

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

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| 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 REPLY COMMENTS OF THE CITIZENS UTILITY BOARD

The Citizens Utility Board (“CUB”), by one of its attorneys, hereby submits these Verified Reply 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 failure of CUB to address a particular argument related to any issue or proposal made by the parties in their Verified Initial Comments should not be construed as agreement or acquiescence.

Several parties have commented on the value of having customer usage data for the purposes of providing new energy pricing options and improved energy efficiency programs. CNT Energy gives several examples of how this information can be used to refine energy efficiency programs based upon local housing stock and conditions, quality control for retrofit programs and to improve coordination between gas and electric energy efficiency programs. CNT Energy Init. Comments at 6-14. The Illinois Competitive Energy Association (“ICEA”) notes that “individual customer interval usage and billing data which is derived from the smart meter deployment is the type of information that ARESs require to develop new products and services for customers.” ICEA Init. Comments at 5. CUB agrees with both that without access to some form of individual customer metered data, the ARES or energy efficiency and demand response community cannot develop or offer innovative products and services that enable the customers who are paying for smart meter

deployment to have the opportunity to fully utilize the benefits of smart meter deployment. ICEA at 5. Reading Section 16-122 as an exclusive list of situations when data may be exchanged would eliminate important customer benefits created by the Energy Infrastructure Modernization Act (“EIMA”), AMI meters, and the smart grid. CNT Energy Ver. Init. Comments at 5.

I. Does Illinois Law Allow Third Parties to Receive Customer Usage Data?

The questions before the Commission are straightforward:

1. Under Illinois law, what access should customers have to their own usage data?
2. What access should parties authorized by a customer have to that customer’s usage data?
3. What access should all other third parties, who do not have customer authorization, have to customer usage data?

The answer to the first question is simple: under Illinois law, a customer’s usage data belongs to that customer. Access should be provided freely, in as close to real-time as practicable and actionable, and through the most straightforward and simple means possible.

The answer to the second question is also simple. If a customer has authorized a third party to have access to that customer’s account, whether as a retail electric supplier (“RES”) for the purposes of supplying that customer with energy or whether as an energy efficiency or demand response program provider, that authorized third party stands in the shoes of the customer and should therefore have the exact same level of access. ICEA Ver. Init. Comments at 5.

It is the answer to the third question that has posed the most difficulty for the parties to this proceeding, and which ultimately prompted Staff's request for an investigation: what level of access should a third party have to customer usage data when that same third party does not have authorization from that customer?

CUB believes that Sections 16-122 and 16-108.6 do not address this third question, as discussed in CUB's Verified Initial Comments. However, for the purposes of these Reply Comments, CUB will assume that these Sections of the Public Utilities Act ("PUA" or "the Act") do apply. Taken together, Sections 16-122 and 16-108.6 establish that individual customer information – that which could be considered "personal customer information" (220 ILCS 5/16-108.6(d)) or "customer specific billing, usage or load shape data" (220 ILCS 5/16-122) – cannot be released absent customer consent. This would include information that could be used to identify a customer: name, address, telephone number, account number, one individual's usage. Only when a customer authorizes a third party to have access to this information may an electric utility provide any individual, personal customer information.

It would appear to CUB that parties agree that Illinois law bars the release of "customer specific" or "personal" information to any third parties who do not have a customer's authorization. All parties would also appear to agree that "anonymized" customer usage data, in some sample size, can be provided to third parties who do not have a customer's authorization, for example:

- Ameren Illinois ("Ameren") does not interpret Sections 16-122 or 16-108.6 of the Act as to prohibit the release of aggregated, anonymous customer usage information to the extent that such information is presented in a manner that precludes an individual or entity from determining the usage characteristics (or other personally identifying information) of identifiable end users. Regardless of whether the usage data is aggregated or not, Ameren Illinois is of the legal opinion that preservation of "anonymity" is controlling. Ameren Ver. Init. Comments at 4.

- As provided in the PUA and the Personal Information Protection Act (“PIPA”), 815 ILCS Act 530, the Commonwealth Edison Company (“ComEd”) regards customer specific and personal information (in addition to the customer’s identity itself) as information about the customer’s use of and payment for electric utility services that is either expressly linked with a customer’s identity or that could, with reasonable effort, be linked to the customer’s identity. ComEd Ver. Init. Comments at 2.
- ICEA believes that aggregated anonymous data would not violate sections 16-122 and 16.108.6 since this data would not include and therefore not reveal the customer's name, address, telephone number or any other customer identifying information. ICEA Ver. Init. Comments at 8. Since no customer specific information would be revealed, the statutory requirement for customer authorization is not applicable. *Id.*
- Staff believes that except as specifically allowed or required by law, information containing a specific customer’s use of, charges for, payment(s) for, electric utility services that also identifies the customer will not be released absent the customer’s consent. Staff Ver. Init. Comments at 6.

The question then becomes what constitutes “customer specific” or “personal” information under Illinois law. Ameren Illinois concurs with ComEd's interpretation that information is not "customer specific" if it cannot be reasonably linked back to an identifiable customer. Ameren Ver. Init. Comments at 12. In this respect, there appears to be a practical and a legal distinction between information that is "customer precise" and information that is "customer specific." *Id.* Ameren Illinois simply does not see any vested legislative interest in protecting the usage information of anonymous consumers and does not read Sections 16-122 or 16-108.6 of the PUA as reflecting that intent. *Id.*

In ComEd’s view, customer specific and personal information (in addition to the customer’s identity itself) is information about the customer’s use of and payment for electric utility services that is either expressly linked with a customer’s identify or that could, with reasonable effort, be linked to the customer’s identity. Thus, a customer’s name, address, and social security number is customer specific information, just as is usage data linked to that identifying information. However, a customer’s zip code is (with some exceptions) not customer specific information. ComEd Ver. Init. Comments at 4. ComEd’s

position has been that it is consistent with Sections 16-122 and 16-108.6 of the PUA to provide information containing an individual customer's use of, charges for, or payments for electric utility service without any customer identifiable information and in a manner that practically prevents the linkage of that data to the customer or to other customer specific information (such as an address). *Id.*

Staff's position is that "customer specific" and "personal information" is information about the customer's use of and payment for electric utility services that is either expressly linked with a customer's identify or that could, with reasonable effort, be linked to the customer's identity. Staff Ver. Init. Comments at 5. Therefore, any data associated with a customer's name, address, and social security number is customer specific information, just as usage data linked to the same identifying information would be customer specific information. *Id.* However, data associated with a customer's zip code is (with possible rare exceptions) not customer specific information, because, unlike a name, address, or social security number, such information could not be individualized to one specific customer. *Id.*

CUB agrees with the parties. The controlling legal principle here is whether or not an individual customer's usage, or other personal information such as an address or account number, could be identified from any sample of usage data provided to a third party by a utility without customer authorization. An anonymized, compiled data set of individual customer usage can be shared with third parties under the law so long as you cannot identify an individual customer.

II. How Should Customer Usage Data Be Shared with Third Parties?

In order for customer usage data to provide value to third parties like ARES (for the purposes of creating new pricing programs, for example) or CNT Energy (for the purposes of refining energy efficiency programs, for example), that data must sorted on the basis of

geographic location. The data must also be in a sample size small enough to be useful to the third party. The data must also contain anonymized, individual usage data. It should not be averaged, or mathematically adjusted. Several parties, CUB included, used the phrase “aggregated” in their Initial Comments. CUB understands all parties to have used the word “aggregated” to mean a compiled set of individual usage data, as opposed to say, one summed set of usage data.¹

Two parties proposed an Anonymous Data Protocol for the Commission’s consideration: ComEd and Staff. Both protocols function the same way:

Data at the individual customer level will be provided anonymously (a) for a geographic area no more granular than a five-digit zip code plus the first two to four additional zip digits (“zip+2-4”) and (b) only when that geographic area has at least 30 customers of each type or class for which data is provided. In the event condition (b) is not met, ComEd would provide the requester only data on the next higher zip code basis, subject to the same restriction. Should the 30 customer condition still not be met, ComEd will aggregate further using fewer digits of the zip code, and so on, until the condition is met. If the condition cannot be met at the five-digit zip code level, no data past the five-digit zip code threshold for the requested customers would be provided. ComEd Ver. Init. Comments at 5-6; Staff Ver. Init. Comments at 6.

CUB believes that this Anonymous Data Protocol would be a good first step towards making use of all of the new customer usage data that will be collected through the utilities’ deployment of AMI. However, CUB also understands that the more granular the usage data set, the more useful the usage data set is to third parties like ARES or energy efficiency providers. Customer energy usage data that is made available through smart grid infrastructure has the potential to facilitate new product development, dynamic pricing models, research, and, ultimately, curtailed energy consumption. It is essential that utility companies and authorized third parties strike a balance between utilizing this data to its

¹ For example, an aggregated data set of 10 individual customer’s usage data could mean a) one summed usage data set, or b) ten individual’s usage simply compiled in one batch. CUB believes that the second data set – b – is legally permissible and useful to third parties.

full potential while also protecting consumers' right to privacy as indicated in Sections 16-122 and 16-108.6 of the PUA. If the data provided is not granular enough, it will be difficult for researchers, product developers, and program administrators to conduct statistically relevant analyses. On the other hand, if data is provided with undue specificity, it will be much easier to identify individual customers through their consumption patterns and/or data mergers.

To that end, CUB would like to propose an alternative protocol for the Commission's consideration, one which will preserve customer anonymity but will also provide the granular data needed by third parties. CUB recommends the Commission adopt a "15/15 Rule," similar to the policies that have enacted in other states such as California and Colorado.²

The 15/15 Rule requires that any aggregated information provided by a utility must be made up of at least 15 customers and a single customer's load must be less than 15% of the customer group. If the number of customers in the compiled data is below 15, or if a single customer's load is more than 15% of the total data, utilities must either expand the geographic area or increase the number of customers before the information can be released. The rule further requires that if the addition of another customer(s) would include a customer whose usage is now 15 % or more of the total data, that customer be dropped from the information provided or the data set expanded again. CUB recommends that the provided group of 15 customers be comprised of a single customer class and grouped by ZIP + 2 or ZIP +4. This will help ensure useful uniformity within the data

² The California Public Utilities Commission implemented a 15/15 Rule in CPUC Decision 97-10-031. Similarly, the Colorado Public Utilities Commission secured a 15/15 Rule in Code of Colorado Regulations, Title 4, 723-3 Part 3 §3031(b)(c). The Minnesota Public Utilities Commission is currently receiving comments in relation to a proposed a 15/15 Rule in Docket Numbers E, G-999 and CI-12-1344.

while also preventing the mixing of usage data from residential and commercial customers, which may occur in dense urban areas such as Chicago. CNT Energy Comments at 14.

III. Can Peak Time Rebate (“PTR”) and Net Metering (“NM”) Customers be Identified?

Staff believes that the utilities should not be barred from identifying whether a customer participates in either the PTR or NM programs. Staff Ver. Init. Comments at 7. However, Staff believes that requiring a utility to provide to a RES a list of customers on a particular rate is not appropriate or allowed by Section 16-122. *Id.* However, it would appear the utilities in this case, Ameren and ComEd, disagree.

To the extent the NM or PTR designation is coupled with information that would identify the customer or could reasonably be linked back to an identifiable consumer, Ameren Illinois does not read Sections 16-122 or 16-108.6 of the Act to provide this flexibility, absent authorization or consent from an end user. Ameren Ver. Init. Comments at 6-7. Ameren Illinois views an NM and/or PTR designation to constitute "billing, usage or load shape data "as those terms are used in Section 16-122 and "information about a customer's electric usage" as used in Section 16-108.6 to the extent it is coupled with customer-specific identifiers. Ameren at 6-7. ComEd considers PTR and NM as being usage related, as well as billing related, and blocked without customer authorization. ComEd Ver. Init. Comments at 6.

CUB agrees with the utilities. As ICEA explains, even if these indicators may not be customer-specific billing and usage information under Section 16-122, they would be considered "general characteristics of customers" under Section 16-108.6 and customer authorization should be required before the RES had access to these indicators ICEA at 9. Flagging these customers within the context of any data provided to a third party absent

customer information would possibly allow a third party to identify a particular customer, which would violate the legal threshold established if Sections 16-122 and 16-108.6(d) were found to apply to requests from third parties.

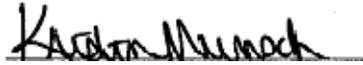
IV. Should Requests for Customer Data be Granted Based on the Purpose of the Request?

Staff and ComEd appear to incorrectly assume that some distinction is drawn between access to billing and usage data even for authorized third parties where the authorized third party is requesting customer data for some purpose other than billing. Staff Ver. Init. Comments at 7-9; ComEd Ver. Init. Comments at 6-8. Neither party provides any legal or practical basis for this distinction – ComEd’s own comments on this point refer to “billing and usage data” – and CUB believes no distinction is necessary. There is no legal distinction is drawn around the purpose of a request for usage data, only between whether or not a customer’s authorization is required. Section 16-122, for example, provides already that a customer’s authorized agent can receive that customer’s billing and usage data. 220 ILCS 5/16-122(a). Nor does the law distinguish between interval and non-interval data or whether interval data is used for billing or not. ICEA Ver. Init. Comments at 10. Once a third party has a customer’s authorization to access that customer’s utility account, the third party effectively stands in the shoes of the customers. No further authorization is needed.³

³ How that authorization is provided, and documented, are of course important issues. ComEd proposes four various methods for documenting customer authorization based upon existing practice with respect to RES enrollment of a customer either individually or in the context of municipal aggregation. ComEd Ver. Init. Comments at 9-10. At this time, CUB does not have a position on which of the four methods is appropriate should the Commission feel that additional authorization is necessary if any authorized third party requests customer usage data for some purpose other than billing.

Dated: November 5, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kristin Munsch", is written over a horizontal line.

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