STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On its Own Motion	))	
	)	Docket No. 11-0434
Commonwealth Edison Company	)	
Investigation of Rate GAP pursuant to Section 9-250 of the Public Utilities Act	))	

VERIFIED INITIAL COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION

Pursuant to the schedule established by the Administrative Law Judge, the Retail Energy Supply Association ("RESA")[1] hereby files these Verified Initial Comments in this proceeding.

I. INTRODUCTION

On November 28, 2011, Commonwealth Edison Company ("ComEd") submitted its Initial Verified Comments in this proceeding ("ComEd Comments"). ComEd addressed the following four issues.

First, ComEd discussed the appropriate interpretation of "small commercial retail customer". (ComEd Comments, pp. 6-9). RESA agrees with ComEd that the term "small commercial retail customer" should be defined, as it is defined in Section 16-102 of the Public

[1] RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant Energy Northeast LLC and TriEagle Energy, L.P.. Many of RESA's members are licensed ARES in Illinois and certified to serve customers in ComEd's service territory. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

Utilities Act, as a non-residential customer who consumes 15,000 kilowatt-hours or less annually.

Second, ComEd discussed the provisions in its Rate GAP for the proper usage and protection of specific customer information passed from ComEd to a government authority. (*Id.*, pp. 9-11). While RESA appreciates ComEd's proposed revision to Rate GAP to provide some further protection to the customer data of RESs' customers, RESA does not believe that the proposed revision is sufficient. RESA proposed additional language during this proceeding and will explain in detail later in these Initial Comments why such language is appropriate and necessary.

Third, ComEd addressed the argument that the term "retail customers" found in Section 1-92 of the IPA Act should be interpreted to mean only ComEd's bundled service customers. (*Id.*, pp. 11-12) RESA does not have a position on this argument at this time, but may address it after reviewing the initial comments of the parties advancing the argument.

Fourth, ComEd proposes fees for providing the customer data to government authorities. (*Id.*, pp. 12-13). RESA takes no position on these proposed fees.

In addition, ComEd, in its discussion of confidentiality concerns, addressed its perceived lack of authority to impose further restrictions on the use of data by RES acquired from electric utilities relating to municipal aggregation. While RESA does not believe that additional authority is needed to add the confidentiality protections set forth in Section II of these Verified Initial Comments, RESA recommends that the Commission initiate a rulemaking proceeding to establish appropriate rules, including those relating to maintaining confidentiality of customer

data, provided by an electric utility to a municipality (which ultimately may be provided to a RES) relating to municipal or other governmental aggregation programs.

II. RATE GAP SHOULD BE REVISED TO PROTECT THE CONFIDENTIALITY OF THE CUSTOMER DATA OF RETAIL ELECTRIC SUPPLIERS' CUSTOMERS.

ComEd proposes to revise Rate GAP to provide some confidentiality protection to the customer data that it is providing to government authorities. While RESA appreciates the efforts of ComEd to improve Rate GAP, ComEd's proposed language does not satisfy RESA's concern—that the government authority and the winning RES understand that, if they are provided by ComEd with information about customers of RESs, they are prohibited from using such information to market to or solicit those customers.

ComEd agreed to propose that the following language be added to Rate GAP:

> The Government Authority warrants that any customer-specific information provided by the Company in accordance with the provisions of this tariff is treated as confidential information. Such Government Authority also warrants that any such information is used only to effectuate the provisions of Section 1-92 of the IPA Act. Such Government Authority is responsible for ensuring the confidentiality of such customer-specific information and the limitation of the use of such customer-specific information only to effectuate the provisions of Section 1-92 of the IPA Act. (ComEd Comments, pp. 10-11)

RESA's interpretation of the provision above is that the Government Authority and its winning RES are bound to only utilize customer-specific information to effectuate the municipal aggregation program. For example, the winning RES would be prohibited from utilizing customer-specific information about customers already being served by another RES in order to implement a marketing campaign to sign up such customers. This interpretation of ComEd's proposed language is consistent with the provision that the data only be used to "effectuate the provisions" of the IPA Act addressing municipal aggregation, and not to provide a commercial

marketing advantage against other market competitors, which is not a provision of the IPA Act. However, some entities may not find the above-quoted provision to be that clear.

Section 1-92 of the IPA Act specifically states that the Government Authority is "subject to the limitations on the disclosure described in Section 16-122 of the Public Utilities Act and Section 2HH of the Consumer Fraud and Deceptive Business Practices Act". However, Section 16-122 of the Public Utilities Act simply provides that, absent consent from a customer, an electric utility may only make available certain generic information about its customers to RESs and units of local government. Section 2HH of the Consumer Fraud and Deceptive Business Practices Act basically prohibits electric service providers from divulging, without the written consent of the customer, personal information about their customers to other persons, with the exception of credit bureaus, collection agencies, and other RESs". Thus, neither section addresses what use a RES can make of customer information in its possession without divulging it to other parties. RESA is concerned that some entities may interpret Section 1-92 to only comply with the requirements of Section 16-122 of the Public Utilities Act and Section 2HH of the Consumer Fraud and Deceptive Practices Act.

ComEd itself admits that Section 1-92 of the IPA Act is not adequate to protect the confidentiality of customer data: "ComEd agrees that Section 1-92 lacks the appropriate restrictions on the use of data acquired from electric utilities". (*Id.*, p. 10) However, ComEd does not want to add language that would be adequate to protect the confidentiality of customer data because it does not believe it could enforce such language: "ComEd lacks the express authority under Section 1-92 to impose further restrictions and, more importantly, the ability to monitor or enforce such restrictions upon corporate authorities, county boards or the RESs that serve their programs".

RESA disagrees with ComEd on this issue. For example, if ComEd's Rate GAP is modified to add the language proposed by RESA, set forth below, and if the winning RES utilizes customer specific information, received from ComEd in connection with the municipal aggregation program, to launch a marketing campaign aimed at the customers of other RESs, this would be a violation of ComEd's tariff. The Commission, on its own motion; ComEd; or a RES could bring a complaint against the winning RES for this violation.

Consequently, RESA proposes that the following language be added to Rate GAP, specifically at the end of the second paragraph on 1st Revised Sheet No. 410 (circulated by Ms. Garza's email of October 6, 2011):

> Specifically, the Government Authority will require, by contract, the RES it has selected to procure the aggregated electric power and energy supply service to eligible customers within the boundaries of the Government Authority to maintain the confidentiality of customer-specific information and to use such customer-specific information only to effectuate the provisions of Section 1-92 of the IPA Act. To that end, the municipality/township/county will, and will require the selected RES to, only allow authorized representatives needing access to customer-specific information to effectuate the provisions of Section 1-92 to have access to the customer-specific information described in Items 18 through 23 of the Company Obligations section of Rate GAP. Moreover, the municipality/township/county will, and will require the selected RES to, delete and/or destroy the customer-specific information described in said Items 18 through 23 within 60 days after the Company provides said information.

Similar language should be added to ComEd's Municipal Aggregation Data Request Form:

> The undersigned authorized representative for the municipality/township/county acknowledges that it will require, by contract, the RES it has selected to procure the aggregated electric power and energy supply service to eligible customers within the boundaries of the municipality/township/county to maintain the confidentiality of customer-specific information and to use such customer-specific information only to effectuate the provisions of Section 1-92 of the IPA Act. To that end, the municipality/township/county will, and will require the selected RES to, only allow authorized representatives needing access to customer-specific information to effectuate

the provisions of Section 1-92 to have access to the customer-specific information described in Items 18 through 23 of the Company Obligations section of Rate GAP. Moreover, the municipality/township/county will, and will require the selected RES to, delete and/or destroy the customer-specific information described in said Items 18 through 23 within 60 days after the Company provides said information.

III. THE COMMISSION SHOULD INITIATE A RULEMAKING PROCEEDING TO ESTABLISH APPROPRIATE RULES FOR MUNICIPAL AGGREGATION PROGRAMS.

While ComEd should be commended for taking the initiative to propose Rate GAP in order to have a procedure in place to address the numerous municipalities which passed referenda approving opt-out municipal aggregation in the spring of 2011, there should be uniform rules applicable to municipal aggregation. RESA's understanding is that there will be many more municipalities, in both ComEd's and Ameren Illinois Company's ("Ameren") service territories, with opt-out municipal aggregation referenda in the March 2012 elections. A rulemaking is appropriate so that there are uniform rules applying to ComEd and Ameren; customers of both utilities should be equally secure from confidential data misuse.. In addition, ComEd has expressed concerns regarding its authority to impose restrictions on the use of data by municipalities. Commission rules would provide the electric utilities with the requisite authority to impose appropriate restrictions of the use of data by municipalities.

IV. CONCLUSION

In conclusion, the Commission should require ComEd to revise its tariffs to provide appropriate protection to confidential customer information, as proposed by RESA in Section II of these Verified Initial Comments. Moreover, the Commission should initiate a rulemaking to

adopt appropriate rules addressing the proper use of confidential customer data acquired by a municipality for purposes of implementing municipal aggregation programs.

Respectfully submitted,

/s/ GERARD T. FOX
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STATE OF ILLINOIS)

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COUNTY OF DUPAGE)

VERIFICATION

Roy Boston, being first duly sworn, on oath deposes and says that he is Strategic Planning and Policy Manager—East for Noble Americas Energy Solutions, that he has read the foregoing Verified Initial Comments of the Retail Energy Supply Association, that he knows of the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

/s/ _____

Roy Boston

OFFICIAL SEAL
GINA L BATTAGLIA
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 6/15/2013

Subscribed and sworn to me

This 23th day of December, 2011

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NOTICE OF FILING

Please take note that on December 29, 2011 I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Verified Initial Comments of the Retail Energy Supply Association in this proceeding.

Dated: December 29, 2011

/s/Gerard T. Fox
Gerard T. Fox

CERTIFICATE OF SERVICE

I, Gerard T. Fox, certify that I caused to be served copies of the foregoing Verified Initial Comments of the Retail Energy Supply Association upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for the instant docket via electronic delivery on December 29, 2011.

/s/ Gerard T. Fox
Gerard T. Fox