

Subject: Streator Energy Notes

Date: Wednesday, January 2, 2019 at 4:36:10 PM Central Standard Time

From: Nate Shanklin

To: Scot Wrighton

CC: Bob Koretz, Miriam Miller

Hi Scot, thank you for your time today.

Per our conversation, here are my thoughts for the upcoming referendum

Either as separate items or as a combined question, I would recommend that Streator ask for both the right to engage in municipal electric aggregation and to retain the right to establish a municipal utility to provide electric service to the citizens of Streator.

I feel that the benefits of the municipal aggregation will be immediate, and this will also allow the options we discussed in relation to the alternative energy suppliers.

On the municipal utility route, I am thinking that while you will not be exercising the option to displace ComEd, it will give you more flexibility down the road for a variety of different avenues of development.

Once you have confirmed that you will be holding the referendum, I would like to establish an agreement with the city allowing us to act as your broker. Also, we will want to work with you to establish a media plan and schedule the public hearings ASAP. We would be looking to launch the informational part of the program before the end of January.

Thank you,

Nate

Nathaniel S. Shanklin
Managing Director
Wolcott Energy Group
Wolcott Capital
(773) 217-9164

www.wolcottec.com

www.wolcottenergygroup.com



Subject: Re: FW: City of Streator - Electric Utility Formation and Operations and Other Alternate Options for City as a Reseller of Electricity

Date: Friday, December 21, 2018 at 2:23:27 AM Central Standard Time

From: Nate Shanklin

To: Scot Wrighton

Hi Scot, thanks for sending this over in general the questions I think are fine. I wanted to let you know about a conversation I had this morning which I think could be very useful to the city. I spoke with Constellation Energy and explained the opportunity with the local wind farms. They indicated that they would be willing to act as a stabilizing middleman if you wanted to procure energy from the wind farms. For a nominal fee, they would ensure that the delivery of energy was constant and stable and would also deal with the aspect of utilizing that energy for a municipal aggregation.

I think this could be a powerful solution to what you're looking for because it would provide you the ability to contract independently without causing the problems associated with a municipal utility.

I'll be interested in hearing your thoughts.

Just to be clear I am not against the municipal utility language going into the referendum in the least. I just thought this could provide a useful avenue to cheering some if not all the city's goals.

Thank you,

Nate

On Thu, Dec 20, 2018, 10:08 AM Scot Wrighton <wrighton@ci.streator.il.us> wrote:

Nate:

Thank you for all the research you have done on our municipal electric utility questions. In order to obtain clear and decisive answers prior to the January 14, 2019 referendum deadline, I have decided to recruit special legal counsel. The scope and direction of this short-term engagement is discussed in the trailing email. If you have additional questions, beyond the ones that are included below, please let me know ASAP, as we are planning a conference call on this topic tomorrow.

Thanks,

Scot W. Wrighton
City Manager
City of Streator, IL
204 S. Bloomington St.
Streator, IL 61364
(815) 672-2517
wrighton@ci.streator.il.us
www.ci.streator.il.us

From: Scot Wrighton <wrighton@ci.streator.il.us>

Date: Wednesday, December 19, 2018 at 9:56 AM



20 N. Wacker Drive, Ste 1660
Chicago, Illinois 60606-2903
T 312 984 6400 F 312 984 6444

15010 S. Ravinia Avenue, Ste 10
Orland Park, Illinois 60462-5353
T 708 349 3888 F 708 349 1506

mtjurusik@ktjlaw.com
DD 312-984-6432

www.ktjlaw.com

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

MEMORANDUM

TO: Scot W. Wrighton, City Manager, City of Streator
FROM: Michael T. Jurusik, Attorney, and Mark Pruitt, Utility Consultant, The Power Bureau
DATE: December 31, 2018
RE: Electric Utility Questions

Per your request, I have set forth below information to address the City of Streator’s (“City” or “Streator”) desire to explore its options of becoming a “virtual utility” or some other statutorily permitted entity to take advantage of the local solar and wind power producers in the Streator area in order to reduce energy costs for Streator’s residents and businesses. This Memorandum addresses the legal questions you posed surrounding this request.

- 1. Is the City authorized by State law to create an electric utility for purposes of buying electricity “off-grid” (i.e., not from ComEd) and reselling the electricity to retail customers and industrial customers within and outside of the City’s corporate limits?**

Yes. This activity is governed by the Illinois Municipal Code (“Municipal Code”). The full text of the relevant provisions of the Illinois Municipal Code are included at the end of this Memorandum. Section 11-117-1 of the Illinois Municipal Code authorizes a municipality to create an electric utility. 65 ILCS 5/11-117-1. A “public utility” is defined in Section 11-117-2 of the Illinois Municipal Code in relevant part as “any plant, equipment, or property, and any franchise, license, or permit, used or to be used [] for the production, storage, transmission, sale, delivery, or furnishing of cold, heat, light, power, water, or for the conveyance of oil or gas by pipe lines [].” 65 ILCS 5/11-117-2.

Section 11-117-3 of the Illinois Municipal Code requires passage of a referendum before the City may “acquire or construct any public utility.” 65 ILCS 5/11-117-3. Section 11-117-4 of the Illinois Municipal Code requires passage of a referendum before the City may “proceed to operate for hire any public utility for the use or benefit of private consumers or users, or charge for such consumption or use....” 65 ILCS 5/11-117-4. The Section 11-117-4 referendum proposition shall be submitted in accordance with the provisions of Section 11-117-3. The Section 11-117-4 referendum is not necessary where the municipality is going to sell electricity inside of or outside of its corporate limits where the electricity is generated by an electric lighting plant owned and operated by the municipality for the municipality’s own use. Thus, the establishment of a new electric utility requires passage of at least two (2) referenda questions, by a majority of the electors voting on the questions of the adoption of the proposed ordinances as required by 65 ILCS 5/11-117-3 and 5/11-117-4. If the municipality is going to finance the acquisition, construction or operation of the public utility and/or the purchase of property for the public utility, the municipality may borrow money and issue bonds, pledging the faith and credit of the municipality, but any bond issuance is subject to prior referendum approval in accordance with the provisions of Section 11-117-3. Per Section 11-117-14 of the Illinois Municipal Code, no referendum

for the acquisition, construction or operation of any public utility shall be held within the ten (10) month period immediately following a failed referendum on the same topic. 65 ILCS 5/11-117-14.

Under the Illinois Election Code, any ordinance or resolution adopted by the City Council authorizing a referendum must be adopted not less than **seventy-nine (79)** days before a regularly scheduled election (10 ILCS 5/28-2(c)). Any public question properly filed must be certified to the county clerk not less than **sixty-eight (68)** days prior to any regularly scheduled election (10 ILCS 5/28-5). Therefore, given the date of the upcoming 2019 General Election, ordinances, resolutions or petitions must be approved or filed as noted below.

ELECTION DATE	ORDINANCE OR RESOLUTION PASSED ON OR BEFORE	CERTIFIED BY VILLAGE ON OR BEFORE
April 2, 2019	January 11, 2019	January 24, 2019

Note: The term “public utility” is also defined in the Public Utilities Act (220 ILCS 5/1-101 *et seq.*) (“PUA”), and includes public electric utilities like Commonwealth Edison, but municipal-owned electric utilities are excluded from the PUA’s definition of public utility. Public utilities are subject to the jurisdiction of the Illinois Commerce Commission (“ICC”). Municipal utilities are exempt from ICC regulation, unless otherwise specifically regulated by the ICC per State law. See, 220 ILCS 5/3-105 and 5/4-101 and 65 ILCS 5/11-117-6(b and d) (any municipality may enter into an agreement with or grant a franchise to any public utility defining the geographic areas in which each party may provide retail utility services, and the agreement or franchise may provide for exclusive or non-exclusive service territories, or both, for the parties; any service area agreement that provides for exclusive service territories is subject to “limited” ICC approval).

2. What alternatives are there to creating an electrical utility to accomplish the City Manager’s goal of having the City operate an “enterprise fund” where the City is buying electricity “off-grid” (i.e., not from ComEd) and reselling the electricity to retail customers and industrial customers within and outside of the City’s corporate limits.

a. Can the City use a power purchase agreement (PPA) to buy and resell electricity to City residents and heavy electric users, like industrial customers?

To negotiate cost competitive Power Purchase Agreements (“PPAs”), the buyer (i.e., the City, or the City Municipal Utility) must present an ability and willingness to make payments to the seller (i.e., a thermal or renewable energy generator) over the term of the PPA. Currently, the City may enter into one or more PPAs to support electricity consumption for accounts controlled by the City, but it cannot obligate its native load customers (residential, commercial and industrial electricity accounts located within the municipal boundaries of the City) to participate in any PPAs. If the City were to establish a municipal utility, the City would purchase electricity and power supply in the regional wholesale market and then resell that electricity and power to its native load accounts. In this arrangement, the City would be required to join the “PJM wholesale market” as a load-serving entity, post credit or collateral for wholesale electricity and power purchases and make payment for electricity and power purchases, and set rates and manage collections from native load accounts. “PJM” is a regional electric utility grid operator (also referred to as a “regional transmission organization”) that coordinates

and directs the flow of electricity to 13 states (including parts of northern Illinois) and the District of Columbia. PJM does not own power lines or generators. Instead, it is a neutral, regulated organization that directs the operation of power lines and generators for many different owners. PJM acts as an agent to provide fair access to the transmission system for competing suppliers and electricity users.

The contract term of a typical PPA is typically 10 to 25 years. Under a PPA, the City would buy output at fixed prices and sell at the wholesale price. Therefore, the City would need to set its strike prices as low as possible to try to make a profit selling at the wholesale price. The City's profits would be tied to the market, so there is inherent risk in PPAs.

i. What are the statutory and regulatory compliance actions that need to be approved for the City to enter into and operate under PPAs?

PPAs concerning electricity and power purchases for ComEd accounts serving the City's municipal facilities are governed by the ICC. Wholesale PPAs (i.e., a PPA held by a municipal utility) are governed by federal law under the oversight of the Federal Energy Regulatory Commission through regional transmission systems (<https://www.ferc.gov/market-oversight/mkt-electric/overview.asp>). The industry-standard form of contract for electricity and power sales is the Edison Electric Institute Master Contract (<http://www.eei.org/resourcesandmedia/mastercontract/Pages/default.aspx>).

b. Can the City become an "Alternative Retail Electric Supplier" (ARES) for purposes of buying electricity "off-grid" (i.e., not from ComEd) and resell to retail customers within and outside of the City's corporate limits?

Yes, the City (or an affiliated entity) may be certified as an Alternative Retail Electric Supplier (ARES). As an ARES, the City could negotiate PPAs for electricity accounts serving municipal facilities and retail energy customers that enter into retail supply agreements with the City. As under the municipal utility model, the City (acting as a wholesale buyer) would need to present an ability and willingness to make payments to energy sellers. Due to the voluntary nature of the agreements between ARES and retail energy customers (i.e., State law requires that retail energy accounts must be able to exercise choice in the selection of electricity supply), a City ARES would be required to post an elevated level of credit against all energy and power purchases. If the City were to establish an ARES, the City would purchase electricity and power supply in the regional wholesale market and then resell that electricity and power to retail supply accounts under commercial contracts. Under this arrangement, the City would be required to join the PJM wholesale market as a load-serving entity, establish data transfer and billing systems that meet the requirements set forth by Commonwealth Edison, post credit or collateral for wholesale electricity and power purchases and make payment for electricity and power purchases, undertake marketing and contract negotiations, and manage collections from customers.

i. What are the statutory and regulatory compliance actions that need to be approved to create and operate as an ARES?

An ARES must be certified by the ICC (<https://www.icc.illinois.gov/electricity/authorities/ares.aspx>) and enter into agreements and meet the standards required by Commonwealth Edison (<https://www.comed.com/DoingBusinessWithUs/Pages/EnergySuppliers.aspx>). A municipality that seeks to operate as an ARES (rather than a municipal utility) must obtain an ICC-issued certificate of service authority (See, 220 ILCS 5/16-115) and must also comply with other statutory requirements imposed on public utilities and be subject to ICC regulatory authority (See, 220 ILCS 5/16-115B).

3. **If the City of Streator creates an electric utility, can it acquire and operate power generation facilities and distribution facilities within and outside of the City's corporate limits, and if so, is it better positioned to do so over any of the alternate options?**

The Illinois statute indicates that power generation assets may be acquired and operated by a municipal utility. However, such activity is not required.

4. **If the City of Streator creates an "ARES", can the ARES acquire and operate power generation facilities and distribution facilities within and outside of the City's corporate limits?**

The Illinois statute does not preclude power generation asset ownership by an ARES. However, many ARES do not own power generating assets due to market price risk and retail switching risk. Wholesale electricity supply prices change hourly, and periodically net negative prices. An ARES operating an owned power generation resource may not be able to generate electricity at prices that are competitive with the prevailing hourly market price. In such a case, the ARES would have to pass along the above-market cost of generation to its retail customers, thus making the ARES prices less competitive. Less competitive pricing can incentivize retail customers to seek out other supply options and leave higher priced ARES providers. If this were to happen to an ARES with owned power generation assets, then the ARES would have no buyers for the electricity generated from its owned power generation assets and would have to book those market losses against its own balance sheet.

5. **Can the City create and operate a "virtual" electric utility?**

- a. **What are the statutory and regulatory compliance actions that need to be approved to create and operate as a "virtual" electric utility?**

Another option for the City, if it does not want to actually take title to the electricity or own the equipment, is to become an "ABC" ("Agents, Brokers, Consultants"). While a Retail Electric Supplier actually takes title to the electricity and resells it, an ABC does not take title and resell electricity. Instead, an ABC acts as an electricity broker. As an ABC, the City would negotiate with retail electric suppliers, facilitate transactions with customers and take a fee. In order to become an ABC, the City would need to post a performance bond and file an application with the ICC. As the City knows its residents and companies that operate within its boundaries, it may be able to underbid other ABCs and more easily facilitate transactions.

It may be possible for the City to operate as an ABC to serve as a "virtual" utility. To date, we are not aware of any Illinois municipality operating in this manner. To be clear, only a full municipal utility has the authority to force consumers to accept its service. The following approach relies on voluntary commercial agreements between the potential City ABC and local residents.

1. Secure Opt-Out Municipal Aggregation Authority for Residential and Small Commercial Retail Accounts. The Opt-Out Municipal Aggregation Authority must be approved by referendum. Once approved, the City can serve as an ABC to select an ARES to serve the City's residential and small commercial (<15 000 kWh/annum) accounts. Typically, over 90% of residential and small commercial accounts participate in Opt-Out aggregation programs.
2. Expand Aggregation Program for Large Accounts. The Opt-Out Aggregation program can be structured to allow the City to broker electricity supply offers to larger commercial accounts (>15,000 kWh) located within the City. Presumably, the City ABC could market services at a lower cost than private sector ABCs and ARES, due to the City's local network of contacts and a competitive cost structure.
3. Structure Appropriate Offers. The City ABC can set the specifications for the retail supply offers presented through the Opt-Out and Expanded Large Account offers. For instance, the City may consider transacting with local renewable suppliers for a portion of the loads presented in each group (i.e., utility-scale solar and wind or community-scale solar), and general market supply for the remainder portion of the loads. In so doing, the City can maintain market price competitiveness while differentiating its product offer.
4. Earn a Transaction Fee. In return for placing loads with one or more ARES for the aggregated loads, the City ABC would receive payments based on agreements with the ARES.

6. Can the City create and operate a "micro-grid" electric utility?

- a. **What are the statutory and regulatory compliance actions that need to be approved to create and operate as a "micro-grid" electric utility?**

ComEd has received authorization from the ICC to create a single micro-grid (<https://www.icc.illinois.gov/docket/files.aspx?no=17-0331&docId=266055>). However, private micro-grids have been created absent regulatory approval (i.e., Illinois Institute of Technology, University of Illinois - Urbana Champaign, University of Illinois - Chicago, etc.). These private micro-grids have been created when the host (i.e., the university) builds a new distribution system or purchases an existing distribution system from the local utility.

7. Municipal-Owned Wind Farms

Any municipality may own and operate a wind generation turbine farm that directly or indirectly reduces the municipality's energy or other operating costs. 65 ILCS 5/11-15.3-1. The authority under this provision includes acting jointly with other units of government, including school and community college districts, and seeking financial assistance from any State agency. Section 5/11-15.3-1 of the Illinois Municipal Code is the sole provision in Division 15.3 of Article 11 and does not contain any other procedural requirements. However, Section 5/11-15.3-1 does not authorize the creation of a new municipally-owned wind-powered electric utility, as the stated purpose of the provision is to reduce the municipality's own energy and operating costs. A municipality would have to rely on the other State laws referenced in this Memorandum in order to establish and operate a wind generation turbine farm or a solar panel farm for commercial purposes.

8. Home Rule Authority

Home rule municipalities have greater power than non-home rule municipalities in making decisions regarding the financing of a municipal utility, and its capital acquisitions and improvements; but this is the extent of the difference between these types of municipalities. In the areas of rate making and extraterritorial powers, municipal utilities are limited by State laws and common law precedent. For example, concepts such as “uniformity,” “reasonableness” and “just for same amount and character of service” apply to rate making. The applicable provisions of the Illinois Municipal Code pertaining to electric utility financing options and product and services charges specifically state that they are not a limitation on home rule authority. See, 65 ILCS 5/11-117-12.

City Manager Scot Wrighton Questions from 12/18/18:

1. We understand that to become a municipal utility a referendum would be required. If the referendum is approved, it should enable us to purchase power either “off-grid” or “on-grid;” and from anyone authorized to sell us power through a PPA, whether it was Commonwealth, Constellation, Avingrid, Invenrgy, Cypress, or anyone else. Without a referendum, we can only negotiate PPAs for the city’s own power needs. We want to sell power back to businesses and residents inside the city, like a utility but without having to condemn Commonwealth Edison’s infrastructure.

Response: See above responses.

2. We are NOT opposed to municipal aggregation. I just think that the authority that can be granted to engage in aggregation does not go far enough and grant the city the authority to act like a utility. We are becoming ringed by alternative energy facilities, so we need a mechanism to buy the power and resell it. Can the referendum question be phrased so that we obtain authority to do both? — Be an electric utility AND engage in municipal aggregation.

Response: See above responses.

3. Does becoming an ARES give us the powers we need without becoming an electric utility? Is it the same as registering as an independent energy provider?

First Question: Partially. An ARES may purchase electricity from the wholesale market and sell that electricity to retail customers. However, an ARES cannot compel retail customers to take its services (as can a public utility).

Second Question: No. An independent power producer is a power generator that is connected to the regional transmission grid and is subject to regulation by the regional transmission operator (PJM).

If there are any questions, please contact us.

Mike and Mark

Enclosures

cc: Sheryl Churney, Streator City Attorney, Klein, Thorpe and Jenkins, Ltd. (w/ encls.)

65 ILCS 5/11-117-1.

Sec. 11-117-1. Subject to the provisions of this Division 117, any municipality may (1) acquire, construct, own and operate within the corporate limits of the municipality any public utility the product or service of which, or a major portion thereof, is or is to be supplied to the municipality or its inhabitants and may contract for, purchase and sell the product or service of any such utility; provided, however, that any municipality may acquire, construct, own and operate without the corporate limits of any municipality any public utility for the transportation of persons; (2) acquire, construct, own, maintain and operate without the corporate limits of any municipality any electric power lines or substations necessary solely to provide power or a source of power for such municipality, and, when it is found necessary and in the public interest by the Illinois Commerce Commission, to acquire by eminent domain any property without the corporate limits of any municipality for such purposes, but no new customer which an electric supplier is entitled to serve under the Electric Supplier Act may be served from any line, lines or other facilities located without the corporate limits of a municipality unless waiver to serve such a customer is given in writing by the electric supplier; (3) lease any public utility owned by the municipality to any corporation organized under the laws of this state for the purpose of operating that public utility, for a period not longer than 20 years; (4) fix the rates and charges for the product sold and the services rendered by any such public utility; and (5) make all needful rules and regulations in relation thereto.

However, no municipality shall acquire or operate a public utility for or in connection with the transportation of persons under the provisions of this Division 117 if there is operating in such municipality any other publicly or privately owned public utility that provides such a service; and no municipality located within or partly within a county having 400,000 or more inhabitants may acquire by eminent domain any land or right of way for any electrical power line or substation outside of its corporate limits.

65 ILCS 5/11-117-2.

Sec. 11-117-2. The term "public utility," when used in this Division 117, means and includes any plant, equipment, or property, and any franchise, license, or permit, used or to be used (1) for or in connection with the transportation of persons or property, or the conveyance of telegraph or telephone messages; or (2) for the production, storage, transmission, sale, delivery, or furnishing of cold, heat, light, power, water, or for the conveyance of oil or gas by pipe lines; or (3) for the storage or warehousing of goods; or (4) for the conduct of the business of a wharfinger.

65 ILCS 5/11-117-3.

Sec. 11-117-3. No municipality shall proceed to acquire or construct any public utility under the provisions of this Division 117 until an ordinance of the corporate authorities providing therefor has been duly passed. This ordinance shall set forth the action proposed, shall describe the plant, equipment, and property proposed to be acquired or constructed, and shall provide for the issuance of bonds, mortgage certificates, or special assessment bonds, as authorized in this Division 117.

This ordinance shall not become effective until the question of its adoption is submitted to a referendum vote of the electors of the municipality. The municipal clerk shall certify the question for submission to the vote of the electors of the municipality upon an initiating ordinance adopted by the corporate authorities.

The question shall be in substantially the following form:

Shall the ordinance (stating YES
the nature of the proposed -----
ordinance) be adopted? NO

If a majority of the electors voting on the question of the adoption of the proposed ordinance vote in favor thereof, the ordinance shall thereupon become a valid and binding ordinance of the municipality.

Prior to the referendum upon this ordinance, the municipal clerk shall have the ordinance published at least once in one or more newspapers published in the municipality, or, if no newspaper is published therein, then in one or more newspapers with a general circulation within the municipality. This publication shall be not more than 30 nor less than 15 days in advance of the election.

65 ILCS 5/11-117-4

Sec. 11-117-4. No municipality shall proceed to operate for hire any public utility for the use or benefit of private consumers or users, or charge for such consumption or use, unless the proposition to operate has first been submitted to the electors of the municipality as a separate proposition and approved by a majority of those voting thereon. The proposition shall be submitted in accordance with the provisions of Section 11-117-3. But any municipality, without such submission and approval, may sell for heat, light or power within or without the corporate limits of the municipality, electricity generated in any electric lighting plant owned and operated by the municipality for the municipality's own use. Also any municipality, without such submission and approval, may sell water within and outside the corporate limits of the municipality from any water plant owned and operated by the municipality, and for this purpose shall have power to acquire by agreement, purchase or condemnation, rights of way not more than 35 miles beyond its corporate limits in the streets, alleys or other public ways of any city, village or incorporated town or in unincorporated territory, even though such city, village or incorporated town or unincorporated territory to be served is not contiguous to the municipality, convenient and necessary for this purpose and to lay mains and construct and operate pumping stations, reservoirs and other necessary appurtenances therein. Provided, further, that where such municipality has laid mains and constructed and operated pumping stations, reservoirs and other necessary appurtenances, it may enter into contracts at a higher water rate than the existing metered rate for like consumers within the municipality, to allow the municipality to obtain a fair return to cover the cost of financing, constructing, operating and maintaining the improved facilities, and in the event such rates are not agreed upon by the parties, such rates shall be fixed and determined by the circuit court of the county in which the municipality which has financed, constructed, operated and maintained the improved facilities is located; but this proviso shall not impair the right of a municipal corporation to obtain water at the existing metered rate for like consumers as is provided in Section 26 of "An Act to create sanitary districts and to remove obstructions in the Des Plaines and Illinois Rivers", approved May 29, 1889, as heretofore and hereafter amended.