David Lothspeich

From: Dave Bennett [dbennett@mayorscaucus.org]
Sent: Friday, March 29, 2013 6:36 PM
To: Mayor Black, Kildeer; Mayor Harrison, Zion; Mayor Herrmann, Island Lake; Mayor Hill, Round Lake Beach; Mayor Hucker, Beach Park; Mayor Kaplan, Riverwoods; Mayor Kessler, Mundelein; Mayor Knigge, Wauconda; Mayor Kovarik, Gurnee; Mayor Kovarik, Gurnee 2; Mayor Lahr, Lindenhurst; Mayor Leitner, Tower Lakes; Mayor Loffredo, Lake Villa; Mayor Loy, Winthrop Harbor; Mayor Lumpkins, Round Lake Heights; Mayor McCue, Round Lake Park; Mayor McCue, Round Lake Park 2; Mayor Munao, South Barrington; Mayor Pannell, Park City; Mayor Pannell, Park City 2; Mayor Pecaro, Highwood; Mayor Ray, Mettawa; Mayor Ray, Mettawa 2; Mayor Rockingham, North Chicago; Mayor Ryback, Wadsworth; Mayor Sabonjian, Waukegan; Mayor Sabonjian, Waukegan 2; Mayor Soto, Hainesville; President Barkemeyer, Bannockburn; President Barkemeyer, Bannockburn 2; President Beggan, Third Lake; President Beggan, Third Lake 2; President Dietz, Round Lake; President Head, Port Barrington; President Kellermann, Deer Park; President Letchinger, Lake Bluff; President Marston, Pingree Grove; President O'Neill Leitner, Tower Lakes; President Pino, North Barrington; President Rodriguez, Long Grove; President Rodriguez, Long Grove 2; President Smith, Old Mill Creek; President Weihofen, Lakemoor; President Wysocki, Green Oaks
Cc: Christine Gentes (lcml@sbcglobal.net); Adrian Marquez, Highwood; Dave Kilbane, Round Lake Beach; David Alarcon, Lakemoor; David Geary, Wauconda; David Lothspeich; Drew Irvin, Lake Bluff; Elaine Palmer, Green Oaks; Jana Lee, Winthrop Harbor; Jim Connors, Deer Park; John Lobaito, Mundelein; Jon Kindseth, Beach Park; Kathy Nelander, North Barrington; Marc Huber, Round Lake; Maria Lasday, Bannockburn; Mark Masciola, South Barrington; Marsi Quigley, Third Lake; Matthew Formica, Lindenhurst; Michael Talbett, Kildeer; Moses Amidei, Wadsworth; Noelle Kischer, Waukegan; Pat Beggan, Third Lake; Patrick Muetz, Gurnee Interim; Scott Hartman, Highwood; Sheire Farmer, North Chicago Interim; Tracy Miracle, Beach Park 2
Subject: FW: New ComEd Electric Prices
Attachments: Transmittal Ltr - Rider PE - Signed.pdf; Transmittal Ltr - Rider PE - Signed.pdf

Importance: High

Mayor:
Attached are ComEd's new Purchased Electricity Charges which were filed with the Illinois Commerce Commission today. These will be the rates electric suppliers will use to determine the rates they offer local government electric aggregation customers for the period June 1, 2013 through May 31, 2014 .

In addition, ComEd notified the ICC that it estimates that its Transmission Services Charges will increase 15-20 percent beginning June 1, 2013. Its current TSC is .811 cents/kWh. Its new TSC will be in the .93 to .97 cents/kWh range.

Dave

From: Clausen, Torsten [tclausen@icc.illinois.gov]
Sent: Friday, March 29, 2013 4:47 PM
To: ORMD
Cc: Pound, Christell; Fallah, Joseph; Lannon, Michael; Swan, Kimberly; Howard, Joan; Muntaner, Peter; Nehrt, Randy; Feipel, Jonathan
Subject: New PECs and BGS prices

Attached are ComEd's new Purchased Electricity Charges and Ameren Illinois' new Basic Generation Service prices as they have been filed with us.

Torsten

ComEd
An Exelon Company

News Release

Contact:
ComEd Media Relations
(312) 394-3500

FOR IMMEDIATE RELEASE

ComEd Files Updated Electricity Supply Charges

Almost 30 percent drop in electricity supply charges means all customers can benefit from lower energy prices

CHICAGO (March 29, 2013) – ComEd today filed with the Illinois Commerce Commission its annual update of electricity supply charges, the primary component of the "Price to Compare," which will take effect in June 2013. The average residential electricity supply charge for customers who buy energy from ComEd will drop from approximately $.07/kilowatt-hour to approximately $.05/kilowatt-hour, a reduction of almost 30 percent, as a result of lower energy prices. Customers that have switched to alternative suppliers for their electricity supply have likely been realizing lower costs already.

As a result of Illinois' longstanding policy to bring electricity choice to consumers, ComEd customers can use the Price to Compare to evaluate offers from alternative retail electricity suppliers. About 75 percent of ComEd customers already have switched to an alternative supplier for their electricity supply. And choices are abundant: More than 40 alternative suppliers in ComEd's service territory are certified to sell electricity supply to residential customers, and more information is available at www.pluginillinois.org.

"We know that customers are most concerned with their total bill each month," said Anne Pramaggiore, president and CEO, ComEd. "Whether customers get their electric supply from ComEd or from an alternate supplier, they are saving money as a result of lower energy prices."

The Price to Compare is determined using expected electricity supply and transmission charges and makes up about two-thirds of the average residential customer bill. In May 2013, ComEd will file new transmission rates to take effect in June 2013. Transmission costs are expected to increase as a result of service-enhancing investments and are reflected in ComEd's Price to Compare.

The other one-third of the bill is made up of delivery charges. Under the Smart Grid law, delivery charges are updated every year in January. In the next few weeks, ComEd will file its proposal for its new delivery charges to take effect Jan. 1, 2014. Under this proposal, delivery charges are expected to increase as a result of grid modernization and other service-enhancing investments, but the increase is largely offset by lower energy prices.

"Even with these changes, for the next year ComEd customers' bills are expected to be the same or lower than they were a year earlier, because of lower power prices," said Pramaggiore. "And because energy prices are low, this is the ideal time to invest in grid modernization."

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Commonwealth Edison Company (ComEd) is a unit of Chicago-based Exelon Corporation (NYSE: EXC), the nation's leading competitive energy provider, with approximately 6.6 million customers. ComEd provides service to approximately 3.8 million customers across northern Illinois, or 70 percent of the state's population.

ComEd®
An Exelon Company

Commonwealth Edison Company
Energy Delivery
Three Lincoln Centre
Oakbrook Terrace, IL 60181-4260

www.exeloncorp.com

VIA OVERNIGHT DELIVERY

March 28, 2013

Ms. Elizabeth Rolando
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Subject: Purchased Electricity Charges Informational Filing

Dear Ms. Rolando:

Commonwealth Edison Company submits to the Illinois Commerce Commission (ICC) the following informational sheet for filing on March 29, 2013:

COMMONWEALTH EDISON COMPANY
ELECTRICITY
ILL. C. C. NO. 10

19th Revised Informational Sheet No. 1 canceling 18th Revised Informational Sheet No. 1

This informational sheet is being filed to identify the Purchased Electricity Charges (PECs) that are to be applicable beginning with the June 2013 monthly billing period and extending through the May 2014 monthly billing period. This informational sheet is to become effective March 30, 2013. The PECs are determined in accordance with Rider PE – Purchased Electricity (Rider PE), Rate BES – Basic Electric Service (Rate BES), an updated load forecast, and the June 2013 Purchased Electricity Prices. This informational sheet incorporates the provisions of Rider PE filed on April 23, 2012, in compliance with the ICC Order in Docket No. 11-0498. With the reduction in purchased electricity prices, the full phase-in to cost based supply charges has been achieved for residential customers. As a result, future informational filings of PECs will include a single residential group and there will no longer be a differentiation made between residential customers that use electricity for space heating purposes and those that do not.

Also enclosed are copies of this transmittal letter and associated informational sheet (marked DUPLICATE) for transmission to Ms. Joy Nicdao-Cuyugan (Director: Financial Analysis Division), Ms. Bonnie Pearce (Accountant: Accounting Department - Financial Analysis Division), Mr. Scott Struck (Manager: Rates Department – Financial Analysis Division), and Mr. Richard Zuraski (Senior Economist: Policy Program - Policy Division), all of the Bureau of Public Utilities of the ICC Staff. Copies of this transmittal letter and associated informational sheet (marked DUPLICATE) are being sent separately to Mr. Torsten Clausen (Director: Office of Retail Market Development), also of the ICC Staff.

Two extra copies of this transmittal letter and the associated informational sheet are provided. One set of such letter and informational sheet is provided for your convenience in acknowledging receipt of this letter and informational sheet, and is to be returned to Commonwealth Edison Company in the self-addressed stamped envelope provided.

Work papers documenting the determination of the PECs and the four Purchased Electricity Prices described in Rider PE have been sent electronically to Mr. Torsten Clausen at tclausen@icc.illinois.gov, and Mr. Richard Zuraski at rzuraski@icc.illinois.gov.

In addition, the informational sheet is being sent electronically to Mr. Sam McClerren at smcclerr@icc.illinois.gov

Sincerely,

Lawrence S. Alongi

Lawrence S. Alongi
Manager, Retail Rates
(630) 576-6736

Enclosures

cc: T. Clausen
J. Nicdao-Cuyugan
B. Pearce
S. Struck
R. Zuraski
A. Resner

PURCHASED ELECTRICITY CHARGES

Supplement to Rate BES and Rider PE (1)

Customer Group or Subgroup	Units	Purchased Electricity Charges (PECs) Applicable Beginning with the January 2013 Monthly Billing Period and Extending Through the May 2013 Monthly Billing Period (2) (3) (4)	
		Summer PEC	Nonsummer PEC
Residential Non-Electric Space Heating	¢/kWh	6.080	7.491
Residential Electric Space Heating	¢/kWh	5.789	5.462
Watt-hour Non-Electric Space Heating	¢/kWh	6.187	7.648
Demand Non-Electric Space Heating	¢/kWh	6.174	7.644
Nonresidential Electric Space Heating	¢/kWh	6.094	6.719
Dusk to Dawn Lighting	¢/kWh	2.536	3.029
General Lighting	¢/kWh	6.018	6.604

Customer Group or Subgroup	Units	PECs Applicable Beginning with the June 2013 Monthly Billing Period and Extending Through the May 2014 Monthly Billing Period (2) (3) (4) (5)	
		Summer PEC	Nonsummer PEC
Residential Non-Electric Space Heating	¢/kWh	4.597	4.559
Residential Electric Space Heating	¢/kWh	4.597	4.559
Watt-hour Non-Electric Space Heating	¢/kWh	4.973	4.918
Demand Non-Electric Space Heating	¢/kWh	4.959	4.910
Nonresidential Electric Space Heating	¢/kWh	4.359	4.806
Dusk to Dawn Lighting	¢/kWh	1.847	2.207
General Lighting	¢/kWh	4.384	4.811

NOTES:
(1) This informational sheet is supplemental to Rate BES - Basic Electric Service (Rate BES) and Rider PE - Purchased Electricity (Rider PE).
(2) PECs are designated on retail customer bills as the Electricity Supply Charge pursuant to Rate BES.
(3) PECs include Supply Base Uncollectible Cost Factors (Supply BUFs) as listed in Informational Sheet No. 21.
(4) PECs incorporate Incremental Supply Uncollectible Cost Factors (ISUFs) as listed in Informational Sheet No. 20.
(5) PECs developed for an updated load forecast and June 2013 Purchased Electricity Prices.

David Lothspeich

From: Dave Bennett [dbennett@mayorscaucus.org]
Sent: Wednesday, March 13, 2013 3:52 PM
To: 'Mayor Black, Kildeer'; 'Mayor Kessler, Mundelein'; 'Mayor Kovarik, Gurnee'; 'Mayor Kovarik, Gurnee 2'; 'Mayor Loffredo, Lake Villa'; 'Mayor Rockingham, North Chicago'; 'President Rodriguez, Long Grove'; 'President Rodriguez, Long Grove 2'
Cc: David Lothspeich; 'John Lobaito, Mundelein'; 'Michael Talbett, Kildeer'; 'Patrick Muetz, Gurnee Interim'; 'Sheire Farmer, North Chicago Interim'
Subject: Join in Fight to Protect Against ICC Takeover of Local Electric Aggregation Programs
Attachments: Municipal Agg - Reply in Support of Motion to Dismiss.pdf

Importance: High

Mayor:
At the beginning of the year, I sent you an email inviting your municipality to join a coalition of towns that is fighting to protect their local control of their electric aggregation programs. This control is being threatened by the Illinois Commerce Commission where an administrative rule has been proposed which will dictate what towns must include in their local plans of governance and operation as well as specific terms to be included in the agreements they enter into with the electric suppliers they select.

I write now to let you know that it's not too late to join the coalition. The ICC rulemaking will soon enter a critical phase as the Administrative Law Judge assigned to it is expected to issue a proposed order any day now. Action on the rulemaking will then switch to more formal proceedings before the full Commerce Commission and then the General Assembly's Joint Committee on Administrative Rules (JCAR). The Mayors Caucus has engaged Holland & Knight, LLP to represent municipal interests throughout this process. Our coalition currently numbers 127 cities and villages from all across the State.

Please note that the ICC has chosen to draft a rule on municipal aggregation despite the fact that the State law authorizing towns to aggregate on behalf of their residents to purchase electricity, the Illinois Power Act, precludes it from doing so. The Commission instead states that its authority to regulate municipal aggregation comes from the Public Utilities Act which it liberally claims allows it to regulate any and all electric load in the State either directly or indirectly. Our coalition challenges this claim. Greater detail on the arguments we have made is provided in the attached memorandum we recently filed in support of a motion to dismiss we filed in the proceeding.

You should also be aware that many of the other parties to the ICC rulemaking want the Commission to act quickly on the proposed rule so it will affect upcoming renewals of supply contracts. Your current contract will not be affected, but your next one will if these other parties get their way. Many towns have contracts which will expire sometime this year. A few more have supply contracts which expire next spring.

Finally, if your town is interested in joining our fight to protect municipal authority from being usurped by the Illinois Commerce Commission, **the cost is nominal at $350 per municipality**. This is exceedingly cost effective if you think of what it would cost an individual town or a smaller group of communities to hire a law firm as capable as Holland & Knight to represent it in an administrative proceeding before the ICC.

If you wish to participate, please respond to this email or call. Thank you for your consideration of this invitation to join our rulemaking coalition.

Dave

Dave Bennett, Executive Director
Metropolitan Mayors Caucus
233 S. Wacker Drive, Suite 800
Chicago, IL 60606
dbennett@mayorscaucus.org
P: 312-201-4505
F: 312-258-1851

OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On Its Own Motion	:	
Development and adoption of rules concerning municipal aggregation	:	12-0456

REPLY OF THE METROPOLITAN MAYORS CAUCUS
IN SUPPORT OF ITS MOTION TO DISMISS

Metropolitan Mayors Caucus ("Caucus"), by and through its undersigned counsel, pursuant to 83 Ill. Adm. Code § 200.190, hereby presents its Reply in Support of Its Motion to Dismiss the Rulemaking Proceeding of the Illinois Commerce Commission ("Commission") in the above-captioned proceeding. For the reasons described below, the Caucus respectfully requests that the Commission grant its Motion to Dismiss. In Reply to the responses of other parties and in support of its Motion, the Caucus states as follows:

I. INTRODUCTION AND OVERVIEW

The Caucus is surprised by the statements of the staff of the Illinois Commerce Commission ("Commission") in its Response to the Caucus' Motion to Dismiss that the proposed Rules "do not govern municipalities." Based on the Caucus' reading of the Rules as drafted, the Rules do very directly govern and limit the ability of governmental aggregators to perform the functions and exercise the discretion that the General Assembly has vested in them in Section 1-92 of the Illinois Power Agency Act, 20 ILCS 3855/1-92. The Caucus provides examples of those conflicts below, along with an analysis of Section 1-92 and the scope of the Commission's authority.

Nine parties to this rulemaking proceeding filed responses to the Caucus' Motion to Dismiss, and the Caucus will respond to the various comments below.

II. ARGUMENT

A. The Illinois Commerce Commission Does Not Have Authority to Regulate Matters That the General Assembly Assigned to the Discretion of Governmental Aggregators.

The Rules proposed in this proceeding by the Commission interfere with the power and authority of governmental aggregators, such as municipalities and counties, to engage in aggregation of electrical loads, as established and contained in Section 1-92 ("Section 1-92") of the IPA Act, 20 ILCS 3855/1-92. Section 1-92 has been in effect since January 1, 2010, with the adoption of Public Act 96-0176. As discussed in the Caucus' initial Memorandum in Support of its Motion to Dismiss, that Public Act repealed the prior source of the power of municipalities and counties to aggregate electricity, which was contained in Section 17-800 ("Section 17-800") of the Illinois Public Utilities Act ("PUA"). By adopting Section 1-92 of the IPA Act and repealing Section 17-800 of the PUA, the General Assembly made a conscious choice to take the regulation of governmental aggregators out of the PUA and out of the scope of the Commission's powers.

As originally adopted, Section 17-800 imposed limits on the Commission's powers relating to governmental aggregators, stating that governmental aggregators "shall be subject to supervision and regulation by the Commission only to the extent provided in this Section." *See* Public Act 95-0311, attached to the Caucus' Memorandum in Support as Exhibit B. Section 17-800 provided the Commission with regulatory authority:

- To issue an order approving the governmental aggregator's plan of operation and governance, or rejecting the plan if certain specified minimum requirements for the local plans contained in Section 17-800 were not met.
- To receive and review bids obtained by municipal or county aggregators, requiring the municipality or county to wait 15 days after filing the bids with the Commission

before awarding the proposed agreement; the Commission also had the power to suspend the award of any agreement based on those bids if the Commission found that the solicitation of bids or the award "are not in conformance with the plan or if the cost for energy in the first year would exceed the cost" of energy under Section 16-103 of the PUA.

By repealing Section 17-800, the General Assembly completely removed the Commission's supervisory and regulatory powers over these decisions by governmental aggregators regarding the electric aggregation process. Instead, Section 1-92's adoption vested these key local decisions with the elected officials of municipalities (their corporate authorities, such as Mayor and City Council or President and Board of Trustees) and counties (the county board)—removing the Commission's power to get involved in the substantive terms of the plans of governance and electric supply agreements.

As a result of the General Assembly's actions, officials of governmental aggregators are now free to make appropriate local decisions regarding whether to aggregate the electrical loads of their residential and small commercial retail customers in their communities and on what terms. 20 ILCS 3855/1-92(a), (b). And the General Assembly has assigned the Illinois Power Agency to assist municipal and county aggregators in developing their local plans of operation and governance. Section 1-92(b).

The Commission staff's Response, at pages 4-5, to the Caucus' Motion to Dismiss appears to confirm the Caucus' position that Section 1-92 of the IPA Act does not authorize the Commission to regulate municipalities, counties or townships in the aggregation process. Indeed, the Commission goes further, admitting that the rules do not apply to municipalities. Commission Response at page 7.

ComEd also agrees with the Caucus that the Commission does not have authority to regulate municipal aggregators, and recognizes that the Rules as written are overbroad and do affect the activities of government aggregators. ComEd Response at 7.

B. The Responses of Other Parties to the Motion to Dismiss Do Not Accurately Reflect the Meaning of Section 1-92 of the IPA Act.

Several responding parties submitted comments in opposition to the Caucus' Motion to Dismiss that do not accurately reflect the meaning of Section 1-92.

First, Ameren Illinois argues, at page 2 of its Response to the Caucus' Motion to Dismiss, that the proposed Rules are "both reasonable and workable" and that the Caucus should identify the rules about which it has a concern. However, simply because the Rules that the Commission staff proposes may seem reasonable to some parties in this proceeding, that feeling of reasonableness does not constitute state law giving the Commission the authority to adopt such Rules. In Part C below, the Caucus has identified specific examples of provisions of the draft Rules that it believes seek to impose the will of the Commission on the government aggregators' discretion, effectively overriding the aggregator's choices in its aggregation program.

Second, the Illinois Power Agency ("IPA") argues, on pages 2-3 of its Response, that the proposed Rules appear to be good practices to follow in electrical aggregation. Retail Energy Supply Association ("RESA") argues, on page 4 of its Response, that the proposed Rules represent "best practices" in electrical aggregation. However, the responses of IPA and RESA would simply allow the Commission's judgment of what is a "best practice" to override the decisions of local community officials as to what is the best practice to be followed in their particular community. Such an approach would be inconsistent with Section 1-92 of the IPA Act and would be detrimental to communities that have differing circumstances that would be best served by a different practice.

Third, some of the parties argue that the Commission's interpretation of the PUA in proposing these Rules should be given deference because the Commission is the agency regularly responsible for interpreting the PUA. The IPA also argues that its interpretation of the IPA Act in this proceeding should be given deference for the same reason. IPA Response at pages 5-9; CNT Energy's Response at pages 2-3. These arguments are misplaced for several reasons.

Courts give deference to an agency interpretation that is challenged on administrative review where the agency has made a judgment that is informed by its experience and expertise in the relevant area. *See Metropolitan Water Reclamation Dist. of Greater Chicago v. Dep't of Revenue*, 313 Ill. App. 3d 469, 474-75 (1st Dist. 2000). While consistency and duration are not prerequisites to affording some degree of deference, courts give greater weight to long-standing, consistent agency interpretations. *Quality Saw & Seal, Inc. v. Illinois Commerce Comm'n*, 372 Ill. App. 3d 776, 781-82 (2d Dist. 2009). Although both the Commission and the IPA have expertise in regulating electric suppliers, they have no similar expertise in regulating units of local government and their aggregation programs. Neither the Commission nor the IPA has historically regulated government aggregators, nor interpreted their enabling statutes to authorize such regulation. As a result, it would be inappropriate to give more than minimal, if any, deference to interpretations by the Commission and the IPA regarding the applicability of their respective statutes to Rules that are not within their normal scope of regulation and interpretation.

Also, deference is afforded to administrative agency interpretations of their enabling statutes only if the statutes are facially ambiguous and the agency interpretation is a reasonable resolution of that ambiguity. Where statutory language is unambiguous, agency interpretations

are given no deference. *Boaden v. Dep't of Law Enforcement*, 171 Ill. 2d 230, 239 (1996) ("[O]ur deference to administrative expertise will not serve to license a governmental agency to expand the operation of a statute.... As we find that the statute is not ambiguous, we decline to defer to the [agency's] interpretation."). As noted in the Caucus' Memorandum in Support at page 4, while the Commission has general authority over public utilities and ARES under the PUA, Section 1-92 unambiguously provides that governmental aggregators are not public utilities or ARES. Therefore, the Commission does not have power to regulate government aggregators in the same way as it does utilities and ARES. If the Commission adopts the Rules and attempts to regulate government aggregators based on its authority to regulate electric utilities and ARES, that position directly contradicts the plain language of Section 1-92 and is not entitled to any degree of deference.

Fourth, the IPA and Citizens Utility Board ("CUB") both overstate the Caucus' position regarding the Commission's authority, arguing that the Caucus has taken the position that the Commission is unable to regulate the electric utilities and ARES; IPA and CUB then claim that this position leaves a void in the regulatory scheme. In fact, the Caucus has acknowledged that the Commission has certain authority to regulate electric utilities and the ARES. Memorandum in Support at 4. The Caucus notes that while the Commission lists a number of statutory provisions on which it relies as the source of its authority for the proposed Rules, nowhere in its Response to the Motion to Dismiss or in its Reply Comments on the Rule does the Commission attempt to establish which statutory provision or interpretation of a provision provides the authority for each of the various sections of the proposed Rule.

C. The Proposed Rules Directly Regulate Governmental Aggregators By Mandating Particular Decisions on Matters Vested in the Governmental Aggregators by the General Assembly and Within the Governmental Aggregators' Discretion.

The proposed Rules seek to impose on governmental aggregators the will of the Commission on subjects that the General Assembly has vested with governmental aggregators. First, Section 1-92(b) provides that the governmental aggregator shall develop a plan of operation and governance for the aggregation program; notably, that plan is not subject to Commission review and approval as was previously authorized by Section 17-800 of the PUA. Instead, the General Assembly has required governmental aggregators to hold two public hearings on their plans of operation and governance, which supports the policy that these decisions should be made at a local level rather than at the Commission. Second, Section 1-92(c) authorizes the governmental aggregator to solicit and enter into agreements for the purchase of electricity, without any review by, or right of the Commission to, object to the proposed agreement.

There are many examples of places in which the proposed Rules contain a Commission staff decision on an issue that has been vested in, and should be left to, the governmental aggregator. The examples listed below are some of the many to which the Caucus objects—because these Rules would limit the governmental aggregator's right to make the decision that is best for its local community based on its local knowledge of its residents and small commercial entities who are eligible for an aggregation program.

Among the examples the Caucus has identified are:

- Section 470.100(c) requires governmental aggregators to include in their plans of operation and governance certain circumstances and processes by which "residential and small commercial retail customers may join the aggregation

program after the initial opt-out period and be considered aggregation customers." Decisions about aggregation program terms are vested in the governmental aggregator, who should be allowed to decide which terms should be included in the plan of operation and governance or in the agreement with the electric supplier.

- Section 470.300(a) requires the governmental aggregator to include its logo both on the envelope and first page of any letter regarding aggregation disclosures. It is simply beyond the Commission's powers to mandate that the aggregator use its logo for any purpose whatsoever. Logo ownership resides in the governmental aggregator, and it should not be compelled to use it for any purpose without its approval and consent. In addition, many governmental aggregators have specific styles of communication with their residents and businesses, and the Commission should not be interfering with those practices. Indeed, under Section 1-92, the Commission simply has no ability to compel such a requirement.
- Section 470.300(b) requires specific notice regarding the customer's ability to purchase electricity from a retail electric supplier or electric utility and must include the PlugInIllinois.org Internet address. This requires a notice but does not specify who should pay for it. This notice is beyond the Commission's statutory power to require.
- Section 470.300(c) requires establishment of a local or toll-free number for customers to call with questions regarding the aggregation program. The Commission seeks to compel that such a number be provided because "this is the current practice for most aggregation notices." *See* Verified Comments of the

Staff of the Illinois Commerce Commission dated November 1, 2012, at page 4. The Commission does not include in this rule who must establish and pay for the number and staff it. This requirement will increase the cost of the aggregation program in a community, leading to a higher electricity cost for customers. Under the authority of Section 1-92, the governmental aggregator is vested with the ability to decide if such a phone number is needed and who should pay for it.

- Section 470.400 (a)-(d) contains what the Commission staff determined to be appropriate notice to customers under an opt-out program. While Section 1-92 provides some standards for notice to customers, the General Assembly has not fully specified all of the details of such notice and how it is to be given. In such an instance, the specifics of notice, such as the requirement for pre-paid postage on the notice, how many opt-out methods should be provided and what kind, and the number of days after postmark for an opt-out response should be determined by the governmental aggregator, not the Commission staff. All of these items will affect the cost of the aggregation program and, ultimately, the cost of electricity to the residents. Accordingly, the Caucus believes that these issues that are not mandated by the General Assembly should be decided at the local aggregator level, and not by the Commission.
- Section 470.400(d) mandates the Commission's desired Rule that a notice of the right to leave the aggregation program early without fee must be given "at least every two years from the initial commencement of the aggregation program." Staff's initial comments when it proposed this rule stated: "Requiring an early termination fee-free opt-out period every two years seems reasonable to staff."

Verified Comments at 6. This is a policy issue that the governmental aggregator should determine based on the duration and terms of its supply contracts as well as the terms of its plan of operation and governance. Communities will select shorter or longer time periods for their supply agreements depending on a variety of local considerations. Municipal aggregators are concerned that including a two-year deadline for notice will lead the market to shorter supply contracts of two years or less, rather than potentially longer term agreements that may have other benefits to the community's residents and businesses. In addition, specifying that the right to terminate without fee must allow 18 days from postmark will add costs to the energy price at the local level.

- Section 470.500 (a)-(c) contains what the Commission staff determined to be appropriate notice to customers under an opt-in program. While Section 1-92 provides some standards for notice to customers, the General Assembly has not fully specified all of the details of such notice and how it is to be given. In such an instance, the specifics of notice should be determined by the governmental aggregator, not the Commission staff. The type and extent of notice to be provided will affect the cost of the aggregation program and, ultimately, the cost of electricity to the residents. Accordingly, the Caucus believes that these issues that are not mandated by the General Assembly should be decided at the local aggregator level, and not by the Commission.

These examples demonstrate how the proposed Rules do regulate governmental aggregators. Some of the parties contend that the Rules do not regulate governmental aggregators—however, it is unclear to the Caucus whether those parties simply do not

understand the manner in which municipalities and counties operate their aggregation programs. It is essential to achieve a common understanding if the Commission does not intend to regulate governmental aggregators. To achieve that result, it is clear that the Rules need to be changed to remove all of the provisions regulating governmental aggregators.

ComEd's Response to the Motion to Dismiss agrees with the Caucus, stating that the draft Rule covers municipal aggregators and that the vast majority of the Rule would require revision or repeal to avoid regulating those aggregators. ComEd also expressed surprise about the Commission's statements that the Rule is not intended to apply to governmental aggregators.

In light of the conflict between the Commission's apparent initial position that the Rule did apply to governmental aggregators and the clear meaning of Section 1-92, the Caucus has been unable to untangle the draft Rule sufficiently to make substantive suggestions for revision of the Rule. However, in light of the suggestions of both ComEd and the Illinois Competitive Energy Association that this matter should return to workshop sessions for discussion of some apparent common ground among the Commission, the Caucus, and other parties, the Caucus would be willing to meet and confer to further discuss these issues and see if there is the possibility of reaching a mutual understanding about the role of governmental aggregators under Section 1-92 and the proper scope of the draft Rules. In addition, the IPA noted that it also had some questions about the validity of certain provisions of the Rule. IPA Response at footnote 1.

III. CONCLUSION

For the reasons cited in this Reply as well as in the Caucus' Motion to Dismiss and Memorandum of Law in Support, the Caucus respectfully requests that its Motion to Dismiss be granted and that the Commission enter an order dismissing this proceeding in its entirety pursuant to 83 Ill. Adm. Code 200.190. However, if the parties are willing to return to workshop

sessions to further discuss the Rule, the Caucus is willing to ask that its Motion be held in abeyance for a limited period to determine if such sessions will be fruitful.

METROPOLITAN MAYORS CAUCUS

By: /s/ Barbara A. Adams
One of its attorneys

Barbara A. Adams
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131 South Dearborn Street, 30th Floor
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jim.mueller@hklaw.com

#12101146_v3

VERIFICATION

I, David E. Bennett, being duly sworn, hereby affirm that I am the Executive Director of the Metropolitan Mayors Caucus and have knowledge of the contents of this Reply of the Metropolitan Mayors Caucus in Support of Motion to Dismiss, and they are true and accurate to the best of my knowledge and belief.

David E. Bennett

Subscribed and sworn to before me
this 16th day of January, 2013.

Ingrid Witherspoon
Notary Public

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Some ComEd customers to see lower prices

By Julie Wernau

Tribune reporter

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Commonwealth Edison customers who haven't signed up to have their electricity provided by another supplier will soon see lower energy rates on par with those of their neighbors who have switched away from ComEd.

That's because pricey long-term contracts that obligate ComEd to purchase electricity at above-market rates expire in June. ComEd said this week that the energy costs - the largest expense in electricity bills - will drop by 30 percent in June from 7 cents per kilowatt-hour to about 5 cents per kilowatt hour.

While the 75 percent of ComEd customers who have switched to alternative suppliers for their electricity supply won't see those savings, for the most part those customers are already enjoying lower energy costs because alternative suppliers are not subjected to the same contractual obligations as ComEd.

For example, the city of Chicago locked down electricity rates for its residents with an initial savings of 21 percent off ComEd bills, or about $20 per month for the average household, by switching to Integrys Energy Services, a sister company to Peoples Gas in February.

With the new lower electricity costs, it is possible that some electricity customers who switched away from ComEd will be paying more for electricity in June than under ComEd's rates. Exact comparisons won't be possible until May when ComEd is expected to update its transmission rates. Those rates are expected to increase and are wrapped into the price that is used to compare ComEd's rates to that of other alternative electricity suppliers.

Delivery charges, which make up about one-third of bills and are paid to ComEd by all electricity customers regardless of who supplies their electricity, are expected to increase in January as a result of a massive 10-year project aimed at modernizing the electrical grid.

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