

Staff Report on an Investigation to Address Customer Authorization Language as Addressed in the Final Order of Docket No. 13-0506

November 6, 2014

Background

Last year, Staff requested the Commission open a docket to address issues related to the release of customer information. Docket No. 13-0506 was initiated to investigate the applicability of Sections 16-122 and 16-108.6 of the PUA ("PUA" or "Act"). In its Initiating Order, the Commission explained 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, the Commission ordered an investigation under Section 10-101 of the PUA. (Initiating Order at 1.)

The Final Order in Docket No. 13-0506, issued on January 28, 2014 ("Order"), directed the Office of Retail Market Development ("ORMD") to host a series of workshops to discuss certain issues described in the Order. One of the issues discussed by the workshop participants is the desirability of developing standard language for the customer authorizations a Retail Electric Supplier ("RES") needs to obtain in order to access specific customer interval data that is not used for billing a customer.

In a June 13, 2014 Staff Report to the Commission ("June 13 Staff Report"), Staff stated that the discussions on the topic of potential standard language were ongoing at that point and that Staff will inform the Commission if any type of formal action is required by the Commission. Staff believes it is appropriate at this point to open a new proceeding to arrive at a Commission-approved customer authorization template to be used by RESs wanting access to customer interval usage data for non-billing purposes.

Docket No. 13-0506

Docket No. 13-0506 examined four topics: (1) the release of aggregated, anonymous customer usage information; and (2) the release of individual and specific information, including the identification of Peak Time Rebate ("PTR") and Net Metering ("NM") customers and RES access to its customers' interval data that is not used for the purposes of billing a customer. (Docket No. 13-0506 June 13 Staff Report at 3; Initiating Order at 2.)

When it comes to the issue of RES access to specific customer interval data that is not used for billing a customer, the Order in Docket 13-0506 stated the following:

The Commission declines to adopt ICEA's position that the customer authorization requirements of Sections 16-122 and 16-108.6 are met if an RES has proper authorization in the form of the customer's account number and/or a customer supply contract. ICEA reasons that the Commission should deem the historic practice of submitting the customer's account number to the utility's website to satisfy the statutory requirement of verifiable authorization. The Commission rejects ICEA claim that it is seeking the "same" customer usage data for residential and small commercial customers that has historically been recorded by standard meters, only now that data will be recorded using interval recording smart meters. ICEA's position fails to acknowledge that because smart meters collect energy usage data at much shorter time intervals than in the past, the information they collect can reveal much more detailed information about the activities within a dwelling or other premises than was available in the past, including knowledge about specific equipment usage or other internal home/business processes. Moreover, ICEA's position fails to take into account the municipal aggregation context where customers do not provide affirmative consent. Until late 2010, customers were acquired by RES via "traditional" means where suppliers contacted customers via face to face, mailing or telemarketing. Those traditionally acquired customers provided an affirmative consent to the release of their account number to their supplier. In municipal aggregation, a majority of the customers with a supplier are acquired via the municipal aggregation "opt out" process, which means if the customers did not affirmatively opt out of the municipal's program, they are in the program. For these reasons, the Commission does not find that possession of an account number and/or a customer supply contract alone to be sufficient evidence of customer authorization to access highly detailed AMI-enabled data.

Staff asserts that RESs should obtain customer authorization for access to this information either through initial sign-up or separate verifiable authorization consistent with Section 2EE of the Consumer Fraud Act. If authorization is obtained through initial sign-up, Staff recommends that RESs be required to disclose authorization 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. Staff then proposes that RESs would certify to the utilities that they had obtained such authorization through the development of a new step in the DASR process. **The Commission supports Staff's proposal regarding the level of authorization necessary to access customers' interval data, but prefers that the parties come together in an effort to reach consensus regarding the method for achieving this result in future workshops. Accordingly, the parties must come together to discuss**

the proper method for a RES to show to the utility that it has obtained the required customer authorization. This method should address the utilities' concern that they not bear the burden of interpreting the scope of consent obtained by suppliers, including physically receiving and reviewing written customer authorizations, or be required to demand proof of individual customer authorization prior to releasing interval usage data to a RES. Whatever method is agreed upon, it must be clear that the responsibility to obtain these customer authorizations rests solely with the RES, and that the RES should be required to separately and affirmatively acknowledge to the utility that it has proper customer authorization.

Order, Docket No. 13-0506, Jan. 28, 2014 at 27 (emphasis added).

ORMD Workshops

In response to the language in the Order from Docket No. 13-0506 quoted above, ORMD hosted a series of workshops to discuss the issues described in the 13-0506 Order, as well as related issues. Participants included those involved in Docket No. 13-0506: Commonwealth Edison Company ("ComEd") and Ameren Illinois Company ("Ameren Illinois"), RESs, the Office of the Attorney General, the Citizens Utility Board, and other interested parties. With respect to "the proper method for a RES to show to the utility that it has obtained the required customer authorization," both ComEd and Ameren Illinois presented their proposed approach to receiving (and responding to) requests from RESs for customer specific interval usage data for non-billing purposes. The June 13 Staff Report describes in detail the process the utilities will be using when responding to requests for access to customer specific interval data for non-billing purposes.

During the workshops, parties also discussed and provided sample customer authorization language to be used by RESs before requesting customer interval usage data from the utility. After several rounds of informal written comments, Staff believes its proposed language, which is shown at the end of this Staff Report, is a workable solution which meets the objectives of the involved parties while also complying with the Order's directives.

List of Issues to be addressed by the Investigation

Staff recommends that the Commission open a proceeding under Section 10-101 of the PUA to consider its proposed customer authorization language. Staff recommends this investigation be conducted as a contested case.

Because of the need to resolve these issues in an expedited fashion, Staff recommends that the Commission attempt to issue a Final Order in this proposed

Docket no later than April 1, 2015. Staff recommends the parties agree to file verified comments in lieu of testimony and briefs. Staff recommends the parties file initial comments to respond to Staff's proposed language by January 8, 2015. Staff recommends the parties file reply comments by January 22, 2015. At that time, the parties could consider whether additional rounds of comments are necessary.

Staff's proposed language for the Standard Template:

"You authorize [utility] to provide your electricity usage information ("EUI") to [RES]. The EUI includes your electricity usage levels for distinct time periods as short as [x] minutes, to the extent this information has been recorded and retained by [utility].

You authorize [RES] to access your EUI for the previous 24 consecutive monthly billing cycles as well as future monthly billing cycles. This authorization to access and use your EUI will expire (a) six months after this authorization is executed or (b) when your supply service with [RES] is terminated, whichever occurs later.

[RES] will use the EUI solely for the development and provision of current and future products or services in connection with electric supply service. [RES] will not sell or disclose the EUI to any third party for any other purpose.

You have the right to revoke this authorization at any time by contacting [RES] at [postal address, phone number, e-mail address, web address].

In an opt-out Governmental Aggregation scenario, the following should be added:

"If you want to opt-out of the electric aggregation program, you must [do X] by [date]. If you want to be part of the electric aggregation program but do not want to provide the authorization above, please [do X] by [date]."



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