

**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 REPLY  
TO BRIEFS 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 Reply (“RBOE”) to Briefs on Exceptions (“BOEs”) to the Proposed First Notice Order (“the Proposed Order”) filed by parties to the above-captioned docket on July 24, 2013. Failure to address a particular point, argument or statement raised by a party in its BOE should not be construed as acceptance with the same. In respect to those items on which Ameren Illinois has selected to reply, the Company states as follows:

**THE STAFF OF THE ILLINOIS COMMERCE COMMISSION (“STAFF”)**

Staff, like Ameren Illinois, takes exception to language in the Proposed Order requiring “the Governmental Aggregator [to] 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.” Staff BOE, p. 8 (citing the Proposed Order, p. 17). In doing so, Staff presents several arguments based the applicable provisions of the IPA Act and backed by well-reasoned public policy considerations. Ameren Illinois agrees with Staff's comments on the topic.

In respect to Staff's interpretation of the IPA Act, and as reflected in the Ameren Illinois' BOE, the only statutory prerequisite to the utility providing the names, addresses and account

numbers of aggregation-eligible customers is that a municipality or county board ask for such information. See 20 ILCS 3855/1-92(c)(2). Ameren Illinois recognizes that an additional requirement is placed on townships (mandating they submit a customer list prior to access). These straightforward requirements, which are embodied in AIC's Commission-approved tariffs, erode and undermine the Proposed Order's concern about the "lack of statutory support for the early transfer of customer information". See Proposed Order, pp. 17-18.

Staff also points out several well-reasoned public policy justifications for the "early" (i.e. pre-opt-out-referendum) release of customer name and address information. In specific, Staff notes that "[i]t is likely that a Governmental Aggregator would prefer having the relevant customer names and addresses at the ready by the time a referendum passes" in order to ensure that disclosures can be mailed in a reasonable amount of time following passage of a referendum. Staff BOE, p. 10. Ameren Illinois agrees. In addition, as noted by Ameren Illinois in its BOE, the GA may also use this information to begin to "prepare educational materials, aggregation-related communication materials, and, potentially, rules of governance" AIC BOE, p. 7.

Staff is also concerned about the barrage of requests for information that utilities would undoubtedly receive in the days following passage of a referendum. Staff BOE, p. 10. Ameren Illinois shares similar concerns. As noted in the Company's BOE, Ameren Illinois has helped facilitate over 320 aggregation events in downstate Illinois. AIC BOE, p. 1. The Company anticipates that significant aggregation activities will continue in the near future, as new communities pursue aggregation and currently-aggregated jurisdictions embark on the "second round" of events. The Company notes that under its Aggregation Tariffs, Governmental Aggregators use the "early" address information to perform their "clean-up" activities - completion of which allows them to access the data (i.e. account numbers) necessary to facilitate a switch. These activities may take from several days to several weeks to complete depending on the size of the GA and the resources devoted

to the "clean-up" efforts. These activities can also be labor intensive on the part of the utility. The "clean-up" is in fact a process whereby the Company and its jurisdictional aggregators work to reach a common understanding about which premises are eligible for aggregation. Ameren Illinois does not want to compromise the accuracy and integrity of this process and is concerned that drastically increasing the volume of requests processed in a small window of time may have that negative result.

Finally, Staff notes that there is a drastic difference in prohibiting the release of customer names and addresses before a referendum and prohibiting the release of customer account numbers before a referendum. Staff BOE, p. 10. Ameren Illinois too agrees that account numbers hold particular significance in that from a technical perspective account numbers are the key pieces of information needed to access customer-specific usage data and to facilitate a switch. Thus, under the terms of Ameren Illinois' Aggregation Tariffs, Ameren Illinois will not release these account numbers until the Company receives the certified results of an opt-out referendum (and the GA has completed its "clean-up" activities). In short, the justifications that arguably prohibit the "early" release of customer account numbers do not exist in respect to names and addresses. To the contrary, release of this additional information aids in ensuring customer eligibility for an aggregation event.

#### **COMMONWEALTH EDISON COMPANY ("COMED")**

In ComEd's third exception, the company makes an extremely pragmatic argument in noting that the Proposed Rule appears to require, contrary to Section 1-92 of the IPA Act, information that a utility may not have in its possession. In specific, the Proposed Rule seeks information from utilities about customers who have applied for RES-provided or hourly service. As noted by ComEd, the utility does not handle these RES applications and/or the related, RES-initiated EDI transactions and is thus unaware of an impending RES switch unless and until it receives an EDI from the applicable RES provider. Similarly, the utility may not know if hourly service has been requested, especially should such request be related to a program offered by a

supplier in the future. Ameren Illinois obviously cannot provide information that it does not have and supports ComEd's suggestion limit the provision of information to that reflected in the electric utility's records at the time of the request.

In ComEd's fourth exception, ComEd urges the Administrative Law Judge ("ALJ") to amend the Proposed Rule to require an Aggregation Supplier to verify an individual's request to opt out of an aggregation program. ComEd argues that such a requirement brings opt-out verification practices in line with those required in opt-in situations. Ameren Illinois observes that the Section 1-92 of the IPA Act contains no such requirement for opt-out aggregation programs. In addition, AIC notes that customers who do not opt-out of an opt-out aggregation program are subject to an additional layer of protection, in that such customers receive a separate letter notifying them of the pending switch and effectively placing them on notice of their ability to rescind the same should they so desire. Ameren Illinois opposes the exception and fears that if accepted, the additional verification requirements would be likely to lead to increased customer confusion (especially in "round two" communities) and higher volumes of related questions from customers to utilities and aggregation event participants.

#### **THE COALITION OF ENERGY SUPPLIERS ("CES")**

In its BOE, CES urges the ALJ to adopt a definition of "RES Customer" in order to clarify references to that term in Proposed Rule §§ 470.240 and 470.100(a)(2). In specific, CES would define RES Customer as "a customer that receives or has applied to receive non-aggregation RES service." CES BOE, p. 9 (emphasis added). This definition may make sense as applied to Proposed Rule § 470.240 (which governs what information can be sent to and retained about RES customers by an Aggregation Supplier), but suffers from a serious practical fault in

respect to § 470.100(a)(2). Section 470.100(a)(2) provides that an electric utility shall provide to a Governmental Aggregator,

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;

The problem with CES' proposed language as applied to § 470.100(a)(2) is that Ameren Illinois' records do not distinguish between those customers who are on aggregation-related RES service and those customers who are on non-aggregation-related RES service. Ameren Illinois simply knows which customers are served by a RES and which customers have applied for said service (assuming an EDI has been sent by the respective supplier). As discussed in respect to the ComEd exception above, Ameren Illinois obviously cannot provide information that it does not have.

**DOMINION RETAIL, INC. ("DOMINION")**

In its BOE, Dominion urges the ALJ to adopt a definition of "retail customer" that would prohibit an electric utility from providing to a Governmental Aggregator information about customers on RES supply. See generally Dominion BOE, p. 3. The ALJ was correct to reject this argument in the Proposed Order. As appropriately noted, "[t]he question of whether a governmental aggregator should receive information is distinct from whether the Aggregation Supplier should receive information." Proposed Order, p. 12. As stated by Ameren Illinois in its Verified Reply Comments Concerning Staff's Draft Municipal Aggregation Rule, Section 1-92(c)(2) of the IPA Act, the provision under which an electric utility must provide information necessary to facilitate an aggregation event, is not as narrow as the language offered by Dominion. In specific, Section 1-92(c)(2) "does not distinguish between customers receiving

bundled versus delivery-only service, i.e., customers receiving a RES-provided commodity versus customers receiving a utility-provided commodity...". Ameren Illinois' Verified Reply Comments, p. 2. "To the contrary, the Section speaks only of 'residential and small commercial customers' and states that the utility 'must' provide all qualifying records in its possession at the time of a request." Id. This interpretation, which is consistent with the decision reached in Docket No. 11-0434 (regarding ComEd's Rate GAP aggregation tariff), is correctly reflected in the current version of the Proposed Rule.

#### **ILLINOIS COMPETITIVE ENERGY ASSOCIATION ("ICEA")**

In ICEA's BOE, the association recommends the Proposed Rule be revised to clarify that Part 470 is intended to apply prospectively, beginning on the effective date of the resulting rule. ICEA BOE, pp. 1-2. Ameren Illinois offers that absent some express intent or language to the contrary, the rule would seem to apply prospectively as a matter of statutory (or code) construction; however, given the number of pre-existing aggregation-related contracts and agreements, Ameren Illinois agrees with ICEA that the Proposed Rule (and/or the Proposed Order) may benefit from an express statement clarifying the intended application.

#### **METROPOLITAN MAYORS CAUCUS ("MMC")**

In an exception offered by MMC to Section 470.210(b) of the Proposed Rule, the Caucus recommends that language be added to clarify that a governmental aggregator's logo need be included on disclosures sent by an aggregation supplier if, and only if, such logos are provided to the supplier by the GA. See MMC BOE, pp. 4-5. Ameren Illinois understands that aggregators may wish to preserve some latitude in respect to their intellectual property and that suppliers, much like utilities, can only provide information in their possession; however, the Company strongly believes that, as a practical matter, if the relevant logos are available, they should be

provided by the GA to the supplier. As stated by Ameren Illinois in its Verified Reply Comments, "[the Company] believes that including a logo or official seal greatly increases the probability that recipients open and review the aggregation literature sent to them" and "may help to reduce customer confusion." See Ameren Illinois' Verified Reply Comments, p. 4 (internal citations omitted). In addition, "Ameren Illinois also believes having a logo as opposed to alternative verbiage reduces risk to the success of the long-term competitive market in that the use of a logo or seal may provide less opportunity for manipulation than alternate wording." Id.

#### **RETAIL ELECTRIC SUPPLY ASSOCIATION ("RESA")**

Pursuant to RESA's third exception, the Association recommends that a section be added to the Proposed Rule requiring Aggregation Suppliers to send customers returning to utility default service a notification informing said customers that minimum stay provisions may apply if they do not initiate a subsequent switch within a certain period of time. See RESA's Corrected BOE, pp. 6-7. To be blunt, Aggregation Supplier do not need "to make customer aware of all their options" because electric utilities already do. When Ameren Illinois receives an EDI relaying that a customer is leaving RES service and returning to a BGS rate, the Company sends a "switch letter" informing said customer of the very provisions that are of concern to RESA. Even outside of the fact that requiring Aggregation Suppliers to send similar notice would be unnecessarily redundant, Ameren Illinois is concerned that should the language offered by RESA be incorporated into the resulting rule, it would be extremely difficult for the Company to change the minimum stay requirements reflected in its tariffs without creating a conflict with the related rule provisions. This result is ill advised. As markets continue to develop, utilities must be permitted to preserve a certain amount of flexibility in altering or amending the minimum stay requirements reflected in their tariffs in order to address evolving conditions.

WHEREFORE, Ameren Illinois Company submits the above RBOE for consideration and requests that the ALJ grant relief consistent with both the recommendations presented above and those contained the Company's BOE.

Respectfully Submitted,

AMEREN ILLINOIS COMPANY  
d/b/a Ameren Illinois

By 

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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 Reply to Briefs 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 7<sup>th</sup> day of August, 2013.



Eric Dearmont