



Robert Kosin &lt;rkosin@barringtonhills-il.gov&gt;

## ICC Initiates Rulemaking Which Will Affect Municipal Electric Aggregation Programs

1 message

**Dave Bennett** <dbennett@mayorscaucus.org> Sat, Oct 20, 2012 at 9:56 AM  
 To: "Mayor Bender, Fox Lake" <mayor@foxlake.org>, "Mayor Lockhart, Marengo" <mayor@cityofmarengo.com>, "Mayor Low, McHenry" <suelow@mc.net>, "Mayor Nolan, Harvard" <mayor@cityofharvard.org>, "Mayor Sager, Woodstock" <bsager@woodstockil.gov>, "Mayor Theiss, Oakwood Hills" <jtheiss@oakwoodhills.org>, "President Abboud, Barrington Hills" <bob@rgalabs.com>, "President Baker, Trout Valley" <troutmayor@aol.com>, "President Beatty, Hebron 2" <jattermeier@villageofhebron.org>, "President Brown, Holiday Hills" <hhpresident@villageofholidayhills.com>, "President Counley, McCullom Lake" <mccullomlake@comcast.net>, "President Duda, Prairie Grove" <sduda@prairiegrove.org>, "President Duda, Prairie Grove 2" <sduda@alpineinc.com>, "President Eisenberg, Spring Grove" <meisenberg@springgrovevillage.com>, "President Given, Greenwood" <sgiven@baxterwoodman.com>, "President Hettermann, Johnsburg" <edh@rdthiel.com>, "President Hettermann, Johnsburg 2" <cpeters@johnsburg.org>, "President Koenig, Richmond" <villagepresident@richmond-il.com>, "President Mack, Ringwood" <rmack@metrarr.com>, "President Miller, Bull Valley" <bullvalley@stans.com>, "President Plaza, Lake in the Hills" <eplaza@lith.org>, "President Plaza, Lake in the Hills 2" <eplaza@woodstocklawpros.com>, "President Russell, Volo" <volovillage@villageofvolo.com>, "President Russell, Volo 2" <brussell@villageofvolo.com>, "President Sass, Huntley" <rmcmahon@huntley.il.us>, "President Sass, Huntley 2" <csass@huntley.il.us>, "President Schmitt, Algonquin" <johnschmitt@algonquin.org>, "President Smith, Lakewood" <info@village.lakewood.il.us>, "President Smith, Lakewood 2" <erin.smith.lakewood@gmail.com>, "President Topf, Wonder Lake" <wlvillage@villageofwonderlake.org>, "President Topf, Wonder Lake 2" <ttopf@wlvillage.org>, "President Wagner, Union" <villagemayor2007@sbcglobal.net>, "President Weihofen, Lakemoor" <villagehall@lakemoor.net>, "President Weihofen, Lakemoor 2" <toddweihofen@yahoo.com>  
 Cc: "amoeller@mchenrycountycog.org" <amoeller@mchenrycountycog.org>, "Catherine Peterson, Lakewood" <peterson@village.lakewood.il.us>, "Claudett Peters, Johnsburg" <cpeters@johnsburg.org>, "Dave Nelson, Harvard" <nelson@cityofharvard.org>, "David Johnson, Huntley" <djohnson@huntley.il.us>, "Derik Morefield, McHenry" <dmorefield@ci.mchenry.il.us>, "Gerald Sagona, Lake in the Hills" <gsagona@lith.org>, "Jeannine Smith, Prairie Grove" <jsmith@prairiegrove.org>, "Joshua Blakemore, Marengo" <jblakemore@cityofmarengo.com>, "Nancy Schuerr, Fox Lake" <schuerrn@foxlake.org>, "Robert Kosin, Barrington Hills" <rkosin@barringtonhills-il.gov>, "Tami Verush-Chesler" <hhtreasurer@villageofholidayhills.com>, "Tim Clifton, Woodstock" <tclifton@woodstockil.gov>, "William Ganek, Algonquin" <williamganek@algonquin.org>

Mayor:

At our quarterly meeting earlier this month, Karen Darch, President of the Village of Barrington and Vice Chair of the Mayors Caucus Executive Board, reported on a rulemaking the Illinois Commerce Commission has initiated which will significantly affect how municipalities will implement and manage their current and future municipal aggregation programs. President Darch also indicated that we would report back to everyone with a recommendation on how we can join forces to ensure that municipal interests are represented in the rulemaking.

**The purpose of this email is to inform you that our Officers recommend that municipalities interested in protecting their interests join forces through the Metropolitan Mayors Caucus to**

10/20/2012

**participate in the rulemaking and challenge the ICC's jurisdiction to regulate municipal aggregation programs. They further recommend that the Caucus engage the law firm of Holland & Knight LLP to represent the Caucus and, thus, a coalition of interested municipalities in these proceedings. The cost to participate is \$350 per municipality.**

Attached for your information is a memo which lays out the issues involved in the rulemaking and the challenge to the ICC's authority. With nearly 200 towns in our region either currently offering municipal electric aggregation programs or seeking approval from their residents via referenda in November to implement them, most municipalities in the region are or will soon be directly impacted by the ICC rulemaking. Our Officers strongly believe that by joining forces through the Mayors Caucus, the region's municipalities will be able to coordinate efforts to help frame municipal aggregation policies and regulations. This is an important issue not only for our governmental units, but for our residents who participate in our aggregation programs as well. We should be at the table.

Finally, please note that time is of the essence. A proposed municipal aggregation rule is scheduled to be presented by the ICC staff to an Administrative Law Judge on November 5. We would like to file an appearance on behalf of all municipal participants within the next 10 days to engage the ICC staff on their draft rule in advance of the November 5 hearing. **We would greatly appreciate if you could let me know if your town will be a participant by Monday, October 29.**

Thank you for your consideration of this request. If you have any questions after reviewing this email and the attached memo, please call or email me.

Dave

Dave Bennett, Executive Director

Metropolitan Mayors Caucus

233 S. Wacker Drive, Suite 800

Chicago, IL 60606

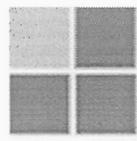
dbennett@mayorscaucus.org

P: 312-201-4505

F: 312-258-1851



**Municipal Agg - Recommendation re ICC Rulemaking.docx**  
40K



# Metropolitan Mayors Caucus

**Edward J. Zabrocki**  
Mayor, Village of Tinley Park  
Executive Board Chairman

**Karen Darch**  
President, Village of Barrington  
Executive Board Vice Chair

**Thomas Weisner**  
Mayor, City of Aurora  
Executive Board Secretary

**Rahm Emanuel**  
Mayor, City of Chicago

**TO:** Mayors and Presidents of the Chicago Region

**FROM:** Dave Bennett, Executive Director

**DATE:** October 19, 2012

**RE:** Illinois Commerce Commission Municipal Electric Aggregation Rulemaking  
Docket No. 12-0456

*Issue:* The Illinois Commerce Commission (ICC) has initiated a rulemaking proceeding to regulate current and future municipal aggregation programs. This is being done despite the fact that the ICC has not been granted the explicit authority to do so by the General Assembly.

While there has been significant representation from utilities, electric suppliers and brokers, municipalities have generally been unrepresented in the early phases of the rulemaking proceeding. This is significant because municipalities have the most at stake given the authority they have been granted by the State of Illinois to implement electric aggregation programs on behalf of their residents.

*Recommendation:* In order to protect your interests as implementers of local electric aggregation programs, the Officers of the Metropolitan Mayors Caucus recommend that municipalities in the Chicago region band together through the Caucus to participate in the ICC rulemaking proceeding. The Officers also recommend that the Caucus challenge the ICC's authority to promulgate rules regarding implementation at the appropriate time. They further recommend that the Caucus engage the law firm of Holland & Knight LLP to represent the Caucus in the proceeding. The cost to participate is \$350 per municipality.

*Background:* The ICC staff published a report in July 2012 noting that there are several issues related to municipal electric aggregation which are not clear under the authorizing statute and, therefore, in staff's view, require additional rulemaking. The staff has identified the following six main topic areas it believes need to be addressed:

1. Whether Section 11-115(A) of the Illinois Public Utilities Act and Section 2EE of the Consumer Fraud and Deceptive Business Practices Act applies to the switching of municipal aggregation customers, such that municipalities will be required to disclose pricing information prior to switching;
2. Whether competitive bids may be required, including whether winning bidders must show how the bidding process was conducted;
3. Whether municipalities should be involved in any aggregation efforts after a first contract with a supplier expires;
4. The obligations for electric utilities under opt-in for first-time and future aggregations;

City of Chicago · DuPage Mayors and Managers Conference · Lake County Municipal League · McHenry County Council of Governments  
Metro West Council of Governments · Northwest Municipal Conference · South Suburban Mayors and Managers Association  
Southwest Conference of Mayors · West Central Municipal Conference · Will County Governmental League

233 South Wacker Drive, Suite 800, Chicago, Illinois 60606  
Tel: 312.201.4505 Fax: 312.258.1851  
[www.mayorscaucus.org](http://www.mayorscaucus.org)

## Electric Aggregation Recommendation

### Page 2

5. Required guidelines for the mailing of opt-out and opt-in notices for first-time and future aggregations; and
6. What notifications, if any, should be provided to the ICC.

It is clear through the early phases of the aggregation rulemaking that ICC staff has some definite positions on the above issues. For example, it believes that as the contracts for initial aggregations expire and municipalities consider new ones, the supplier chosen for the first contract must provide the information that allows the government authority to distinguish between an existing aggregation customer and an existing ARES customer who switched outside of an aggregation program. ICC staff has noted that the rulemaking should address the exact process for this type of information transfer and the roles of the municipality, the previous supplier and the utility in such a process.

ICC staff has raised the issue of whether customers who opted-out of an initial aggregation (thereby remaining on utility default service) should be included in subsequent aggregation pools (where they would be given another opportunity to opt-out). It also believes that rules are needed to specify what procedures should be used to enroll customers who move into the aggregation community after the initial opt-out or opt-in notices have been sent. Municipalities will be significantly affected in both of these situations and should be at the table to represent their perspectives.

In addition, several parties who have filed appearances in the rulemaking are proposing rules which will directly impact municipalities. For example, the Citizens Utility Board (CUB) has suggested that the ICC should propose rules which provide guidelines for suppliers marketing to customers in communities with opt-out aggregation programs. These rules would affect the supplier selected by a municipality as well as suppliers who falsely claim they are the selected supplier.

CUB has also suggested that a rule is needed to clarify whether a municipality can collect a payment from an ARES, and if so, what the appropriate disclosure should be for these payments. CUB would further like to cap or eliminate cancellation fees in municipal aggregation contracts for customers who wish to cancel their participation in an aggregation contract. Municipalities should be at the table when rules governing these issues are being written.

**Timeline:** The ICC has scheduled an initial hearing on November 5 at which an initial draft of staff's proposed rules will be presented and the rulemaking process will be formalized. It is estimated that this process, which will include hearings before an administrative law judge, submittal of testimony for the proceeding and the filing of pleadings to advocate positions, will run from November through spring 2013.

**Governing Structure:** As with past collaborative efforts, the Mayors Caucus will establish a steering committee of three representatives from each of the suburban councils of governments (COGs) to provide general direction to Holland & Knight as the firm represents the positions of the Caucus in the rulemaking proceeding. The steering committee will seek input from participating communities when significant decisions regarding the proceeding need to be made.