

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 :

**RESPONSE OF COMMONWEALTH EDISON COMPANY
TO THE CITIZEN UTILITY BOARD’S MOTION FOR CLARIFICATION**

Commonwealth Edison Company (“ComEd”), pursuant to 83 Ill. Admin. Code § 200.190, hereby responds to the Citizens Utility Board’s (“CUB”) Motion for Clarification of the Commission’s Order of January 29, 2014 (the “CUB Motion”), as follows:

INTRODUCTION

CUB’s Motion requests that the Illinois Commerce Commission (the “Commission” or “ICC”) modify the Final Order to clarify the following: that the Anonymous Data Protocol does not bar the release of anonymous data to third parties, including but not exclusively Retail Electric Suppliers (RESs), provided such information is released in accordance with the established Anonymous Data Protocol; and that the Anonymous Data Protocol is designed to be applied to customers within one customer class. As described herein, ComEd agrees with the CUB Motion that the Final Order should be clarified to provide that the release of anonymous customer usage information to any party, whether listed in Section 16-122 or not, is not prohibited. With regard to CUB’s request that the Commission specify that the Anonymous Data Protocol “is designed to be applied to customers within one customer class,” ComEd notes that the protocol supported by Staff and ComEd similarly provided that the provision of anonymous customer data should not be prohibited if the groupings were no smaller than 30 of each customer “type or class.” Since the Commission adopted Staff’s protocol with the 15/15

minimum grouping proposed by CUB, ComEd understands that is what the Commission intended, but specific clarification would be helpful.

ARGUMENT

While ComEd supports CUB's underlying position, it is not clear that the Final Order can be read to state, as CUB asserts, that a utility may release to any third party "anonymous data" in accordance with the Anonymous Data Protocol established by the Final Order, namely Staff's Proposed Data Protocol with one modification. CUB Motion at 2. Rather, the Commission appeared to limit the disclosure of anonymous customer usage information only to those parties enumerated in Section 16-122. Order at 17-18. Specifically, the Order states:

The Commission concurs with the parties' agreed definition of "customer specific information" and their position on the release of "aggregated," anonymous usage information, and finds that electric utilities are not prohibited from making such information available to third parties **enumerated in Section 16-122** without customer authorization.

Order at 17 (emphasis added). ComEd's Petition for Rehearing, filed on February 28, 2014, requests rehearing on this issue on the basis that both the plain language and the contextual meaning of the Act demonstrates that the release of anonymous customer usage information to parties not listed in Section 16-122 is permissive.

The language of Section 16-122 is clear as what a utility must do, and what it is prohibited from doing. Section 16-122 lists those situations where utilities "shall," i.e., are *required*, to provide certain types of customer data, both generic and specific, and *prohibits* the disclosure of "customer specific" data without authorization. 220 ILCS 5/16-122. No language in Section 16-122 either requires or prohibits a utility from providing anonymous customer usage information to any party to the extent that such information is presented in a manner that precludes an individual or entity from determining the usage characteristics (or other personal

identifying information) of identifiable end users. To the extent Section 16-122 is an “exclusive list,” it is of those parties to whom utilities must, or are required to, provide certain customer usage data. No language in Section 16-122 purports to “prohibit” a utility from voluntarily providing generic, aggregated or anonymous customer data to any party; nor does it purport to “prohibit” the Commission from authorizing a utility to do so. No rule of construction allows a court or agency to declare that the General Assembly did not intend the plain meaning of the words it used. *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 149 (1997). Indeed, a court or agency can only look beyond the language where that language itself is ambiguous. *Gem Electrics v. Dep’t of Revenue*, 183 Ill. 2d 470, 475 (1998); *County of DuPage v. Illinois Labor Relations Bd.*, 231 Ill. 2d 593, 604 (2008); *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 394-95 (2003); *Paris v. Feder*, 179 Ill. 2d 173, 177 (1997).

Moreover, as described in ComEd’s Petition for Rehearing, the interpretation of Section 16-122 contained in the Order is inconsistent with other parts of the Order and past ICC and utility practice. For example, ComEd operates the Energy Usage Data System (“EUDS”) as a part of its energy efficiency program. This program has been approved by the ICC on two separate occasions as a part of ComEd’s 3-year energy efficiency plans.¹ Under the EUDS program, ComEd makes generic or aggregated tenant usage information available to building owners and managers, neither of whom are specifically listed in Section 16-122.²

Similarly, to the extent that the CUB Motion seeks to have the Commission specify that the Anonymous Data Protocol “is designed to be applied to customers within one customer class,” such a clarification would be helpful. The protocol supported by Staff and

¹ See Order in Docket No. 07-0540 at 17 and 52-53; and Order in Docket No. 10-0570 at 15.

² Additional examples appear in ComEd’s Petition for Rehearing at 5-6.

ComEd similarly provided that the provision of anonymous customer data should not be prohibited if the groupings were no smaller than 30 of each customer “type or class.” Since the Commission adopted Staff’s protocol with the 15/15 minimum grouping proposed by CUB, ComEd understands that is what the Commission intended, but further clarification would be helpful.

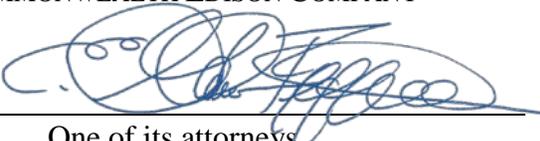
CONCLUSION

For the reasons stated above, the Commission should grant the CUB Motion consistent with ComEd’s recommendations herein.

Dated: March 5, 2014

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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