

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On Its Own Motion)	
)	Docket No. 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)	

REPLY BRIEF ON EXCEPTIONS OF THE STAFF OF THE
ILLINOIS COMMERCE COMMISSION

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Illinois Commerce Commission

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NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), by and through their undersigned counsel, pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (“Commission”) (83 Ill. Adm. Code 200.830) and the schedule set by the Administrative Law Judge (“ALJ”), and respectfully submit their Reply Brief on Exceptions (“BOE”) to the Proposed Order (“PO”) issued by the ALJ on December 23, 2015.

I. INTRODUCTION

In its January 15, 2016 Brief on Exceptions (“BOE”), Staff took no exception to the ALJ’s Proposed Order (“ALJPO”). In addition to Staff, the following parties filed BOEs: the Citizens Utility Board (“CUB”) and the Environmental Defense Fund (“EDF”) (together, “CUB/EDF”); Ameren Illinois Company d/b/a Ameren Illinois (“Ameren”); the Illinois Competitive Energy Association (“ICEA”); Commonwealth Edison Company (“ComEd”); and Mission:data Coalition, Inc. (“Mission”). In lieu of a BOE, the Illinois Attorney General’s Office (“AG”) filed what it labeled a “Revised Statement of Position”

that contained proposed draft order language. Pursuant to the direction of the ALJ, this RBOE follows.

Staff's position on exceptions taken by various parties is set forth in detail below. To the extent that a Party takes exception to a portion of the ALJPO and Staff does not address that exception, Staff continues to endorse the ALJPO as written.

II. ARGUMENT

A. Exceptions taken by Mission and CUB/EDF Regarding the 24-month Authorization Period Should be Rejected in Part

The PO recommends a set period of 24-months for authorization of prospective data (PO, 12), but clarifies that “the language adopted...is for residential customers and small businesses only.” *Id.* at 13. Mission argues the PO should be revised to further clarify this language to extend only to residential customers. Staff disagrees with this exception.

It is unclear to Staff whether the PO intends the 24-month authorization period to apply to all customers or to residential and small business customers only. While the first sentence states that “[t]he Commission adopts a set period of 24-months of prospective data,” which Staff views as a 24-month period for all customers, Mission interprets subsequent language as restricting the 24-month authorization term to only apply to residential and small business customers and not to larger-use, non-residential customers. Mission recommends that a 24-month term apply only to residential customers; that is, the 24-month term would not apply to “small business” customers. (Mission BOE, 2-3.)

Staff notes that the Act does not define “small business customer” but does define “Small commercial retail customer” as “those nonresidential retail customers of an electric

utility consuming 15,000 kilowatt-hours or less of electricity annually in its service area.” 220 ILCS 5/16-102. However, it is Staff’s understanding that neither Ameren nor ComEd have a delivery services class that is based on maximum annual usage of 15,000 kilowatt-hours. Thus, if the PO intends that the 24-month period only apply to smaller-use customers, Staff recommends removing the reference to “small business” customers in the PO.

CUB/EDF does not object to a default authorization period of 24-months but recommends that the customers and third parties who wish to negotiate a longer term of authorization should be able to do so. (CUB/EDF BOE, 2.) Staff disagrees and continues to recommend a default authorization period of 24-months for all customers. At this early point in the process of devising methods to safeguard customer data it would be prudent first to gain some experience with the 24-month period before allowing a several-year or even an unlimited authorization duration, even for larger customers.

B. Exceptions taken by Mission, ICEA and ComEd Regarding the 24-month Authorization Period Should be Adopted in Part

1. Reply to Mission

Mission also recommends that the PO specify authorization language for non-residential customers as well as residential customers (Mission BOE at 3); as written the PO is silent as to the authorization language to be used for non-residential customers. Staff does not object to this recommendation. However, it is Staff’s position that the language adopted should be identical for all customer classes.

2. Reply to ICEA

ICEA notes that the PO uses the term “third-party” as a synonym for “non-RES” third parties. It recommends that the PO either use “non-RES” third parties or,

alternatively, that the Introduction to the PO make clear that the PO applies to non-RES third parties and not RESs. Staff agrees that this docket applies to third parties other than RESs and therefore agrees that clarification on this point in the PO would be desirable. (ICEA BOE, 6-7.)

3. Reply to ComEd

ComEd recommends that authorization language contain an express prohibition against selling customer electricity usage information. ComEd notes that such a prohibition would be consistent with the Commission's decision in Docket No. 14-0701. (ComEd BOE at 5.)

Staff supports ComEd's exception, with two slight changes (i.e., deletion of a comma after "vendors" and insertion of the word "other"), shown below.

[NAME OF THIRD PARTY] may disclose my electricity usage information to its contracted third party vendors or its affiliates for this purpose only. [NAME OF THIRD PARTY], its affiliates, and its third-party vendors⁽⁷⁾ will not sell or license my electric usage information to any other party for any purpose.

C. The Commission Should Issue a Final Order in this Proceeding

The PO recommends that the Commission should only approve authorization when authorization is provided directly to the utility from a customer. Possible approval of the warrant process – specifically, permitting a customer to provide authorization to a third-party and allowing the third-party in turn to certify to the utility that it has obtained authorization from a customer to receive the customer's data from the utility – would be considered in Docket 14-0507. (PO, 29.)

Several parties commented in their BOEs on the PO's recommendation. As an alternative to proceeding forward in this docket, Ameren recommends staying this docket until the conclusion of Docket 14-0507. (Ameren BOE at 11.) Similarly, ICEA

recommends that the Commission not authorize Ameren and ComEd to begin data-access programs for non-retail energy suppliers until the Commission issues a final order in Docket 14-0507 or a successor docket. (ICEA BOE, 3.) CUB/EDF seeks guidance on proposing authorization processes that would assure the Commission that customer data could be safeguarded. (CUB/EDF BOE, 4-6.) Mission recommends that the Commission allow an authorization process initiated by third parties, and also recommends that the Commission identify the customer identification information that would assure the Commission that customer would be secure. (Mission BOE, 4.)

The Commission declined to approve a warrant process in this Docket. However, there is a difference between a warrant process and the process approved in the PO; namely, under a warrant process the customer has the ability to contact either the utility or the third-party vendor to cancel authorization, whereas under the process approved in the PO, the customer must contact the utility. This difference, and that fact that all issues related to third-party notification have not yet been resolved, is justification to withhold a decision on the warrant process. It is not, however, sufficient justification to withhold a decision on the process contemplated by this docket. Neither Ameren nor ICEA provide specific or substantive rationale that would justify withholding an order in this proceeding or opening yet another proceeding to address the issues riper for consideration in 14-0507. It is Staff's position that the PO should be adopted with the exceptions noted herein, and that any further issues should be addressed in Docket 14-0507. To the extent any party disagrees with that position, their arguments should be rejected.

III. CONCLUSION

WHEREFORE, for all of the foregoing reasons, Staff respectfully requests that the Commission's Order in this proceeding reflect all of Staff's recommendations.

January 26, 2016

Respectfully submitted,

/s/ _____
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