

**BEFORE THE ILLINOIS COMMERCE COMMISSION  
STATE OF ILLINOIS**

<b>Illinois Commerce Commission</b>	)	
<b>On Its Own Motion</b>	)	
	)	<b>ICC Docket No. 12-0456</b>
<b>Development and adoption of rules</b>	)	
<b>concerning municipal aggregation</b>	)	

**REPLY COMMENTS OF THE  
COALITION OF ENERGY SUPPLIERS  
REGARDING THE FIRST NOTICE RULE**

The Coalition of Energy Suppliers ("CES"), by and through its counsel Quarles & Brady LLP, and pursuant to the Administrative Law Judge's January 15, 2014 Ruling, respectfully submits these Reply Comments regarding the First Notice Rule and First Notice Order of the Illinois Commerce Commission ("Commission") concerning Part 470 of Title 83 of the Illinois Administrative Code regulating "Governmental Electric Aggregation" (commonly referred to as "municipal aggregation") published in the Illinois Register on December 27, 2013.<sup>1</sup>

**I.**

**INTRODUCTION**

There is general agreement that the following fundamental principles should apply to any rule that the Commission adopts regulating municipal aggregation (the "Rule"):

- **Respect Customers' Choices**
- **Minimize Customer Confusion**
- **Maintain Competitive Neutrality**

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<sup>1</sup> CES is a coalition of retail energy providers that have actively participated in the competitive energy markets in Illinois and across the country. CES's members include: Interstate Gas Supply, Inc. d/b/a IGS Energy ("IGS Energy") and MidAmerican Energy Company ("MidAmerican"). IGS Energy is a licensed Illinois Alternative Retail Electric Supplier pursuant to the Public Utilities Act ("Act"). MidAmerican operates as an electric utility in Illinois pursuant to the Act, and also provides competitive retail electric service to customers outside its public utility service area, as provided under Section 16-116 of the Act.

- **Maximize Transparency; and**
- **Minimize Anti-Competitive Outcomes**

During both the Workshop process as well as through its formal Written Comments and Briefs, CES has emphasized the importance of these principles. (*See* CES Feb. 10, 2014 Init. Comments (hereafter "CES Init. Comments") at 2-3.)<sup>2</sup> In general, the First Notice Rule appears to take these principles seriously, and incorporates several improvements suggested by CES and certain other stakeholders that were not included in the Proposed Rule attached to the Administrative Law Judge's Proposed Order (the "ALJ's Proposed Rule") (although the ALJ's Proposed Rule also displayed a healthy respect for those principles).

**However, a strong consensus of comments from the retail supplier participants indicates that the First Notice Rule contains certain modifications to the ALJ's Proposed Rule that inappropriately shift the balance in favor of Aggregation Suppliers and threaten to result in customer confusion as well as unfair, and potentially illegal, customer switching.** (*See* CES Init. Comments at 4-5, 8-10; Retail Energy Supply Association (hereafter "RESA") Init. Comments at 1-5 ("The Proposed First Notice Rules inappropriately, and without justification, reverse the competitively neutral position of the ALJPO Proposed Rules, and provide an competitive advantage to Aggregation Suppliers. . .") (at 2); Prairie Point Energy, L.L.C. d/b/a Nicor Advanced Energy LLC (hereafter "NAE") Init. Comments at 4-11; Dominion Retail, Inc. (hereafter "Dominion") Init. Comments generally.)

Specifically, the First Notice Rule imposes a new obligation in Section 470.240 for disclosures about the municipal aggregation to be made to *previously switched* RES customers. As the Initial Comments of CES and other parties indicate, that provision inappropriately

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<sup>2</sup> Consistent with that citation approach, unless otherwise indicated, references to other parties' "Initial Comments" are to the comments filed on February 10, 2014 in response to the Commission's First Notice Order and First Notice Rule.

threatens to muddy the waters for customers, rather than bring clarity or advance consumer protection. (See CES Init. Comments at 4-5, 8-10; RESA Init. Comments at 1-5; NAE Init. Comments at 4-11; Dominion Init. Comments generally.) Unquestionably, customers who have previously switched to a RES should not be swept up in an opt-out aggregation program. Thus, the Rule should establish a clear demarcation to ensure that all parties -- including governmental aggregators, aggregation suppliers, non-aggregation suppliers, and, most importantly, customers -- understand that when a customer has made an affirmative choice to switch, that choice will be respected and legally protected.

By establishing that previously switched customers should not receive notifications regarding a potential municipal aggregation (unless the switched customers request that information, of course), the Proposed Order and Proposed Rule established a desirable and useful clear demarcation, consistent with the principle of competitive neutrality. The modification to Section 470.240 in the First Notice Rule, however, represents an undesirable "step back" from that competitive neutrality, and inappropriately tips the scales in favor of aggregation suppliers, through the imposition of disclosure requirements that will serve no necessary or valid purpose, but may well result in customer confusion. (See CES Init. Comments at 4-5, 8-10; RESA Init. Comments at 2 ("[N]owhere in the Illinois Power Agency Act (20 ILCS 3855/1-1 et seq. ("IPA 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. If Illinois is to have a dynamic, competitive market that supports both municipal aggregation as well as direct marketing, then the Commission needs to ensure that both types of competitive activity operate on a level playing field."))

In sum, although the First Notice Rule contains some substantive improvements over the Proposed Rule (which itself contained many positive attributes), the First Notice Rule should be modified in several respects, as discussed further herein.

## II.

### **THE FIRST NOTICE RULE SHOULD BE MODIFIED AS OUTLINED BY CES**

In order to better protect consumers and provide them with the benefits associated with a more robust competitive market, CES offered several substantive changes to the First Notice Rule. These include the following:

- In recognition of the unique manner in which opt-out customers are switched to an aggregation program without making any explicit documented decision, **the Rule should prohibit termination fees** for exiting an opt-out aggregation program. (*See* CES Init. Comments at 5-8; *see also* CES Br. on Exceptions at 5-8 and Appendix at 7.)
- In order to maintain competitive neutrality and respect the status of customers who have individually chosen to enter a contract with a RES, **no notices or disclosures regarding a pending municipal aggregation should be sent to customers who have already affirmatively selected their own supplier**, unless the switched customer requests such information. (*See* CES Init. Comments at 8-10.)
- For clarity, **the definition of "RES Customer" should be revised**. (*See id.* at 11.)
- In the interest of customer protection, **customers should be given at least one full billing cycle to opt out of a municipal aggregation**. (*See id.* at 11-12; *see also* CES Br. on Exceptions at 11-12 and Appendix at 8.)

Nothing in the other parties' Initial Comments negates or effectively rebuts any of the CES proposed modifications. Indeed, Staff's recognition of "**the very different nature of an opt-out program when compared to switching outside of an opt-out aggregation**" succinctly

highlights the overall point made by CES in addressing the Rule: opt-out aggregation is different and calls for a heightened sensitivity to individual customer choice and competitive neutrality. (Staff Init. Comments at 30 (emphasis added).)

Accordingly, CES respectfully reiterates its request that the Commission make the proposed changes to the First Notice Order set forth in the CES Initial Comments.

### III.

#### **REPLIES TO OTHER PARTIES**

While advocating for the modifications to the First Notice Rule outlined above and explained in detail in CES's Initial Comments, CES offers the following replies to certain comments of other parties.<sup>3</sup>

##### A. **Reply To RESA**

*CES strongly supports RESA's view regarding the First Notice Order's modifications to Section 470.240.* RESA argues that the change to Section 470.240 in the First Notice Order "reversed the competitively neutral position of the ALJPO Proposed Rules, and provide a competitive advantage to Aggregation Suppliers, those RESs who have obtained customers through Aggregation Programs." (RESA Init. Comments at 2.) RESA provides a compelling explanation of why the change to Section 470.240 is neither legally nor factually justified. (*See id.* at 1-6.)

##### B. **Reply to NAE**

*CES strongly supports NAE's view regarding the First Notice Order's modifications to Section 470.240.* NAE also argues that the change to Section 470.240 is inappropriate: "The imposition of a requirement that aggregation suppliers provide a special notice to RES customers

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<sup>3</sup> These Reply Comments do not attempt to address every comment and proposed change offered in the other parties' Initial Comments. Failure to address any particular comment or proposal should not be interpreted as an agreement with or endorsement of that comment or proposal.

creates an improper competitive preference for aggregation suppliers and is based on arguments that were inaccurate, incorrect, and contrary to law." (NAE Init. Comments at 4.) Like RESA, NAE provides a compelling explanation of why the change to Section 470.240 is neither legally nor factually justified. (*See id.* at 2-11.)

**C. Reply to Dominion**

*CES supports Dominion's proposal regarding the definition of the term "retail customer."* Dominion makes one proposal: the term "retail customer" should be specifically defined to include only customers receiving commodity supply from their public utility. (*See Dominion Br. on Exceptions at 2.*) The concern that Dominion seeks to address is valid and important: RES customers are not meant to be swept up in a municipal aggregation and RES customer information should be treated in a manner distinct from non-RES customer information.

However, if the Commission declines to adopt Dominion's proposal, the Commission should reverse the changes made in the First Notice Rule (in comparison to the ALJ's Proposed First Notice Rule) that diluted the protections meant to ensure that RES customers and RES customer information are treated appropriately in a manner that respects RES customer choice and minimizes the possibility of anti-competitive activity. In particular, the changes made to Section 470.240 in the First Notice Rule should be revised to revert back to the approach taken in the ALJ's Proposed First Notice Rule, as discussed above.

**D. Reply to Staff**

Staff appears to offer the most extensive changes to the First Notice Rule. Several of the concepts articulated by Staff appear to embody an appropriate pro-competitive view -- consistent with the Act's overall requirements and the Commission's pro-competitive policies -- that is sensitive to the primacy of customer choice and competitive neutrality. (*See, e.g., Staff Init.*

Comments at 4-5, 30-33.) On the other hand, however, some of Staff's other proposed modifications are inconsistent with that pro-competitive view and threaten to establish structural impediments to the principle of competitive neutrality. (*See, e.g., id.* at 23-25.)

**Staff's Overall Approach To Assigning Responsibility  
For Customer Disclosures Is An Appropriate Modification**

Consistent with pro-competitive principles, Staff proposes an approach under which "the Aggregation Supplier ensures that the customer disclosures conform with the proposed rules, regardless of which entity physically mails the disclosures." (*Id.* at 5.) CES agrees with that approach in concept, though CES does not agree with all of Staff's suggested modifications. Certainly, no Aggregation Supplier should gain an unfair competitive advantage as a result of the "structure" of a governmental aggregation program; nor should consumer protection for customers potentially participating in a municipal aggregation be compromised just because certain aggregation-related functions will be performed by the Governmental Aggregator rather than the Aggregation Supplier who will actually be supplying the customers in the aggregation.

Thus, **CES agrees with Staff's proposal that "the ultimate responsibility would be on the Aggregation Supplier to ensure that adequate disclosure(s) were sent to the appropriate recipients within the requisite timeframe."** (*Id.* at 28 (emphasis added).) CES does not believe that the complete change in the structure of Section 470.210 of the First Notice Rule is required, as suggested by the wholesale replacement language offered by Staff at page 28 of Staff's Initial Comments. Rather, this concept could be incorporated through a straightforward single sentence added to the beginning of the Customer Disclosures section of the Rule.

**Staff's Customer Disclosure Approach Improperly  
Would Cause Customer Confusion And Potential Anti-competitive Activity**

***CES strongly disagrees with Staff's proposed extensive revisions to the format of the customer disclosures.*** (*See* Staff Initial Comments at 28-29.) It appears that Staff's proposed

format for customer disclosures would revert back to a rule format that the Proposed Order and First Notice Order properly rejected, wherein all customers -- including RES customers who have previously made an individual choice to switch suppliers -- would receive disclosures relating to the municipal aggregation program. As CES and other parties have explained, such an approach is a recipe for customer confusion and potential anti-competitive activity. (*See* CES Init. Comments at 4-5, 8-10; RESA Init. Comments at 1-5; NAE Init. Comments at 4-11; Dominion Init. Comments generally.)

The First Notice Order, in principle, recognizes the reasonable distinction between non-RES customers who are eligible to switch through the standard opt-out procedure and those RES customers *who have already switched suppliers through affirmative personal action*. (*See, e.g.,* First Notice Order at 8 ("The Commission is compelled to protect customer information and ensure that customers' choices of provider are respected.") The First Notice Order also, in principle, makes a reasonable distinction between suppliers serving individual RES customers and those serving aggregated loads. (*See id.* at 8 ("Slamming, the illegal switching of a customer, is precisely what the Commission seeks to avoid through the notice and process requirements encapsulated in the Proposed Rules. ... The Proposed Rule ensures competitive neutrality and protects customers in both situations."; *see also id.* at 18-19, 27, 45-46.) Yet, the First Notice Rule's modification of Section 470.240, in comparison to the version of that section contained in the ALJ's Proposed Rule, undercuts rather than advances these principles. In fact, the ALJ's Proposed First Notice Order drew the appropriate line when it comes to contacting RES customers about aggregation programs -- "the Aggregation Supplier should not send disclosures to RES customers or even receive RES customer information" (ALJ's Proposed Order at 46) (emphasis added).) Nothing in Staff's further revisions to the First Notice Order would correct or advance this issue.

Accordingly, Staff's proposed extensive modifications to the customer disclosures sections should be rejected, and the Section 470.240 of the First Notice Rule should be modified using the language for that section that was included in the ALJ's Proposed Rule.

**Staff's Proposal For A Bi-annual Free Right To Terminate  
Demonstrates The Value Of A Prohibition On Termination Fees**

Staff continues to advocate for a Rule that would provide a "two-year fee free opt-out period." (*See* Staff Initial Comments at 30-33.) Staff portrays its proposal as a "middle ground between prohibiting early termination fees and prohibiting restrictions regarding termination fees." (*Id.* at 30.) It is unclear, however, why Staff believes a compromise "middle ground" on this crucial consumer protection issue is the best course. As Staff itself states:

Staff recognizes the very different nature of an opt-out program when compared to switching outside of an opt-out aggregation. In all switching situations other than opt-out aggregation, the customer is required to take affirmative action to switch suppliers. This very important distinction appears to drive the disputes on many of the issues in this rulemaking. In fact, the FNO itself recognizes this important distinction in several parts of the Order.

(*Id.* at 30-31.)

Given Staff's recognition of and sensitivity to the "very different nature of an opt-out program," the better approach would be for the Commission to simply prohibit termination fees in the context of opt-out aggregations. (*See* CES Init. Comments at 5-8.) To allow a termination fee, even after the two-year period proposed by Staff, would mean that a customer who may *never* have made any conscious decision to switch suppliers, and may have *no knowledge* at all of the switch, could nonetheless face legal action from an Aggregation Supplier for collection of a termination fee that is not capped by any statute or any Commission regulation. (*See id.*; *see also* CES Brief on Exceptions at 5-8.) Allowing this scenario would be precisely contrary to the type of robust consumer protection that the Commission has long embraced.

Accordingly, for the reasons set forth herein and in CES's Initial Comments, **rather than take a compromise "middle ground" position on this important consumer protection issue, the Commission instead should simply prohibit termination fees in the context of opt-out municipal aggregations.** (See CES Init. Comments at 8 (containing suggested language for insertion into the Rule).)

***Staff's Suggestion To Water Down Protections  
Against Inappropriate Marketing Should Be Rejected***

Staff opposes the additions made to Section 470.110(a)(3) of the First Notice Order that clarify the limitations on the use of customer information retained by an aggregation supplier to market to customers. (See Staff Init. Comments at 23-25.) Staff's position appears to be that because, in general, a non-aggregation supplier might be able to market to customers based on information in its possession, then an aggregation supplier should be able to market to customers based on aggregation-related information in its possession. (See *id.*)

Staff's position is not well taken. Staff's position disregards the principle that Staff accurately recognizes elsewhere in its Initial Comments that the municipal aggregation scenario has "**an inherently different nature**" than other customer switching situations. (See *id.* at 31 (emphasis added).) To treat the two situations as the same for purposes of how an aggregation supplier may use customer information obtained in the aggregation process to conduct individual customer marketing efforts would inappropriately tip the competitive market scales in favor of aggregation suppliers over the non-aggregation suppliers, and would disregard the principle of competitive neutrality.

RESA provided a compelling explanation of why the disputed modification to Section 470.110(a)(3) is appropriate. (See RESA Br. on Exceptions at 3-4.) CES strongly supported that view. (See CES Reply Br. on Exceptions at 8.) The First Notice Order contains a cogent and sensible explanation for the modified language in Section 470.110(a)(3), noting concerns about

"competitive advantage" and the need for "clarification" of when and how customer specific information may be used for marketing purposes. (First Notice Order at 22-23.) The First Notice Order is correct on these points, and Staff's suggested modification of Section 470.110(a)(3) should be rejected.

**E. Reply to the Metropolitan Mayors Caucus ("MMC")**

***MMC's Reasoning In Support Of The Modified Section 470.240(a) Should Be Rejected***

MMC supports the First Notice Rule's modification of Section 470.240(a) requiring notice of a pending municipal aggregation to RES customers. As explained elsewhere herein and in CES's Initial Comments, CES and other RESs strongly disagree with that position, and those arguments are incorporated by reference here. (See CES Init. Comments at 4-5, 8-10; RESA Init. Comments at 1-5; NAE Init. Comments at 4-11; Dominion Init. Comments generally.)

In addition to those arguments, CES takes specific issue with MMC regarding a rather inflammatory statement about customer slamming that MMC offers -- without reference to any specific facts, data, or verifiable evidence -- to support MMC's view about Section 470.240 of the First Notice Rule. That is, MMC makes the following unsubstantiated, bald assertion:

First, after notice about the Aggregation Program is sent to customers receiving service from the electric utility, Governmental Aggregators have found that other RES customers ask why they did not receive the same notice. Many of these RES customers thought they were still customers of the electric utility and had, in fact, been switched to another RES provider without their knowledge or consent. For these customers, this is the first time they have discovered that they have been "slammed" by a RES Supplier away from the electric utility.

(MMC Init. Comments at 4-5.)

The Commission ought to disregard this statement. It involves a serious allegation of misbehavior by one or more members of the non-aggregation RES community, without citation to any verifiable fact or even to a single specific instance or example of the objectionable alleged

"slamming" behavior. The allegation is highly prejudicial and offensive to the non-aggregation RES community, but is stated in such a vague and broad-brush manner that it is neither subject to any semblance of verification nor a fair opportunity for rebuttal. This is plainly not the type of statement permitted as a basis for a Commission decision; on the contrary, it falls well outside the type of evidence that justifies legal decisions under Illinois law generally, and even well outside the type of information that may be admissible under the Commission's relaxed evidentiary standards. (*See* 83 Ill. Admin. Code § 200.610(b).)<sup>4</sup> At a minimum, MMC's allegation should be ignored, if not stricken. (*See* Ill. R. Evid. 403 (permitting exclusion of otherwise relevant evidence that is unfairly prejudicial, confusing, or misleading); *Boersma v. Amoco Oil Co.*, 276 Ill. App. 3d 638, 650 (1st Dist. 1995) (reversing trial court for failing to strike unsubstantiated and incomplete evidence); *see also* *People v. Williams*, 333 Ill. App. 3d 204, 213 (1st Dist. 2002) (same).)

In sum, the Commission should disregard MMC's argument and should revise the changes made to Section 470.240 in the First Notice Rule to revert back to the approach taken in the ALJ's Proposed First Notice Rule, as discussed above.

**MMC's Attempt To Shorten The Opt-Out Period Should Be Rejected**

The First Notice Order and First Notice Rule endorse a 21-day period to opt-out of a municipal aggregation. (*See* First Notice Order at 39; First Notice Rule at 7-8). This is a customer-friendly improvement over the 18-day opt-out period contained in the ALJ's Proposed Rule, although CES believes that the opt-out period ought to be extended to a full billing cycle. (*See* CES Init. Comments at 11-12.)

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<sup>4</sup> If MMC actually possesses specific information supporting its allegation, it should provide that information to the Commission or other appropriate authorities, rather than just use a broad-brush but highly prejudicial statement that lacks foundation and that cannot possibly be subject to a substantive response.

MMC takes issue with the Commission setting *any* minimum opt-out period. (*See* MMC Init. Comments at 2-4.) Then, MMC takes the position that if the Commission sets any opt-out period it should be no longer than "10 or 14 days." (*Id.* at 4.) MMC's position is extreme and out of step with the broad consensus that the Commission can and should set a minimum opt-out period to assist and protect customers who might be swept up in an aggregation without a reasonable period of time to opt-out. (*See* CES Init. Comments at 11; CES Br. on Exceptions at 11-12.)

MMC states that there is "no evidence" to support a 21-day opt-out period. (MMC Init. Comments at 3.) Actually, this is an issue that has been discussed at length during the course of this proceeding, beginning during the Workshops and extending into the most recent round of comments. Ironically, after suggesting a lack of evidence to support the Commission position, MMC then makes a bald statement -- inaccurately clothed as a reference to evidence -- to suggest that a 10 or 14 day opt-out period would allow governmental aggregators the "flexibility" to obtain "the benefit of those customers receiving cost savings earlier." This statement is highly misleading, for the simple reason that it *presumes* that municipal aggregations always result in customer cost savings. That premise is dubious, at best. During the course of this proceeding, CES provided the Commission with information suggesting that municipal aggregations are *not* always a cost savings mechanism for customers. (*See, e.g.*, Attachment A to CES's Apr. 10, 2013 Verified Additional Comments, Crain's Chicago Business Apr. 3, 2013 article entitled "Some suburban electricity deals to be costlier than ComEd".) Indeed, as recently as last week, Crain's Chicago Business reported serious issues involving the apparent renegotiation of a municipal aggregation contract due to pricing issues. (*See* "Frigid temps spur suburban power supplier to hike prices," available at <http://www.chicagobusiness.com/article/20140227/>

[NEWS11/140229810/frigid-temps-spur-suburban-power-supplier-to-hike-prices](https://www.wisn.com/story/news/140229810/frigid-temps-spur-suburban-power-supplier-to-hike-prices), also attached hereto as Attachment A.)

In short, MMC's suggestion that *no* minimum opt-out period or a *very short* opt-out period is appropriate because municipal aggregation always results in customer savings is not accurate or credible. Accordingly, CES respectfully requests that Section 470.220(b) be modified to provide customers at least a single billing cycle to decide whether to opt out of an aggregation program.

**F. Reply To Commonwealth Edison Company ("ComEd")**

**ComEd's "Symmetrical Verification" Proposal Should Be Rejected**

ComEd continues to propose that the Rule should impose a "symmetrical verification requirement" for customers seeking to opt-out of an opt-out municipal aggregation. (*See* ComEd Init. Comments at 5-6.) **The Commission should continue to reject such a proposal.**

ComEd's argument rests on creating a false equivalency between (1) customers who take affirmative action to enroll in an *opt-in* municipal aggregation program; and (2) customers faced with potential enrollment in an *opt-out* municipal aggregation program. These two groups of customers are plainly different (*i.e.*, the customer groups are not "symmetrical") and the manner in which their action or inaction will result in a switch in electric supplier is materially distinct.

Creating such a barrier to a customer's ability to opt out of an aggregation program -- a program that the customer may have done *nothing* to support and, indeed, may have voted against -- is contrary to the notion that a customer's individual preference for electric service should be afforded prime consideration. (*See* CES Init. Comments at 10-11.) ComEd's suggestion would -- intentionally or not -- tilt the playing field in favor of aggregation over the other choices available to a customer.

ComEd suggests that its proposed approach is necessary "to avoid erroneously including or excluding a customer from an Aggregation Program." (ComEd Init. Comments at 5.) ComEd's statement is somewhat disingenuous -- the proposed ComEd approach would plainly tend to result in raising the burden on customers to opt-out, raising the threat of erroneously including unwilling customers in an aggregation, and thus communicates at least a subtle bias in favor of aggregation programs as the preferred method of customer switching. Yet, the law expresses no preference in favor of including customers in an aggregation program, and imposing such a preference would be unjustified as a matter of law and policy. In the situation of an opt-out program, where a customer faces a "default" switch in service if the customer does not act, the process to avoid that "default" switch should be simple and straightforward.

The First Notice Order gets it right when it states:

The Commission does not see the benefit of adding extra steps for customers to opt-out of an Opt-out Aggregation Program. The Commission finds it most important to make the process of opting out as easy as possible. Accordingly, the Commission rejects ComEd's proposal.

(*Id.* at 34.)

Accordingly, the Commission should continue to reject ComEd's proposal for a "symmetrical verification" process.

***It Is Premature, And Procedurally Inappropriate,  
To Revise The First Notice Rule Now To Account For  
Data Privacy Issues Determined In A Separate Docket***

ComEd suggests that the First Notice Rule should be revised to add entirely new sections to deal with data privacy issues that were recently addressed in ICC Docket No. 13-0506. (*See* ComEd Init. Comments at 6-8.) The Commission should decline to modify the First Notice Order with regard to that proposal at this time.

CES does not necessarily disagree with the notion that the municipal aggregation Rule may need to be modified in light of the Commission decision in ICC Docket No. 13-0506.

However, this proceeding has been pending since July 31, 2012, and at no time prior to the submission of the parties' Initial Comments on February 10, 2014 was this issue raised. To date, neither the Commission, the ALJ, nor the Staff has solicited feedback on this issue or offered any proposed Rule language associated with this issue. In addition, issues associated with ICC Docket No. 13-0506 are currently being discussed in the Workshop context in workshops organized by the Commission's Office of Retail Market Development, and ComEd is seeking rehearing of the Commission's Final Order. (*See* ICC Docket No. 13-0506, ComEd Application for Rehearing dated February 28, 2014.) Accordingly, adoption of the ComEd proposed language under these circumstances would be premature and procedurally inappropriate.

Therefore, the Commission should decline to modify the First Notice Order with respect to ComEd's newly proposed language associated with the Commission's recent decision in ICC Docket No. 13-0506.

**G. Reply to the Illinois Competitive Energy Association ("ICEA")**

**ICEA's Proposal To Delete Section 1-92(f) Disclosures Should Be Rejected**

ICEA suggests a modification to the First Notice Rule's disclosure requirement pursuant to Section 1-92(f) of the Illinois Power Agency Act. (*See* ICEA Init. Comments at 2-3.) ICEA suggests that the disclosure requirement as applied to aggregation suppliers may be rarely invoked because it is more often "agents, brokers and consultants" ("ABCs") rather than aggregation suppliers who provide would be required to provide a disclosure under Section 1-92(f) of the IPA Act. (*See id.*)

ICEA's observation highlights what appears to be a loophole in the First Notice Order's requirement for disclosures relating to those entities that assist or consult with municipalities relating to municipal aggregation. That is, ICEA suggests that the majority -- perhaps the vast majority -- of parties who are required to prepare a Section 1-92(f) disclosure are ABCs rather

than aggregation suppliers. If that is the case, the First Notice Rule should be modified to make sure that Section 470.200's requirements for providing information to the Commission cover *both* aggregation suppliers *and* ABCs.

Section 1-92(f) itself makes clear that it is intended to "be liberally construed to ensure that the nature of financial interests are fully revealed." (20 ILCS 3855/1-92(f).) That statutory language conveys an intention for a robust disclosure requirement, unconstrained by technicalities or loopholes that might allow an involved party to avoid appropriate disclosure of its relationship to a municipal aggregation. Accordingly, **the Commission should modify Section 470.200(a)(5) as follows:**

5) a copy of (a) the Aggregation Supplier's disclosure **and/or the disclosure of any Agent, Broker, or Consultant** required by Section 1-92(f) of the IPA Act, (b) and any payments, inducement or donations, including civic contributions and consulting fees made by the Aggregation Supplier **and/or any Agent, Broker, or Consultant**, either directly or indirectly, to the Governmental Aggregator.

**H. Reply to the Citizens Utility Board ("CUB")**

Like ComEd, CUB notes that the Commission's recent decision in ICC Docket No. 13-0506 may necessitate a modification to the municipal aggregation Rule. (*See* CUB Init. Comments at 1.) Unlike ComEd, CUB does not actually suggest new language for the Rule. (*See id.*)

As discussed herein in the reply to ComEd, CES does not necessarily disagree that the municipal aggregation Rule may need to be revised in light of ICC Docket No. 13-0506. However, to do so at this stage of this proceeding would be premature and procedurally inappropriate.

IV.

**CONCLUSION**

For the reasons stated, CES respectfully requests that the Commission modify the First Notice Rule as set forth herein and in CES's Initial Comments.

Date: March 3, 2014

Respectfully submitted,  
**THE COALITION OF ENERGY  
SUPPLIERS**

By: /s/Christopher J. Townsend  
Christopher J. Townsend

Christopher J. Townsend  
Christopher N. Skey  
Adam T. Margolin  
Quarles & Brady LLP  
300 North LaSalle Street  
Suite 4000  
Chicago, IL 60654  
Phone: (312) 715-5000  
christopher.townsend@quarles.com  
christopher.skey@quarles.com  
adam.margolin@quarles.com