STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	**:**	
On Its Own Motion	**:**	
	:	**15-0073**
Investigation into the Customer	**:**	
Authorization Required for Access by	**:**	
Third Parties Other Than Retail	**:**	
Electric Suppliers to Advanced	**:**	
Metering Infrastructure Interval Meter Data	**:**	

PROPOSED ORDER

December 23, 2015

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By the Commission:

I. PROCEDURAL HISTORY

On January 28, 2015, the Illinois Commerce Commission ("Commission") entered an Initiating Order in this proceeding to investigate the need for, and form of, customer authorization required for access by third parties, other than Retail Electric Suppliers ("RESs"), to Advanced Metering Infrastructure ("AMI") interval meter data.

The following parties have intervened or entered an appearance in this proceeding: the Citizens Utility Board ("CUB") and the Environmental Defense Fund ("EDF") (together, "CUB/EDF"); the Illinois Attorney General's Office ("AG"); Ameren Illinois Company d/b/a Ameren Illinois ("Ameren"); the Illinois Competitive Energy Association ("ICEA"); Elevate Energy ("Elevate"); the Retail Energy Supply Association ("RESA"); Commonwealth Edison Company ("ComEd"); and Mission:data Coalition, Inc. ("Mission:data").

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, prehearing conferences were held before a duly authorized Administrative Law Judge ("ALJ") at the Commission's offices in Chicago, Illinois, on March 4, 2015, March 25, 2015, and July 9, 2015. At the conclusion of the hearing on July 9, 2015, this matter was continued generally.

On March 9, 2015, Verified Initial Comments were filed by Staff, ICEA, Mission:data, CUB/EDF, Ameren, Elevate, the AG, and ComEd. Verified Reply Comments were filed on April 20-21, 2015, by Staff, RESA, ICEA, Mission:data, Ameren, Elevate, ComEd and CUB/EDF. On May 4, 2015, Verified Surreply Comments were filed by Staff, Ameren, ICEA, ComEd, CUB/EDF, and the AG. Corrected Verified Surreply Comments were filed by Mission:data on September 23, 2015. Verified Fourth Round or Final Comments were filed on June 24, 2015 by ICEA, Mission:data, Staff, RESA, Elevate, Ameren, ComEd, and CUB/EDF. On July 9, 2015, the AG filed its Verified Final

Comments. Verified Fifth Comments were filed on July 24, 2015 by Elevate, ICEA, CUB/EDF, Ameren, Staff, ComEd, and the AG. For clarity, comments are referred to by the date of filing throughout the Order.

II. BACKGROUND

The interval data that is the subject of this proceeding is available because of Ameren's and ComEd's investment in AMI meters. These meters allow utilities to measure a consumer's usage in intervals throughout the day, rather than simply measuring a lump total of usage in a monthly billing period. This allows for energy products and services that provide customers with a more direct relationship to energy market price signals, along with the tools to take advantage of those signals. ICEA 3/9/15 Cmts. at 2. CUB/EDF explain that third party access to AMI data will encourage innovation enabled by the data, such as new dynamic pricing options, expanded energy efficiency programs, and new in-home energy management technologies that will provide Illinois customers with a chance to directly benefit from smart grid investment. CUB/EDF 3/9/15 Cmts. at 1-2.

Several related Commission dockets also address the interval data made available by AMI meters. In Docket No. 14-0701, the Commission adopted standardized language for customer authorization that applies when a RES wishes to access a customer's interval data. *Illinois Commerce Comm'n On Its Own Motion*, Docket No. 14-0701, Order (April 2, 2015). Docket No. 14-0507 is CUB/EDF's petition to adopt the Illinois Open Data Access Framework, which addresses data ownership, types of data, third-party access to data, data formats, methods of delivering data, timeliness of data delivery, quality of data, data security, the use of national standards, and whether or not charges should be assessed for accessing data. *Citizens Util. Bd. and Environmental Defense Fund*, Docket No. 14-0507, CUB/EDF Petition at 5-6.

The instant proceeding is to address the need for, and form of, any customer authorization required for access to AMI interval meter data by third parties (other than RESs) as agents of customers, pursuant to Section 5/16-122(a) of the Public Utilities Act ("Act"). 220 ILCS 5/16-122(a). The Initiating Order states that the issues to be addressed in this proceeding can be found in the Staff Report (dated January 15, 2015), which enumerated the following issues for consideration in this docket:

1. The need for a standard customer authorization form required for access to AMI interval meter data by third parties other than RESs.
2. The minimum requirements for a customer authorization form.
3. The need for Commission approval of a customer authorization form.

This proceeding, and the issues to be resolved, have evolved through the five rounds of comments filed by the parties. In particular, there does not appear to be disagreement that Commission action is necessary (item #3) and that the Commission should adopt standardized language for customer authorization (item #1). Indeed, all parties seem to agree with the Commission's ruling in Docket 14-0701 that:

> the approved language herein will be standardized so as to relieve the utilities of the responsibility of interpreting the scope of consent obtained by the RESs. The use of standard language will eliminate the need for a utility to evaluate alternative authorization language on an ad hoc or case-by-case basis, thereby conserving resource and removing any potential for confusing or conflicting interpretations.

Docket No. 14-0701, Order at 5. There are a few outstanding issues regarding the minimum requirements for a customer authorization form (item #2), which are addressed in the next section.

Parties' early comments also addressed guiding principles that should apply to the Commission's decision, but now all seem to agree that the Fair Information Practice Principles ("FIPPs") first implemented by the United States Department of Health, Education and Welfare, and the Voluntary Code of Conduct ("VCC") are appropriate. The VCC was released by the U.S. Department of Energy ("DOE") in January 2015 for adoption by both utilities and third parties with respect to Data Privacy and the Smart Grid. ComEd 3/9/15 Cmts. at 5. It is not entirely clear that adopting guiding principles is necessary or appropriate, rather the Commission will address the specific issues presented.

Mentioned throughout the remainder of the Order is "Green Button," which both Ameren and ComEd have indicated they intend to utilize to facilitate data access. ComEd explains that Green Button will allow customers to directly release their data to third parties. Registration for an account in the Green Button system would require the customer to present certain confidential information, and to then establish an online identification along with a password, which would be used for accessing the site. Once in the system, customers would be presented with a drop-down menu of the non-RES third parties that have self-registered with the utility to be included in the system. The customer would then select the third parties to which the customer authorized release of historical and/or going forward billing and usage data. ComEd 3/9/15 Cmts. at 8.

The remaining issues discussed in the parties' comments are outside the scope outlined in the Staff Report. Moreover, in order to reach a decision on those issues, the Commission needs the information being discussed in Docket No. 14-0507. For these reasons, the Commission declines to reach a final decision on the "warrant" process discussed below, but rather finds that it should be addressed in Docket No. 14-0507. The warrant process would allow third parties to represent to utilities that they have obtained the necessary authorization from customers.

III. AUTHORIZATION LANGUAGE

A. Historical Period of Authorization

The Commission understands that once authorization is granted, the third party will receive that customer's historical usage data for the past 24 months and that no party is contesting this. The Commission agrees that this information should be shared with

authorized third parties, and for that reason, a description of historical data authorization is included in the language adopted below.

Also, as suggested by Ameren, and apparently unopposed, the period for which historical data is available should be the shorter of the standardized 24 months or the amount of time the customer has been the customer-of-record at the premises.

B. Statement of Purpose

1. CUB/EDF

CUB/EDF believe that it is important that third parties disclose the purpose for which the data will be used and that third parties should be afforded a certain degree of flexibility in their description of that purpose. CUB/EDF 4/21/15 Cmts. at 8. Flexibility allows for a wide variety of third parties to request data—including third parties that may offer unforeseen technologies or services in the future. *Id*. Finally, CUB/EDF assert that deviations from the standard language can be reviewed by the Commission in the context of the guiding principles. *Id*.

2. AG

The AG recommends that generic descriptions of the purpose for which the customer's usage data will be accessed are to be avoided. Instead, the purpose should be explicitly stated in the authorization form as specifically as possible in order to disclose to the customer the exact uses for which the vendor may access and use the data. For example, "energy auditing services for Unit 3 at 123 Main Street" is preferable to "energy services."

3. Ameren

Ameren argues that the authorization language should be standardized, except for the statement of purpose, which should be stated and tailored with some amount of specificity. This statement of purpose should not stand as a "blanket" authorization to access any AMI data for any purpose. As Ameren emphasized in Docket No. 14-0701, it does not want to be placed in the position of having to evaluate customer authorization language on an ad hoc or case-by-case basis. That undermines the purpose of this docket and the Commission's role in ensuring compliance with the Act. And standardized or mostly standardized language will help ensure consistency for customers in reviewing, comparing and understanding the data access intentions of different parties. Ameren argues non-RES third parties should have the flexibility to tailor the statement of purpose on a case-by-case basis to reflect their specific needs and intentions.

4. Staff

Staff states that non-RES third parties seeking access to a customer's AMI data should list a specific purpose or purposes for which the data is sought, but should be allowed a degree of flexibility in describing the purpose(s). Staff 6/24/15 Cmts. at 5. Thus,

Staff recommends that the Commission not require standardized "Purpose" language. Permissible authorization language that uses a general term such as "energy management services" is acceptable to Staff. *Id*. Staff does not oppose ComEd's recommendation that any disclosure document utilized by a third party must contain language that describes the purpose for which disclosure is authorized.

5. Elevate

Elevate supports including in the authorization form a description of the purpose for which the non-RES third party seeks to acquire data. Elevate believes that this additional information could help to alleviate customer confusion and reduce the risk of bad actors. Elevate 6/24/15 Cmts. at 3. Elevate states that the purpose will be unique to each program, including those not yet developed, and recommends flexibility be left for non-RES third parties to craft the language that best describes each particular need. *Id*., Elevate 3/9/15 Cmts. at 7.

6. Mission:data

Mission:data agrees with other parties that consumers must be apprised of the purpose for which their energy data will be used and for which authorization is requested. Mission:data explains that the details of the purpose are typically spelled out in a contract or terms of service between the customer and the third party. Mission:data states that third parties should be afforded a certain degree of flexibility in their description of that purpose. A purpose specification should allow products to incorporate new features and improvements that consumers may find useful. To avoid undue complexity in the authorization form, Mission:data states that a simple purpose specification such as "energy management service" should be sufficient. To further avoid placing the utilities in the position of assessing the validity of purposes, the Commission must provide specific guidance as to the acceptability of various purposes.

7. ComEd

ComEd believes that non-RES third parties must disclose the purpose(s) for which they seek access to a customer's electricity usage information to the customer. Thus, ComEd recommends including a "fill-in-the-blank" line regarding purpose. Due to concerns expressed by certain parties related to the practicability of including a specific, pre-determined description of the purpose in the authorization language, ComEd has also suggested that, in the alternative, the authorization language could contain (i) a reference to a disclosure document provided by the third party to the customer, which describes the purpose for which the disclosure is authorized, or (ii) a statement that the customer has been informed of and understands the purpose(s) for which the third party will use customer's data and makes the authorization without restriction based on the same. In any case, ComEd believes that, pursuant to national standards and the fundamental principles of notice, informed consent can only be achieved when the customer is provided with an appropriate disclosure from the third party of how the data will be used, and makes the authorization with informed consent as a result. ComEd believes that it is

not ComEd's role, nor the role of any utility, to make any investigation of, or in any way police, such purposes.

8. Commission Analysis and Conclusion

The Commission does not see a disagreement among the parties that some statement of purpose must be included on the authorization. The Commission finds that the customer authorization form should include a space where the purpose for the data access can be filled in, as proposed by ComEd.

The Commission does not find in the record any practical manner to determine whether a particular statement of purpose is adequately specific. The Commission is also not going to put the utilities in the position of making that determination. The idea here is that the customer is informed of the purpose for which the third party seeks the information, but the Commission is not adopting any specific requirements for the statement of purpose.

The Commission notes that Section 16-108.6 of the Act states that personal information gleaned from Smart Grid technology shall not be "used for other commercial purposes not reasonably related to the conduct of the utility's business." 220 ILCS 5/16-1806(d). The purpose for which third parties seek interval data is not a question being addressed here. For purposes of this docket it is sufficient that the Commission finds that some purpose should be identified in the customer authorization.

It would also perhaps be appropriate that third parties inform the utilities of the purposes for which they are requesting the data during the registration that third parties will need to complete in order to receive interval data. This would be consistent with ComEd's position that third parties must provide adequate disclosure of the purpose for which they seek a customer's data. It is not clear from the record whether the proposed web-based "Green Button" system will require the customer to fill in a blank on the form or select from a drop down box the purpose for which the chosen third party has registered.

C. Prohibition on sharing

1. ComEd

ComEd believes the final, Commission-approved authorization language must include a prohibition against the non-RES third parties, affiliates, and contracted third party vendors selling electricity usage information. This is consistent with the Commission's holding in Docket No. 14-0701 related to authorization language for RESs, wherein the Commission held,

> The Commission agrees with ComEd, however, that Staff's proposed language could be read as authorizing RESs to sell the EUI to third-parties provided it's for the purpose of developing electric service offerings. As noted above, several parties argue that RESs should not sell or license the EUI to third parties at all—and the Commission agrees. Accordingly,

> the sentence "[RES] will not sell or disclose the EUI to any third party for any other purpose" is replaced with the following, "[RES] may disclose the EUI to its contracted third party vendors or its affiliates for this purpose only. [RES], its affiliates, and its contracted third party vendors, will not sell or license the EUI to any party for any purpose." The Commission believes that this language clearly authorizes the disclosure to the RESs' agents for the authorized purpose, but also clearly articulates that under no circumstances is the authorized EUI to be sold or licensed to any party.

Docket No. 14-0701, Order at 13. Accordingly, ComEd includes this language in its proposed authorization language.

2. RESA

RESA recommends that the Commission adopt the customer authorization for RESs set forth in the Commission's Order in Docket No. 14-0701 (Attachment 1 to the April 1, 2015 Order), modified to reflect the fact that the authorization in this proceeding is for non-RESs and to include specific language prohibiting the sale or licensing of customer information.

3. Mission:data

Mission:data is concerned that a broad limitation on the sharing or sale of customer information, even that which is not individually identifiable, would frustrate achievement of important policy objectives. Moreover, Mission:data states that it is important that third parties have the ability to share data with their own business partners and contractors in order to fulfill the purpose set forth in the authorization language.

Mission:data also raises the concern that state agencies or academic research institutions may at some point desire access from third parties to aggregated analytics regarding energy use of Illinois residents. Mission:data seeks Commission approval for a third party to be compensated for its costs to provide such data. Mission:data also recognizes that it would need the customers' consent to make a disclosure of customer identifiable data, but not for derivative, aggregated and non-identifiable data. Thus, Mission:data argues that the Commission should clarify the applicability of the authorization language.

4. Commission Analysis and Conclusion

The issue here is determining what language should be included in the authorization regarding the sharing of information. Section 16-108.6 of the Act contains a prohibition on sharing (220 ILCS 5/16-1806(d)) and generally, the Commission is concerned that customers not lose control over their personal data.

The Commission is constrained by the fact that this docket adopts language for customer consent between the utility and a customer. Because this is a form that a

customer must sign for a utility to release personal data and it is not a contract between a customer and a third party, it is not, by itself, enforceable against third parties.

From CUB/EDF's 5/4/15 Comments, it appears that third parties will need to register with a utility in order to receive interval data. CUB/EDF state that during that registration process, the third party will need to execute an agreement stating that it will abide by the approved authorization language. CUB/EDF 5/4/15 Cmts. at 8. Ameren states that it intends to obtain from third parties agreement to the terms of the authorization language provisions prior to giving the third party access to the data. Ameren 6/24/15 Cmts. at 8. Failure to comply, Ameren states, will forfeit the third party's ability to access customer data. The record does not provide enough information regarding this process to make a determination regarding the ability of the registration process to make third parties comply with this prohibition on sharing.

With respect to the specific language proposed, the language proposed by Staff regarding sharing states that "I understand" the third party will not share the data. The Commission rewrites this language to state that the customer does not authorize the third party to share the data. Because this is an authorization form, the Commission finds it to be more effective and clear for the customer to sign a form which states "I do not authorize" the third party to share the data. When considered with the third party registration process, this language is preferable because it specifically states what is or is not being authorized.

D. Prospective Period of Authorization

1. CUB/EDF

CUB/EDF state that once customer authorization is given, the third party has authorization for 24 months from the date of authorization. CUB/EDF 5/4/15 Cmts. at 7. CUB/EDF further believe that a customer and non-RES third party should be able to agree that a different term is appropriate. *Id*. Following the principle that the customer is ultimately "in the driver's seat regarding the release of their interval usage data" (ComEd 4/20/15 Cmts. at 5), CUB/EDF propose that the customer have the option to designate the length of time for which authorization should be granted. CUB/EDF 6/24/15 Cmts. at 4.

There are demonstrated practical reasons, CUB/EDF argue, for allowing a customer to choose an authorization period for a time other than the default two-year period. *Id*. As noted by Elevate and Mission:data, individual programs, services arrangements and measures can be longer than 24 months, and often involve tracking usage over time for purposes such as evaluation, measurement and verification. CUB/EDF 5/4/15 Cmts. at 7. For example, Illinois energy efficiency programs can cover multiple years – each plan is a 3-year cycle – not including the time needed for the measurement and verification of savings. *Id*. This means the need for data authorization to ensure a cost-effective program would need to be at least four years: Outreach and engagement may occur in the months between the Commission approval of the program, contract approval, and the June program start date prior to the start of the three-year

program period. CUB/EDF 6/24/15 Cmts. at 5. After the program is completed, measurement and verification of savings for these programs typically take 9-10 months as conducted by external consultants to the utilities. *Id*. Where services are tied to guaranteed savings, such as with energy efficiency retrofit programs, savings must often be verified over several years. *Id*.

According to CUB/EDF, even programs that provide ongoing engagement, making reauthorization seamless, could be negatively impacted by a mid-term limitation. *Id*. Monitor-based commissioning – an energy efficiency practice that uses ongoing monitoring of building data to ensure it is operating to its most efficient design – or the provision of building analytics, or behavior change programs, may have programmed data streams interfacing directly with building automation systems, which could negatively impact facility operations if cut off. Id.

For these reasons CUB/EDF believe that a default, prospective term of authorization should be set at 24 months but each customer and third party should be able to agree to a longer term if they so choose.

2. AG

Given the novelty of the data access process and customers' general lack of familiarity with smart meters and the information they produce, the AG agrees with Staff that access to future data be limited to 24 months. Combining this cap with the historical data limit will still provide non-RES third parties with 48 months of usage data. The AG notes that this is the limit the Commission adopted for RESs in Docket No. 14-0701, and the AG sees no reason to conclude that other parties -- at least at this early stage – should be entitled to more.

3. Ameren

Ameren states that any authorization received should expire no longer than two years later. Even at a two-year expiration period a non-RES third party would be entitled to four years of data (24 months of historical data upon initial authorization and then 24 months of rolling-forward AMI data). This is a substantial amount of information. Admittedly, it is difficult to determine the appropriate bright line at which to deem terminated a contract between private parties. Ameren recommends the Commission err on the side of establishing a conservative, two-year period that protects customers and helps ensure that the customer's data access expectations are being met. Ameren is also mindful that two years is the authorization period applicable to RES and approved in Docket No. 14-0701.

Ameren recognizes that parties may have a legitimate need for more data. But nothing should preclude them from contacting customers to obtain authorization for another two-year period. The point of this docket is to help ensure that utilities and non-RES third parties alike are properly effectuating decisions made by customers and that customers are fully informed about those decisions. A shorter authorization period is more in line with those goals and increased efficiency should not trump these ends.

Should the Commission disagree with Ameren's suggestion to employ a maximum authorization period of two years, it should require non-RES third parties to send some type of "opt out" letter or "reminder" at some interval during the period. For example, if the Commission determines that four years is an appropriate authorization term, which it should not, it should require the non-RES third party to initiate a customer contact at some point during the term, say the two-year mark, to remind the customer that the non-RES third party continues to access data pursuant to the customer's previous election.

What the Commission should not do is leave the authorization term open-ended and subject to unchecked discretion. The authorization term need have some definitive cap. Ameren has no objection to the authorization term being configurable for a period less than the cap, with the understanding that customers will be responsible for managing said shorter term and data sharing in general *via* Green Button.

4. Staff

Staff recommends the adoption of 24 months as the initial authorization period. Alternatively, Staff suggests that the 24-month limit could apply only to the use of the warrant process, should the Commission agree with Staff that a warrant process should be permitted. Customers contacting the utility via the Green Button process to authorize non-RES third party access could set a longer period, for example, up to 48 or 60 months.

If the Commission allows a period longer than 24 months for one or more options, the non-RES third party should be required to send a notice to the customer no later than 24 months after authorization stating that the customer has authorized access to the customer's data.

5. ICEA

ICEA recommends a limit on authorizations for 24 months of ongoing (future) interval data. *See* ICEA 6/24/15 Cmts. at 2.

6. RESA

RESA accepts the standard language that includes a time limitation on accessing information for two years. RESA asserts that the time limitation on accessing of customer information by non RESs should be no more than the time limitation set by the Commission in Docket No. 14-0701 for RESs—two years. Although this is a contested issue and some parties argue for longer time periods, RESA believes that the correct solution would be to obtain the customer's authorization for an extension at the end of the initial two-year period. RESA points out that this is what RESs are required to do.

7. Elevate

Elevate does not object to the use of standardized language as long as it allows for the third party provider and the customer to decide on a specific time period for authorization. Elevate contends that the shorter the timeframe, the higher the potential

for non-participation in the programs that use the data and ultimately, their failure. Elevate 4/20/15 Cmts. at 8.

Elevate argues that customers should be able to authorize non-RES third parties to obtain more than two years of future data. It explains that some energy efficiency programs, especially building retrofits of the kind it performs, can require longer than two years to complete and rely heavily on access to post-retrofit data. Elevate posits that the longer the allowable authorization period the better for all parties involved. According to Elevate, an extended authorization period (1) removes the burden on the customer to reconfirm their consent; (2) reduces costs and employee resources associated with updating authorization information for the utilities; and (3) ensures uninterrupted access to data for the non-RES third party to use in successfully implementing its programs. Elevate 6/24/15 Cmts. at 4.

It is Elevate's position that extended authorization periods are necessary to encourage customer participation in long-term energy efficiency programs, and create certainty around access to data for non-RES service providers. Elevate 4/20/15 Cmts. at 3. While Elevate acknowledges the utility's responsibility to its customers to maintain data privacy, and recognizes its inclination to eliminate risk, Elevate is not of the opinion that those outcomes are achieved through limiting the authorization period to two years. *Id*. Elevate asserts that the risk associated with bad actors attempting to gain fraudulent access to customers' data exists regardless of the length of time the authorization is valid for; the limited authorization period only diminishes the potential for success of the energy services program depending upon the data. *Id.*

Elevate suggests that the non-RES third party and customer should be allowed to determine the specific length of time for each authorization, potentially subject to an outer parameter. Elevate 4/20/15 Cmts. at 3. Elevate cites to what it describes as a common retrofit process for apartment buildings, 2-4 flats and single-family residences, that requires at least four years of forward looking data, to support its argument that there is a critical need for non-RES third party access to more than two years of data per authorization. In its example, Elevate describes requiring two years of historical data for the pre-retrofit analysis, two years to complete the retrofit, and at least two years of post-retrofit consumption monitoring to determine savings for the building owner. Elevate 3/9/15 Cmts. at 5. Elevate claims that a significant portion of its ongoing retrofit work requires more than the six years of data (2 years historical and 4 years forward looking) illustrated in its example, and further states that all of its programming could benefit greatly from more information gathered over longer periods of time. Elevate 6/24/15 Cmts. at 5.

Elevate states that the timeline imposed by this data authorization proceeding would be the only such binding timeline that Elevate and its clients are subject to. Elevate observes that customers' level of engagement in energy consumption issues does not extend far beyond the "set it and forget it" mentality, which it argues, makes it more crucial for the period of authorization to be as long as possible so as not to discourage participation by placing an otherwise non-existent restriction on the programs. Elevate 4/20/15 Cmts. at 4-5.

8. ComEd

ComEd believes the appropriate authorization term(s) are for access to up to 24 months prior usage for a customer (or the term for which the account information is available), and 24 months future usage. Access to 24 months of historical and 24 months of future data, for a total of 4 years of usage information, seems to be a more than reasonable and responsible approach to take to enable undefined services that may be offered by third-parties. If, in the future, the Commission determines the authorization language and processes established herein are working and customers are satisfied, those terms could be reevaluated.

9. Mission:data

Mission:data argues that the period of authorization for any third party should extend to the end of any underlying service agreement between the third party and the customer so as to avoid unnecessary, unwanted service interruptions. Mission:data states that in workshop discussions, the justification advanced for treating RES third parties differently from non-RES third parties is that utilities have the ability to determine when consumers terminate their service agreements with RES third parties whereas utilities will not know when a customer terminates with a non-RES third party. Mission:data states that it is sensitive to the need for an approach that does not impose undue burdens on the utilities and understands their need for certainty, but believes that a policy objective for RES and non-RES third parties should be to enable service without arbitrary time limits on service.

Mission:data disagrees with the AG's argument that a customer's renewal of data access to a non-RES third party will not be burdensome. Mission:data suggests that utilities have no incentive to make the renewal process simple and convenient.

Also, customers could potentially be in breach of contract if the customer fails to reauthorize the data access. Mission:data provides examples in its 6/24/15 Comments, of contracts with energy management service providers that could require data access for periods of time longer than 24 months.

According to Mission:data, many of the parties' efforts to protect customers from fraud are directed toward residential consumers. Mission:data states that businesses are typically less in need of protection in the form of default term limitations.

Mission:data recommends that residential and commercial customers have different authorization requirements. In particular, Mission:data states that it prefers the option of an unlimited term, but that it would accept a default term of 24 months, should the Commission deem it necessary, so long as residential consumers have the option in the authorization process of designating a longer term of up to 5 or 6 years and commercial users have the option to designate an indefinite term.

10. Commission Analysis and Conclusion

The Commission adopts a set period of 24 months of prospective data. Although Elevate raises valid points, the Commission must bear in mind that the third parties are

unregulated entities. The Commission is most concerned with protecting customers, especially at this early juncture. Also, authorization will be easy to renew through Green Button. In addition, for utilities, it will be easier to institute a standard period, as pointed out by ComEd. ComEd 5/4/15 Cmts. at 4.

Staff recommends that if a longer period is allowed, then the third party should be required to send the customer a notice. The Commission does not have the authority to require a third party to send a notice. This lack of authority over the third parties, reinforces the Commission's decision to limit the timeframe to two years. The third party will need to obtain customer consent for additional periods. By allowing only two years of future data, the Commission is ensuring that the third party contacts customers to remind them to renew their authorization.

Mission:data misses the point regarding the utilities' knowledge of when a RES is no longer the customer's service provider. The point is not ease for the utility, but rather a customer's data may still be transferred to a non-RES third party even after the non-RES third party and the customer have terminated their relationship.

CUB/EDF inform the Commission that ComEd currently allows a longer data access period for commercial customers. This is reasonable as there is always a presumption that commercial customers are more savvy and not in need of protection. Thus, the language adopted here is for residential customers and small businesses only.

Although Elevate argues that the risk associated with bad actors exists regardless of the length of time the authorization is valid for, the Commission finds that adoption of a set two year period will at least limit the damage.

E. Revocation

1. Staff

Staff proposes two versions of authorization language: one for use with the "warrant" process, the second for use with the "Green Button" process. Staff 7/24/15 Cmts. at 2. The difference between the two versions is in the last paragraph of the authorization language. *Id*. Under either process, a customer may revoke the third party's authorization by contacting the utility. *Id*. at 2-3. If the third party chooses to use the warrant process, a customer has the additional option to revoke the authorization by contacting the third party directly. *Id*. at 3-4.

1. ComEd

In ComEd's opinion, revocation of authorization is an interaction that must take place between the customer and the non-RES third party. In other words, a customer cannot contact the utility to revoke an authorization it has made with the non-RES third party. However, the utility must be notified when such revocation takes place.

2. AG

The AG agrees with ComEd that because authorization is an agreement between the customer and the third party, actual revocation must be executed between the customer and that party, with notification of that revocation being communicated to the utility as well. Absent any other formal process for the non-RES third party to communicate revocation, and consistent with ComEd's arguments, the AG endorses the revocation portion of the authorization language as proposed by ComEd, which is a modification of Staff's proposed language.

3. Ameren

Ameren's recommended language does not have a termination option that envisions a customer contacting a non-RES third party, which then contacts Ameren to stop the transfer of data. This extra step is unnecessary as applied to Ameren. In Ameren's service territory, customers will be able to elect and manage their data sharing decisions through Green Button. Ameren does not plan to interface directly with non-RES third parties on decisions related to the start or stop of customer data. Ameren explains Green Button is a customer-facing tool. There will be no efficient or readily verifiable mechanism for a non-RES third party to contact Ameren to inform the Company that a customer has elected to commence or cease any sharing of data. If contacted by a customer who wishes to commence or terminate the exchange of usage data, the non-RES third party should redirect the customer to their utility account, where they will be able to manage their data sharing elections. Ameren acknowledges that it may have to accommodate manual workarounds for customers without computer or internet access, but the Company anticipates those instances being the exception rather than the rule. Regardless, the transaction, in Ameren's view, will be and should be between the customer and the utility.

4. Commission Analysis and Conclusion

The parties approach the issue of revocation from different positions, which explains the different proposals. The AG calls the authorization an agreement between the third party and the customer. Likewise, ComEd insists revocation must take place between the customer and the third party. Whereas Ameren does not intend to involve third parties on decisions related to the start or stop of customer data. The Commission finds that the authorization is not an agreement between a customer and a third party, rather it protects the utility from liability for releasing customer information that it otherwise is required to protect.

The Commission finds ComEd's position unrealistic. The authorization that is required by this Order must be signed by the utility customer in order to authorize the utility to release data that is generated by the utility about the utility's customer's energy usage. A third party may have another contract with a customer that requires the interval data, but the third party is not a party to the customer authorization. It may be appropriate for a third party to be able to relay a customer's request to cancel a data transfer, but a customer must have the right to contact the utility to revoke authorization.

In order to protect customers from potential bad actors, the Commission finds it necessary to allow customers to be able to contact the utility to stop the data transfer. Customers should not have to rely on a third party that it no longer wishes to receive data to tell the utility to cancel the data transfer. The Commission adopts language for the authorization that states that a customer may contact the utility at any time to stop the transfer of data to a third party.

F. Consumer Complaints

1. AG

The AG states that a reference to its Consumer Fraud website should appear on any authorization form used by a third party, especially given the uncertainty as to how non-RES third parties could be compelled to honor the authorization terms and conditions; the rights granted consumers in the authorization; Commission directives; or address consumer complaints. The AG proposes that the reference to the Office of the Attorney General as a resource for customers be made in conjunction with an explanation of the specific instances of wrongdoing that customers can contact the office about, rather than as a general source of information about smart meter data access. The link to the Attorney General's website provides the hot line number, but for those without computer access, the AG believes it necessary to list the telephone numbers on the authorization form as well.

2. Ameren

Ameren sees at least three mechanisms that may be used to report, investigate, and enforce compliance with any requirements stemming from this docket: (1) customers may contact the Commission's Consumer Services Division or the Office of the Attorney General; (2) customers may contact the utility to determine compliance with the data access terms and conditions that apply to the non-RES third party by virtue of the "warrant" discussed below; or (3) the customer may initiate a private legal action against an offending entity (for example for breach of contract, fraud, or other equitable remedies). Determinations of liability in scenarios (1) and (2) may, at the very least, result in loss of access to data. Scenario (3) may result in a judgment for damages.

Ameren would have no objection to including additional language in the authorization directing customers to resources like the Attorney General's Office or the Commission's Consumer Services Division that may be useful in the event a customer believes a non-RES third party has breached the terms of the authorization.

3. Staff

Staff maintains that the Commission has the authority to determine the conditions under which, and the mechanism whereby, utilities provide access to customer interval data. Staff 6/24/15 Cmts. at 7. "The legislature may establish broad guidelines, and the details of application of these principles to specific instances may then be determined by an administrative body." *The Lake County Board of Review v. The Property Tax Appeal*

Board of the State of Illinois, 119 Ill. 2d 419, 427 (1988); see 220 ILCS 5/16-108.6; 220 ILCS 5/16-122(a). To the extent any customer or other party has a complaint as to how the utility has disseminated its interval data, that customer or other party may seek remedies at the Commission. *Id*.

4. Commission Analysis and Conclusion

It appears to the Commission that the main disagreement is whether only the AG's phone number should be included or also the Commission's consumer services division. The Commission finds that either the AG's Office of Consumer Fraud or the Commission's Consumer Services would be the appropriate entity to call, depending on the consumer's problem. Thus, it is appropriate to include both on the approved authorization language.

The Commission rewrites the language proposed by the AG because it mentions the customer's contract with the third party, which is beyond the scope of this docket and the scope of the authorization. Also, the Commission adds that the utility's compliance with this authorization is a matter that a customer might want to report.

G. Standard Language

The Commission agrees with Staff, ComEd, Ameren, and ICEA that authorization language should be based on the standardized language from Docket No. 14-0701 but modified to reflect the differences between non-RES and RES. The following language incorporates the decisions reached above:

> I, [CUSTOMER NAME], understand that [NAME OF THIRD PARTY] seeks access to my electricity usage information. This information includes my electricity usage levels for distinct time periods no longer than 60 minutes to the extent this information has been recorded and retained by [UTILITY].
>
> I authorize [UTILITY] to provide my electricity usage information to [NAME OF THIRD PARTY] solely for the purpose of:
>
> _____[PURPOSE]_____.
>
> <u>I do not authorize my data to be used for purposes other than those I have explicitly authorized in this document.</u>
>
> I do not authorize [NAME OF THIRD PARTY] to sell or license my electricity usage information to any other party for any other purpose, except that [NAME OF THIRD PARTY] may share my electricity usage data with an affiliate or contracted vendor if that is necessary for the purpose described here.
>
> I authorize [UTILITY] to provide [NAME OF THIRD PARTY] my usage information for the previous 24 months as well as 24 future months.

> This authorization to access and use my electricity usage information will expire 24 months after this authorization is executed or upon notification by me to [UTILITY] that I have revoked [NAME OF THIRD PARTY]'s authorization to access my usage information.
>
> I understand that I can report any concerns about my rights under this authorization and [NAME OF THIRD PARTY]'s or [UTILITY]'s compliance with its duties under this disclosure to:
>
> **ILLINOIS ATTORNEY GENERAL'S**
> **CONSUMER FRAUD DIVISION**
>
> http://www.illinoisattorneygeneral.gov/consumers/index.html]
> Chicago: 800-386-5438; 800-864-3013 (TTY)
> Springfield: 800-243-0618; 877-844-5461 (TTY)
> Carbondale: 800-243-0607; 877-675-9339 (TTY)
>
> OR
>
> **ILLINOIS COMMERCE COMMISSION**
> **CONSUMER SERVICES DIVISION**
> 800-524-0795

IV. PROCESS

A. Authorization Format

CUB/EDF define authorization format as the physical means by which customer consent is obtained, e.g., electronic signature, wet signature, text message, phone conversation, etc. CUB/EDF 3/9/15 Cmts. at 5.

There is no dispute that the utilities should implement the Green Button system and accept customer authorizations for third party data access through it. Green Button would be an electronic, web-based signature and thus will comply with the following Section 16-108.6 requirement:

> The AMI Plan shall secure the privacy of personal information and establish the right of consumers to consent to the disclosure of personal energy information to third parties through electronic, web-based, and other means in accordance with State and federal law and regulations regarding consumer privacy and protection of consumer data.

220 ILCS 5/16-108.6(c). The Commission approves this uncontested method of customer authorization.

Phone authorization is also proposed (Staff 3/9/15 Cmts. at 4) and apparently uncontested. ComEd clarifies that this could be in the form of a call center alternative for those without internet access. ComEd 5/4/15 Cmts. at 5. The Commission agrees that

recorded phone authorizations, with the language approved above, are compliant with Section 16-108.6.

Also, there is no apparent disagreement that the utilities should accept paper authorization with a "wet signature" from customers.

As discussed in the next section, the contested authorization format is that which would allow third parties to represent to utilities that they have obtained the necessary authorization from customers, i.e., a warrant process.

B. Third Party Warrants

1. CUB/EDF

CUB/EDF state that it is important that customers of different types and technology usage have options by which to easily, quickly and securely authorize third-parties. CUB/EDF believe that in any process, it will be necessary for the utility to be able to ensure that: (1) when a customer requests that the utility share his/her data with a registered third party he/she is not an imposter and (2) when a registered third party requests access to a customer's data and provides proof of authorization to the utility, that the authorization is authentic. CUB/EDF 7/24/15 Cmts. at 2.

CUB/EDF explain that the representation of third parties that they have customer authorization has been referred to throughout this docket as a "warrant" process, and could apply to one customer or groups of customers. CUB/EDF 6/24/15 Cmts. at 9. CUB/EDF use the term "warrant process" to refer to the third party's representation of customer authorization on behalf of a customer or group of customers. *See* CUB/EDF 3/9/15 Cmts. at 11. According to CUB/EDF, the warrant serves as confirmation to the utility that the third party has obtained customer authorization. *Id.*

For the warrant process, CUB/EDF recommend that the Commission should require the third party to provide customer-specific information (e.g. customer account number, amount on customer's most recent utility bill, username/password, etc.) to authenticate customer consent. CUB/EDF 4/21/15 Cmts. at 9-10.

Also, CUB/EDF recommend that the Commission allow the utilities to authenticate third parties through a registration process whereby a non-RES third party registers with the utility in order for a customer to easily communicate to the utility that they authorize that third party to access to his/her usage data. CUB/EDF 4/21/15 Cmts. at 9; CUB/EDF 3/9/15 Cmts. at 10-12. For the registration process to take place, the Commission should require that a utility request, at a minimum, the following information from a third party: 1) third party name; 2) contact information (address, phone number, email address, etc.); 3) an executed agreement stating the third party understands and will abide by the approved authorization language and process (approved in this docket) stating that all authorizations must be authentic and that the non-RES third party will not unnecessarily share customer usage data - a "digital signature" or affirmative checkbox should be acceptable; and 4) sufficient information as required for the utility to transmit the data.

CUB/EDF opine that customers should be allowed to authorize a third party to demonstrate authorization to the utility, that is, third parties should be allowed to represent that they have customer authorization and utilities should accept that authorization if the third party follows a process approved by the Commission for use by a utility. Every effort should be taken to ensure the privacy of customer usage data, and the Commission should not approve a representation process that does not put in place safeguards to access such data or require verification from third parties. CUB/EDF 7/24/15 Cmts. at 3. CUB/EDF believe that the Commission, the utilities, and the stakeholders can agree on a process by which customer privacy is protected and customer interest in new products and services is recognized. *Id.*

In response to parties' assertions regarding the Commission's lack of jurisdiction over the third parties, CUB/EDF assert that the Act does not require a third party to be under the jurisdiction of the Commission to receive data. According to CUB/EDF, this argument ignores the focus of this and the related proceedings where the utilities and stakeholders have sought to fashion a means by which customers can obtain value from the interval usage data made available from the million-dollar investments in AMI those customers are paying for. *Id.* The law requires customers to authorize third parties before those parties can receive customer data; CUB/EDF state that it does not limit who those third parties are. *Id.* Nor does it require that each customer separately give authorization directly to the utility. *Id.*

Section 16-122, CUB/EDF state, addresses the privacy of customer usage data within the overall competitive market for electricity supply established by Section 16 of the Act. CUB/EDF 7/24/15 Cmts. at 2. CUB/EDF note that it was written in the context of the development of a competitive retail electricity market and providing explicit access for a retail customer, a designated agent of a retail customer, an ARES, and a unit of local government, it was part of the legislation enabling a competitive market for retail electric supply. 220 ILCS 5/16-122; see also "Electric Service and Customer Choice Rate Relief Law of 1997," Public Act 9-561." CUB/EDF argue that imputing into Section 16-122 an exclusive list of situations when data may be exchanged would eliminate important customer benefits created by the Energy Infrastructure Modernization Act ("EIMA") and its mandatory investments AMI meters and smart grid technologies. CUB/EDF agree with Staff that what the law requires is that third parties, including RES, present to the utility verifiable evidence of customer authorization. CUB/EDF 7/24/15 Cmts. at 4.

CUB/EDF opine that customers are not a monolithic group. Some may have access to the internet, some may not. CUB/EDF 5/4/15 Cmts. at 9. If a customer is part of a larger group, say a utility bill clinic of the type offered by CUB, it would be inefficient and burdensome on the customer to have them leave the clinic and separately authorize CUB after the fact for access to their interval usage data to help them enroll in energy saving programs. CUB/EDF 7/24/15 Cmts. at 4. CUB, Elevate Energy, or other third parties should be able to present to the utility evidence of customer authorization for groups of customers.

For these reasons, CUB/EDF maintain that the Commission should allow third parties to represent customer authorization if there is verifiable evidence of customer authorization presented, either directly or through an approved authorization process.

2. AG

The AG acknowledges the need to utilize an authorization form that can accommodate an appropriate authorization process for non-RES third parties to access individual customer electricity usage data. The AG believes that a direct customer-to-utility authorization process is the only process presented so far in this proceeding that complies with the requirements of Section 16-122 of the Act. 220 ILCS 5/16-122.

The AG states that a warrant process, by definition, does not include the presentation of any verifiable authorization nor any verifiable designations of agency status to the utility, and thus would be inconsistent with Section 16-122. While the AG agrees that the language of Section 16-122 clearly requires utilities to respond to customer demands for the release of information, utilities need only respond to authorizations that are objectively verifiable and only from an entity specifically designated as the customer's agent. But in order to give full meaning to the language of Section 16-122, the legislature's intent and the Commission's duty to enforce that law, the statute must be interpreted in such a way as to make it enforceable. The AG argues that a reading that denies the Commission the ability to address violations of the authorization requirement and the agency designation of the third party is inconsistent with standard principles of statutory interpretation. Statutes must not be interpreted in a way that leads to absurd, unjust, unreasonable or inconvenient results that the legislature could not have intended. *Apple Canyon Lake Property Owners' Association v. Illinois Commerce Comm'n.*, 2013 Ill. App. (3d) 100832, para. 47; 985 N.E. 2d 695, 709.

The AG argues that enforcement is at the crux of the warrant process controversy because adopting it would render Section 16-122 unenforceable, and a law that is not enforceable by the agency entrusted with its interpretation and implementation is rendered meaningless. Proper statutory interpretation cannot be based solely on the statute's language. It must be founded on the nature, objects and consequences of construing it one way rather than another. *Mulligan v. Joliet Regional Port Dist.,* 123 Ill.2d 303, 312-13 (1988), citing *Carrigan v. Illinois Liquor Control Comm'n.*, 19 Ill.2d 230, 233, 166 N.E.2d 574 (1960). The AG, ComEd and Ameren have all identified the Commission's lack of jurisdiction over non-RES third parties as an obstacle to effective enforcement of Section 16-122 through a warrant process, and no party has established that such jurisdiction exists. This observation is not intended to deny customers the right to have their usage data released to a third party of their choice, but only to exclude the use of any authorization process that precludes effective Commission enforcement of the law. The AG is obliged to point out that absent that jurisdiction and the associated authority to compel any third party to abide by the requirements of the Act, the Commission would be unable to enforce the law's requirements because the third party would not be answerable to any orders, rules, regulations, decisions or directives that the Commission might issue in fulfillment of its duties under the Act.

The regulatory status of third parties is relevant only because it provides a nexus between third party actions and Commission enforcement of the Act. Interpretation of the law's specifics goes hand-in-hand with the law's enforcement. Without establishing how to verify authorization by an unregulated third party or how to confirm that an unregulated third party has accepted the fiduciary duties of agency (in the sense of being legally accountable to the customer), the terms "verifiable" and "agent" as contained in Section 16-122 become meaningless. Whether or not a party comes under the Commission's jurisdiction, there must be some means to corroborate the third party's representations other than mere reliance on the word of the third party.

Finally, it has been suggested that the Commission has already approved third party access using verifiable authorization in Docket Nos. 13-0506 and 14-0701. Staff 7/24/15 Comm. at 8. The AG disagrees that those proceedings are instructive for purposes of the instant docket. The data release at issue in Docket No. 13-0506 was not the release of customer-specific data that is the focus of this proceeding, but the release of anonymous, aggregated data, which the Commission concluded was not prohibited by Section 16-122 and could be accomplished without individual customer authorization. *Illinois Commerce Comm'n*, Docket No. 13-0506, Order at 16-18 (Jan. 28, 2014). The data access process approved in Docket No. 14-0701 was intended for parties certified to operate as alternative retail electric suppliers and answerable to the Commission's orders, rules, regulations and directives generally. *See generally* 220 ILCS 5/16-115(d); 83 Ill. Admin. Code 451.20(e). As parties subject to the Commission's jurisdiction, the Commission has the legal authority to hold them accountable for violations of the Act, and can modify or revoke their certification as retail suppliers of electricity in Illinois. 220 ILCS 5/16-115(f). In addition, the Commission retains the authority to initiate or modify any orders or regulations in conjunction with data access authority for RESs. 220 ILCS 5/16-115(f); 220 ILCS 5/10-113.

The AG agrees with Ameren that Section 16-122 of the Act must be read in conjunction with Section 16-108.6, which emphasizes the right of the customer to control the release of individual usage data. Ameren 7/24/15 Comm. at 3. A direct customer-to-utility authorization process eliminates the problem of verifying authorization or agency and most effectively and efficiently executes the customer's wishes, without the involvement of any other entity in the customer's communication with his or her utility. In addition, no party objects to a customer-to-utility authorization process.

CUB has argued that it would be "inefficient and burdensome on the customer" to have to separately authorize CUB after the fact for access to their interval usage data to help them enroll in energy saving programs. CUB 7/24/15 Cmts. at 4-5. But if all that is required for the customer to communicate his or her intention to authorize data release to a third party is the use of a computer, the third party can bring a laptop computer to in-person events with potential customers so that customers can use a Green Button or other direct authorization process. That is hardly a burden. Furthermore, the AG asserts that any customer who devotes enough time and energy learning about a vendor's services to conclude that he or she wishes to take advantage of them, would likely be willing to spend an extra ten minutes to convey that intention to a utility in a safe and secure fashion. Moreover, the AG argues that because any improper use of customer

data by an unsavory third party may ultimately be counterproductive to the well-meaning efforts of third party vendors who have customers' best interests in mind, it is in all parties' interests that customer data be properly safeguarded.

Certain parties have stated that the process of providing interval data to third parties will be spelled out in Docket No. 14-0507, which could address how customers and authorized third parties receive interval usage data from the utility. Staff 7/24/15 Cmts. at 8; CUB/EDF 7/24/15 Comm. at 5. In that case, the AG recommends that the Commission consider postponing a Final Order in this docket until the issue of the validity of any warrant process and its compliance with the Act is determined.

3. Ameren

Ameren states that it plans to employ Green Button as the tool to transmit customer interval data in the Company's possession. At its core, Green Button is a customer-facing mechanism. The customer, as the individual granting authorization, is in the best position to determine and confirm with whom they have decided to share their data and under what conditions. Green Button will allow a customer to manage his or her decisions about his or her data. It is not designed to allow third parties to "start" or "stop" the exchange.

Ameren points the Commission to Green Button's webpage, available at greenbuttondata.org. The purpose of the initiative, which is self-described as "an industry-led effort that responds to a White House call-to-action," is identified on the home page as "Helping You Find And Use Your Energy Data." Ameren states that Green Button is a customer-facing tool. According to Ameren, using it as something else can present issues with validation and misrepresentation. Those concerns can all be avoided by using Green Button for the purposes for which it was envisioned.

Ameren states that this issue deals with the extent to which non-RES third parties can or should have access to Green Button functionality, for example, to commence or terminate access to customer data. Ameren avers that they should not.

Ameren notes that Staff argues that Section 16-122 requires public utilities to provide customer-specific AMI data directly to non-RES third parties that present "verifiable authorization" directly to utilities on behalf of customers. Ameren argues that Staff has failed to explain or support how a warrant or warrant-like process satisfies the "verifiable authorization" requirements of the Act. Ameren asserts that, if adopted, such a process will have inherent practical "disadvantages" as compared to customer-facing authorization mechanisms such as the Green Button. In sum, the Act does not require utilities to design, offer or host a mechanism designed to obtain authorization from non-RES third parties to access the type of data at issue in this docket.

Section 16-122 of the Act does not define the term "verifiable authorization." According to Ameren, a warrant or warrant-like process will not yield the type of "verifiable authorization" envisioned by the Act as necessary to access the type of information at issue in this docket. A warrant approach is fraught with problems, including those related to unauthorized access and Commission authority over potential bad actors. A warrant or warrant-like process may undercut many of the customer-protection concepts discussed in comments.

To be clear, Ameren does not plan to obtain a "warrant" or affirmative authorization from a non-RES third party each time the Company transmits customer interval data to them. This is because the non-RES third parties will not be taking an action to obtain information from Ameren on a transaction-by-transaction basis. The Company plans to develop and put into place certain terms and conditions governing the access to customer interval data. These terms and conditions will apply the results, requirements and representations stemming from this docket, for example by requiring non-RES third parties to use the approved authorization language. Ameren will obtain from third parties an agreement to these terms, prior to third parties becoming eligible to be connected to data though Green Button. In this respect Ameren will obtain a "warrant" from these entities. But said warrant will be on a party-by-party and not a transaction-by-transaction basis. Ameren states that failure to comply with the terms and conditions shall result in termination or forfeit of the party's ability to access customer data.

Ameren notes that other parts of the Act place more of an emphasis on the customer's ability to directly control their data. Specifically, Section 16-108.6(c), which speaks primarily to utility AMI Plans, emphasizes the rights of customers to consent and control their data – not the rights of others to access it. *See* 220 ILCS 5/16-108.6(c). Ameren argues that this language in particular is more supportive of a customer-facing data sharing mechanism such as the Green Button as opposed to a third-party-facing warrant mechanism. In sum, the Act does not require a warrant mechanism to access the type of data at issue here.

Ameren is also very mindful of the conflicts the use of a warrant or warrant-like process may pose in light of parallel deployment of a customer-facing Green Button. For example, what would a utility do in the case of conflicting representations - a non-RES third party that "turns on" a data flow that is subsequently "turned off" by a customer using Green Button? In that situation, the customer's actions would seem to undermine any type of representation by the non-RES third party that any type of authorization, let alone "verifiable authorization," continues to be in effect.

Ameren maintains that Green Button is a customer-facing tool. The Commission should reject any argument that non-RES third parties should be able to commandeer this tool and use it for purposes for which it was not designed.

4. Staff

According to Staff, Section 16-122(a) of the Act (220 ILCS 5/16-122(a)) requires some process or processes that allow utilities to receive authorization directly from, and to provide interval data directly to: (1) a customer and (2) a third party with verifiable authorization. Staff takes no position as to the superiority of the Green Button process versus the warrant process.

Staff notes that the primary objection raised against the warrant process is that there would be insufficient consumer protections against mistakes or bad acts by the non-RES third parties because the non-RES third parties are unregulated entities. Non-RES third parties are specifically distinguished from RES third parties who, as entities subject to Commission regulation, are accountable for mistakes and bad acts. The problem with

this distinction, Staff argues, is that it is contrary to the language of Section 16-122(a) of the Act. Staff 7/24/15 Cmts. at 6.

In interpreting a statute, the primary objective is to ascertain and give effect to the intent of the legislature. *MD Electrical Contractors, Inc. v. Abrams*, 228 Ill.2d 281, 287, 888 N.E.2d 54 (2008). Where the language of the statute is clear and unambiguous, it must be applied as written, without resort to other tools of statutory construction. *Id*. Here, the language of Section 16-122 is clear and unambiguous: "[u]pon 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." 220 ILCS 5/16-122(a). Staff states that the statutory language does not distinguish between regulated and non-regulated parties in establishing the criteria pursuant to which a third party can obtain customer billing and usage data from a utility. Staff 7/24/15 Cmts. at 7. Thus, Staff argues, any objections to a warrant process or any attempt to foreclose a warrant process outright based on that distinction should be rejected as inconsistent with Section 16-122(a). *Id*.

The AG further states with respect to Section 16-122(a) that the warrant process, as described in this proceeding, "does not contemplate that unregulated third parties will actually present any verifiable authorization to the utility, nor does it require that those entities be acting as agents of the customer." AG 7/9/15 Cmts. at 5-6. Staff claims that the AG cites no legal authority or other support for these conclusory assertions. Staff 7/24/15 Cmts. at 7. Further, the AG's assertions are inconsistent with existing law and prior Commission decisions. *Id*. Under a special agency, a party may, by express contract, grant another party limited authority to conduct a single transaction or series of transactions on behalf of the authorizing party. See, e.g., *Citizens State Bank v. Rausch*, 9 Ill.App.3d 1004, 293 N.E.2d 678 (1st Dist. 1973). More to the point, the AG's assertions entirely ignore that the Commission has already approved third party access to customer data using verifiable authorization based on the statutory language found in Section 16-122. *See*, Docket No. 13-0506, Order at 29-30; Docket No. 14-0701, Order at 20-21.

Staff agrees with CUB/EDF that the process used to obtain authorization is a separate question better addressed in Docket No. 14-0507. Staff 7/24/15 Cmts. at 8; CUB/EDF 6/24/15 Cmts. at 9. Staff notes that several workshops have already been held in Docket No. 14-0507 on the subject of ComEd's proposed Green Button process, and that a future workshop has been scheduled to address Ameren's proposed Green Button process. Staff 7/24/15 Cmts. at 8. Staff suggests that additional workshops could flesh out the specifics of and address concerns about a warrant process, such as third party privacy policies, data retention and cybersecurity risk management. Staff 7/24/15 Cmts. at 8; see also, e.g., AG 7/9/15 Cmts. at 6-7.

5. Elevate

Elevate recommends that the authorization process should be easy for the utility and third parties to administer, while protecting against fraudulent claims of authorization. In addition, Elevate suggests that customers should be able to rescind their authorization

at any time, using any of the formats available for providing the authorization in the first place. Elevate 3/9/15 Cmts. at 3.

Elevate states that streamlining the authorization process should be a top priority; it argues that it is critical to address the ease with which customers navigate between the website of the third party provider they are authorizing to access their data, to the utility to verify their identity, and back again. Elevate 4/20/15 Cmts. at 5. Elevate claims that a process that is confusing to the customer or requires too many additional steps is highly likely to discourage participation. Elevate identifies instances in which its staff does not have an opportunity to interact physically with the building owner prior to needing authorization to access data, such as with sites located far from its Chicago office, and argues that an authorization process that is complicated or lengthy could derail a project if the building owner is unable, or unwilling to navigate the authorization process without assistance. Elevate 4/20/15 Cmts. at 5-6.

Elevate argues for the ability for non-RES third parties to engage in a "bulk enrollment" warrant process, which would allow a third party to report authorization from multiple customers to the utility simultaneously for verification. Elevate 4/20/15 Cmts. at 6. Elevate explains that bulk enrollments are convenient and even invaluable for certain aspects of its programming, including "house parties", the Value for High Performance Homes Campaign, benchmarking meetings, community and building association gatherings, and research. Elevate 4/20/15 Cmts. at 7; Elevate 6/24/15 Cmts. at 7. Elevate claims that allowing non-RES third parties to submit the authorizations for multiple customers directly to the utility would save valuable time and markedly promote program participation. Elevate 4/20/15 Cmts. at 7.

Elevate agrees with Staff's interpretation of Section 16-122(a) and argues that the AG's interpretation relies heavily on an as-yet-unmade determination that the Commission does not have authority over non-RES third parties under the Consumer Fraud Act. Elevate suggests that the AG's concerns may be alleviated, to some degree, in the process of designing the details of a warrant process which it foresees occurring in Docket No. 14-0507.

In response to ComEd's statement that "authorization should be given directly by the customer to the utility" (ComEd 3/9/15 Cmts. at 5-6), Elevate suggests an alternative process, subject to further discussion on practicality and feasibility. Elevate recommends that the non-RES third party be permitted to submit authorizations by multiple customers granting access to their data, followed by the utilities' online verification system (i.e. Green Button Connect) sending the customer a notification requesting confirmation of that authorization. Elevate 4/20/15 Cmts. at 7. Elevate opines that this suggestion represents a straightforward, two-step process that achieves the convenience sought by non-RES third parties and customers alike by removing a proactive step for the customer, while also protecting the integrity of the authorization and the data. Elevate 4/20/15 Cmts. at 8. Elevate notes that it is willing to work with other parties to determine a suitable and sufficiently secure method for conducting authorizations between the non-RES third party and the utility. Elevate 7/24/15 Cmts. at 2.

Elevate takes no exception to the use of Green Button Connect, but argues that a singular reliance on Green Button Connect, or direct customer-to-utility authorization, is not sufficient to meet the needs of non-RES third parties requiring access to data, and does not provide satisfactory options for customers when completing authorizations. Elevate 6/24/15 Cmts. at 8.

Elevate suggests that multiple authorization formats (e.g., electronic signature, wet signature, text message, recorded phone conversation, or some other method) should be available to customers, and should be chosen to be easy and convenient for all customers to grant authorization, including those customers whose native language is not English, or who do not have access to the internet. Elevate 3/9/15 Cmts. at 1, 3. Elevate states that authorization formats must also accommodate third parties' business practices, which may involve a need to seek data access prior to a physical meeting with the customer. Thus, Elevate argues, requiring a "wet" signature would make it cost-prohibitive and difficult to provide retrofit services statewide. *Id.* at 3.

6. ICEA

ICEA agrees with the AG that the Commission should exercise its discretion under Section 16-122 of the Act and not allow non-RES third parties to use batch warrants. *See* ICEA 7/24/15 Cmts. at 1-2. Specifically, ICEA asserts that there are significant dangers allowing easy, open-ended access to non-RES third parties in the event they are not regulated by the Commission. *See id.* at 2.

ICEA raises several issues regarding the Commission's authority over non-RES third parties. ICEA argues that without resolution of the Commission's authority, there is strong potential for non-RES third parties to engage in two problematic behaviors without Commission—or, potentially, any—consequences. ICEA identified the first problematic behavior as ignoring the authorization language or any Commission mandate prohibiting the sale of customer data. If there is no Commission authority over non-RES, ICEA states it is not clear what entity would enforce against the offending non-RES because the Commission would not have had the authority to require authorization language in the first place. ICEA notes that a subsequent determination that the Commission does not have authority over non-RES would render the Order in this docket functionally moot. *See* ICEA 5/4/15 Cmts. at 3-4.

ICEA identifies the second problematic behavior as non-RES failing to secure authorization consistent with the Commission's Order in this docket. ICEA posited that if the Commission decides it does not have authority over non-RES, there is no direct path to ordering non-RES to comply. ICEA posits that, at least under some authorization scenarios, ComEd and Ameren may be in a position to at least partially verify that proper authorization was acquired by the non-RES from each individual customer. ICEA points out that without explicit Commission authority, the utilities are the only gatekeepers—as noted in Docket No. 14-0701, the Commission has already decided it is not appropriate for the utilities to serve as verifiers of non-utilities' authorizations. *See* ICEA 5/4/15 Cmts. at 4.

With regard to the Commission's authority, ICEA notes that although there is no obvious equivalent to Section 16-115A of the Act or Part 412 of the Commission's Rules for the non-RES (at least that are not Agents, Brokers and Consultants), the non-RES are not necessarily unregulated by the Commission. ICEA points out that Section 2EE of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2EE, applies to "electric service providers," which are defined in Section 6.5 of the Attorney General Act. *See, e.g.*, 815 ILCS 505/2EE(e). ICEA quotes Section 6.5 of the Attorney General Act, which states: "'Electric service provider' shall mean anyone who sells, contracts to sell, or markets electric power, generation, distribution, transmission, or services (including metering and billing) in connection therewith." 15 ILCS 205/6.5(b). ICEA notes that the upshot of being an "electric service provider" is that:

> Complaints may be filed with the Illinois Commerce Commission under this Section [of the Consumer Fraud Act] by a subscriber whose electric service [defined in the Attorney General Act as services provided by an electric service provider] has been provided by an electric service supplier in a manner not in compliance with this Section.

815 ILCS 505/2EE(d). ICEA argues that depending on the Commission's interpretation of "services . . . in connection therewith," non-RES may be "electric service providers" and thus subject to the jurisdiction of the Commission for violations of the Consumer Fraud Act. ICEA urges the Commission to definitively decide whether the non-RES subject to this docket are covered by that definition. *See* ICEA 3/9/15 Cmts. at 6-7.

7. RESA

Some parties have taken the position that the customer authorization must come from the customer to the utility. Others have taken the position that customer authorization can come from either the customer to the utility or from the customer to the third party to the utility. RESA does not have a position regarding this issue.

8. ComEd

Parties have raised two potential authorization processes for non-RES third parties in this proceeding: (i) one in which a utility releases customer data to the third party non-RES upon direct authorization from the customer (i.e., Green Button), and (ii) one in which the utility releases customer data to the non-RES third party upon representation by the non-RES third party that it has received customer authorization (i.e., warrant). To be clear, ComEd supports only a process through which the customer provides authorization directly to the utility.

Use of DOE's "Green Button" system would allow customers to initiate the release of their data to third parties whom they identify. A warrant process, alternatively, would involve the non-RES third party soliciting and collecting authorization from the customer and then warranting or proving such authorization to the utility. The non-RES third parties will be unregulated entities, likely not subject to Commission oversight or accountability in the event of mistakes or willful misconduct in connection with either the service they

provide or the warrant they make to the utility. Indeed, any third party, including criminal organizations and other misfeasors, could falsely warrant to the utility that is has presented the approved customer authorization language and obtained authorization to access customer interval usage data. As ComEd has stated, it will not be vetting or policing the parties that request access to interval usage data; nor will ComEd be vetting or policing the authenticity of a warrant, should the Commission allow use of such. Accordingly, a warrant process appears to offer little to no safeguards to protect customers' electricity usage data and, in ComEd's opinion, the convenience factor to third parties is not worth the risk to customers' privacy.

ComEd does not believe that the Act mandates approval of a process by which utilities receive authorization directly from the third party with verifiable authorization. Section 16-122 provides that utilities "shall" provide a customer's billing and usage data to a person who presents "verifiable authorization and is acting as the customer's agent. . ." But Section 16-122 must be read in harmony with Section 16-108.6, which is the newer provision and the one that directly addresses the issue of access to smart meter data. Nothing in Section 16-108.6 requires the release of smart meter data to a customer's agent. Section 16-108.6, in fact, focuses on the rights of consumers—not third parties—and is more concerned about ensuring the privacy of a customer's information than it is in making that information more widely and easily available.

ComEd has proposed giving customers the right to consent to disclosure through electronic, web-based, and other means directly involving the customer via Green Button Connect. ComEd does not believe a warrant process can adequately provide customers the privacy and protection envisioned by the Act or the Consumer Fraud Act. In the end, ComEd leaves it to the Commission's discretion to determine what process(es) will be legally compliant but believes a customer-based authorization process is the best choice.

9. Mission:data

Mission:data believes the Commission should proceed carefully with regard to requiring a specific authorization process. It notes that the problem with being overly specific about an authorization process in a Commission ruling is that evolving technologies might someday be able to accomplish the same outcomes in a new way, rendering Commission rules obsolete.

Mission:data asserts that the authorization should accommodate a variety of mechanisms, including at a minimum: 1) online through the utility website; 2) online through third-party applications; 3) via text message verification; 4) over the telephone to the utility's call center; 5) in person or paper forms; and 6) a third-party-led process using some form of warrants. Mission:data maintains that the important thing is whether the customer has been informed in a manner consistent with the principles adopted, not the technical method or procedure by which it has been accomplished.

10. Commission Analysis and Conclusion

Based on the record in this proceeding, the Commission cannot at this time approve a warrant process. Although the Commission acknowledges that a warrant

process would be more convenient for non-RES third parties, the AG and the utilities have identified significant concerns. The Commission agrees with Ameren that the "utility is the holder of the Customer's AMI data and the utility should manage the release of it, subject to the customer's direction to share that data with third parties for non-utility-related purposes." Ameren 5/4/15 Cmts. at 4. Because a process has not been described that will enable utilities to be sure that an authorization arriving through a warrant process accurately reflects the customer's direction, it cannot and should not be approved.

Several parties rely exclusively on Section 16-122 of the Act, which is located in the portion of the statute dealing with the development of the competitive market, for the argument that a warrant process is required by the Act. The relevant portion of Section 16-122 states:

> (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.

220 ILCS 5/16-122(a). The Commission finds that the warrant process, as described in this proceeding, does not require that the third party be an agent, and as noted by the AG, it does not even require the third party to present verifiable authorization. AG 7/9/15 Cmts. at 6. Without this portion of the statutory language being addressed, the Commission cannot give approval for the warrant process at this time.

The Commission finds the portions of the statute known as EIMA to be more relevant, because EIMA specifically deals with the data generated by AMI meters. It states:

> The AMI Plan shall secure the privacy of personal information and establish the right of consumers to consent to the disclosure of personal energy information to third parties through electronic, web-based, and other means in accordance with State and federal law and regulations regarding consumer privacy and protection of consumer data.

220 ILCS 5/16-108.6(c). Notably, when discussing "personal energy information," the legislature specified that consumers have the right to consent to disclosure. There is no mention of agents acting on behalf of customers. When considering these two statutory provisions, the Commission agrees with ComEd that there is no statutory requirement for the warrant process as described here.

The question ICEA raises is whether the Commission has jurisdiction over the third parties that will receive the AMI meter data from the utilities. The Commission notes that this issue has not been fully briefed. Also, because the issue being decided here is what authorization a utility must receive from a customer in order to release a customer's interval data to a third party, a determination is not necessary for this purpose. Moreover, because the Commission's authority over third parties is tenuous at best, this is yet another reason utilities should only accept authorizations directly from customers, at least for now.

At this juncture, the Commission only approves an authorization which is received by the utility directly from a customer. Going forward, if appropriate safeguards and processes are proposed, then approval for the warrant process may be possible. Although it is possible to make this an interim order in order to consider these questions in this docket, the Commission finds that it is more appropriately considered in the open data access framework proceeding, Docket No. 14-0507. That docket is addressing the process for data access and, thus, because approval for any warrant process is so contingent on the actual process, it is more appropriate that this docket be closed and the warrant process be considered in Docket No. 14-0507.

C. Authorization Language for Warrant Process

CUB/EDF, the AG, and Ameren all propose that the same authorization language be adopted regardless of the authorization process. Staff is the only party to propose two versions of authorization language - one for use with the "warrant" process and the second for use with the "Green Button" process. The difference between the two versions is in the last paragraph of the authorization language and provides information for revoking authorization. Under either process, Staff proposes that a customer may revoke the third party's authorization by contacting the utility. Staff's alternate language recognizes that if the third party chooses to use the warrant process, a customer has the additional option to revoke the authorization by contacting the third party directly.

The Commission finds the standard language adopted above to be adequate for authorization through any of the proposed processes. Although the Commission finds that there is not adequate information to approve a process other than direct customer authorization at this time, in the event a different process is approved later, the Commission does not see that different authorization language is necessary.

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) the Commission has jurisdiction over the parties hereto and the subject matter herein;

(2) Section 16-122 and 16-108.6 of the Public Utilities Act require Ameren Illinois Company d/b/a Ameren Illinois and Commonwealth Edison Company to secure customers' interval usage data; but, with proper customer consent and authorization, the customer's usage information may be released to a third party;

(3) the authorization language established by this Order should be accepted by Ameren Illinois Company d/b/a Ameren Illinois and Commonwealth Edison Company to release customer interval data to third parties;

(4) the language adopted herein is standard language from which utilities should not deviate for residential and small business customers, except to identify the purpose for accessing the data; and

(5) Ameren Illinois Company d/b/a Ameren Illinois and Commonwealth Edison Company should release customers' interval usage data electronically upon receipt of the proper customer authorization.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the authorization language adopted herein shall be used as the consent necessary for Commonwealth Edison Company and Ameren Illinois Company d/b/a Ameren Illinois to release customer data to third parties.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding that remain unresolved are to be disposed of in a manner consistent with the conclusions reached herein.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED:	12/23/2015
BRIEFS ON EXCEPTIONS DUE:	1/8/2016
REPLY BRIEFS ON EXCEPTIONS DUE:	1/19/2016

Leslie Haynes,
Administrative Law Judge