJ disagrees with such interpretation and (3) to take exception to the Proposed Order and Proposed Rule where harmonizing these documents with Ameren Illinois' practices may not be possible or where additional language may help clarify the intent of the Proposed Rule and/or Proposed Order.

In respect to the second above-stated purpose, Ameren Illinois seeks additional guidance in respect to the interplay between the Proposed Rule and its aggregation practices. In specific, Ameren Illinois is looking for definitive guidance on what information it may provide to a governmental entity prior to passage of an opt-out referendum.

In furtherance of the third purpose, and in order to address the three enumerated exceptions discussed above Ameren attaches hereto Ameren Exhibits 1 and 2, representing Ameren Illinois' proposed changes to the Proposed Rule and the Proposed Order, respectively. Consistent with the above discussion, Ameren Illinois requests that the ALJ incorporate these changes in the Proposed Order, which, if adopted, will clarify that the Commission has no intent of unwinding an aggregation process that has proven to be extremely efficient and successful.

WHEREFORE, the Company respectfully requests that the Commission grant its enumerated Exceptions described above, and grant any further relief it deems just and equitable.

Respectfully Submitted,  
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d/b/a Ameren Illinois

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**CERTIFICATE OF SERVICE**

I, Eric Dearmont, Counsel for Ameren Illinois Company, hereby certify that a copy of the foregoing *Ameren Illinois Company's Brief on Exceptions to the Proposed First Notice Order* was filed on the Illinois Commerce Commission's e-Docket and was served electronically to all parties of record in Docket No. 12-0456 on this 24<sup>th</sup> day of July, 2013.



Eric Dearmont