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 COMMENTS ON REHEARING 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 Comments on Rehearing in the instant proceeding.

I. BACKGROUND

On September 4, 2013, the Commission initiated a docket to investigate the applicability of Sections 16-122 and 16-108.6 of the Public Utilities Act ("PUA"). 220 ILCS 5/16-122; 220 ILCS 5/16-108.6. In its Initiating Order, the Commission explained:

> These sections pertain to the release of customer-specific information by electric utilities. The Commission agrees with Staff's Report that the deployment of the Advanced Metering Infrastructure ("AMI"), Net Metering, Peak-Time Rebate Programs and certain Rate 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. Because policies, practices, rules or programs may need to be established that apply to more than one electric utility, an investigation under Section 10-101 of the PUA is appropriate.

(Initiating Order, 1.)

Further, the Initiating Order identifies a list of issues to be considered in this investigation. (Initiating Order, 2.) Because of the wide-ranging implications of these issues, the Commission named Commonwealth Edison Company ("ComEd") and Ameren Illinois Company ("Ameren") as parties to this investigation. (*Id.*, at 3.)

Aside from Staff, ComEd and Ameren, the following parties intervened: City of Chicago, Citizens Utility Board ("CUB"), Retail Energy Supply Association ("RESA"), CNT Energy, Illinois Competitive Energy Association ("ICEA"), and the People of the State of Illinois ("AG"). The parties filed Verified Initial Comments, Verified Reply Comments and Verified Surreply Comments on October 15, 2013, November 5, 2013, and November 19, 2013, respectively. On January 28, 2014, the Commission entered a Final Order. On February 18, 2014, CUB filed a Motion for Clarification, to which Staff supported. (Staff Response, March 5, 2014, 3.) The Commission filed an Amendatory Order, on March 19, 2014, granting in part CUB's Motion for Clarification. The following modification was made to the Commission Analysis and Conclusions on page 17 of the Final Order:

> The Commission finds that Staff's proposed Data Protocol should be adopted with one exception: the "15/15 Rule" as recommended by CUB, and applied in other jurisdictions, should be used <u>to release information about customers within one customer class</u>.

(Amendatory Order, Docket No. 13-0506, March 19, 2014, 1.)

On February 28, 2014, ComEd filed an Application for Rehearing ("Application"). The Commission granted in part and denied in part ComEd's Application. At a status hearing convened on April 8, 2014 the Administrative Law Judge set a schedule for

Verified Comments and Reply Comments. (Notice, April 9, 2014, 1.) These Verified Comments on Rehearing follow.

II. APPLICABLE LAW

Section 16-122 provides:

> (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 how-ever, 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 in part that a participating utility's AMI Plan is to secure the privacy of customer's personal information. Section 16-108.6(d) describes "personal information" as "the customer's name, address, telephone number, and other personally identifying information, as well as information about the customer's electric usage" and requires electric utilities to secure the privacy of "personal information" as

part of their Smart Grid Advanced Metering Infrastructure Deployment Plan. Section 16-108.6(d) prohibits the disclosure of such information by utilities for commercial purposes, except where authorized. 220 ILCS 5/16-122.

III. COMMENTS

ComEd's Application for Rehearing argues that the Commission's Final Order erroneously limits the disclosure of anonymous customer usage information only to those parties enumerated in Section 16-122. (ComEd Application, 2 *citing* Order at 17-18.) Staff agrees.

While Staff previously disagreed with this interpretation of the Commission's January 28, 2014 Order (in Staff's Response to CUB's Motion for Clarification), Staff finds that the Commission's March 19, 2014 Amendatory Order supports ComEd's interpretation. In its Response to CUB's Motion for Clarification ("Response"), Staff had argued that it "understands the Commission's Order to allow an electric utility to provide anonymous, or, conversely, not customer specific information, to a requesting third party." Staff's Response at 2. Staff further argued that the Commission's January 28, 2014 Order provided that "the Commission clarifies that 'anonymous data' is individual customer data with 'customer specific information' removed" and that "Staff interprets the Commission Order as allowing the electric utility to release anonymous data to a requesting third party." *Id.*

Given that the March 19, 2014 Amendatory Order did not result in additional changes that would make it clear that the Commission agreed with Staff's interpretation, Staff is inclined to agree with ComEd that the Commission reached the wrong

conclusion by stating that the release of anonymous customer usage information is limited to parties expressly mentioned in Section 16-122.

ComEd states that Sections 16-122 and 16-108.6 do not prohibit the discretionary release of aggregated, anonymous customer usage information to third parties not listed in those Sections. (ComEd Application, 2.) Staff agrees. The purpose of establishing the anonymous data protocol is to ensure no customer specific information is being released. Any party is therefore eligible to receive non-customer specific usage information from the utility. The establishment of the anonymous data protocol was the item the Commission was asked to rule on in Issue #1 in this Docket. The Commission adopted CUB's proposed 15/15 Rule for the release of anonymous customer data. No customer-specific billing, usage or load shape data is being provided when requested pursuant to the anonymous data protocol. In other words, Section 16-122 does not prohibit the release of anonymous data. As a result, Staff recommends that the Commission clarify that any party is able to request data pursuant to the anonymous data protocol that the Commission approved in this Docket. In addition, Staff recommends that the Commission strike the language about requesting parties paying a fee for this type of data. As stated above, the data provided pursuant to the anonymous data protocol is not customer-specific billing, usage or load shape data and therefore a fee is not required pursuant to Section 16-122. To be clear, Section 16-122 does not prohibit the utilities from charging a fee for providing anonymous data. However, Section 16-122 does not require such a fee.

The issue of what type of customer authorization is needed for the release of customer specific information was never a part of Issue #1 in this Docket. Instead, Issue

#4 in this Docket addressed the release of customer-specific information. More to the point, Issue #4 addressed the release of customer-specific information to retail electric suppliers. In its Amendatory Order, the Commission declined to broaden the scope of Issue #4. This means that Issue #4 only addresses release of customer specific information to retail electric suppliers. It does not address access to customer specific information from parties other than retail electric suppliers. However, it is not clear that the Commission need to address such issues at this time. It appears that parties other than the ones enumerated in Section 16-122 are mainly interested in anonymous customer information. In other words, they are interested in data that is not customer specific and therefore no customer authorization is needed before it can be released by the electric utility.

As a result, Staff recommends that the Commission modify its Order as follows:

> 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~~. The Commission agrees that in order to protect personal and customer specific information from unauthorized disclosure, a Standard Protocol should be established and followed by the electric utilities when receiving requests for data concerning the use of electric utilities service at the individual customer level. The Commission finds that Staff's proposed Data Protocol should be adopted with one exception: the "15/15 Rule" as recommended by CUB, and applied in other jurisdictions, should be used to release information about customers within one customer class. As the AG noted, no statistical analysis was provided demonstrating that groupings of 15 are any less protective of customer privacy than 30. The Commission is not persuaded by ComEd's argument that this method is "resourcefully burdensome," as they do not describe with specificity what that burden would be other than to say it may result in greater costs. ~~Further, any party requesting aggregated, anonymous data is required to pay a reasonable fee, which would surely defray any additional cost.~~ The Commission believes this methodology is a reasonable compromise of all of the parties' positions and will best achieve the goal of making granular data available to authorized third parties such as RESs while also protecting personal and customer specific information from unauthorized disclosure pursuant to the PUA. Further, it also ensures that the utilities and RESs

> are compliant with Section 16-122 since no customer specific information will be divulged.
>
> Like Staff, the Commission is sympathetic to CNT's concerns regarding the interpretation of Section 16-122, however, the Commission agrees with Staff and the AG that Section 16-122 does not allow the utility to release customer specific usage data unless it is provided anonymously~~ to a service provider, in this case an ARES or municipality aggregating its residents' electric service,~~ or the customer has provided consent. Section 16-122(a) as well as subsections (b) and (c) are clear that customer specific billing, usage, or load shape data cannot be provided unless a customer provides authorization. The Commission is of the opinion that Section 16-122 and Section 108.6(d) ~~are an exclusive list and to interpret the statute otherwise ignores the plain language of Section 16-122(a) which~~ provide~~s~~ that customer specific information (customer's billing and usage data) can only be released to a customer or a customer's agent who presents verifiable authorization. (220 ILCS 5/16-122(a)). The Commission sees the importance of striking a careful balance between protecting a customer's privacy while unlocking the full benefits of the smart meter infrastructure. Research institutions and program administrators, such as CNT, are an important part of maximizing the benefit of technology implemented as a result of EIMA. However, the Commission believes that the measures in this Order protect a customer's privacy and are consistent with the statutes in place at this time. CNT is certainly not prohibited from receiving anonymous, aggregated data~~ or customer specific information~~ subject to the findings in this Order~~ and as a program administrator should make direct contact with its program participants to request this information. Just as other parties are obligated to do, CNT should obtain customer authorization for access to this information~~.

Order at 16-18.

IV. CONCLUSION

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

Respectfully submitted,

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Counsel for Staff of the
Illinois Commerce Commission

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Docket No. 13-0506
On Rehearing

VERIFICATION

I, TORSTEN CLAUSEN, being first duly sworn, depose and state that I am the Director of the Office of Retail Market Development of the Illinois Commerce Commission; that I sponsor the foregoing Verified Initial Comments on Rehearing; that I have personal knowledge of the information stated in the foregoing Verified Initial Comments; and that such information is true and correct to the best of my knowledge, information and belief.

TORSTEN CLAUSEN
Illinois Commerce Commission

Subscribed and sworn to before me
this 22nd day of April, 2014.

Notary Public

OFFICIAL SEAL
ALICE H JOHNSON
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:02/01/17