STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION On Its Own Motion	: :	No. 13-0506
Investigation of Applicability of Sections 16-122 and 16-108.6 of the Public Utilities Act	:	

BRIEF ON EXCEPTIONS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association ("RESA")[1] submits, pursuant to the schedule established by the Administrative Law Judge ("ALJ") and Section 200.830 of the Rules of Practice of the Illinois Commerce Commission ("Commission"), this Brief on Exceptions to the ALJ's Proposed Order in this proceeding ("ALJPO"). RESA supports and endorses a position that the Illinois Competitive Energy Association ("ICEA") has taken throughout this proceeding: there is no statutory basis to distinguish between the customer authorization required to obtain interval data from a smart meter and that required to obtain non-interval usage data from a standard meter. Neither is there any policy reason, nor factual reason, supporting such a distinction. RESA agrees with ICEA that a customer's account number and/or a signed customer supply contract provides a RES with the requisite authorization to obtain interval data from a smart meter or non-interval data from a standard meter. RESA also notes that, in rejecting ICEA's position, the ALJPO relies upon the practice of obtaining customers through municipal

[1] RESA's members include AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P.. 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.

aggregation programs. Since many RESs serve customers outside of municipal aggregation programs, RESA does not believe that this is a relevant comparison for an industry wide rule. Therefore, RESA offers the following Exception to the ALJPO.

EXCEPTION 1: SECTION III.C OF THE ALJPO SHOULD BE REVISED TO FIND THAT POSSESSION OF THE CUSTOMER'S ACCOUNT NUMBER AND/OR A SIGNED CUSTOMER SUPPLY CONTRACT IS SUFFICIENT EVIDENCE OF CUSTOMER AUTHORIZATION TO OBTAIN INTERVAL DATA.

Section III.C of the ALJPO should be revised to find that possession of the customer's account number and/or signed customer supply contract is sufficient evidence of customer authorization to obtain data from the customer's meter, regardless of whether it is a standard meter or a smart meter. To accomplish this, Subsection III.C.8 of the ALJPO should be revised by deleting the last two paragraphs of that subsection and revising the second paragraph of that subsection to read as follows:

The Commission ~~declines to~~ adopts ICEA's position that the customer authorization requirements of Sections 16-122 and 16-108.6 are met if an RES has proper authorization in the form of the customer's account number and/or a customer supply contract. For the reasons offered by ICEA, as discussed above, ~~reasons that~~ the Commission ~~should~~ deems the historic practice of submitting the customer's account number to the utility's website to satisfy the statutory requirement of verifiable authorization. ~~The Commission rejects ICEA claim that it is seeking the "same" customer usage data for residential and small commercial customers that has historically been recorded by standard meters, only now that data will be recorded using interval recording smart meters. ICEA's position fails to acknowledge that because smart meters collect energy usage data at much shorter time intervals than in the past, the information they collect can reveal much more detailed information about the activities within a dwelling or other premises than was available in the past, including knowledge about specific equipment usage or other internal home/business processes. Moreover, ICEA's position fails to take into account the municipal aggregation context where customers do not provide affirmative consent. Until late 2010, customers were acquired by RES via "traditional" means where suppliers contacted customers via face to face, mailing or telemarketing. Those traditionally acquired customers provided an affirmative consent to the release of their account number to their supplier. In municipal aggregation, a majority of the customers with a supplier are acquired via the municipal aggregation "opt out" process, which means if the customers did not affirmatively opt out of the municipal's program, they are in the program. For these reasons, the Commission does not find that possession of an account number and/or a customer supply contract alone to be sufficient evidence of customer authorization to access highly detailed AMI enabled data.~~

Respectfully submitted,

s/s GERARD T. FOX
Gerard T. Fox
An Attorney for the Retail Energy Supply Association

Law Offices of Gerard T. Fox
Two Prudential Plaza
180 North Stetson
Suite 3500
Chicago, IL 60601
(312) 909-5583
gerardtfox@aol.com

NOTICE OF FILING

Please take note that on December 23, 2013 I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Brief on Exceptions of the Retail Energy Supply Association in this proceeding.

Dated: December 23, 2013

/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 Brief on Exceptions 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 23, 2013.

/s/ Gerard T. Fox
Gerard T. Fox