

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
)	ICC 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 PEOPLE OF THE STATE OF ILLINOIS**

The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois (“the People” or “AG”), and pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“ICC”) and the Administrative Law Judge’s Notice of Continuance of Hearing and Notice of Schedule dated September 25, 2013, hereby file their Surreply Comments in the above entitled proceeding.

Reply comments were filed by Ameren Illinois Utilities (“Ameren”), the Citizens Utility Board (“CUB”), the City of Chicago (the “City”), CNT Energy (“CNT”), Commonwealth Edison (“ComEd”), the Environmental Law & Policy Center (ELPC), the Illinois Competitive Energy Association (“ICEA”), the People, and the Staff of the ICC (“Staff”). The People’s reply comments discussed, in part, the “Anonymous Data Protocol” advanced by Staff to address the issue of releasing usage data to third parties who lack customer authorization. The People expressed the belief that Staff’s protocol would be consistent with all existing laws relevant to customer-related information. In other reply comments, various other parties submitted additional proposals or methodologies for releasing usage data to third parties who lack customer authorization, to which the People now respond.

I. Definitions and Distinctions

The People agree with the City and with CNT that it is helpful to distinguish between (1) “aggregation” and (2) “de-identification” as means of anonymizing usage data. Aggregated data should mean usage data that is summed or averaged from accounts in a specific building or geographic area. *See* City Reply at 7-8; CNT Reply at 3-4. De-identified data should mean individual usage data, designated on an account-by-account basis, from a specific building or geographic area that has all identifying information (name, account number, address, etc.) removed. *See* CNT Reply at 4. Aggregated data is a form of de-identified data but one that has undergone the additional step of being summed or averaged with other accounts. De-identified data can be designated on an account-by-account basis by assigning separate random designations such as “Account Q” to each data set in order to provide the data on a separate account basis without revealing any meaningful identifiers about the particular account.

Another useful distinction to recall is the difference between monthly data and interval data. Monthly data is simply an individual customer’s total use for a particular month and is made available by ComEd on an aggregated basis for buildings of four or more tenants through its Energy Usage Data System (“EUDS”).¹ Monthly data reveals less detail about the individual user than the interval data provided by smart meters and can therefore be viewed as less sensitive from a consumer privacy standpoint.

II. Potential Framework for Data Release

A. Three-Tiered System

With the above distinctions in mind, and taking into account the reply comments of the various parties, it appears that the Commission could consider creating a three-tier framework to govern usage data requests. The first tier would apply to requests for monthly usage data for a

¹ <https://www.comed.com/business-savings/energy-tools/Pages/energy-usage-data.aspx>

specific building on an aggregated basis. Under Tier One, utilities could be permitted to release such data as long as there are at least 4 accounts in the aggregation group and as long as the accounts are de-identified of all personal information. The second tier would apply to all other types of usage data requests (such as, for example, requests for interval data or individual monthly usage data from specified geographic areas). Utilities could release these kinds of data only after individual accounts are de-identified and randomly designated in groups of 30 accounts (as previously proposed by Staff and others), or pursuant to CUB's suggestion of the "15/15" rule in which there must be at least 15 accounts in a group and no one account can represent 15 percent or more of the total consumption. The third tier would require individual customer consent and apply to requests for data that fall outside of the initial two tiers.

B. Tier One

Tier One is protective of consumer privacy in four ways: 1) it involves only monthly data and not the more specific interval data; 2) the accounts are de-identified by stripping all personal information from the data, such as the customer's name, specific address, account number, telephone number or any other identifying information; 3) the data must be summed or averaged and cannot be provided on an account-by-account basis; and 4) there must be at least 4 accounts in the aggregation group. Tier One would allow building owners and researchers to establish energy use benchmarks for individual buildings as long as at least four accounts are active in the building (any less than four would require individual customer consent to generate a benchmark). The building address, but not the customer's specific address, could be provided as long as the four previous conditions are met. Tier One is consistent with ComEd's existing EUDS program

and tracks with other utility programs across the country, such as Austin Energy's and Puget Sound Energy's data aggregation programs.²

C. Tier Two

Data requests that do not fall into Tier One may be more concerning from a privacy standpoint. For instance, utilities could receive requests for data on a more granular level than a monthly basis or for non-aggregated de-identified individual accounts in a specific geographic area. Putting additional protections in place for these types of requests would be prudent and would assist with consumer confidence in safeguarding privacy. Tier Two protections would require that the data be 1) de-identified by stripping all personal information from the data, such as the customer's name, specific address, building address, account number, telephone number or any other identifying information; 2) separated by random identifying designations; and 3) provided on a Zip Code + 2-4 basis, subject to the Commission's adoption of one of two thresholds. Staff has previously suggested use of a 30 customer threshold for releasing data in a group. CUB has also put forward the 15/15 rule, which has been used in California since the mid-1990s and was adopted in Colorado in 2011. It has also been proposed by Xcel Energy in Minnesota.

The People are not aware of any statistical analysis suggesting that a 15 customer threshold would be any less protective of consumer privacy than a 30 customer level. While both proposals appear to be acceptable to the People, the Commission may have a preference for the 15/15 rule as it is used in other jurisdictions and would represent a compromise position between the 30 customer threshold and the smaller (5 or less) thresholds advocated by the City and CNT.

² See, e.g., Utilities' Guide to Data Access for Building Benchmarking, Institute for Market Transformation (March 2013) at 15 (available at http://www.eebhub.org/media/files/IMT_Report_-_Utilities_Guide_-_March_2013.pdf).

D. Tier Three

The People also note that a third tier exists consisting of requests for data from the utility that fall outside of the above guidelines or otherwise require individual customer consent by operation of law or Commission Order or Rule. Requests of this nature raise privacy concerns because, similar to data that has not been thoroughly de-identified, the data could conceivably be reverse-engineered through reasonable efforts in such a way as to identify an individual customer's personal information, including usage patterns. Examples of Tier Three data could include requests for Tier One data for a building with fewer than four units or Tier Two data that cannot satisfy the minimum threshold levels set by the Commission (whether the 30 customer level, the 15/15 rule, or some other standard). In these situations, the People urge the Commission to require individual, express, written authorization from the customer in order to release the data.

E. Interval Data

The People appreciate the information and insights provided by the parties regarding the possible uses of interval data in helping consumers manage their energy usage. Regardless of the many sophisticated ways this information may be used in the future, however, interval data is still an unknown entity to the vast majority of electric power and energy customers. Most consumers do not even know what interval data is or what interval meters do, let alone have interval meters installed to measure their personal or commercial electric energy usage. While these facts should not stall discussions on the topic, the People believe that the novel nature of individual customer's interval data and the fact that it is not yet understood by the typical customer requires that, until stakeholders and the Commission itself are able to engage in more in-depth discussions with consumers and determine the appropriate conditions for its dissemination, conventional methods of consumer protection should govern the release of such

information for non-billing purposes. This would require any entity seeking interval information from an individual for non-billing purposes to obtain *express written consent* from the customer after a clear and conspicuous disclosure of all material terms and conditions connected to the release of the information. Such disclosure would include the requester's definition of interval data, what information they seek to collect, how the data will be stored, what security processes are in place to protect the data from unauthorized acquisition, what the data will be used for and what recourse the consumer would have in case of unauthorized release. These conditions are based on discussions within the Attorney General's Office with individuals familiar with consumer protection issues.

The People recommend that the Commission adhere to these traditional consumer protection principles and continue discussions on the proper release of interval data by engaging privacy advocates and consumer groups in public forums to understand the concerns of consumers, energy service vendors, and the academic community as well as power suppliers and regulators. The People look forward to further discussions on this important issue, but ask that the Commission defer ruling on the release of individual interval data for non-billing purposes at this time.

IV. Legal Considerations

The People believe the tier approach to customer usage and billing data distribution described below is consistent with Sections 16-122 and 16-108.6(d) of the Public Utilities Act, as well as with relevant provisions of the Consumer Fraud Act.

Consistent with 16-122 of the Act, the People's recommendations require the utility to separate personal identifying information from usage and billing data such that no customer specific billing, usage or load shape data is provided to third parties. In addition, the proposals

set forth by the People build on the aggregation protections in the statute by adding similar safeguards such as aggregation on a time frame or customer basis.

Consistent with 16-108.6(d) of the Act, the People's recommendations "secure the privacy of the customer's personal information" by requiring that such information be stripped in both the Tier One and Tier Two protocols to prevent its usage in mailing lists or for other commercial purposes.

In addition, the People's proposal is consistent with Section 2HH of the Consumer Fraud and Deceptive Business Practices Act, 815, ILCS 505/2HH, which limits the dissemination of personal information relating to subscribers of "generation, transmission, distribution, metering or billing of electric service" absent the subscriber's written consent.

V. Conclusion

The People believe that creating a three-tiered system for usage data requests properly balances the need to safeguard consumer privacy with the desire to put energy consumption data toward productive and meaningful use.

Respectfully submitted,

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