

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Citizens Utility Board)	
And)	
Environmental Defense Fund)	
)	Docket No. 16-0245
Complaint to Open an Investigation)	
Pursuant to 220 ILCS 5/16-108.6 regarding)	
Ameren Illinois Company's Progress in)	
Implementing its AMI Plan)	

DRAFT ORDER DISMISSING COMPLAINT

By the Commission:

I. Procedural Background

On April 1, 2016, the Ameren Illinois Company (Ameren) submitted, pursuant to Section 16-108.6(e) of the Public Utilities Act (Act), its annual report regarding the progress it has made toward completing implementation of its Advanced Metering Infrastructure (AMI) Plan. On April 4, 2016, the Citizens Utility Board (CUB) and the Environmental Defense Fund (EDF) jointly filed a Complaint pursuant to Sections 16-108.6 and 10-108 of the Act requesting that the Commission enter upon an investigation regarding Ameren's progress in implementing its AMI Plan. On April 8, 2016, Commission Staff submitted a Report regarding the Complaint. On April X, 2016, Ameren filed [a Response].

II. Ameren's Report

Section 16-108.6(e) of the Act provides that participating utilities, of which Ameren is one, must "[o]n April 1 of each year ... after consultation with the Smart Grid Advisory Council, ... submit a report regarding the progress it has made toward completing implementation of its AMI Plan." The participating utility's report must "(1) describe the AMI investments made during the prior 12 months and the AMI investments planned to be made in the following 12 months; (2) provide sufficient detail to determine the utility's progress in meeting the metrics and milestones identified by the utility in its AMI Plan; and (3) identify any updates to the AMI Plan."

On April 1, 2016, Ameren timely filed its Report pursuant to Section 16-108.6(e). The Report recites that Ameren presented it to the Smart Grid Advisory Council on March 8, 2016. The Report identifies AMI "program accomplishments" for the year 2015, and "program goals" for 2016. The Report further describes Ameren's performance with respect to its AMI Related Energy Infrastructure Modernization Act (EIMA) performance

metrics, and the information Ameren is required to track under its approved AMI Plan. The Report also identifies AMI investments made in 2015 and projected for 2016. Appended to the Report are a distributed generation annual report, a distributed generation annual report for net metering only, a summary of the time required for connection of distributed resources, and a report summarizing requests for non-standard metering.

Ameren indicates in its Report that it intends to accelerate its deployment of AMI meters so that such deployment will be completed at a date earlier than prescribed in its existing approved AMI Plan. Ameren states that, of the 780,419 AMI meters it is required to deploy under its AMI Plan, it has, through 2015, deployed 208,539, instead of the 188,419 meters it was scheduled to deploy by that date. Ameren further states that it plans to deploy 178,000 meters, rather than the planned 148,000, in 2016, and 295,000 meters, rather than the planned 148,000, in 2017. Ameren also indicates that it will complete meter deployment in 2018, rather than 2019.

III. The CUB / EDF Complaint

Section 16-108.6(e) provides that the Commission has authority, within 21 days of the filing of a report by a participating utility, to initiate an investigation into a utility's progress in implementing its AMI plan. The Commission may initiate such an investigation either on complaint, or on its own motion. If, as a result of such an investigation, the Commission finds that the utility's progress in implementing its AMI plan is "materially deficient," the Commission is required to "issue an order requiring the participating utility to devise a corrective action plan, subject to Commission approval and oversight[.]" Regardless of whether the Commission finds a material deficiency in implementation, it must enter its Order in such an investigation within 90 days of the utility filing its Report.

CUB and EDF argue in their Complaint that Ameren's Report does not provide sufficient detail to determine Ameren's progress in implementing its AMI plan. CUB and EDF assert that, since the categories of costs and investments presented in Ameren's Report are not identical to the categories of costs and investments presented in Ameren's annual Modernization Action Plan (MAP) Reports and Ameren's annual Section 16-108.5 Formula Rate Update (FRU), the costs and investments are difficult for the Commission and stakeholders to compare across filings, thereby rendering it difficult to track Ameren's progress in implementation. CUB and EDF argue that Ameren's reported investments and expenditures appear to be inconsistent across each of the filings. This alleged failure, argue CUB and EDF, results in Ameren's Report lacking sufficient detail to evaluate Ameren's progress.

In their Complaint, CUB and EDF observe that Ameren intends to accelerate its deployment of AMI meters. CUB and EDF argue that, to evaluate Ameren's acceleration proposal and determine whether it is reasonable, the Commission must have information regarding whether Ameren has to date satisfied AMI program metrics and milestones. CUB and EDF assert that Ameren's performance "could be evidence of whether or not acceleration is reasonable[.]" CUB and EDF assert that, because of the alleged

inconsistencies in reporting described elsewhere in their Complaint, “the Commission cannot make a determination that Ameren has met its obligations” such that acceleration is proper.

CUB and EDF request that the Commission open an investigation to determine Ameren’s progress in implementing its Plan.

IV. The Staff Report

On April 8, 2016, Commission Staff submitted its Staff Report. The Staff Report states that, based on its review of Ameren’s Report, Staff concludes as follows:

- Ameren consulted with the Smart Grid Advisory Council on March 8, 2016 and provided a draft to the SGAC prior to the meeting;
- Ameren’s Report summarizes 2015 actual capital investments and forecasted 2016 capital investments for various identified AMI activities, including systems integration, AMI communications network and AMI meters, assuming accelerated meter deployment. For 2015, the Report states that capital expenditures were \$46.1 million, slightly more than the \$45.9 million it projected in its 2015 Report;
- The Report provides data for several metrics and milestones that Ameren is required or has agreed to track. Additionally, Ameren has committed to track and report on many other metrics that are generally tied to AMI deployment;
- The AMI Plan Report indicates that the major activities that Ameren expected to complete in 2015 were undertaken and completed as scheduled. It appears from the Report that Ameren has deployed approximately 20,000 more AMI meters than the Plan calls for;
- Ameren “will accelerate deployment of the 62% electric AMI meters[,]” which Ameren states will allow customers to obtain program benefits more quickly. Ameren has, through 2015, deployed 208,539, instead of the 188,419 meters it was scheduled to deploy by that date. Ameren further states that it plans to deploy 178,000 meters, rather than the planned 148,000, in 2016, and 295,000 meters, rather than the planned 148,000, in 2017. Ameren also indicates that it will complete meter deployment in 2018, rather than 2019; and
- Staff has not identified any non-compliance issues.

Staff describes the CUB / EDF Complaint. It recommends that the Commission decline to initiate the investigation that CUB and EDF request. Staff observes, however, that the CUB / EDF Complaint appears to be raised at least partially under the auspices of Section 10-108, in addition to section 16-108.6(e). Staff therefore recommends that the Commission order that a Section 10-108 proceeding be initiated, for the limited purpose

of determining what, if any, of CUB / EDF's allegations survive the dismissal of their Section 16-108.6(e) claims.

Finally, Staff observes that Ameren proposes to accelerate deployment of AMI meters. Staff recommends that the Commission direct Ameren, if it intends to carry through with accelerated deployment, to submit a Petition to reopen Docket No. 12-0244 in which the Commission approved Ameren's AMI Plan. This will enable the Commission and stakeholders to review changes to the Plan in the context of the whole AMI Plan. Further, the Commission has in the past ruled on a request by a participating utility, the Commonwealth Edison Company ("ComEd"), to accelerate meter deployment. The Commission did so in that case by reopening ComEd's AMI Plan, Docket No. 12-0298, 13-0285 & 14-0212 (cons.), and amending the deployment schedule. Staff considers this to be the appropriate manner in which to address such proposals.

V. **[Ameren's Response]**

VI. Commission Analysis and Conclusions

The Commission first notes that the CUB / EDF Complaint essentially alleges that Ameren has failed to comply with Section 16-108.6(e) in that its Report is insufficiently detailed for the Commission to meaningfully assess Ameren's progress in implementing its AMI Plan, and by extension, to determine whether that progress is materially deficient such that a corrective action plan should be imposed. While CUB and EDF make two conclusory references in their Complaint to Section 10-108 of the Public Utilities Act, they do not, as nearly as we can determine, allege any violation of any other "provision of [the Public Utilities] Act, or of any order or rule of the Commission" unrelated to Section 16-108.6(e). This approach is problematic.

In Citizens Utility Bd. v. Illinois Commerce Commission, 2015 IL App (4th) 150562, the Appellate Court affirmed our dismissal of the Complaint CUB filed regarding Ameren's 2015 AMI Report, specifically finding that:

Section 16-108.6(e) does not require a hearing as to whether an investigation should be opened or require written findings if the Commission decides not to open an investigation. The plain language of this section clearly gives the Commission broad discretionary authority to initiate an investigation. Thus, the Commission has the authority to dismiss [Section 16-108.6(e)] complaints without a hearing.

Citizens Utility Bd., 2015 IL App (4th) 150562, ¶14.

In so finding, the Appellate Court rejected CUB's argument that it was entitled to a hearing on its Complaint because Sections 10-108 and 16-108.6(e) of the Act had to be read in harmony, in such a way as to require the Commission to hold a hearing on Section

16-108.6 complaints, observing that such a reading “would cause nothing but confusion and would require a reading of section 16-108.6(e) that the General Assembly, by its plain language, did not intend.” *Id.*, ¶15.

We observe that CUB and EDF’s attempt to bring their Complaint at least partially under authority of Section 10-108, without alleging any violation of any statute other than Section 16-108.6(e), or of any Commission order or rule unrelated to Section 16-108.6(e), raises precisely the concerns that the Appellate Court expressed. In their instant Complaint, as in Citizens Utility Board, CUB / EDF do not invoke Section 10-108 to specifically request a hearing or present evidence. Rather, they merely “request that the Commission enter upon an investigation . . . pursuant to 220 ILCS 5/16-108.6.” While we are authorized to dismiss without hearing any complaint brought pursuant to Section 16-108.6(e), our authority to dismiss without hearing any complaint brought pursuant to Section 10-108 is less clear. With this procedural framework in mind, we proceed to the substantive question of whether Ameren’s 2016 AMI Report is sufficiently detailed to allow use to meaningfully assess Ameren’s progress in implementing its AMI Plan.

Having reviewed Ameren’s 2016 AMI Report, the CUB / EDF Complaint, the Staff Report, and Ameren’s [Response], we find that the 2016 Report is sufficiently detailed and adequate to allow us to assess Ameren’s progress in implementing its AMI Plan, and more specifically in meeting the metrics and milestones identified by the company in its Plan. Pursuant to statute, the Report need only describe the AMI investments made during the prior 12 months and the AMI investments planned to be made in the following 12 months; . . . provide sufficient detail to determine the utility’s progress in meeting the metrics and milestones identified by the utility in its AMI Plan; and . . . identify any updates to the AMI Plan.” Ameren’s Report identifies AMI “program accomplishments” for the year 2015, as well as “program goals” for 2016. The Report identifies AMI investments made in 2015 and projected for 2016. The Report further describes the performance metrics Ameren is required to satisfy as a result of its approved AMI Plan and Ameren’s 2015 performance with respect to those metrics. The Report also contains the information Ameren is required to track as a result of its approved AMI Plan, and the 2015 results of such tracking. Accordingly, we find that the Ameren Report complies with the statute.

Likewise, we are not convinced by CUB / EDF that Ameren’s alleged failure to use the same categories of costs and expenses in its AMI Report that it uses in its MAP Reports and FRUs renders the Report deficient. While such common categorization might be desirable, we do not address that question in this Order. We are not aware of any statutory requirement, or any finding in any Commission Order, that requires the use of such common categories or classifications. Further, CUB / EDF have failed to direct our attention to any such requirement, or to explain in any detail why requiring the use of such common categories or classifications is necessary. As Complainants, CUB and EDF have failed here to state a basis for relief.

Accordingly, we decline to open an investigation under Section 16-108.6(e) regarding Ameren’s performance in implementing its AMI Plan. In issuing our findings and conclusions regarding our decision, we do not suggest that we are required to issue such

findings and conclusions, and the Appellate Court has determined that we are not required to do so. Citizens Utility Bd., ¶18. We issue these findings and conclusions because we consider it necessary to a complete understanding of the direction we give the parties in the remainder of this Order.

We next address in greater detail CUB / EDF's invocation of Section 10-108 as authority under which to bring their Complaint. As we noted above, the Appellate Court found that any attempt to read Sections 10-108 and 16-108.6(e) "in harmony" with one another would result in confusion. In so finding, the Appellate Court recognized the highly-abbreviated 21-day schedule upon which we are required to determine whether an investigation under Section 16-108.6(e) should be initiated. Citizens Utility Bd., ¶15. Moreover, we read the Appellate Court's opinion in Citizens Utility Board to stand for the proposition that the sole remedy available to a party seeking by complaint an investigation of the progress of a participating utility's AMI Implementation is under Section 16-108.6(e). Id., ¶16. CUB and EDF have, nonetheless, elected to bring their complaint under, in part, Section 10-108. Accordingly, to the extent the CUB / EDF Complaint briefly cites Section 10-108, we address it.

As noted above, we find that Ameren's Report satisfies the requirements of Section 16-108(e). Further, it is not clear from the face of the CUB / EDF Complaint what, if any, claims they raise unrelated to the adequacy of the Report under Section 16-108.6(e). However, in the interests of affording the Complainants due process, without concluding they are strictly entitled to it, we direct that a Section 10-108 proceeding be opened, for the limited purpose of determining what, if any, of CUB / EDF's allegations survive the dismissal of their Section 16-108.6(e) claims. In doing so, we make clear that we are not authorizing CUB / EDF to file an amended Complaint, but rather to demonstrate, based on the four corners of their existing Complaint, what, if any relief they could obtain under Section 10-108 of the Act, in light of our dismissal of their Section 16-108.6(e) claims. We direct that this proceeding be concluded within 90 days of the date of entry of this Order.

Finally, we observe that Ameren seeks, through this AMI Implementation Report, to accelerate deployment of AMI meters, such that full statutory deployment will be achieved over one year earlier than Ameren's AMI Plan provides for. We understand CUB and EDF to assert that this request cannot be evaluated in light of what they argue to be the limitations of the AMI Report.

While we do not adopt CUB / EDF's reasoning or position, we nonetheless find that Ameren's request should not, in this case, be adopted within the scope of this proceeding. We understand Section 16-108.6(e) Implementation Reports to serve the limited statutory purpose of reporting on and assessing the participating utility's progress in implementing its existing AMI Plan, rather than substantially altering the AMI Plan itself, as Ameren proposes here. We were presented with similar circumstances when ComEd

sought to accelerate meter deployment, and in that case we reopened ComEd's AMI plan. Docket No. 12-0298, 13-0285 & 14-0212 (cons.). Here, Ameren proposes what appears to be a substantial alteration of its AMI Plan, which would result in full deployment of meters over a year earlier than planned. In particular, Ameren proposes to deploy approximately twice as many meters in 2017 as its AMI Plan calls for. While it is not apparent from the Report, we consider it not unlikely that such accelerated deployment might significantly affect the rates resulting from the formula rate process. Accordingly, we are of the opinion that modifications of this nature to a participating utility's AMI Plan should be reviewed by reopening the Order on Rehearing in Docket No. 12-0244 in which the Commission approved Ameren's AMI Plan, pursuant to Section 16-108.6(c) of the Act. This will enable the Commission and stakeholders to review changes to the Plan in the context of the whole AMI Plan. Accordingly, to the extent that Ameren seeks to accelerate meter deployment, we direct it to file a petition to reopen its existing AMI Plan.

VII. Findings and Ordering Paragraphs

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

- (1) Ameren Illinois Company d/b/a Ameren Illinois is an Illinois corporation engaged in the distribution and sale of natural gas to the public in Illinois, and is a public utility as defined in Section 3-105 of the Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter herein;
- (3) the recitals of fact and conclusions of law reached by the Commission in this Order are supported by the evidence of record, and are hereby adopted as findings of fact and conclusions of law;
- (4) Ameren's April 1, 2016 Report regarding its progress in implementation of its AMI Plan satisfies the requirements of Section 16-108(e);
- (5) No investigation of Ameren's progress in implementing its AMI Plan should be initiated;
- (6) The April 4, 2016 Complaint brought jointly by the Citizens Utility Board and Environmental Defense Fund should be denied insofar as it alleges that Ameren has failed to comply with Section 16-108.6(e) of the Act;
- (7) A proceeding should be opened pursuant to Section 10-108 of the Act for the limited purpose of determining what, if any, of CUB / EDF's allegations survive the dismissal of their Section 16-108.6(e) claims;

- (8) to the extent that Ameren seeks to accelerate meter deployment, it should file a petition to reopen its existing AMI Plan; and
- (9) all motions, petitions, objections, and other matters in this proceeding which remain unresolved should be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the April 4, 2016 Complaint brought jointly by the Citizens Utility Board and Environmental Defense Fund is dismissed and denied insofar as it alleges that Ameren has failed to comply with Section 16-108.6(e) of the Act;

IT IS FURTHER ORDERED THAT a proceeding is initiated pursuant to Section 10-108 of the Act for the limited purpose of determining what, if any, of CUB / EDF's allegations survive the dismissal of their Section 16-108.6(e) claims, which shall be concluded with 90 days of entry of this Order;

IT IS FURTHER ORDERED THAT to the extent that Ameren seeks to accelerate meter deployment, it is directed to file a petition to reopen its existing AMI Plan;

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

By Order of the Commission this 12th day of April, 2016.

(SIGNED) BRIEN SHEAHAN
Chairman