

MUNICIPAL AGGREGATION – DEVELOPMENT OF A PLAN OF OPERATION AND GOVERNANCE (“PLAN”)

Illinois Power Agency Guidance Document IPA-MA-1 (March 30, 2012)

NOTE: The Illinois Power Agency (“IPA”) cannot provide legal advice or binding legal interpretations of the requirements of Section 1-92 of the Illinois Power Agency Act. The IPA provides this explanation and examples for illustrative purposes only.

I. Municipal Aggregation Timeline – Where Are We in the Process?

- Referendum
- **Draft Plan of Operation and Governance (“Plan”)**
- Public notice/Two public meetings on Plan
- Ordinance Approving Plan
- Solicit Suppliers

II. What Must Be in the Plan?

The following are requirements for the contents of the Plan in Section 1-92(b) of the Illinois Power Agency Act, 20 ILCS 3855/1-92(b):

- “[P]rovide for universal access to all applicable residential customers and equitable treatment of applicable residential customers” (1-92(b)(1))

In essence, this means that all residential customers who are eligible to be aggregated have to be given access, with similarly situated customers being offered the same price terms. In other words, some residential customers with the same load characteristics cannot be given a flat rate of \$0.06/kWh and others \$0.08/kWh; however, this term does not appear to prevent a two tiered pricing structure, where a residential customer has the option to, for instance, obtain a flat rate of \$0.06/kWh or a floating index-based price at the customer’s option, or for differentiation as between electric space heaters and those who heat their homes by other means.

- “[D]escribe demand management and energy efficiency services to be provided to each class of customers” (1-92(b)(2))

This requirement does not require inclusion of demand management or energy efficiency in the plan for any particular class, but it does require identifying any demand management or energy efficiency services being specifically sought or

invited in the bid response. Note as well that, depending on the composition of your aggregated load, it may be more cost-effective or prudent to provide certain services to one customer class but not another.

- “[M]eet any requirements established by law concerning aggregated service offered pursuant to this Section” (1-92(b)(3))

It is not entirely clear what this requirement adds, but it is likely geared toward ensuring that the service contract between the individual retail customers and the supplier (referred to sometimes as a Retail Electric Supplier (“RES”) or an Alternative Retail Electric Supplier (“ARES”), and any contractual agreement between the governmental aggregator and the supplier, must meet the legal requirements for a RES/ARES contract. The more careful approach would be to ensure in the operating plan that the RES/ARES (collectively, “Supplier”) contracts meet both the minimum requirements of the Public Utilities Act/Consumer Fraud Act and common commercial practice.

III. What Else Might You Consider Adding?

Under the authority of Section 1-92(b), the IPA may provide assistance to a corporate authority or county board in developing a Plan. Although there are limited requirements for the Plan, additional detail may lead to better procurements and fewer opportunities for miscommunications or unmet expectations. Such potentially useful additional detail would include an outline of the contract term on key components, such as:

- The types of products and services the municipality is seeking

If the sole goal of the municipal aggregation is lower prices, there are many different ways to price electricity; each has risks and benefits. On the other hand, adding renewable purchase requirements, particular types of demand response and energy efficiency being sought, or other programs may be further addressed beyond the requirements of Section 1-92(b)(2).

- Customer service and customer education funding/responsibilities of the supplier

Better informed customers and customers with good access to customer support help mitigate customer complaints. Include a requirement that the supplier have a call center and dedicated customer service representatives. Customer service and complaint numbers should be clearly provided. Educational materials will be extremely important, as ARES in addition to the selected aggregation supplier may be soliciting eligible customers during the RFP and opt-out process implementation period.

- Opt-out procedures

Although certain minimum standards are set out in the Illinois Power Agency Act for the opt-out window, any additional protections or modifications, including

who sends the opt-out letters and the contents of those letters can be part of the plan. It is recommended that opt-out materials, regardless of whether actually printed, mailed and processed by the governmental aggregator or the supplier, bear the logo, signature and address of the municipality or county conducting the aggregation. This helps to avoid such material being mistaken for junk mail.

- Provisions involving collection and protection of customer-specific data.

Protection of customer-specific data is an important topic to consider, especially to the extent that you have a consultant or other third parties involved in the transaction that may or may not be explicitly covered by the Public Utilities Act, the Consumer Fraud Act, the Illinois Power Agency Act, other laws and regulations, or the eventual contracts.

- Solicitation process for Suppliers

Aside from specific terms of the contract, a general overview of the entire solicitation process would be a prudent addition to the plan. Although there is no maximum or minimum detail that must be added by law, discussions of the following may be of interest: outlines of a schedule, minimum requirements for Supplier qualification, and criteria upon which to evaluate the supplier.

In addition, due to increased volumes of individual customers switching to an alternative supplier and the normal churn of residents and businesses changing locations, the actual load to be aggregated (upon which the potential suppliers based their price bids) changes daily. In order to prevent large swings that could trigger contingencies requested by the winning Supplier, it is prudent to set a timeframe for final approval of bids and commencement of the opt-out window that allows for a thorough review but avoids needless delay that could change the price or other terms. Also, the longer a price must be held open prior to actual bid selection and award, the greater the probability of a market price risk premium being added to the bid price. One strategy would be to call a special meeting of your board to approve final bid selection, instead of waiting for a regular meeting date; another would be heavier involvement of the board with the design of the bid scoring system and overall process so the bids may be scored and the winner may be approved on an expedited basis, so long as the Board-approved process is followed.

- Anticipated or secured Intergovernmental Agreements

Section 1-92(a) allows one or more municipalities or counties to jointly operate an opt-out aggregation program. If any such agreements have been or will be considered or secured, it would be appropriate to mention in the plan

- Customer contingencies

Regardless of the location, some customers inevitably will be late or delinquent with payments. Requiring bidders to specify any late fee assessments and termination provisions for individual customers is important, especially if the Supplier does not elect to have the utility purchase its receivables and issue a single bill.

Also, the question of what happens when customers move in or move out of their premises, or new meters are added (through new construction or otherwise), should be addressed.

- Billing

How will customer billing be handled? Will the utility be providing a single bill or will suppliers be sending separate supply bills, while the utility separately bills for delivery service? These issues can be closely tied to customer education as well, informing customers that the utility will continue to deliver electricity (and possibly bill), but that the Supplier will provide energy.

- Municipality/County Liability

Actual supply contracts are between the selected supplier and the individual homeowner or business. The municipality/county should make it clear that it is not a party to these individual contractual relationships. However, the Plan might outline the municipality or county's ability to hold the supplier accountable for performance of the contract, ranging from a right to enforce certain contract provisions on behalf of its constituents to notification/reporting requirements.

- Termination of Service Provisions

What happens if the Alternate Retail Electric Supplier goes out of business or merges with another entity, or the agreement is terminated for other reasons? While this is like contained within the retail electric supply agreement you may wish to include terms such as notice provisions in the Plan. In addition, Supplier contracts often have modification provisions or contractual outs for significant changes in law that increase or decrease the cost of providing service.

Please see sample plans posted to the Illinois Power Agency website. While there is no required standard for of a Plan, these samples along with this Guidance Document will assist in formulating your own specific Plan of Operation and Governance. Also, please note that the Plan is one of several key documents (RFP/bidding documents, form contract, educational materials) that will have to be considered and drafted during the process.

If you have additional questions, please contact the following members of the Illinois Power Agency:

Arlene Juracek, Acting Director

(312) 814-8106

Arlene.Juracek@Illinois.gov

Michael Strong, Chief Legal Counsel

(312) 814-4635

Michael.Strong@Illinois.gov