

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION :
On Its Own Motion :
 :
Investigation of Standard Terms for : **14-0701**
Customer Authorization of Access to :
Interval Usage Data for Non-Billing :
Purposes. :

ORDER

I. BACKGROUND

In a Staff Report dated November 6, 2014, the Staff of the Illinois Commerce Commission (“Staff”) recommended the Illinois Commerce Commission (“Commission”) open a docket to consider authorization language that may be used by Retail Electric Suppliers (“RESs” or “Suppliers”) when seeking to access utility-held customer interval usage data for non-billing purposes.

Docket No. 14-0701 originates from the Final Order in Docket No. 13-0506 on January 28, 2014, in which the Commission urged stakeholders to continue discussions around additional measures that may be implemented in an effort to ensure that RESs have the appropriate level of customer authorization prior to accessing customer-specific information in the possession of a utility.

Docket No. 14-0701 focuses specifically on the authorization needed by RESs seeking to access Advanced Metering Infrastructure (“AMI”) data of customers served by Suppliers on non-time-of-use rates. As part of these ongoing discussions, several parties, including Staff, have circulated authorization language proposals designed to achieve this end. Specifically, Staff suggested the following language in its November 6, 2014 Staff Report:

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

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

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

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

Staff also suggested that in an opt-out Governmental Aggregation scenario, the following language be added:

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

Staff Report (November 6, 2014).

The Staff Report describes the efforts that went into drafting the proposed customer authorization language. During the process, the Office of Retail Market Development (“ORMD”) hosted a series of workshops in which Staff, Ameren Illinois Company d/b/a Ameren Illinois (“Ameren”), Commonwealth Edison Company (“ComEd”), various RESs and RES groups, the Office of Attorney General (“AG”), the Citizens Utility Board (“CUB”) and other interested parties worked together to exchange ideas and information concerning the appropriate language. The Staff Report identified issues that remain unresolved after the workshops that were held. For the issues still in contention after the workshops, Staff and other interested parties filed comments in support of their respective positions.

II. PROCEDURAL HISTORY

On November 25, 2014, Staff filed a Report dated November 6, 2014, in which it recommended the Commission initiate this docket to consider customer authorization language relevant to situations in which Suppliers may seek to access AMI data of customers for purposes other than billing. The Commission opened this docket in response to the Staff Report to coordinate the consideration of proper means of authorizing access to customers’ interval usage data for non-billing purposes.

Ameren, ComEd, the AG, the Illinois Competitive Energy Association (“ICEA”), MidAmerican Energy Company (“MidAmerican”), CUB, and the Retail Energy Supply Association (“RESA”) (collectively “Intervenors”) all intervened.

On January 8, 2015, Ameren, ComEd, the AG, ICEA and Staff filed their respective verified initial comments. On January 22, 2015, the same parties as well as MidAmerican filed their respective verified reply comments. On January 27, 2015, there was a status hearing at which all parties mutually agreed to waive additional responsive comments. The Administrative Law Judge (“ALJ”) also marked the matter “Heard and Taken” on this date.

On March 2, 2015, the ALJ issued the Proposed Order in this matter. The parties filed their Briefs on Exceptions and Reply Briefs on Exceptions on March 12, 2015 and March 19, 2015, respectively. The Order considers each party's position and addresses both substantive issues regarding the authorization language as well as implementation issues.

III. APPLICABLE LAW

Section 16-122 of the Public Utilities Act ("PUA") 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.
- (b) Upon request from any alternative retail electric supplier and payment of a reasonable fee, an electric utility serving retail customers in its service area shall make available generic information concerning the usage, load shape curve or other general characteristics of customers by rate classification. Provided however, no customer specific billing, usage or load shape data shall be provided under this subsection unless authorization to provide such information is provided by the customer pursuant to subsection (a) of this Section.
- (c) Upon request from a unit of local government and payment of a reasonable fee, an electric utility shall make available information concerning the usage, load shape curves, and other characteristics of customers by customer classification and location within the boundaries of the unit of local government, however, no customer specific billing, usage, or load shape data shall be provided under this subsection unless authorization to provide that information is provided by the customer.
- (d) All such customer information shall be made available in a timely fashion in an electronic format, if available.

Section 16-108.6(d) provides in part that a participating utility's AMI Plan is to secure the privacy of customers' personal information. Section 16-108.6(d) describes "personal information" as "the customer's name, address, telephone number, and other personally identifying information, as well as information about the customer's electric usage" and requires electric utilities to secure the privacy of "personal information" as part of their Smart Grid Advanced Metering Infrastructure Deployment Plan. Section 16-108.6(d) prohibits the disclosure of such information by utilities for commercial purposes, except where authorized.

IV. SUBSTANTIVE LANGUAGE ISSUES

A. Uniform Customer Authorization Language

Staff's Position

Staff states that its proposed language complies with the Commission requirements described in the Final Order in Docket No. 13-0506. However, Staff maintains that its proposed language should not be construed to be the only compliant language. Staff submits that a RES could use different language and whether that language complied with the Commission requirements would be determined on a case-by-case basis.

AG's Position

The AG believes the use of standardized, Commission-approved language by any RES seeking access to individual customer interval data is essential to a fair and efficient authorization process. Only by mandating the use of a standardized form can the Commission ensure that every RES customer has received the same disclosures, designed to lead to the type of informed consent necessary to address the Commission's concerns about the unique nature of smart meter data. The use of standardized authorization forms is also the only way to relieve the utilities of the responsibility of interpreting the scope of consent obtained.

The AG also notes that both ComEd and Ameren support the need for standardized authorization language. The utilities are the parties that the Commission correctly assumed would be the most likely to be burdened should authorization be executed in a manner that imposed the need for individual compliance assessments on each and every data access request from the RES industry.

The AG disagrees with comments filed by ICEA that the Commission should resist prescribing specific, uniform language for RES contracts. Likewise, the AG differs with Staff's view that its own proposed language should be treated only as an example of compliant language such that a RES could use different language, and whether that language complied with the Commission requirements would be determined on a case by case basis. The AG argues that determining compliance on a case-by-case basis suggests that each RES could adopt its own unique authorization form to obtain a customer's agreement to release their interval data, with compliance subsequently determined by the Commission or the utility. At the least, this would require each RES seeking individual customer interval data to submit its form to the Commission for approval and perhaps to seek individual rulings in response to each modification to the authorization form. At the worst, this proposal suggests the utilities would have to make a case-by-case compliance assessment, which would be contrary to the Commission's intention that utilities not be required to interpret whether or not the authorization was compliant with any applicable orders or rulings.

The AG submits that in order to effectively implement the intent of its own order, the Commission should adopt uniform customer authorization language to be used by all alternative retail electric suppliers who seek customer authorization to release their

individual interval data for non-billing purposes. The AG explains that use of a universal authorization form would ensure that each and every customer was presented with the same disclosures, guaranteeing that the Commission's oversight with respect to individual customer data would be applied in an equitable and consistent manner.

Ameren's Position

Ameren agrees with Staff that its suggested language is not the only language with the potential to address the concerns expressed by the Commission in Docket No. 13-0506, i.e., gaining customer authorization for a RES to access non-billing AMI data. RESs should have, and have had the opportunity to propose alternative language. That is the purpose of this docket. However, Ameren does harbor reservations about Staff's suggestion that alternative language be evaluated on a case-by-case basis. Ameren does not want to be placed in the position of having to evaluate RES-specific language with each supplier and/or each time said supplier attempts to access customer data. Standardized authorization language is the only way to relieve utilities of the responsibility of interpreting the scope of consent obtained. RESs will have made the disclosures the Commission determines are needed, in a format determined to be appropriate, and those disclosures will all be the same. Ameren submits that the use of standard language is the best way to effectuate the progress made on this topic in this docket and other related discussions.

ComEd's Position

ComEd contends that RESs should not be able to deviate from the Commission-approved authorization language. It argues customer education and awareness is the key to a successful authorization process and multiple forms and non-standard language will lead to customer confusion, and that the best way to promote understanding is through consistency. ComEd agrees with the AG's proposal that the Commission should direct the use of standardized language by any RES seeking access to individual customer billing and usage data.

ICEA's Position

ICEA agrees with Staff that its proposed language should not be construed to be the only compliant language. ICEA notes that Staff's proposal appropriately puts the onus on RES, not the utility, with regard to non-conforming language.

Commission Analysis and Conclusion

The Commission holds 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 resources and removing any potential for confusing or conflicting interpretations.

B. Service Contracts / Separate Forms

AG's Position

The AG recommends that whatever language the Commission may choose to endorse should be approved on the condition that the disclosure is provided to the customer in a document (or screen for internet enrollments) that is separate from other materials such as a service contract. The purpose of this is to overcome the obstacles to customer understanding that the Commission has described, namely, the sophistication of smart meter data collection and the absence of any meaningful RES/customer interaction that is typical of municipal aggregation subscriptions, as well as with the more impersonal nature of internet enrollments.

The AG claims that ComEd agrees with this position and does not support authorization being embedded in any other RES-customer contract or opt-in form, as such a practice does not further the "notice" purposes of such an authorization form. The AG states that ComEd also recommends that this separate authorization requirement should apply in the case of municipal aggregation customers as well, and not be presented as merely another term or condition of the opt-out process, especially since the disclosure must make clear that the customer can decline release of interval data for non-billing purposes even if they do not choose to opt out of the aggregation program. The AG agrees with ComEd and claims there is no reason why municipal aggregation customers should be entitled to less notice than customers not participating in an aggregation program.

The AG argues that the Commission has disavowed the use of a sales contract alone as evidence of customer authorization to access highly detailed AMI-enabled data. Including the authorization within the sales contract language would seem to undermine the Commission's position. The AG asserts that separate authorization, consistent with that required by the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2EE ("Consumer Fraud Act"), to change providers, is what will best serve to make this authorization as explicit as possible and what is minimally required to make a substantive change of this kind to the provision of electric service.

According to the AG, Staff's proposal on disclosure suggests that Commission rules give RESs the option of deciding whether or not to include the disclosures mandated by Section 412.110 in a document separate from the sales contract, implying that the same discretion should hold for language authorizing interval data access in non-billing contexts. The AG does not agree that RESs should be given the option to bury the authorization language in the contract. Staff adds that any customer authorization approved by the Commission should be disclosed, in the case of an initial signup, in the same prominent manner in which other crucial terms and conditions are required to be disclosed pursuant to Section 412.110 of the Commission's rules or, when seeking authorization from an existing customer, through separate verifiable authorization consistent with Section 2EE of the Consumer Fraud Act. The AG agrees that existing customer authorizations can only be executed with separate authorizations consistent

with 2EE, but disagrees that Section 412.110 is the applicable standard to obtain customer authorization to release individual interval data at the time of initial signup.

The AG states that according to the Order in Docket No. 13-0506 all customer authorizations to release interval data for non-billing purposes must be consistent with Section 2EE of the Consumer Fraud Act. The AG argues that this is harmonious with Illinois law because all retail electric suppliers must obtain separate verifiable authorization before executing a customer's consent to a change in service provider pursuant to Section 2EE of the Consumer Fraud Act, no matter when or under what circumstances the customer subscribes to the provider's service. Under Section 2EE, a customer's authorization to change electric service providers cannot be completed until:

[t]he new electric service provider has obtained the subscriber's written or electronically signed authorization in a form that meets the following requirements:

- (1) An electric service provider shall obtain any necessary written or electronically signed authorization from a subscriber for a change in electric service by using a letter of agency as specified in this Section. Any letter of agency that does not conform with this Section is invalid.
- (2) The letter of agency shall be a separate document (an easily separable document containing only the authorization language described in subparagraph (a)(5) of this Section) whose sole purpose is to authorize an electric service provider change. The letter of agency must be signed and dated by the subscriber requesting the electric service provider change.
- (3) The letter of agency shall not be combined with inducements of any kind on the same document.

815 ILCS 505/2EE.

The AG offers that under Section 2EE, a separate document is always required to obtain customer assent to a change in the provision of electric service and must be obtained before a change in service according to the terms and conditions of any contract can be executed.

The AG adds that the Commission has cited the need to comply with Section 2EE when addressing non-RES third-party access to customer interval data. The applicability of this standard is also consistent with the Commission's own view that a contract cannot serve as a proxy for customer authorization to release individual interval data for non-billing purposes. The AG maintains that the Commission has acknowledged the intrusive nature of interval data and concluded that affirmative customer consent to its release requires more than mere subscription to alternative supply service, even in the presence of an executed contract. Where the Commission has expressed its concerns that agreeing to take supply service from an alternative provider, even through a written contract, cannot be a proxy for the explicit authorization needed to assent to release of this data, then use of a sales contract should not be relied upon to meet the authorization requirements of Section 16-122 and 16-108.6. The AG concludes that burying the terms

and conditions for the release of interval data in sales contracts for new customers would undermine the Commission's reasoning, especially where the Commission requires a separate document to disclose the same terms and conditions of access to existing customers.

Staff's Position

Staff explains that the Commission decided in Docket No. 13-0506 that RESs should obtain customer authorization for access to this information either through initial signup or separate verifiable authorization consistent with Section 2EE of the Consumer Fraud Act. Both through initial signup as well as separate authorization, customers and suppliers have the option of using a "wet" signature, telephonic enrollment via third-party verification or online enrollment. When it comes to disclosing the authorization as part of the initial sign up with the RES, the Commission directed the RES to disclose authorization in the same prominent manner in which other crucial terms and conditions are required to be disclosed pursuant to Section 412.110 of the Commission's Rules. Section 412.110 of the Administrative Rules, 83 IL. Admin. Code 412.110, lists the items that need to be disclosed regardless of the form of marketing used. Staff continues that the following sections in Part 412 then describe the various marketing forms, such as door-to-door solicitation, telemarketing, direct mail, and online marketing. Similarly, if the interval usage data disclosure is done separate from the customer sign-up, Section 2EE of the Consumer Fraud Act describes the requirements for an oral authorization, in addition to a written or electronically signed authorization.

Regarding the AG's proposal for a separate authorization requirement, Staff notes that Part 412.110 provides that the sales contract must use 10 point font or larger, and, if it is a separate document, it must not exceed two pages in length. Staff suggests that this language in the rule seems to give the RES the option of separating the list of items to be disclosed pursuant to Section 412.110 from other portions of the sales contract, but it does not require it. However, if a RES seeks customer authorization for access to interval usage data for non-billing purposes before (for example, for a price quote) or after the customer has signed up with the RES, a separate authorization is required pursuant to the 13-0506 Order.

ICEA's Position

ICEA agrees with Staff and argues that RESs should have the flexibility to put the authorization either in a contract or in a separate document. If the Commission chooses only one option, however, ICEA recommends that the authorization sit within the contract.

ComEd's Position

ComEd supports the concept of a discrete disclosure document, whether in electronic or other format, containing the Commission-approved authorization language. ComEd believes this is the easiest way to clearly identify the authorization as an additional agreement that the customer is making beyond the other terms and conditions of his RES contract or opt-in/opt-out agreements.

Ameren's Position

Ameren has no objection to the proposal that customer authorization should be obtained on a stand-alone basis as opposed to being incorporated into other contract or aggregation-related materials. However, Ameren generally defers to the Commission on this topic.

Commission Analysis and Conclusion

The Commission requires that the RES disclose authorization for all customers in the same prominent manner in which other crucial terms and conditions are required to be disclosed pursuant to Section 412.110 of the Commission's Rules. Similarly, in the event of governmental aggregations, the Commission affirms that the customer disclosure required for opt-out aggregations should include the standardized language approved in this Order in a separate document (or internet screen where applicable) to obtain customer authorization to receive interval data for non-billing purposes. If an aggregation supplier desires to receive customer specific interval data for non-billing purposes, the opt-out disclosure to the customer must describe this fact and alert the customer that not opting out will authorize the aggregation supplier to receive interval data for non-billing purposes as long as the customer remains in the aggregation program. Any approved customer authorization language for the release of individual interval data, whether for new or existing customers, and whether for new or existing customers under a municipal aggregation plan, must appear in a document separate from any other contractual, marketing or information materials. The presentation of customer authorization language in this manner will help ensure the customer is alerted with respect to what data is being sought and what will be done with that data.

C. Release of Personal Information Other Than Just Usage Data

AG's Position

The AG maintains that personal information, as defined in the Electric Infrastructure Modernization Act ("EIMA"), includes usage data. 220 ILCS 5/16-108.6(d). The AG notes that ComEd agrees with this as well. In view of this provision, the AG proposes to amend Staff's language to read "[RES] will use the EUI and any of your personal information solely for the development and provision of current and future products or services in connection with electric supply service. [RES] will not sell or disclose the EUI or any of your personal information to any third party for any other purpose."

The AG also agrees with ComEd and ICEA that the law prohibits the sale of customer usage data to third parties and therefore authorized agents of RES providing services related to the development of products and services should not have a right to sublease, sell or otherwise profit from access to the customer information.

The AG supports ComEd's suggestions that should the Commission approve Staff's proposal of restricting sale or disclosure of data based on the phrase "for any other purpose", it should also (i) delete any reference to being able to sell the data; (ii) clearly define "purpose" considering the U.S. Department of Energy Voluntary Code of Conduct ("VCC")

and Section 16-108.6(d) of the PUA; and (iii) limit a RES's ability to disclose data only in relation to the development of current and future electric service products.

The AG does not agree with ICEA's suggestion that language be amended to read "RES will not sell or disclose the EUI to any third party for any other purpose unless explicitly authorized by the customer as part of a RES-offered product." The AG finds that sharing information as part of supplying a particular product is acceptable, but including a provision authorizing the sale of information to third parties, for whatever purpose, is far too broad an arrangement, holds the potential for disseminating customer information far beyond the purposes reasonably anticipated by the customer, and risks personal information privacy and security for purely commercial purposes.

Ameren's Position

The AG suggests amending the third paragraph of Staff's proposed language as follows, "[RES] will use the EUI and any of your personal information solely for the development and provision of current and future products or services in connection with electric supply service. [RES] will not sell or disclose the EUI or any of your personal information to any third party for any other purpose." Ameren has no objection to the AG's suggested revisions, but generally defers to the Commission on this topic.

Staff's Position

Staff maintains that even if electric usage information is considered part of a customer's personal information, it does not follow that other personal information should be addressed in an authorization regarding a customer's electric interval usage data. Staff submits that this proceeding is limited to determining the appropriate customer authorization form for access to AMI interval meter data. Furthermore, this proceeding is limited to RES access to interval usage data for non-billing purposes. This Docket does not address access by entities other than RESs. Staff recommends rejecting the AG's proposed addition to the third paragraph of Staff's proposed template.

Commission Analysis and Conclusion

The Commission agrees with Staff's position on this issue and holds that customer authorization at issue in this proceeding does not address the access to other personal information. This proceeding is limited to RES access to interval usage data for non-billing purposes.

D. Wet Signature

ICEA argues that evidence of customer authorization should not be restricted to a "wet" signature on a page. With the caveat that authorization must be consistent with other applicable legal requirements, ICEA notes that no party who addressed the issue objected to its request.

Ameren agrees that a “wet” signature is not needed to confirm agreement with the disclosure provided that said consent is obtained and evidenced in a manner that complies with the Consumer Fraud Act as well as any other applicable statutes and regulations.

The AG does not object to the use of electronic signatures, in addition to wet signatures, to obtain customer authorization to access interval data for non-billing purposes.

The Commission agrees and finds that a customer’s wet signature is not needed to confirm agreement with the disclosure. However, the obtained consent must be evidenced in a manner that is compliant with the Consumer Fraud Act as well as other all applicable statutes and regulations.

E. Revocation of Authorization

ComEd argues that the process for a customer to notify the RES of its revocation should be more structured. ComEd maintains that at a minimum, revocation should be via a “writing” that satisfies the Consumer Fraud Act.

Staff submits that the Commission decided in the 13-0506 Order that RESs should obtain customer authorization for access to this information either through initial signup or separate verifiable authorization consistent with Section 2EE of the Consumer Fraud Act. Both through initial signup as well as separate authorization, customers and suppliers have the option of using a “wet” signature, telephonic enrollment via third-party verification or online enrollment.

The Commission agrees with Staff and finds that revocation of authorization must be evidenced in a manner that is compliant with the Consumer Fraud Act.

F. Interval Periods

Staff recommends that the RES have flexibility to choose the specific time interval for purposes of the customer authorization. The proposed language states that “the EUI includes your electricity usage levels for distinct time periods as short as [x minutes] to the extent this information has been recorded and retained by [utility].”

Staff states that currently the utility collects only 60-minute intervals for residential customers (except for some ComEd customers where the interval was/is 30 minutes). Staff maintains that there may be shorter intervals offered in the future and the proposed language should retain the flexibility to reflect as much. Staff adds that some suppliers may want to avoid updating the time interval specified in the customer authorization language and simply use a very short interval (such as 15 minutes or 1 minute) from the very beginning for the sole purpose of covering the possibility of shorter intervals in the future. As well, other suppliers may choose to update the interval period in the customer authorization as shorter intervals become available to them. Staff believes that both should be acceptable as long as the customer knows the time interval for which he or she is giving consent.

The AG does not object to permitting the authorization language, to reflect, as needed, the fact that different types of interval data (i.e., 15-minute intervals as opposed to 60-minute intervals) may be available to the RES.

ComEd agrees with Staff as well but proposes amending Staff's language regarding interval time periods to read "*intervals available as offered by [utility] during the term of your authorization.*"

Ameren agrees with Staff's recommendation that RESs retain flexibility to choose the specific interval period to reference in the authorization as long as the qualifier that the information need have been recorded and retained by the utility in that interval remains in the final product, i.e., the approved language. Ameren adds that it cannot provide information that it does not have or has not planned to provide.

The Commission adopts Staff's proposed language and further finds that RESs will retain flexibility to choose the specific interval period to reference in the authorizations. However, the utility will provide the data that is requested by the RES as long the information has been recorded and retained by the utility in that interval in the normal course of business.

G. Third Party Access

ComEd's Position

ComEd has concerns about the parameters surrounding authorization for third-party access to billing and usage data. ComEd notes that Section 16-108.6(d) of the PUA makes clear that a utility may not disclose the personal information of a customer for any purpose other than one related to its utility business and that the only authorization to sell customer information contained in Section 16-108.6(d) is in relation to information other than personal information. ComEd suggests these same restrictions be carried forward to those to whom a utility discloses personal information at the customer's request.

Staff's Position

Staff asserts that its proposed language is not a blanket authorization for a RES to sell that billing and usage data to any number of unnamed third parties, as ComEd argues, because the proposed language limits the use of the interval usage data by any third party by the inclusion of "for any other purpose." Staff goes on to argue that its proposed language is in fact very similar to ComEd's demand that customers should authorize data to be released to the RES only or to authorized agents of the RES who are contracted to provide services to the RES related to the development of products and services.

Staff notes as well that ComEd's filed Initial Comments and its proposed Attachment 1 provide conflicting recommendations. While ComEd's comments state that "customers should authorize data to be released to the RES only or to authorized agents of the RES who are contracted to provide services to the RES related to the development of products and services", its proposed language in the attachment does not allow third party access whatsoever. ComEd's proposed language states that "[RES] is not authorized to sell or

disclose my electricity billing and usage information to any third party.” Staff recommends that the Commission reject ComEd’s proposed substitute language.

ICEA’s Position

ICEA urges the Commission to clarify that pursuant to the Staff-recommended authorization language a RES could provide non-billing interval data to a third party for the purposes of offering or developing a product. Staff argued that its proposed language would authorize RES to provide the interval data for non-billing purposes to third parties for the development and provision of current and future products or services in connection with electric supply. ICEA agrees with Staff’s position. ICEA also agrees with several other parties that RES should not sell or license interval data to third parties.

Ameren’s Position

Both ICEA and ComEd suggest that specific language should be included to recognize situations where customers may wish to permit RESs to share information with third parties. Ameren does not have any objection to expanding the current language in order to allow a RES to share any EUI obtained with third parties, subject to a customer’s express or explicit consent. Specifically, Ameren has no objection to ICEA’s addition: “[RES] will not sell or disclose the EUI to any third party for any other purpose unless explicitly authorized by the customer as part of a [RES]-offered product.” Ameren expects that the sharing of information with the third party would be necessary “as part of” the RES-offered product, as in the case of the EE or DG-related product cited by ICEA, and not simply that any authorization to share information for other purposes have been obtained as part of the contract. Ameren would also expect the RES and not the third party to remain the primary interface with the utility by receiving the EUI directly.

Commission Analysis and Conclusion

The Commission agrees with the parties that the authorization language should permit RESs to provide contracted third-party vendors, which are authorized agents of the RES, with a customer’s interval usage data in order to price or develop smart meter-enabled products. 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.

H. Affiliates and Business Partners

Staff notes that there was some concern expressed during the workshop discussions that its proposed language would restrict the supplier from sharing the EUI with an affiliate or other business partner for the purposes described in the authorization. The relevant part of Staff's proposed language states that "[RES] will use the EUI solely for the provision of current and future electric service offerings and to develop and offer products or services in connection with electric supply service. [RES] will not sell or disclose the EUI to any third party for any other purpose." Staff maintains that the inclusion of "for any other purpose" makes it clear that the supplier is able to share the EUI with its business partner for the purpose of providing and developing electric service offerings.

Ameren agrees with Staff's conclusion that sharing of information between a RES and business is permitted under the current language for purposes described in the authorization.

The Commission agrees with the parties that a RES should be permitted to share a customer's EUI with an affiliate or business partner for the purposes, and only those purposes, described in the authorization. The language adopted in Section G above clearly achieves this. Parties are reminded of their responsibilities to maintain the confidentiality of all billing and usage authorized for release by customers and to comply with the consumer privacy requirements of the Personal Information Act.

I. Smart Meter as the Source of EUI

The AG states that customer authorization language should include a reference to the electric meter as the source of the usage information which the customer is agreeing to release. The goal is not merely to clarify terms, but to educate the customer on the nature of the data, which the Commission has noted is a very different type of usage information than has been used in the past. For all intents and purposes, a customer might believe that "electricity usage information" is simply the information that appears on their monthly bill. Additionally, the customer should understand that usage levels "for distinct time periods" have not been generally available to their utility but are now communicated through the smart meter. The AG submits that there is no purpose served in withholding the source of the information and given the novelty of smart meter data, making it explicit is in the interests of transparency.

The AG notes that ComEd agrees with this recommendation and that Ameren does not object to the AG suggestion to add a reference to the fact that the EUI was "collected from your electric meter." Staff supports this reference as well.

The Commission adopts the AG's alternative proposal of adding the phrase "collected from your electric meter" to the first paragraph of Staff's proposed language.

J. EUI / Billing and Usage Data

ComEd's Position

ComEd asserts that rather than introduce new terminology in this proceeding – electricity usage information or “EUI” – the term “*billing and usage data*” should be used, consistent with Sections 16-122 and 16-108.6 (d) of the PUA. ComEd states that if a new term is introduced, as is the case under Staff’s proposal, then that term needs to be clearly defined.

Ameren's Position

Ameren has no objection to ComEd’s suggestion to replace the use of “EUI” with a reference to “billing and usage data.” However, Ameren does question whether that edit expands the purpose of the authorization beyond what was contemplated by the Commission in initiating this docket, by perhaps implicating data in addition to non-bill AMI data.

Staff's Position

Staff recommends avoiding the term “billing and usage data.”

Commission Analysis and Conclusion

The Commission agrees with Ameren’s concern that adopting ComEd’s language could expand the purpose of the authorization. Therefore the Commission supports Staff’s EUI terminology.

K. Monthly Billing Cycles

ComEd's Position

ComEd argues that using “monthly billing cycles” may unnecessarily limit the data available as some new advanced metering technology will be able to provide data for a set period that may not correspond to a billing cycle. ComEd proposes the phrase “up to 24 months of billing and usage data.”

Staff's Position

Staff argues that ComEd’s proposals in its table are not reflected in its proposed language contained in Attachment 1. Instead, ComEd’s proposed language in the attachment uses the terms “monthly billing period”, “24 consecutive past monthly billing cycles”, and “future monthly billing cycles.” Regardless of ComEd’s conflicting proposals, Staff recommends avoiding the term “billing and usage data.” However, Staff has no objection to changing the sentence in question to the following: “You authorize [RES] to access your EUI for the previous 24 consecutive months as well as future months.”

Ameren's Position

ComEd suggested in its initial comments that Staff's language be modified to reference "up to 24 months of billing and usage data", rather than "from the previously 24 consecutive monthly billing cycles" to provide a clear definition of the of the cycle period. Ameren agrees that a more understandable definition of the 24 month period over which data may be obtained should be provided.

Commission Analysis and Conclusion

The Commission agrees with Staff and adopts its suggestion. This recommendation will be incorporated into the approved language.

L. Customer Authorization Retention Policy

Although it does not necessitate an amendment to Staff's recommended language, Ameren would note that pursuant to Part 451.40, Suppliers would be required to retain any authorizations received from individuals for a period of not less than two (2) calendar years. Ameren would suggest that Suppliers, pursuant to their internal policies and procedures, retain said information for the longer of these two (2) years or the period for which the authorization will be used as the basis to access the information at issue, similar in intent to Part 412.180, which mandates retention of contracts.

The Commission agrees with Ameren. Suppliers should be required to retain any authorizations received from individuals for a period of not less than two (2) years calendar years or the period for which the authorization will be used as the basis to access the information at issue, whichever is longer.

M. Utilities with non-AMI Meters

MidAmerican states that Staff's template form applies to customer interval data obtained from AMI meters approved pursuant to Section 16-108.6 of the PUA. Consequently, the applicability of the form should be limited to those circumstances where interval data is obtained through an AMI meter. MidAmerican suggests that either the standard language in the proposed template form or the Commission Order in this docket limit the scope of the authorization to utilities that have installed AMI meters. MidAmerican suggests that for those electric utilities who have not installed AMI meters, the utility's own customer authorization form may be required to be used by a RES to obtain customer usage data pursuant to Section 16-122 of the Act. MidAmerican requests that either the form or the final order in this docket make clear that the use of the form is limited to those utilities who have AMI meters installed throughout their respective service territories.

The Commission will adopt MidAmerican's recommendation to limit the scope of this proceeding to utilities that currently have installed AMI meters and to all future installed AMI meters. The authorization language approved herein will be mandatory for access to data from existing and future AMI meters. For those utilities who have not yet

installed AMI meters, the use of individual utility customer authorization forms for the monthly usage data is reasonable until such time AMI meters are installed.

N. Future Update of the Relevant Administrative Code Parts

Staff shall provide a status report one year after the date of the Final Order in this Docket to ensure RESs obtain customer authorization for interval usage data for non-billing purposes in a manner intended by the Commission. The status report should contain a recommendation as to whether or not the implementation of the Final Order in this Docket has proceeded as anticipated. If Staff believes that the Commission-approved language and its implementation has proved to be satisfactory, then Staff's report should be accompanied with recommendation for the Commission to Initiate a docket to amend the applicable Code Parts. If, however, Staff believes the Commission-approved language and its implementation has not proved to be satisfactory, then Staff's report should so indicate and recommend alternative language to the Commission.

V. IMPLEMENTATION ISSUES

In addition to the specific language that will be provided by suppliers to customers or potential customers, it is important to consider the mechanism(s) that should be used to approve that language. These mechanisms may vary depending on the circumstances or situations in which customers will receive the recommended authorization communications.

A. Initial Customer Contact or Signup Implication Part 412

The Order in Docket No. 13-0506 agreed with Staff that if authorization is obtained through initial signup, then RESs are required to disclose authorization in the same prominent manner in which other crucial terms and conditions are required to be disclosed pursuant to Section 412.110 of the Commission's Rules. In other words, the customer authorization approved by the Commission in this Docket should be disclosed as items (a) through (p) of Section 412.110 (if applicable).

Ameren submits that Part 412.110 applies to suppliers serving or seeking to serve residential or small commercial customers and dictates the minimum terms to be included in a sales contract, regardless of the form of marketing used by a Supplier. If these minimum contract terms and conditions are to be amended to incorporate Staff's recommended language or some alternative requiring disclosure of a supplier's data access intentions, Ameren recommends Part 412 be revised in the context of a rulemaking. If that occurs, care should be taken to ensure that customers or potential customers receive the required additional terms in a request for pricing scenario and not only under circumstances resulting in sign-up (for example, under the terms required to be disclosed in a door-to-door solicitation setting under Part 412.120).

As addressed in Section IV. N. above, one year after the date of the Final Order in this Docket, Staff will present a status report to the Commission as to whether or not the implementation of the Final Order in this Docket has proceeded as anticipated. If Staff believes that the Commission-approved language and its implementation has proved to be

satisfactory, then Staff's report should be accompanied with recommendation for the Commission to Initiate a docket to amend the applicable Code Parts, including Part 412.

B. Separate Communication with an Existing RES Customer

If the supplier intends to receive interval usage data for non-billing purposes of an existing customer and did not disclose the customer authorization during the initial signup, the supplier is required to obtain separate verifiable authorization consistent with Section 2EE of the Consumer Fraud Act. Staff maintains that the Commission's Final Order in this Docket should make it clear that if a supplier uses the language approved in this Docket and complies with Section 2EE of the Consumer Fraud Act, then the supplier is in compliance with the directives contained in the 13-0506 Order.

Ameren further recommends suppliers be required to provide Staff's recommended language to current, non-aggregation customers on third-party supply (those customers being served through aggregation addressed separately below). Ameren states that a mandate to this effect could lawfully be provided in the context of this investigation docket (i.e., incorporated into the final order).

The Commission agrees with Ameren, and finds that suppliers are to provide Staff's recommended language to current, non-aggregation customers on third-party supply as a result of this Order.

C. Customer Disclosure during Initial or Subsequent Opt-out Period(s)

The 13-0506 Order states that:

if an aggregation supplier desires to receive customer specific interval data for non-billing purposes, the opt-out disclosure to the customer must describe this fact and alert the customer that not opting out will authorize the aggregation supplier to receive interval data for non-billing purposes as long as the customer remains in the aggregation program. The opt-out disclosure should make it clear that the customer has the ability to decline authorization for the release of interval data for non-billing purposes even if the customer does not act to opt-out of the aggregation program.

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

Staff proposes that if the customer disclosure contains Staff's proposed language, discussed above, as well as the following, then it should be considered compliant with the directives of the Commission's 13-0506 Order:

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

Ameren recommends that customers be provided Staff's recommended language as part of the aggregation-related disclosures sent by Governmental Aggregators or

Aggregation Suppliers in conjunction with a pending opt-out aggregation event. Ameren maintains that aggregation disclosure requirements are (or will soon be) squarely and directly addressed by Part 470 (see e.g., §§ 470.210 – 470.240). Ameren suggests that Part 470 is the logical place to address and incorporate any additional, aggregation-related requirements for going-forward aggregation events.

The Commission finds that customers should be provided Staff's recommended language as part of the aggregation-related disclosures sent by Governmental Aggregators or Aggregation Suppliers in conjunction with a pending opt-out aggregation event. The Commission further agrees that aggregation-related disclosure requirements have been addressed in Part 470. To that end, Staff should recommend any possible changes to Part 470 as part of the Staff Report ordered pursuant to Section IV. N. above.

D. Customer Disclosure during Initial or Subsequent Opt-in Period(s)

Staff maintains that the Commission's Final Order in this Docket should make it clear that if a supplier uses the language approved in this Docket and obtains verifiable authorization pursuant to Section 2EE of the Consumer Fraud Act, then the supplier is in compliance with the directives contained in the Final Order of Docket No. 13-0506.

Ameren recommends customers be provided Staff's recommended language as part of the aggregation-related disclosures sent by Governmental Aggregators or Aggregation Suppliers in conjunction with a pending opt-in aggregation event. As with the opt-out event requirements discussed above, Part 470 is the logical place to address and incorporate any additional, aggregation-related requirements for going-forward aggregation events.

The Commission finds that customers should be provided Staff's recommended language as part of the aggregation-related disclosures sent by Governmental Aggregators or Aggregation Suppliers in conjunction with a pending opt-in aggregation event. The Commission further agrees that aggregation-related disclosure requirements have been addressed in Part 470. To that end, Staff should recommend any possible changes to Part 470 as part of the Staff Report ordered pursuant to Section IV. N. above.

E. Separate Communication with an Existing Opt-out or Opt-in Aggregation Customer

Staff states that if an aggregation supplier intends to receive interval usage data for non-billing purposes of an existing aggregation customer and did not previously obtain customer authorization to do so, then the Final Order in Docket No. 13-0506 directs the aggregation supplier to obtain separate authorization from its existing aggregation customers if it wishes to receive interval data for non-billing purposes. Staff maintains that the Commission's Final Order in this Docket should make it clear that if a supplier uses the language approved in this Docket and obtains verifiable authorization pursuant to Section 2EE of the Consumer Fraud Act, then the supplier is in compliance with the directives contained in the Final Order of Docket No. 13-0506.

Ameren recommends that current opt-out or opt-in aggregation customers should be provided Staff's recommended language by their respective Governmental Aggregators or

Aggregation Suppliers. Although as with going-forward aggregation events and requirements, this additional disclosure requirement may be appropriate to be incorporated into pending Part 470, given that these are existing aggregation customers served by virtue of a past aggregation event, this docket is also a permissible, alternative candidate to incorporate any additional disclosure requirements applicable to these types of customers.

The Commission agrees with Staff and adopts Ameren's recommendation. Current opt-out or opt-in aggregation customers should be provided Staff's recommended language by their respective Governmental Aggregators or Aggregation Suppliers. The Commission also agrees that this docket is an appropriate forum to incorporate these additional disclosure requirements for these types of customers and adopts such requirements as a result of this Order.

F. Separate Approval by a Prospective RES Customer

Staffs states that this scenario is slightly different from the other scenarios because it allows for the possibility that the prospective customer does not become a customer of the supplier in question. This scenario allows the supplier to access a customer's interval usage history in order to provide an offer to the prospective customer. Staff's proposed language contains the following sentence: "This authorization to access and use your EUI will expire (a) six months after this authorization is executed or (b) when your supply service with [RES] is terminated, whichever occurs later." By including this language, Staff's proposed customer authorization can be used in the scenario of a RES wishing to access a prospective customer's interval usage history.

The Commission agrees with Staff and finds that if a supplier uses the language approved in this Docket and obtains verifiable authorization pursuant to Section 2EE of the Consumer Fraud Act, then the supplier is in compliance with the directives contained in the Final Order of Docket No. 13-0506.

VI. CONCLUSION 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) Sections 16-122 and 16-108.6 of the Public Utilities Act require RESs to obtain customer authorization for access to AMI interval usage data;

(3) While a RES may simultaneously present a customer with initial signup terms and conditions, or other contract language, the customer authorization language must be located on a separate and discrete form;

(4) The authorization language established by this Order will be used by RESs to access customer interval usage data for non-billing purposes and is adopted as

presented in Appendix A. This is considered standard language and the RES shall not deviate from the same, with the exception of identifying unique interval periods; and

(5) Ameren Illinois Company d/b/a Ameren Illinois and Commonwealth Edison Company will set up systems necessary to receive authorizations from RES and provide interval data for non-billing purposes.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that this investigation of standard terms for customer authorization of access to interval usage data for non-billing purposes is concluded.

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 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.

By Order of the Commission this 1st day of April, 2015.

(SIGNED) BRIEN SHEAHAN

Chairman