

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
)	13-0506
Investigation of Applicability of)	
Sections 16-122 and 16-108.6 of the)	
Public Utilities Act)	

VERIFIED INITIAL COMMENTS OF THE CITIZENS UTILITY BOARD

The Citizens Utility Board (“CUB”), by one of its attorneys, hereby submits these Verified Initial Comments in accordance with the Illinois Commerce Commission (“ICC” or “the Commission”) Administrative Law Judge’s September 25, 2013 Notice of Continuance of Hearing and Notice of Schedule.

The Energy Infrastructure Modernization Act (“EIMA”) requires participating electric utilities to collectively invest over \$3 billion in system infrastructure improvements and qualifying “smart grid” investments (in particular, investment in advanced metering infrastructure [AMI]). 220 ILCS 5/16-108.5. “Smart Grid” is defined in the EIMA as investments and policies that together promote multiple goals, including the development and incorporation of demand resources (demand response and energy efficiency) and distributed generation; deployment of real-time, automated and interactive technologies; integration of “smart” appliances and customer devices; and the provision to customers of timely information and control options. 220 ILCS 5/16-108(a). The EIMA specifically includes the “[i]dentification and lowering of unreasonable or unnecessary barriers to adoption of Smart Grid technologies, practices, services, and business models that support energy efficiency, demand-response, and distributed generation” as one of its objectives. 220 ILCS 5/16-108.6(a).

This proceeding flows directly from those goals and the responsibility given the ICC to identify and lower any unreasonable or unnecessary barriers to the adoption of Smart

Grid technologies. Since the first filings by Commonwealth Edison Company (“ComEd”) and the Ameren Illinois Company (“Ameren”) under the EIMA, the question of how customers will benefit from the EIMA’s investment obligations has been central to ICC proceedings. It is expected customers will benefit from new dynamic pricing options, expanded energy efficiency programs and new in-home energy management technologies that will, taken together, provide Illinois customers a chance to directly benefit from EIMA investments by reducing their energy consumption. Customers will have access to interval usage data that will help inform their decision making, and provide a real-time window into how they use electricity. Even if only a handful of customers choose to change their consumption patterns by lowering or shifting their usage away from peak usage times, all customers will benefit from a flatter load shape and reduced energy demand.

A necessary, if not sufficient, condition for those benefits to materialize is the access by third-parties, including alternative retail electric suppliers (“ARES”) and municipalities, to the interval usage data which will be now be collected by ComEd and Ameren. Illinois law clearly provides for customers to have access to their own interval usage data as soon as the utility has it. Illinois law also clearly provides for third-parties who have been given access by a customer to that customer’s account to have the same access that customer would. At this point, then, the only question left is what customer usage data can, and should, be made available to third-parties who do not yet have authorization from a customer.

CUB believes that Illinois law is silent on this point, and that neither Sections 16-122 or 16-108.6 address this question directly. Section 16-122 addresses access to customer usage data in the context of municipal electricity supply aggregation. Section 16-108.6 addresses the technical requirements for protecting customer usage data from unauthorized parties. Neither addresses what to do with the vast amount of customer

usage data which will be captured thanks to the deployment of AMI. This information will be critical to the development of the very technologies customers will need to allow them to benefit from EIMA investments. The full benefits of the smart meter infrastructure can be unlocked only with the help of third-party energy efficiency, demand response and dynamic pricing program designers and implementers. CUB agrees with the Commission that this requires a careful balance between protecting a customer's privacy and unlocking the full benefits of the smart meter infrastructure. Initiating Order at 2 (Sept. 4, 2013). As a result, access of third parties to customer usage data – interval or otherwise – should be restricted to aggregated batches such that no individual customer can be identified from any data released. Customer usage data could be released this way in groups, for example, in groups based on zip code plus 4 or census tract so long as there are 30 customers in each group¹. This would preclude the release of customer names, addresses, account information or meter information as well as preclude the release of customer usage data in any group sizes such that individual customers could be identified. With this restriction in place, third parties could – and should – be given access to customer usage data in the intervals that ComEd and Ameren collect them.

I. PROCEDURAL BACKGROUND

The Commission seeks to investigate the applicability of Sections 16-122 and 16-108.6 of the Public Utilities Act (“PUA”). Initiating Order at 1 (Sept. 4, 2013), citing 220 ILCS 5/16-122; 220 ILCS 5/16-108.6. These sections pertain to the release of customer-specific information by electric utilities. *Id.* The Commission agreed with Staff that the deployment of AMI, net metering and Peak-Time Rebate (“PTR”) programs and other rate

¹ If there are not 30 customers in a zip+4 postcode, the next smallest group, for example zip code, that contains over 30 customers should be used.

design filings required by the electric utilities pursuant to statute has led to the immediate need for utilities to provide customer-specific information to third parties which may or may not conflict with other sections of the PUA. *Id.* The Commission then requested that parties explore these issues in order to appropriately interpret the PUA as it relates to the dissemination of customer-specific information, and in particular, address two issues identified by the Commission's Office of Retail Market Development in its Staff Report of August 30, 2013:

A. Release of aggregated, anonymous customer usage information,

B. Release of individual and specific information

1. Identification of Peak Time Rebate and net metering customers
2. RES access to its customers' interval data for non-billing purposes.

Staff Report at 3.

Section 16-122 states:

(a) Upon the request of a retail customer, or a person who presents verifiable authorization and is acting as the customer's agent, and payment of a reasonable fee, electric utilities shall provide to the customer or its authorized agent the customer's billing and usage data.

(b) Upon request from any alternative retail electric supplier and payment of a reasonable fee, an electric utility serving retail customers in its service area shall make available generic information concerning the usage, load shape curve or other general characteristics of customers by rate classification. Provided however, no customer specific billing, usage or load shape data shall be provided under this subsection unless authorization to provide such information is provided by the customer pursuant to subsection (a) of this Section.

(c) Upon request from a unit of local government and payment of a reasonable fee, an electric utility shall make available information concerning the usage, load shape curves, and other characteristics of customers by customer classification and location within the boundaries of the unit of local government, however, no customer specific billing, usage, or load shape data shall be provided under this subsection unless authorization to provide that information is provided by the customer.

(d) All such customer information shall be made available in a timely fashion in an electronic format, if available. 220 ILCS 5/16-122.

Section 16-108.6(d) provides:

(d) The AMI Plan shall secure the privacy of the customer's personal information. "Personal information" for this purpose consists of the customer's name, address, telephone number, and other personally identifying information, as well as information about the customer's electric usage. Electric utilities, their contractors or agents, and any third party who comes into possession of such personal information by virtue of working on Smart Grid technology shall not disclose such personal information to be used in mailing lists or to be used for other commercial purposes not reasonably related to the conduct of the utility's business. Electric utilities shall comply with the consumer privacy requirements of the Personal Information Protection Act. In the event a participating utility receives revenues from the sale of information obtained through Smart Grid technology that is not personal information, the participating utility shall use such revenues to offset the revenue requirement.

II. THE APPLICABILITY OF SECTIONS 16-122 AND 16-108.6(d) TO REQUESTS FOR CUSTOMER USAGE DATA

Applicability of Section 16-122

Section 16-122, was written in the context of the development of a competitive retail electricity market and provides explicit access for a retail customer, a designated agent of a retail customer, an ARES, and a unit of local government. 220 ILCS 5/16-122. This Section of the PUA was enacted as part of the "Electric Service and Customer Choice Rate Relief Law of 1997," Public Act 9-561. As such, it was part of the General Assembly's decision to create a competitive market for retail electric supply.

The original sections of Section 16-122 provide that for a retail customer or agent or a designated agent, a utility must make available upon request that customer's billing and usage data shall be provided, 220 ILCS 5/16-122(a), and that for an ARES, a utility must make available upon request "generic information concerning the usage, load shape curve or other general characteristics of customers by rate classification." 220 ILCS 5/16-122(b).

The word “generic” is only used in connection with the fulfillment of a request from an ARES.²

In 2002, Section 16-122 was amended to provide that for a unit of local government, a utility must make available “information concerning the usage, load shape curves and other characteristics of customers by customer classification and location within the boundaries of the unit of local government.” 220 ILCS 5/16-122(c). This language was added by the General Assembly at the same time language was added to the PUA addressing the development of a competitive market, mandating that the Commission shall prepare a report on the value of municipal aggregation of electricity customers. Public Act 92-0585. These new reporting requirements obliged the Commission to work with “persons involved in aggregation or the study of aggregation of electricity customers in Illinois, including municipalities, utilities, aggregators, and non-profit organizations. *Id.*

The fundamental rule of statutory construction is to ascertain and give effect to the legislature’s intent. Staff Response at 4, ¶8, citing *Michigan Avenue Nat’l Bank v. County of Cook*, 191 Ill.2d 493, 503-504 (2000). The best indication of legislative intent is the statutory language given plain and ordinary meaning. *Id.*, citing *Illinois Graphics v Nickum*, 159 Ill.2d 469, 479 (1994). Courts presume that the legislature did not intend an absurd, inconvenient or unjust result. *Id.*, *Carver v. Sheriff of La Salle County*, 203 Ill.2d 497 (2003).

The General Assembly used Section 16-122 to place upon electric utilities an obligation to respond to requests from customers, designated agents and ARES when it created a competitive retail electricity market. It later placed an obligation upon electric utilities to respond to requests from units of local governments when it obliged the ICC to

² All such requests must be accompanied by a “reasonable fee,” which, since no party addresses it in either a Motion or a Response, is presumed waived in the context of a litigated proceeding. 220 ILCS 5/16-122.

investigate the value of municipal aggregation for electricity customers. However, the General Assembly did not address what an obligation of an electric utility is to respond to Commission Staff, the People, or indeed any other unit of government, or any nonprofit intervening party such as CUB.³ Section 16-122 is meant to place an obligation on the electric utility to respond in a timely fashion to requests from those parties directly involved in achieving the goals of the General Assembly to develop and promote a competitive retail electric market: customers, agents, ARES, and units of local government. Given the context in which Section 16-122 was created, CUB disagrees with a presumption that Section 16-122 governs all third-party requests

Section 16-122 predates the smart grid and AMI rollout effectuated by the EIMA. 220 ILCS 5/16-122. The General Assembly did not remove Section 16-122 when it enacted the EIMA and so it may remain applicable to requests for customer usage data in the context of municipal aggregation. This does not, however, address other instances where data may be exchanged to the utilities' discretion. Imputing into Section 16-122 an exclusive list of situations when data may be exchanged would eliminate important customer benefits created by the EIMA and its mandatory investments AMI meters and smart grid technologies. ComEd and Ameren must have discretion, as limited by Illinois laws, to share this data where necessary to fulfill the PUA and EIMA's purpose and create customer benefits.

³ In fact, Section 16-120 notes that the provisions of Section 16-122 notwithstanding, the Commission should have access to such aggregated load data as may be necessary to perform the analyses required by this subsection, which is a report on the value of municipal aggregation of electricity customers. 220 ILCS 5/16-120(c). That same section does provide, however, that "proprietary or confidential information shall not be disclosed publicly," though no definition is provided in that Section for what constitutes "proprietary or confidential information." *Id.*

Applicability of Section 16-108.6(d)

Unlike Section 16-122, Section 16-108.6 is part of the EIMA. The EIMA requires utilities participating in its formula rate option to make mandatory investments in smart grid and AMI investments. 220 ILCS 5/16.108.5(b). Those investments are reviewed as part of the participating utility's "Smart Grid Advanced Metering Infrastructure Deployment Plan ("AMI Plan") filings. 220 ILCS 5/16-108.6(c). The EIMA requires that the AMI Plan

secure the privacy of personal information and establish the right of consumers to consent to the disclosure of personal energy information to third parties through electronic, web-based, and other means in accordance with State and federal law and regulations regarding consumer privacy and protection of consumer data. *Id.*

Section 16-108.6(d) requires utilities to "secure the privacy of the consumer's personal information," which for this purpose consists of the consumer's name, address, telephone number, and other personally identifying information, as well as information about the consumer's electric usage and comply with the consumer privacy requirements of the Personal Information Protection Act. 220 ILCS 5/16-108.6(d).

The EIMA thus places a premium on the security of individual consumer information and in particular on any information which could be used to identify an individual. However, the EIMA does not address the central question now confronting the ICC and indeed all stakeholders in the success of Illinois' unprecedented investment in smart grid and AMI technologies: how to realize the benefits of that investment while protecting consumer privacy. While the EIMA does explicitly require the utilities to develop procedures for third parties to gain customer consent for personal information, it does not address how participating utilities should respond to requests for customer usage data that is not personal.

Legal Standard for the Release of Customer Usage Data

Taken together, Sections 16-122 and 108.6 establish that individual customer information – that which could be considered “personal” – cannot be released absent customer consent. This information would include information that could be used to identify a customer: name, address, telephone number, account number, individual usage. Only when a customer authorizes a third party to have access may an electric utility provide any individual, personal customer information. This interpretation follows naturally from the emphasis on security in the EIMA (Section 16-108.6(d)) and from the specific requirements for authorization needed during a municipal aggregation (Section 16-122).

Nothing in this interpretation, however, would bar the release of customer usage information which is aggregated such that an individual customer’s usage information or any other personal information is not identifiable. Customer load data – customer usage data – can be provided down to an individual level so long as that information cannot be reasonably used to identify a particular customer. This bars the release of any customer name, account number, or address. This does not bar the release of tabulated data which shows hourly consumption patterns for any group of customers, including a designation for each customer within that group of the delivery service class used by ComEd when billing each customer within that group. Granularity alone does not make anonymous data customer specific.

It should be presumed that the legislature had a definite purpose in enacting a statute and drafted it so that each part would be in harmony with that purpose and, thus, the general purpose of the whole act controls and all parts are interpreted consistently with that purpose. *In Re Ameren Illinois Company Verified Petition for Approval of Smart Grid Advanced Metering Infrastructure Deployment Plan*, Final Order at 51 (May 29, 2013). The

Commission recognizes that, to the extent possible, various Sections of the Act must be read together and interpreted to achieve a coherent intent. *Id.* Taking the goals of the EIMA into consideration, as well as the context for Section 16-122, it is clear that the PUA allows participating utilities to share non-individual customer usage information, including interval usage data, with third parties.

III. NECESSITY FOR THE RELEASE OF CUSTOMER USAGE DATA

The question of the realization of customer benefits has been central to the ICC's review of ComEd and Ameren's AMI Plans. With respect to the informational finding required for approval, the ICC framed the central question as "whether the Company's AMI strategy adequately embraces AMI benefits for customers given the investments required and ratepayer dollars expended." *In Rre Commonwealth Edison Co. Petition for Statutory Approval of a Smart Grid Advanced Metering Infrastructure Deployment Plan pursuant to Section 16-108.6 of the Public Utilities Act*, Final Order, ICC Docket No. 12-0298, at 6 (June 22, 2012)⁴ ("12-0298 FO"). The ICC, in its conclusions with respect to that question, included a specific list of the "immediate benefits" of AMI as described in the AMI Plan:

Once AMI meters are installed, customers will be able to benefit from the latest Smart Home applications. For example, they will be able to participate in any supplier's dynamic rate offerings and/or any curtailment service (demand response) provider's or ComEd's DLC [Direct Load Control] programs, such as the PTR program discussed earlier in this chapter. ComEd is also in the process of enhancing the existing web portal, which was used in the Pilot to enable all of the potential value for customers from this application, including:

- Viewing hourly interval usage data within 24 hours of that consumption[.]
- Setting a goal for reducing energy usage, setting up a plan/budget to meet that goal, viewing progress towards that

⁴ ComEd petitioned for, and was granted, rehearing in that docket, and the final order on rehearing was issued on December 5, 2012.

goal, and receiving optional proactive communications if not meeting the goal.

- Comparing energy use to similar anonymous customers[.]
- Viewing tips for reducing energy consumption[.]
- Encrypted data transfer to ensure security of customer usage data[.]
- The web portal ComEd is developing will also be built with a “Green Button” functionality. Further description of this functionality can be found in the “Data Privacy” section of this chapter.

12-0298 FO at 6, citing AMI Plan at 55.

In the docket approving ComEd’s AMI Plan, the Commission repeated that the “AMI system is the foundation for creating customer value and that selection of the AMI components is a critical first step in the creation of customer value,” in particular singling out the identification and implementation of customer applications that will unlock key functionalities of the Smart Grid. 12-0298 FO at 7.

Since, as the ICC has already noted, the “AMI system is the foundation for creating customer value and that selection of the AMI components is a critical first step in the creation of customer value.” *Id.* Unlocking these key functionalities can only follow from access by customers – and by other third parties – to customer interval usage data.

Interpreting any part of the PUA to restrict data access only to those situations specifically enumerated would dramatically reduce the abilities of third parties to design and implement effective energy efficiency and dynamic pricing programs. These third parties could include program implementers who participate in the utilities’ Energy Efficiency Portfolio Standard (“EEPS”) programs, ARES, municipalities, universities, product developers, or other stakeholders. For example, there are program administration and research questions that can only be answered by understanding the energy use of particular buildings or building types. Energy efficiency and demand response programs

are designed around the energy consumption habits of customers, which in turn are based on a given set of location and housing characteristics. Municipalities who are undergoing an energy planning process rarely have the internal capacity to make productive use of customer-identified or aggregated energy use data in-house. Instead, they must contract out to an urban planner or other consultant to interpret and present the data in a way that helps the municipality achieve its goals. As energy efficiency programs become more sophisticated, and deeper savings are sought, utilities, program administrators and independent third parties need access to energy use information to identify continuing sources of energy waste.

Of particular interest to CUB during the course of the initial EIMA proceedings has been the development of new dynamic pricing and other demand response programs. The successful and cost-beneficial deployment of AMI is essential to the development of a mature Smart Grid whose functions cannot be fully implemented without the ability that AMI provides to measure granular data on customers' use of energy, and to communicate and interact in real time with other systems and devices. Dynamic pricing and demand response are predicated on creating an economic value from changes in energy consumption patterns. Without access to customer usage data, program developers and administrators cannot design, refine or even offer such programs. This data could, for example, be used to determine the number of customers who would benefit from a particular existing or future dynamic pricing structure, to fine-tune rates to provide the maximum benefit from the smart grid's support of time of use offerings, or to identify municipalities whose customers would benefit most from the provision of a time of use option by their municipal aggregation provider.

ComEd and Ameren as participating utilities under the EIMA should be permitted to release aggregated customer data to third parties such as ARES, nonprofit organizations,

municipalities or others seeking to develop new dynamic pricing programs, distributed generation technologies, or energy efficiency and demand response technologies. The release of this information is the necessary condition for the realization of benefits of the EIMA described by the General Assembly: promoting future economic development in Illinois and ensuring that Illinois electric utilities will be able to continue to provide quality electric service to their customers, including innovative technological offerings that will enhance customer experience and choice. Public Act 97-616, as modified by Public Act 97-646.

Dated: October 15, 2013

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