

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

**Illinois Commerce Commission** :  
**On its Own Motion** :  
 : **Docket No. 13-0506**  
 :  
**Investigation of Applicability of** :  
**Sections 16-122 and 16-108.6 of the** :  
**Public Utilities Act** :

**VERIFIED SURREPLY COMMENTS OF THE STAFF  
OF THE ILLINOIS COMMERCE COMMISSION**

Staff of the Illinois Commerce Commission (“Staff”), by and through its undersigned counsel, pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“Commission” or “ICC”) (83 Ill. Adm. Code 200.800) and Section 10-101 of the Public Utilities Act (the “PUA” or “Act”), respectfully submits its Verified Surreply Comments in the instant proceeding.

**I. BACKGROUND**

Please refer to Staff’s Verified Initial Comments filed in this proceeding on October 15, 2013. On October 15, 2013, the following parties filed Initial Comments (“Initial Comments”): Staff, Ameren, ComEd, CUB, ICEA and CNT Energy. On November 5, 2013, the parties filed Reply Comments (“Reply Comments”). These Surreply Comments follow.

## II. SURREPLY COMMENTS

### A. Applicability of Section 16-122

Reviewing the Reply Comments, Staff sees great value in clarifying the terminology used when describing this issue. For example, CNT Energy observes that “parties seem to discuss, in various places, both ‘aggregated’ data as CNT Energy would define it, and what we would call “de-identified data.” (CNT Energy Reply Comments, 3.) CNT Energy also states that “both aggregation and de-identification are methods of making data anonymous. However, they are not equivalent.” *Id.* Staff agrees that the terms are not equivalent. In fact, what CNT Energy terms “de-identified” data is not aggregation but “anonymous” or “anonymized” data, as those terms are used by other parties in this proceeding. When Staff used the term “aggregated, anonymous” data, Staff used the word aggregated merely to highlight the fact that such data would be released by the utilities in batches of customers. Put differently, the process of releasing batches of individual customer data is markedly different from the debate regarding Issue 4 in this proceeding, concerning the utilities’ responses to requests for releasing individual customer data of specific, pre-selected customers.

CUB states that “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.” (CUB Reply Comments, 6.) Similarly, ComEd stated that “while referred to as ‘aggregated’, in fact the information at issue is that of individual customers who are located within some defined geographic area or zip code.” (ComEd Reply Comments, 1, fn 1.) Staff’s use of the term “aggregated” aligns with the manner in which it is used by ComEd and CUB. Staff is of the opinion that the issue of aggregating data in the sense

of adding or summing up individual customer data is not in front of the Commission in this proceeding. In short, Staff recommends that the Commission not adopt protocols or guidelines “for the sharing of aggregated customer data possessed by electric utilities.” (City of Chicago Reply Comments, 22.) Hence, Staff has no opinion at this time on the City of Chicago’s proposal titled “Aggregated Data” on page 22 of its Reply Comments. Staff recommends that the issue of summing up individual customer data need not, and should not, be addressed by the Commission in this proceeding.

In addition, CNT Energy recommends that customer data be provided by the utility to third parties after being “treated with one of the following methods:”

Method 1 (Aggregation):

Aggregated customer energy use data will be provided so long as the aggregation sums the energy use information of at least 5 electric meters.

Method 2 (De-identification):

Individual customer energy use data will be provided without personal information, but with a five-digit zip code plus the first two to four additional zip digits (“zip+2-4”). This data will be provided only when that grouping has at least 5 meters of each type or class for which data is provided. In the event the zip+4 grouping has fewer than 5 meters, the electric utility would provide the requesting party only data on the next higher zip code basis, subject to the same 5-meter restriction. Should the 5-meter condition still not be met, the electric utility should 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 for the impacted meters would be provided. Maintaining a minimum 5-meter requirement ensures no information would be divulged that could identify an individual customer.

Method 3 (De-identification that allows the merger with housing character and Census data):

The electric utilities may release customer energy use data where: (1) personal information that is not necessary to merge the dataset with another has been removed from the dataset, and (2) remaining personal fields, which are needed to merge the dataset with other data, have been encoded in a format that would allow merger with other datasets without revealing the encoded information in either dataset.

(CNT Energy Reply Comments, 15-16.) Method 2 appears to be very similar to Staff's and ComEd's recommendations, but with a much lower "floor" of a minimum of five customers, as compared to Staff and ComEd's recommended minimum of 30 customers. Staff continues to advocate for the zip code plus 2-4 methodology with the minimum number of customers being 30.

Staff also has concerns with Method 3. Specifically, how the "personal fields...have been encoded in a format that would allow merger with other datasets without revealing the encoded information in either dataset." (*Id.*, at 16.) Staff does not see how this would not contravene Section 16-122. CNT suggests that the merger would be accomplished either by the utility or a third party that is an "ICC-approved entity with housing, Census and energy data analysis expertise." *Id.* However, this approach raises a number of questions; such as would such an entity receive this ICC-approval? What would the standards be upon which the Commission would grant such approval? Would such approval be needed annually? Even if the Commission could adequately judge an entity to possess energy efficiency expertise," what are the standards of housing and Census data expertise? Method 3 is far too complicated and opens the door to new requirements which the Commission has no direction upon which to follow. Therefore, Method 3 seems unworkable in that it opens more doors than it closes.

**B. Issue 2: Identifying PTR customers**

Ameren Illinois states "Staff also argues that each utility's 'back office systems' should allow suppliers the ability to find out whether a particular customer is a PTR, NM [or QF] designee. Ameren Illinois agrees, to the extent that access to this back office

system (and the data contained therein) is accessed by a supplier having obtained customer authorization or consent to access the information contained therein.” (Ameren Illinois Reply Comments, 3.) Staff agrees. As Staff stated in its response to a ComEd data request, it is Staff’s recommendation that the Commission expressly allow an electric utility to disclose whether a customer is a participant in its PTR program or a net metering customer to an entity in possession of such customer’s account number.

While ComEd stated “concerns about expanding the universe of information that is available to any entity in possession of a customer’s account number,” ComEd does not oppose Staff’s recommendation. (ComEd Reply Comments, 3.)

**C. Issue 3: Identifying Net Metering customers**

See response to issue 2 above.

**D. Issue 4: RES access to its customers’ interval data for non-billing purposes**

ICEA claims that “based on the comments submitted by Ameren, Staff, and ICEA, it is clear that a signed contract between a customer and an ARES satisfies the statutory requirement for customer authorization and therefore, the ARES should have access to its customer’s interval data when used for non-billing purposes.” (ICEA Reply Comments, 7.) Even if Ameren Illinois, ICEA, and Staff were in fact to be in complete agreement on this issue, it is still the Commission who is charged with determining whether a signed contract satisfies the statutory requirement for customer authorization.

However, it is not clear whether ICEA agrees with Staff's proposed customer disclosure requirements outlined in Staff's Initial Comments. (Staff Initial Comments, 8.) Staff stands by its recommendations as detailed in pages 7 to 10 of its Initial Comments.

ComEd states that it "generally supports Staff's proposal regarding the level of authorization necessary to access customers' interval data." (ComEd Reply Comments, 4.) However, ComEd also states that it "believes that there may be more efficient, streamlined methods for achieving the same result." *Id.* Unfortunately, ComEd does not reveal what type of "more efficient, streamlined methods" it has in mind. Instead, ComEd argues that "the details of the implementation should be addressed in future workshops." *Id.* It appears that ComEd is referring to the process by which a RES notifies the utility that it has obtained the proper customer authorization to receive interval data for non-billing purposes. Staff is not opposed to the Commission providing for a certain flexibility concerning this process. However, as stated in our Initial Comments, Staff recommends that the RES be required to separately and affirmatively acknowledge to the utility that it has indeed obtained proper customer authorization. While Staff agrees with ComEd that "utilities should not bear the burden of physically receiving and reviewing written customer authorizations," Staff also points out that no party has suggested such a course of action. In fact, Staff stated in its Initial Comments that it would be acceptable to facilitate such indication via the electronic communications between the utility and the supplier. At the same time, Staff recommends that a RES simply submitting an enrollment request as it exists today should not be considered sufficient. Staff recommends that, if the customer authorization indication is done via electronic communications between the utility and

the supplier, the enrollment request contain a new element that indicates to the utility that the RES has obtained proper authorization to receive interval data for non-billing purposes. If a RES did not indicate possession of customer authorization at the initial enrollment request, Staff recommends that the RES be required to indicate having received customer authorization prior to receiving interval data for non-billing purposes.

In our Initial Comments, Staff proposed two ways for RESs to obtain customer authorization to receive interval data for non-billing purposes from the utility. The first is through the RES's initial sign-up of the customer. If a RES decides to go this route, Staff recommends that the Commission require RESs to disclose the authorization to receive interval data for non-billing purposes in the same prominent manner in which other crucial terms and conditions are required to be disclosed pursuant to Section 412.110 of the Commission's Rules.

If a RES did not prominently disclose the authorization to receive interval data when it originally signed up the customer, Staff recommends that the Commission require the RES to obtain separate, verifiable customer authorization before receiving interval data from the utility for non-billing purposes. Staff recommends that such verifiable authorization be obtained in a form or manner consistent with Section 2EE of the Consumer Fraud and Deceptive Business Practices Act, which describes the authorized types of obtaining customer consent to switch electric service providers. Whether the RES obtains customer authorization to receive interval data when signing up a customer or obtains a separate authorization after the initial sign-up, Staff recommends that the Commission clarify in this Order that the responsibility to provide verifiable customer authorization rests solely with the RES.

ComEd notes that opt-out government aggregation situations are different from individual customer switching situations where the customer affirmatively switches suppliers. (ComEd Reply Comments, 4.) However, opt-out government aggregations also require notice to prospective aggregation participants. Section 1-92 of the IPA Act provides that it is “the duty of the aggregated entity to fully inform residential and small commercial retail customers in advance that they have the right to opt out of the aggregation program” and that “the disclosure shall prominently state all charges to be made.” Staff recommends that the Commission clarify in this Order that the customer disclosure required for opt-out aggregations be used to obtain customer authorization to receive interval data for non-billing purposes. If an aggregation supplier desires to receive customer-specific interval data for non-billing purposes, the opt-out disclosure to the customer must describe this fact and alert the customer that not opting out of the aggregation program will authorize the aggregation supplier to receive interval data for non-billing purposes as long as the customer remains in the aggregation program. If the opt-out disclosure does not contain such an authorization, the aggregation supplier has to obtain separate authorization from its existing aggregation customers if it wishes to receive interval data for non-billing purposes.

**III. CONCLUSION**

Staff recommends that the Commission approve Staff's recommendations made herein.

Respectfully submitted,

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