STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	**:**	
On Its Own Motion	**:**	
	:	**15-0273**
Amendment of 83 Ill. Adm. Code 465.	**:**	

SECOND NOTICE ORDER

November 12, 2015

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By the Commission:

I. PROCEDURAL HISTORY

On April 8, 2015, the Illinois Commerce Commission ("Commission") entered an order (the "Initiating Order") initiating the present rulemaking proceeding and authorizing the submission to the Secretary of State of the first notice of the proposed amendment of 83 Ill. Adm. Code 465, "Net Metering" ("Part 465"). The Initiating Order points to a Commission Staff ("Staff") report dated March 23, 2015, wherein Staff provides the rationale for the proposed changes to the rules. The Staff report was made a part of the record in this proceeding. The amendments are intended to incorporate changes to Section 16-107.5 of the Public Utilities Act (220 ILCS 5/16-107.5) ("the Act"), and improve the operation of the net metering programs offered by electricity providers.

The proposed amendments were published in the Illinois Register on May 8, 2015, initiating the first notice period pursuant to Section 5-40(b) of the Illinois Administrative Procedure Act. (38 Ill. Reg. 5441). Subsequently, the following parties filed petitions for leave to intervene: Retail Energy Supply Association ("RESA"), Commonwealth Edison Company ("ComEd"), Elevate Energy, Environmental Law and Policy Center ("ELPC"), Citizens Utility Board and the Environmental Defense Fund ("CUB/EDF"), Ameren Illinois Company ("Ameren"), MidAmerican Energy Company ("MidAmerican"), and the Illinois Competitive Energy Association ("ICEA"). The Illinois Attorney General's Office ("the AG") and the City of Chicago ("the City") also filed appearances in this docket.

During the first notice period, a prehearing conference was held on June 2, 2015, pursuant to notice required by law and the Commission's rules and regulations. The parties scheduled June 24, 2015 for the submission of verified initial comments, and July 27, 2015, for the submission of verified response comments. A status was also scheduled for August 3, 2015.

Thereafter, RESA, the AG, ComEd, CUB/EDF, Elevate Energy, the City, and the ELPC filed verified initial comments. Ameren, the AG, ComEd, CUB/EDF, the City, ELPC, ICEA, MidAmerican, RESA and Staff filed response comments. There were no issues raised and no discussion of any matters at the August 3, 2015 status. This docket was

continued generally. A Proposed Order was issued on September 29, 2015. RESA, ComEd, ICEA and Ameren filed Briefs on Exceptions ("BOE") on October 9, 2015. RESA, ComEd the AG, ICEA, ELPC, the City, Ameren and Staff filed Reply Briefs on Exceptions ("RBOE") on October 16, 2015.

II. SECTION 465.5 - DEFINITIONS

No party raises any issues with the proposed changes and additions to Section 465.5. (Initiating Order, App. at 1-3). ComEd agrees with the new definition of "electricity supplier", as it helps clarify the role of an electric utility providing delivery service, compared to its role in providing electricity supply service. It also eliminates the ambiguity otherwise present in the definition of the term "electricity provider." (ComEd Init. Comments at 3-4). Also, the ELPC note that new definitions have been added to tailor Part 465 rules to new customer classifications contained in Section 16-107.5. Definitions for "non-competitive customer" and "Type(d)", "Type(d-5)", "Type(e)" and "Type(f)" customers refer back to the revised sections of the Act, and will clarify the appropriate billing approach for these different customer classes. The definition of "eligible renewable electrical generating facility" has also been updated to reflect changes in the statute. (ELPC Init. Comments at 4).

The Commission finds that the proposed changes and additions are appropriate and necessary to the issue of Net Metering, and should be adopted as proposed by Staff.

III. SECTION 465.10 - APPLICATION OF PART 465

No party filed comments or raised any issues regarding the change to this Section. As proposed by Staff, the rule now reads:

> This Part shall apply to all Illinois electric utilities and alternative retail electric suppliers as defined in the Act ~~that are required to provide net metering services~~ in accordance with Section 16-107.5 of the Act [220 ILCS 5/16-107.5].

(Initiating Order, App. at 3).

The Commission finds that the proposed changes are appropriate and necessary to the issue of Net Metering, and should be adopted.

IV. SECTION 465.35 - NET METERING APPLICATION AND ENROLLMENT PROCEDURES

There are several proposed changes to Section 465.35. To the extent that the proposed changes are not contested, the Commission finds that the proposed changes to Section 465.35 are relevant and necessary to the issue of Net Metering, and should be adopted as proposed by Staff. The contested issues regarding amendments to Section 465.35 are addressed below.

A. Section 465.35(e)

1. ComEd

ComEd notes that Section 465.35(e) contains a typographical error as follows: "An electricity provider shall not deny a prospective net metering customer's application in a manner that violates this part, 83 Ill. Adm. Code 466 or Section 16-107.5 of the Act." (ComEd Init. Comments at 4; Section 465.35(e), Staff App. to the Init. Order at 5). ComEd states that Part 466 addresses interconnection of distributed generation facilities, rather than net metering. ComEd proposes to change Part 466 to Part 465.

2. Staff

Staff explains that there is no typographical error in this Section. The sentence in question simply lists three regulatory or statutory mandates that may not be violated in denying a prospective net metering customer's application: (1) proposed Part 465; (2) 83 Ill. Adm. Code Part 466 (dealing with interconnection of distributed generation); and (3) Section 16-107.5 of the Act. (Initiating Order, App. at 5). Staff states that these are the specific rules and statutes at issue when an electricity provider considers a net metering application. The customer's distributed generating facility must be able to interconnect before a customer can net meter.

Staff asserts that electricity providers must not violate the Act or the Commission's regulations in any instance, and this sentence merely points out the specific rules and statutes at issue when an electricity provider considers a net metering application. (*Id.).* Staff states that interconnection of distributed generation is an integral aspect of successful net metering for any customer. The customer's generating facility (which will be a distributed generation facility in most, if not all, relevant net metering cases) must be able to interconnect before a customer can net meter.

3. Commission Analysis and Conclusion

The Commission agrees with Staff that there is no typographical error in proposed Section 465.35(e). Staff's explanation for the inclusion of Part 466 is clear. No other issues were raised with regard to Section 465.35(e). The Commission finds that the proposed changes to Section 465.35(e) are reasonable and necessary to the issue of Net Metering, and should be adopted as proposed by Staff.

B. Section 465.35(j) and (k)

1. RESA

RESA states that the problem with Section 465.35(k) is that it is unclear that the requirement in Section 465.35(j), that the electric utility notify an alternative retail electric supplier ("ARES") of a switched customer's net metering status, applies when a customer switches from one ARES to another, as opposed to when a customer switches from an

electric utility to an ARES. If the electric utility does not notify the new supplier when a net metering customer is switched from one ARES to another ARES, the new ARES has no way of knowing that the switched customer is a net metering customer.

RESA proposes to solve the problem with the following revision to Section 465.35(k):

> With respect to any customer that has been authorized for net metering that is switching from one electricity supplier to another, the new electricity supplier shall inform the customer within 15 calendar days after the date the electric utility provides the notice to the new electricity supplier pursuant to Section 465.35(j), ~~accepts the enrollment request~~ of any steps that are necessary to apply for net metering with the new supplier.

(RESA Init. Comments at 2).

ComEd also proposes revisions to Section 465.35(k). RESA states that ComEd would solve this issue by revising proposed Section 465.35(k) to put the obligation of communicating the net metering status of a customer, on to the customer. (ComEd Init. Comments at 4). However, RESA prefers its proposed revision to Section 465.35(k), because the utility will always know whether the customer is a net metered customer, and is therefore the most efficient provider of that information.

2. ComEd

ComEd also proposes to modify Section 465.35(k) as follows:

> With respect to any customer that has been authorized for net metering that is switching from one electricity supplier to another, the customer's new electricity supplier shall inform the customer within 15 calendar days after the date the customer informs the new electricity supplier of its previous net metering status ~~electric utility accepts the enrollment request~~ of any steps that are necessary to apply for net metering with the new supplier.

(ComEd Init. Comments at 4).

ComEd states that its proposal seeks to clarify that the obligation to communicate the net metering status of a customer rests with the new supplier and the customer. The new supplier informs the electric utility after the customer is authorized to participate in the new supplier's net metering program. (ComEd Init. Comments at 4).

ComEd argues that RESA proposes to modify this Section to shift the responsibility for notification to the utility, even when the shift is from one ARES to another. RESA's

statement that "(I)f the electric utility does not notify the new supplier when a net metering customer is switched from one ARES to another ARES, the new ARES has no way of knowing that the switched customer is a net metering customer." (RESA Init. Comments at 2). ComEd argues that this is incorrect.

ComEd provides a customer's net metering status through the online data request available through ComEd.com and through customer lists provided to ARES through its electricity supplier portal. When entering into an agreement, if the electricity supplier failed to discuss the application of net metering with the customer, the electricity supplier could check its customer list in the portal to determine whether a customer was previously enrolled in net metering with another supplier. Further, an electricity supplier that acquires customers through a municipal aggregation program can also identify customers enrolled in net metering through the customer list provided to the municipality and shared with the supplier. (ComEd Reply Comments at 3-4).

ComEd also suggests the use of "electricity supplier" in Section 465.35 to clarify that customers apply for net metering from electric suppliers, and that the 5% enrollment cap is determined for each electricity supplier.

3. ELPC

The ELPC states that the rules have been amended to accommodate web-based electronic application procedures. Sections 465.35(j) and (k) have been proposed to facilitate the notice and exchange of information between a utility and an ARES when a customer switches service. This will smooth the switching process for customers and minimize future instances in which customers are dropped from net metering after switching.

The ELPC agrees with RESA's suggestion to revise Section 465.35(k) to clarify that the information sharing requirement in that Section applies when a customer switches from one ARES to another, as well as when a customer switches from an electric utility to an ARES. (See RESA Init. Comments at 2). As RESA points out, the ARES must rely on the electric utilities to identify when net metering customers are switching suppliers, in order to provide a seamless transition of their service. ELPC opposes ComEd's suggestion to place the burden on the customer to "inform the new electricity provider of its previous net metering status." (ComEd App. to Init. Comments, 465.35(k), at 7).

As discussed in ELPC's initial comments and discussed extensively in the workshops leading to the development of the proposed rule, many net metering customers lost net metering credits and experienced lengthy delays in reestablishing net metering service when they were switched, voluntarily or through meter aggregation. (ELPC Init. Comments at 2-3). In ELPC's opinion, RESA's suggested amendments should help to address this situation and provide a smoother experience for net metering customers.

4. ICEA

In response to RESA, ICEA agrees that as written, Section 465.35(k) is problematic when applied to a customer switching to a Retail Electric Supplier ("RES"). (RESA Init. Comments at 2). Section 465.35(k) requires that any customer who has been authorized for net metering, and is switching from one electricity supplier to another, the customer's new electricity supplier shall inform the customer within 15 calendar days after the date the electric utility accepts the enrollment request, of any steps necessary to apply for net metering with the new supplier.

A RES is not currently able to determine whether a new customer previously served by another RES is net metered, other than from the customer directly or from the utility. RESA notes that, as drafted, the proposed rule revisions were not clear as to whether the electric utility must notify a RES of its new customer's net metering status. (RESA Initial Comments at 2). RESA recommends that the electric utility be required to notify the new electricity supplier whether the newly switched customer is a net metering customer. (*Id.*).

5. MidAmerican

RESA and ComEd both argue that Staff's proposed language is vague, and seek to clarify who should have the obligation to communicate the net metering status of a customer. RESA points out that Staff's proposed amendment to Section 465.35(k) does not address notice provisions from one ARES to another. To the extent that the Commission finds that Staff's proposed language in Section 465.35(k) should be modified to clarify communication obligations, MidAmerican supports ComEd's proposed change. MidAmerican argues that the electricity supplier should ask the customer its net metering status, and the customer should inform the new supplier. MidAmerican also notes that ComEd's proposed changes from "electricity providers" to "electricity suppliers" adds further clarity to the rule and merits the Commission's consideration.

6. Ameren

Ameren states that RESA's changes to Section 465.35(k) would require utilities to notify suppliers when a customer switches supply service from one ARES to another ARES, as Section 465.35(j) is not clear in that regard. (RESA Init. Comments at 2). RESA states that if a utility does not notify the new ARES when a net metering customer is switched from one ARES to another, the new ARES has no way of knowing that the switched customer is a net metering customer. (*Id*.).

Ameren does not object to the revisions proposed by RESA, but questions the necessity. This notification is already part of the information provided in an 814E – Response transaction through the Electronic Data Interexchange ("EDI") protocols. There are various protocols under the EDI and they do not require the guidance or obligation of a rule. Ameren suggests that RESA's revisions are not necessary.

7. Staff

Staff notes that RESA protests that it is ambiguous whether the requirement of Section 465.35(j), which requires the electricity utility to notify an ARES when the utility's non-competitive customer switches its supply service to the ARES, also applies when a customer switches from one ARES to another. To remedy this possible problem, RESA recommends amending Section 465.35(k). (RESA Init. Comments at 2).

In response to RESA, Staff recommends that Section 465.35(j) be modified to include switches between an electric utility to an ARES, from an ARES to an electric utility, or from one ARES to another. Thus, Section 465.35(j) would be modified as follows:

> j) With respect to any non-competitive customer authorized for net metering offered by an electric supplier ~~utility~~ that is switching to another electric supplier ~~ARES~~, the electric utility must notify the customer's new electric supplier ~~ARES~~ via an electronic method approved by the utility of the customer's status as a net metering customer.

ComEd and RESA also suggest modification of Section 465.35(k), which was added to Section 465.35 because, under current practice, a customer's net metering status is cancelled when the customer switches from one supplier to another. A customer may not be aware that it must enroll in the new supplier's net metering program to continue net metering. And a customer's new supplier may not be aware of the customer's interest in continuing net metering. Section 465.35(k) is intended to ensure that an existing net metering customer can enroll in its new supplier's net metering program with a minimum of delay or disruption.

Section 465.35(k) requires a net metering customer's new supplier to inform the customer within 15 calendar days after the electric utility accepts the new supplier's enrollment request, of the steps required for the customer to apply for net metering with the new supplier. The term "enrollment request" refers to the electric utility's processing and acceptance of the new electric supplier's electronic request to switch the customer to the supplier.

Staff believes this is a workable process because of the utilities' responses to Staff's data requests indicating that their customer record systems identify each customer's net metering status, regardless of whether a customer takes supply from an ARES or from the utility. Furthermore, enrollment requests are typically processed several weeks in advance of a customer's switch date. During that period, a supplier can inform its new customer of the steps needed to enroll in the supplier's net metering program.

Under ComEd's proposed revision of Section 465.35(k), the 15-day clock starts when the customer informs the new supplier of its intention to enroll in the supplier's net

metering program; i.e., it is the responsibility of the customer to inform the new supplier of the customer's interest in net metering. (ComEd Init. Comments at 4). In some instances a customer will not even be aware that its net metering status is cancelled, and thus it may not occur to the customer that it should communicate with its new supplier about net metering. Staff recommends retaining Section 465.35(k) as written.

ComEd argues that the term "electricity provider" should be modified to "electricity supplier" in all instances throughout Section 465.35. (ComEd Initial Comments at 3, App. at 4-7). Staff agrees with ComEd's suggestion, based upon Staff's understanding that prospective net metering customers need only apply for net metering from an electricity supplier, and not from the entity delivering electricity.

8. Commission Analysis and Conclusion

Subsection 465.35(k) was added because under current practice, a customer's net metering status is canceled when it switches from one supplier to another. A customer may not be aware that it must enroll in the new supplier's net metering program, and the new supplier may not be aware of the customer's interest in continuing net metering. (Staff Reply Comments at 4). Accordingly, the Commission finds that ComEd's suggested revision, which places the burden on the customer to inform the new supplier of the customer's previous net metering status, is rejected.

RESA raised the issue under subsection (k) that there is no provision for notifying a new ARES of a customer's net metering status when it switches from a previous ARES. (RESA Init. Comments at 2; Reply Comments at 2). The Commission agrees with RESA that this issue must be addressed; however, RESA's suggested revision to subsection (k), by itself, does not appear to resolve the problem. RESA proposes adding the language in subsection (k) that "the electric utility provides the notice to the new electricity supplier pursuant to Subsection 465.35(j)." (RESA Init. Comments at 2). As written in the Initiating Order, subsection (j) only applies when net metering is being offered by an electric utility and the customer is switching to an ARES. Therefore, RESA's proposed change to subsection (k) fails to remedy the issue without revising subsection (j). Staff's proposal will modify subsection (j) so that an electric utility provides notice to a new supplier when a net metering customer switches from one supplier to another. "Supplier" can be either a utility or an ARES and is, therefore, the broader term.

Under Staff's proposed subsection (k), the customer's new electricity supplier must notify the customer of any steps necessary to apply for net metering with the new supplier within 15 calendar days from when the electric utility accepts the enrollment request. However, until the new electricity supplier is notified by the electric utility pursuant to subsection (j) of the customer's status as a net metering customer, it is not clear that the new electricity supplier would need to contact a customer for such purposes. Ameren argues that subsection (j) is unnecessary because notification to a new ARES already occurs and is part of the information provided in an 814E-Response transaction through the Electronic Data Interchange ("EDI") protocols. If EDI protocols were sufficient, as

Ameren argues, then an ARES would have notice of a customer's prior status as a net metering customer, which is contrary to RESA's claim that ARES do not necessarily have such information. Therefore, the Commission finds RESA's suggested edit to subsection (k) combined with Staff's revision to subsection (j) is the best resolution to the issue raised by RESA.

The 15 calendar-day requirement for notice to the switching customer should further allay the concerns of the ELPC: "New Sections (j) and (k) will help…ensure a smoother switching process for customers and will…minimize future instances in which customers are dropped…after switching suppliers." (ELPC Init. Comments at 4). "(M)any net metering customers lost net metering credits and experienced delays in reestablishing net metering service when they were switched." (ELPC Reply Comments at 7).

ICEA's suggestion that the utility include language in its customer letter when informing the customer of the change in supplier, stating that the customer will need to contact the new supplier about joining the new supplier's net metering program, is unnecessary because a net metering customer will be contacted by the new supplier pursuant to the requirements of subsection (k). (ICEA Reply Comments at 1-2).

The Commission finds that Section 465.35(j) should be adopted as proposed by Staff, and Section 465.35(k) should be adopted as proposed by RESA.

V. SECTION 465.40 - REPORTING REQUIREMENTS

A. AG

Section 465.40 addresses the annual net metering reports that electric suppliers must submit pursuant to Section 16-107.5(k) of the Act. In order to further transparency in government, make useful data available to the Commission and others, and protect the legitimate concerns of suppliers engaged in competitive business, the AG suggests the following modifications to Section 465.40. The changes are intended to ensure that information and reporting is available to the public and that electricity suppliers also have the ability to request that appropriate information be treated as confidential.

> (a) The annual report required by Section 16-107.5(k) of the Act shall be filed with the Chief Clerk ~~Manager of the Energy Division~~ of the Illinois Commerce Commission by April 1 of each year ~~beginning in 2009~~. The report shall include all information required under Section 16-107.5(k) of the Act, including, but not limited to, the following information: the total number of net metering customers served ~~peak demand supplied~~ by the electricity provider; the type, capacity, and energy sources of the generating systems used by the electricity provider's net metering customers; whether the total generating capacity of the electricity provider's ~~its~~ net metering customers~~;~~ equals or exceeds the 5% cap; and, whether the

electricity provider intends to limit the total generating capacity of its net metering customers to 5~~1~~% ~~and the electricity provider's total number of net metering customers~~. Commission Staff shall maintain a publicly accessible webpage on the Commission's website that includes public copies of the annual reports and lists the electricity providers who failed to file an annual report. Commission staff shall also publish a summary of the annual reports providing aggregated statistics from annual reports and ensuring that any confidential information is not identifiable.

(b) If information contained in the annual report filed pursuant to this Section contains commercially or financially sensitive information or trade secrets, the electricity provider may file that information with the Commission on a confidential basis. To be filed confidentially, the information shall be accompanied by an affidavit that sets forth both the specific reasons confidential treatment is required and a public synopsis of the information. If an annual report contains information filed on a confidential basis, the electricity provider shall file both a "confidential" and a "public" version of the report and attached documentation, with confidential information redacted and marked "Confidential." Commission Staff shall post the "public" version of the report on the Commission's website as required by Section (a). As long as the electricity provider adheres to the requirements of this Section and the request for confidentiality is accompanied by the above-described affidavit, it is unnecessary to file a petition seeking confidential treatment, unless the electricity provider is requesting that the information be maintained as confidential for a period longer than two years, in which case a petition is required. Following expiration of the confidentiality period, the information will no longer be considered confidential and Commission Staff shall replace the "public" version of the report with the "confidential" version on the Commission's publicly accessible webpage referenced in Section (a).

B. ComEd

ComEd does not object to the revisions proposed by the AG, CUB/EDF, and ELPC. Furthermore, ComEd suggests the use of "electricity supplier" instead of "electricity provider" in Section 465.40. (ComEd Init. Comments, App. at 7-8; Reply Comments at 4).

C. CUB/EDF

CUB/EDF states that Staff's proposed amendments provide additional detail to the annual net metering reports required by the Act. (Order Appendix at 7-8). These reports will be valuable not only to the Commission, but to customers and project developers to see how the market for net metering programs is developing, what types or resources are being used, where those resources are located, etc. CUB/EDF understands it to be the general practice that electricity providers filing these annual reports ask that they be kept confidential, as they contain competitively sensitive information. Moreover, there is no place where the public can access the reports that is not confidential. To remedy the situation, CUB/EDF proposes the same amendments to Section 465.40 as the AG.

D. ELPC

ELPC agrees with the proposed language offered by the AG and CUB to streamline and clarify the annual reporting requirements. ELPC notes that the lack of public transparency about net metering compliance has hindered the public's ability to learn about and "shop" for electricity suppliers. ELPC further states that creating more publicly accessible information could also help promote accountability and compliance with net metering requirements.

E. ICEA

The ICEA states that streamlining confidential treatment will reduce compliance costs for RESs and administrative costs for the Commission.

F. MidAmerican

In MidAmerican's opinion, Staff's changes to the reporting requirements are reasonable and should be adopted by the Commission. The AG and CUB/EDF propose language to Staff's additions that go far beyond what is required by statute and are overly burdensome. Moreover, Staff has already changed the requirement that the reports be filed with the Chief Clerk, and to the extent the reports contain confidential information, Commission rules already require that a public version be filed along with the confidential version. Consequently, the proposed language by CUB/EDF and the AG merely rewrite the Commission's procedural rules without providing a basis as to why the change is warranted. For these reasons MidAmerican argues the Commission should reject CUB/EDF's and the AG's proposed language to Section 465.40.

G. Staff

Staff argues that ComEd's revision effectively eliminates any reporting requirements for entities providing delivery service. Section 465.40 is intended to apply to all electricity providers, because the reporting requirement under Section 16-107.5(k) is a general requirement. ComEd's modifications should be rejected.

The AG recommends provisions that would require Staff to maintain a portion of the Commission website that includes copies of each electric supplier's annual report, and lists the electric suppliers that fail to submit an annual report. Staff would also be required to create a summary of the annual reports. Additionally, the AG recommends adding a paragraph to Section 465.35 specifying how a reporting entity's claims of confidential data should be submitted to the Commission. CUB/EDF and ELPC also recommend adoption of the provisions. (AG Init. Comments at 2-3; CUB/EDF Init. Comments at 2-3; ELPC Init. Comments at 6-7).

Staff does not object to modifying Section 465.40 to make clear that the electric providers' annual reports should be available on the Commission website. Thus, Staff recommends that the following sentence be added at the end of Section 465.40: The Commission shall maintain the reports required by this Section on the Commission's website. To facilitate posting of the reports, Section 465.40 should also state that electric providers should file the reports electronically with the Chief Clerk's Office. If these changes are adopted, Staff will provide instructions to electricity providers regarding how annual reports may be submitted electronically.

Thus, Staff recommends that Section 465.40 be modified as follows:

> The annual report required by Section 16-107.5(k) of the Act shall be filed electronically with the Chief Clerk ~~Manager of the Energy Division~~ of the Illinois Commerce Commission, in a manner that meets all filing requirements of the Commission's electronic filing system, by April 1 of each year ~~beginning in 2009~~. The report shall include all information required under Section 16-107.5(k) of the Act, including, but not limited to, the following information: the total number of net metering customers served ~~peak demand supplied~~ by the electricity provider; ~~during the previous year;~~ the type, capacity, and energy sources of the generating systems used by the electricity provider's net metering customers; whether the total generating capacity of the electricity provider's ~~its~~ net metering customers~~;~~ equals or exceeds the 5% cap; and, whether the electricity provider intends to limit the total generating capacity of its net metering customers to 5~~1~~%; ~~and the electricity provider's total number of net metering customers~~. The Commission shall maintain the reports required by this Section on the Commission's website.

(Staff Reply Comments, App. at 7).

Staff does not recommend adoption of the AG's, CUB/EDF's and ELPC's recommendations with respect to Staff maintaining the Commission website, nor does Staff recommend that the rule include provisions directing it to summarize the electricity suppliers' annual reports. Parties who wish to analyze the data contained in the reports will have the information available to them.

Regarding the AG's and CUB/EDF's recommendation to add a new Section 465.40(b), Staff states that the data required is not expected to engender requests for confidential treatment. Additionally, any reporting entity may seek redaction of information deemed by the Commission to be confidential. (Section 5/16-107.5(k)).

H. Commission Analysis and Conclusion

The Commission agrees with the AG, CUB/EDF and Staff that the annual reports should be available on the Commission's website. This would promote greater public disclosure and openness of electric suppliers' operations, and serves the public interest. Staff, however, should not be required to compile data from the reports. As Staff notes, the parties desiring such information would have the necessary data available to them. (Staff Reply Comments at 7).

The Commission is not persuaded that the AG's proposed Section 465.40(b) is necessary. Section 16-107.5(k) provides for the redaction of data deemed by the Commission to be confidential business information. Moreover, the Commission routinely protects annual report data filed with the designation "confidential", "proprietary", or "trade secret". (83 Ill. Adm. Code 200.605). Further, public and confidential versions of annual reports are already required by the Commission, as MidAmerican correctly points out. (MidAmerican Reply Comments at 2).

Commission rules and Section 16-107(k) provide a thorough mechanism for the filing of confidential data. The AG's proposed Section 465.40(b) far exceeds what is required by statute and Commission regulations, and it should not be adopted.

The Commission does not agree with ComEd to substitute the term "electricity supplier" for "electricity provider". "Electricity supplier" is a less expansive term that would exempt electric utility deliverers, such as ComEd, from the reporting requirements of this Section. Furthermore, ComEd only gave a rationale for this change for the first time in its Brief on Exceptions, arguing that its current reporting practice is limited to its supply customers only. ComEd states that adding to the report delivery customers who receive supply from an ARES would result in double reporting, causing confusion and inefficiency. (ComEd BOE at 3-4). The Commission does not agree. To reduce the likelihood of any confusion, ComEd could specify in its reports which of its customers receive supply and which receive only delivery. Also, retaining the term "electricity provider" would keep this Section in line with the reporting requirements of Section 16-107.5(k), and would include both suppliers and deliverers.

The Commission should adopt Section 465.40 as follows:

> The annual report required by Section 16-107.5(k) of the Act shall be filed electronically with the Chief Clerk ~~Manager of the Energy Division~~ of the Illinois Commerce Commission, in a manner that meets all filing requirements of the Commission's electronic filing system, by April 1

of each year ~~beginning in 2009~~. The report shall include all information required under Section 16-107.5(k) of the Act, including, but not limited to, the following information: the total number of net metering customers served ~~peak demand supplied~~ by the electricity provider; ~~during the previous year;~~ the type, capacity, and energy sources of the generating systems used by the electricity provider's net metering customers; whether the total generating capacity of the electricity provider's ~~its~~ net metering customers~~;~~ equals or exceeds the 5% cap; and, whether the electricity provider intends to limit the total generating capacity of its net metering customers to 5~~1~~%~~;~~ ~~and the electricity provider's total number of net metering customers~~. The Commission shall maintain the reports required by this Section on the Commission's website.

VI. SECTION 465.50 - ELECTRICITY PROVIDER BILLING FOR ELIGIBLE CUSTOMERS

A. RESA

RESA states that Section 465.50 currently provides that, for all types of customers, the electric utility shall determine whether the customer is a net purchaser or net seller of electricity. Proposed Section 465.50 provides that the electricity supplier shall make that determination.

In its Reply Comments, RESA argues that the proposed revision to Section 465.50 creates a problem, because when the electricity supplier is not the electric utility, the electricity supplier is not metering the customer's usage - the electric utility is. Currently, RESA states that if a net metering customer has negative usage (i.e., generates more than it uses), ComEd's EDI transaction identifies the usage as "zero", rather than the negative number. Accordingly, the following language should be inserted in proposed Section 465.50 after the title:

> If the electric utility is not the electricity supplier, the electric utility shall transmit to the electricity supplier via standard electronic billing protocol the applicable billing kWh for each billing period. If the customer is a 'net purchaser of electricity' during the billing period, the electric utility shall transmit the billing kWh equal to the net kWh usage. If the customer is a 'net seller of electricity' for the billing period, the electric utility shall transmit the net kWh for the billing period less usage credits from prior billing periods, if applicable. All unused credits in a given billing period shall be carried over to subsequent billing periods. The electric utility shall process credit amounts from Section 465.50 as a credit toward an electricity supplier's load for settlement with the applicable retail transmission organization.

(RESA Reply Comments at 3-4).

B. ComEd

ComEd suggests edits to Section 465.50(c)(3) to clarify that customer credits shall reflect kilowatt-hour based charges in the customer's electric service rate, and that no credits will be given for non-kilowatt hour based electric service rates:

> If a customer is a net seller of electricity during the billing period, the customer shall receive a 1:1 kilowatt hour credit that reflects the kilowatt-hour based charges in the customer's supply service rate from the electricity supplier that is equal to the net kilowatt hours supplied by the customer during the billing period. To the extent that the electric utility is not the electricity supplier, the customer shall receive a 1:1 kilowatt hour credit that reflects the kilowatt-hour based charges, if any, in the customer's ~~for~~ delivery service rate from the electric utility that is equal to the net kilowatt hours delivered to the electric utility's system by the customer during the billing period.

(ComEd Init. Comments, App. at 10).

According to ComEd, this language more accurately reflects the revisions to Section 16-107.5(e)(2) of the Act, which provides:

> If the amount of electricity produced by a customer during the billing period exceeds the amount of electricity used by the customer during that billing period, then the electricity provider supplying that customer shall apply a 1:1 kilowatt-hour credit that reflects the kilowatt-hour based charges in the customer's electric service rate to a subsequent bill for service to the customer for the net electricity supplied to the electricity provider.

(220 ILCS 5/16-107.5 (e)(2)). ComEd asserts that this makes clear to the customer that no credits will be given for non-kilowatt-hour-based electric service rates.

In its Reply Brief on Exceptions, ComEd argues that RESA's proposed revision is unnecessary and duplicative, as proposed Section 465.55 already requires an electric utility to provide suppliers with metered data. ComEd states that electricity suppliers receive netted interval usage data via ComEd's EDI. ComEd asserts that an electricity supplier is able to determine the amount of energy supplier to the customer or the amount of energy received from the customer by summing up the interval usage data for the bill period. Electricity suppliers can then track any excess energy received from the customer and can address any energy credits on subsequent bill periods. In light of these processes, and because all of the data needed for billing net metering customers is

already provided by ComEd, ComEd argues RESA's proposed revisions provide no added benefit and should be rejected.

ComEd further argues that RESA's proposed language that would require an electric utility to "process credit amounts from Section 465.50 as a credit towards an electricity supplier's load for settlement with the applicable retail transmission organization" is inappropriate. ComEd states that such a requirement cannot be implemented unless specifically authorized by the tariffs of the applicable regional transmission organizations, which are subject to the exclusive authority of the Federal Energy Regulatory Commission. (ComEd RBOE at 4).

C. ELPC

ELPC states that this section is substantially revised to reflect statutory changes to net metering eligibility and billing procedures in Section 16-107.5 of the Act. The billing provisions are organized by the various "types" of net metering customers that are described in Sections (d), (d-5), (e), and (f) of the statute. According to ELPC, this will help improve the clarity and usability of the rules.

ComEd suggests edits to Section 465.50(c)(3) to clarify that credits received by a customer reflect kilowatt-hour-based charges in the customer's electric service rate. (ComEd Init. Comments at 5). ELPC maintains that these suggested edits are unnecessary. The statute requires the electricity provider to "apply a 1:1 kilowatt-hour credit" and provides specific guidance about the procedure to be followed for customers whose electric delivery service is "provided and measured on a kilowatt-hour basis" ("Part (d) customers") vs. customers whose delivery service is "provided and measured on a kilowatt demand basis" ("Part (e) customers"). *See* Section 5/16-107.5(d),(e). The ELPC argues that it is not clear why ComEd's suggested edits are necessary in this situation.

D. Staff

Staff notes that ComEd argues certain changes should be made to reflect revisions to Section 16-107.5(e) of the Act. (ComEd Init. Comments at 5, App. at 10). This Section refers to Type (e) customers whose delivery service is kilowatt-based, and whose supply service has not been declared competitive. Staff's understanding is that currently there are no residential Type (e) customers.

ComEd recommends insertion of a phrase in Section 465.50(c)(3) that includes the words "customer's supply service rate." However, the language in Section 16-107.5(e) refers to a customer's "electric service rate," not its "supply service rate." Staff does not recommend adoption of ComEd's modification, but would not object to modifying the Section to include the language of Section 16-107.5(e), i.e., the term "electric service rate."

ComEd also recommends an additional modification of Section 465.50(c)(3) as follows: "…that reflects the kilowatt-hour based charges, if any, in the customer's delivery service rate…" As noted above, there are no Type (e) residential customers, so in Staff's opinion ComEd's suggested addition would not currently be applicable. However, Staff states it is possible in the future that delivery service charges will not be entirely kilowatt-hour based. Thus, with a small modification (i.e., deleting the word "rate"), Staff does not oppose ComEd's recommendation. With each of these changes, Section 465.50(c)(3) would appear as follows:

> 3) If a customer is a net seller of electricity during the billing period, the customer shall receive a 1:1 kilowatt hour credit that reflects the kilowatt-hour based charges in the customer's electric service rate from the electricity supplier that is equal to the net kilowatt hours supplied by the customer during the billing period. To the extent that the electric utility is not the electricity supplier, the customer shall receive a 1:1 kilowatt hour credit that reflects the kilowatt-hour based charges, if any, for delivery service from the electric utility that is equal to the net kilowatt hours delivered to the electric utility's system by the customer during the billing period.

(Staff Reply Comments at 8-9)

Additionally, ComEd proposes changing the term "electricity provider" to "electricity supplier" in Section 465.50(d)(2) and (d)(4). (ComEd Init. Comments, App. at 11). Staff does not oppose these changes.

In its Reply Brief on Exceptions, Staff briefly addresses RESA's proposed language. Staff recommends the Commission reject RESA's edits because the proposed language goes further than what is needed to resolve the issue.

E. Commission Analysis and Conclusions

ComEd's proposed edits to Section 465.50(c)(3) were designed to ensure that customer credits strictly reflect kilowatt-hour based charges, thereby conforming to Section 16-107.5(e)(2) of the Act. (ComEd Init. Comments at 5; App. at 10). Staff offered amendments to ComEd's Section 465.50(c)(3) edits, first changing "supply service rate" to electric service rate", as that is the language that appears in Section 16-107.5(2). (Staff Reply Comments at 8). The Commission agrees with Staff, as its amendment has the same purpose as ComEd's, which is to bring Section 465(c)(3) into conformity with Section 16-107.5(e)(2). This also answers the ELPC's question why ComEd's edits are necessary at all. (ELPC Reply Comments at 8).

Staff also recommended deleting the word "rate" from ComEd's sentence "…that reflects the kilowatt-hour based charges, if any, in the customer's ~~for~~ delivery service rate…" (Staff Reply Comments at 8). The Commission finds that with deletion of

the term “rate”, ComEd’s proposed language becomes less specific, which is more in harmony with Staff’s observation that there are currently “no Type (e) residential customers”, so “rates” has no current applicability. (*Id*.).

Staff also agreed with ComEd’s proposal to change “electricity provider” to “electricity supplier” in two specific instances in Section 465.50(d)(2) and (d)(4). (Staff Reply Comments at 9; ComEd Init. Comments, App. at 11). The Commission finds that that each section clearly contemplates that it is the electricity supplier negotiating with the customer and assessing other charges, not the provider. ComEd’s changes accurately reflect the intent of these sections.

The Commission notes that RESA raises a new issue and proposes new language in its Reply Comments and, consequently, no other party had an opportunity to respond. For that reason, the Proposed Order did not offer any analysis or ruling on RESA’s proposed language. On Exceptions, ICEA, ComEd and Staff address RESA’s proposed language. Aside from the fact that RESA’s proposal was untimely raised, the Commission declines to adopt RESA’s proposed language. As ComEd notes, electricity suppliers will receive interval meter data from the electric utility pursuant to Section 465.55, thus giving the supplier the information necessary to make a determination. Moreover, ComEd raises a valid concern regarding the language related to wholesale settlement for supplier billing. (ComEd RBOE at 4). RESA’s language appears to include a requirement that cannot be implemented unless specifically authorized by the tariff rules of the applicable regional transmission organizations. Therefore, the Commission rejects RESA’s proposed language.

The Commission concludes that Section 465.50 should be adopted including Staff’s edits to Section 465.50(c)(3) and ComEd’s edits to Sections 465.50(d)(2) and (d)(4) as reflected in the Appendix to this Order.

VII. SECTION 465.55 – INTERVAL METER DATA

No party contested the amendments to Section 465.55. The ELPC points out that the lack of access to interval data was hindering electricity suppliers’ ability to provide net metering service to their customers. The Commission finds that Section 465.55 should be adopted as proposed by Staff, however it cautions that Section 16-108.6(d) of the Act requires that the Advanced Metering Infrastructure Plan shall secure the privacy of customers’ personal information. Customer information obtained by electric utilities, their contractors or agents, and any third parties, is not to be disclosed for a commercial purpose not reasonably related to the conduct of the utility’s business. (220 ILCS 5/16 108.6).

Further, Section 16-122 prohibits the disclosure of customer specific information. (220 ILCS 5/16-122). Electric utilities are bound by the constraints of Sections 16-108.6 and 16-122 when providing customer interval meter data to electric suppliers.

VIII. SECTION 465.70 - PENALTY PROVISIONS

A. ComEd

ComEd proposes to amend Section 465.70(a)(2) to reference an electricity "provider" rather than a "utility", as contemplated by the original section of the rule. ComEd argues that it is the responsibility of the electricity provider, not the electric utility, to make reparations or refunds pursuant to statute. ComEd states that this term is flexible, as it can refer to an electric utility or electric supplier. It does not limit the applicability of Section 465.70 solely to an electric utility. (ComEd Init. Comments at 5).

B. RESA

RESA disagrees with ComEd's proposed revision to this Section. Proposed Section 465.70(a)(2) provides that the Commission may, after notice and hearing, require an "electricity utility" to make due reparations or refunds as permitted by statute.

RESA states that proposed Section 465.70 would not be limited to electric utilities, as revised in the First Notice Rules; only Section 465.70(a)(2) would be so limited. Moreover, RESA argues that this limitation is appropriate because, under Section 16-115B of the Act, which sets forth the Commission's authority to impose penalties on ARES, the Commission does not have the authority to require ARES to make "reparations" or "refunds". RESA concludes that ComEd's proposed revision to Section 465.70 should be rejected.

C. ICEA

ICEA notes that new Section 465.70 properly makes the electric utility responsible for billing to provide interval data to the extent necessary. ICEA agrees with the direction of new Section 465.70. One reason a customer might seek such interval data is to compare the data against what their own generation equipment is measuring. If the customer has concerns or issues with the interval data, there is little or nothing a RES could do to address those concerns, because the utility is the entity reading and retaining that data. In that vein, ICEA urges the Commission to not place requirements on the RES that the electric utility is in a better position from which to respond.

ICEA notes that ELPC alleges that some RES either (1) do not offer net metering products and/or (2) do not timely file the currently-required net metering report. (ELPC Init. Comments at 2-3). As a general matter, and here specifically, ICEA believes that the best response to non-compliance is discipline for non-compliance, rather than additional layers of compliance. In a separate context, ICEA has recommended annual Commission Staff-led workshops to discuss compliance and enforcement issues, and to confirm that all RES are aware of ongoing regulatory requirements. Adding additional layers of regulation in response to noncompliance by certain RES only serves to punish RES that

place an emphasis on compliance, while not, in and of itself, remedying continuing non-compliance by other RES.

D. Staff

Staff agrees with ComEd's proposed change to Section 465.70(a)(2), which should read: "require an electricity provider to make due reparations or refunds as permitted by statute." (ComEd Init. Comments at 5; Staff Reply Comments at 15).

E. Commission Analysis and Conclusion

The Commission can see no rationale for imposing on the electricity provider disciplinary action under Section (a)(1), yet leveling monetary punishment under Section 465.70(a)(2) solely upon an electric utility. The proposed definition of electricity provider includes both an electric utility and an ARES. (Initiating Order, App. at 2). The Commission can discern no reason for otherwise excluding an ARES from the sanctions contemplated by Section 465.70(a)(2).

RESA argues that the limitation "electric utility" in Section 465.70(a)(2) is appropriate because, under Section 16-115B of the Act, the Commission does not have the authority to require an ARES to make "reparations" or "refunds". (RESA Reply Comments at 4; 220 ILCS 5/16-115B). The Commission disagrees. Section 16-115B generally governs Commission oversight of services provided by ARES. Section 16-115B(b)(2) allows the imposition of "financial penalties for violations of or non-conformances with provisions of Section 16-115 or 16-115A", subject to specified limitations. (220 ILCS 5/16-115B(a)(2)). Despite the absence of the precise terms "reparations" and "refunds" in Section 16-115B(a)(2), the Commission believes that excluding either term from the range of financial penalties would serve to defeat the purpose of the statute and proposed Section 465.70(a)(2).

The Commission agrees with ICEA that the remedy for non-compliance is discipline, not more layers of compliance. (ICEA Reply Comments at 2-3). If a party is not initially compliant, additional compliance requirements would more likely exacerbate the situation rather than provide a remedy.

The Commission concludes that Section 465.70 should be adopted as proposed by ComEd and Staff, thereby substituting "provider" for "utility" in Section 465.70(a)(2).

IX. SECTION 465.80 MISCELLANEOUS PROVISIONS

A. ComEd

ComEd did not provide any discussion or rationale in its Initial or Reply Comments, but included proposed changes to Section 465.80 in its Appendix (at 14). ComEd proposes to change the word "electricity provider" to "electricity supplier."

a) In accordance with Section 16-107.5~~(e) and (g)~~ of the Act, nothing in this Part is intended to prevent an arm's-length agreement between an electricity supplier ~~provider~~ and an eligible customer ~~that either sets forth different prices, terms and conditions for the provision of net metering service, including, but not limited to the provision of the appropriate metering equipment for non-residential customers, or~~ that sets forth the ownership or title of renewable energy credits.

b) In accordance with Section 16-107.5(m) of the Act, nothing in this Part is intended to affect any ~~existing~~ retail contract between an alternative retail electric supplier and an eligible customer existing prior to the effective date of this Part.

~~a) Nothing in this Part shall be construed to impose upon an alternative retail electric supplier any additional obligation that it does not otherwise have pursuant to the Act.~~

(ComEd Init. Comments, App. at 14-15)

B. ELPC

ELPC supports Staff's proposed changes to Section 465.80. ELPC notes that this section clarifies the ability of suppliers and customers to negotiate an arms-length agreement that sets forth the ownership or title of renewable energy credits. ELPC states that customers must be given the option to accept net metering service, and shall not be required to sign an agreement with a supplier with new or different terms as a condition of receiving net metering service.

C. Staff

Staff urges the Commission to maintain the term "electricity provider," as it allows for the entity either supplying or delivering electricity to enter into arm's length agreements with net metering customers related to the renewable energy credits. Importantly, customers will accrue renewable energy credits for both supply and delivery, but if ComEd's proposed change is adopted, only renewable energy supply credits would be contemplated by this Section. Moreover, Staff argues that the statute is clear that "this Section (g) shall not be construed to prevent an arms-length agreement between an electricity *provider* and an eligible customer that sets forth the ownership or title of the credits." (Section 5/16-107.5(g); emphasis added). Therefore, Staff concludes that the Commission should ignore ComEd's proposed edit of Section 465.80.

D. Commission Analysis and Conclusion

Staff's proposed changes to this section bring it into line with Section 16-107.5(g). Further, preventing customers from accruing renewable energy credits for delivery service appears to the Commission to be tantamount to a penalty for which there has been no demonstrated rule or statutory violation. The proposed definition of "electricity provider" includes an electric utility as well as an ARES, which could enable a customer negotiating at arm's length to ultimately benefit from the accrual of renewable energy credits for both supply and delivery. (Initiating Order, App. at 2).

The Commission also notes that only the term "electricity provider" appears in Section 16-107.5(g). ComEd's proposed change from "electricity provider" to "electricity supplier" should not be adopted.

The Commission finds that the proposed changes and additions as proposed by Staff are relevant and necessary to the issue of Net Metering, and should be adopted.

X. SECTION 465.90 METER AGGREGATION

The Initiating Order included a new section in Part 465 requiring electricity providers to consider applications for meter aggregation that reads:

a) Electricity suppliers shall separately consider each application for meter aggregation for the purposes of net metering and shall determine whether to allow meter aggregation for purposes of net metering on the basis of the facts and circumstances presented in each application.

b) Whenever an electricity supplier determines that it will not allow meter aggregation for the purposes of net metering, the electricity supplier shall provide an explanation of its determination, based on the facts and circumstances presented in the application, in a written document simultaneously filed with the Chief Clerk of the Commission and provided to the applicant, within 30 days after receiving the application.

(Initiating Order, App. at 15).

A. RESA

RESA argues that proposed Section 465.90 goes far beyond the requirements of Section 16-107.5(l) of the Act by requiring an electricity supplier to separately consider each application for meter aggregation. RESA asserts that Section 16-107.5(l) only requires an electricity provider to consider whether to allow meter aggregation for the purpose of net metering for certain types of property. In RESA's view, there is no

justification for the additional burden proposed by Section 465.90, and it should be omitted from the Second Notice rules.

RESA agrees with ComEd's position that proposed Section 465.90 conflicts with Section 16-107.5 of the Act by imposing obligations on electricity suppliers not found in that, or any other section of the Act, namely the obligation to consider each meter aggregation application individually and prepare a written, individualized analysis. Similarly, RESA asserts that CUB/EDF's proposed revisions to Section 465.90 would impose additional obligations on electricity suppliers not found in the Act, which should also be rejected. Moreover, RESA argues it is not clear that a RES could move forward with a meter aggregation project if the electric utility does not believe individual meter aggregation projects are supported under the Act.

B. AG

The AG supports inclusion of a new provision addressing meter aggregation applications. The AG states that good net metering policy facilitates the ability of customers to generate power from renewable energy, which reduces electric bills and power plant emissions into the environment.

The AG cites to Section 16-107.5(a) of the Act in asserting that the General Assembly found net metering to be in the public interest. Pursuant to Section 16-107.5(b), utilities are required to offer net metering for renewable electrical generating facilities ("solar panels") located on the customer's premises intended primarily to offset the customer's own electrical requirements. However, the AG states that by national estimates nearly 50% of residential and business customers cannot install solar panels or wind turbines "on" their premises because their premises are either apartments or condominiums, or because rooftops or yards cannot accommodate the equipment for various reasons. In these situations, Section 16-107.5(l) requires utilities to "consider" meter aggregation as a solution. Meter aggregation is defined as "the combination of reading and billing on a pro rata basis." (220 ILCS 5/16-107.5(l)).

The AG explains that meter aggregation allows for power generation from a single, renewable energy facility, e.g. wind farm or solar project, to be shared among participants, subscribers, owners or leaseholders, as their cooperative arrangement provides. Without meter aggregation, many Illinois residents, particularly those in low-to-moderate income households, will be unable to participate in the bill-reducing, emission-reducing benefits of renewable energy applications.

The AG states that a new Section 465.90 will ensure that that applicants for meter aggregation receive a prompt response following the utilities' statutorily-required consideration of their proposals. Where applications are denied, the electricity provider will be required to "provide an explanation of its determination, based on the facts and circumstances presented in the application, in a written document."

The AG states that requiring utilities to explain the reasons for denial of meter aggregation requests allows customers and the project developer to correct problems or concerns, or possibly explore other solutions. Without the individualized explanations required by Section 465.90, the AG concludes there is no guarantee that denied applicants could determine what was wrong with the proposal and what to do differently to have it approved. Section 465.90 ensures fair customer treatment and the AG urges Commission approval.

In arguing against proposed Section 465.90's requirement to respond to meter aggregation proposals, ComEd asserts that Section 16-107.5(l) only requires that electricity providers "consider, *as a general proposition*, whether meter aggregation is appropriate." (ComEd Init. Comments at 2, 7; emphasis added). ComEd further states that "its current policy does not allow" meter aggregation "because it is not made whole for the cost of delivery services offset by such a unit's output or any credits carried forward." (*Id*. at 8).

The AG questions why the legislature would intend for electricity providers to disallow meter aggregation "as a general proposition" on "a global basis", if it included a section in the Act directing such entities to consider meter aggregation for community-owned renewable resources and collectively served properties, individual units, or apartments. The AG argues that the legislature could not have intended for Section 16-107.5(l) to have no meaningful effect. Electricity providers could not disallow meter aggregation as a general policy without giving meaningful consideration to meter aggregation proposals set forth in the statute.

The AG cites case law in which Illinois courts have made clear that statutes must not be read so as to render any part superfluous or meaningless. The AG argues that ComEd's view of meter aggregation would render Section 16-107.5(l) superfluous and meaningless and must, therefore, be rejected.

ComEd's plain language is similarly unpersuasive. In its Initial Comments (at 7), ComEd argued that "a plain reading of Section 16-107.5(l) only requires an electricity (provider) to "consider" - in the singular – whether to allow meter aggregation to eligible customers." The AG argues that, to the extent ComEd views "considers" as the plural of "consider", using the plural would make no sense as Section 16-107.5(l) is constructed. The singular is used in the statute because it is grammatically correct. The sentence refers to "an" electricity provider who is required to "consider" meter aggregation proposals in various (plural) scenarios – properties owned or leased by multiple customers, individual units, apartments or properties owned or leased by multiple customers. According to the AG, ComEd's argument shows that the legislature used proper grammar, not that it intended for a one-time only consideration of meter aggregation.

C. ComEd

ComEd's proposed changes to Section 465.90, as reflected in the Appendix to its Reply Comments, state:

> a) Electricity ~~suppliers~~ providers shall ~~separately~~ consider ~~each application for~~ meter aggregation ~~for the purposes of net metering and shall determine whether to allow meter aggregation for purposes of net metering on the basis of the facts and circumstances presented in each application~~. The consideration of an electricity supplier to provide meter aggregation service does not obligate the electric utility to provide such service and does not obligate the electric utility to provide any additional services to such electricity supplier.
>
> b) If an electric utility has determined that it will not offer meter aggregation to net metering customers who purchase supply from the electric utility, such electric utility is not obligated to provide a delivery service credit to the customers in its service area that are offered meter aggregation by alternative retail electricity suppliers. Such customers remain responsible for all taxes, fees, and utility delivery service charges that would otherwise be applicable to the gross amount of electricity delivered to the customers. ~~Whenever an electricity supplier determines that it will not allow meter aggregation for the purposes of net metering, the electricity supplier shall provide an explanation of its determination, based on the facts and circumstances presented in the application, in a written document simultaneously filed with the Chief Clerk of the Commission and provided to the applicant, within 30 days after receiving the application.~~

(ComEd Reply Comments, App. at 15)

ComEd opposes the inclusion of Section 465.90 as proposed by Staff and contained in the Initiating Order, and has two concerns regarding this issue. First, ComEd argues that Section 465.90 would impose obligations not found in Section 16-107.5(l), or in any other provision, of the Act. Second, ComEd states that the proposed Section does not consider circumstances where an electric utility's delivery-related operations cannot accommodate a RES' decision to allow meter aggregation for its customers.

With regard to the first concern, ComEd argues that the Commission's powers are limited to those established by the legislature and it may not act outside of its statutory authority. ComEd cites to a series of cases that require the Commission to construe a statute as written, and it may not supply omissions, remedies, defects, etc., or otherwise change the law, so as to depart from the plain meaning of the language used in the

statute. According to ComEd, a plain reading of Section 16-107.5(l) requires an electricity supplier only to consider, in the singular, whether to allow meter aggregation to eligible customers. ComEd argues that nothing in Section 16-107.5(l) or in any other part of the Act requires a supplier to consider applications for meter aggregation on a case-by-case basis.

Similarly, ComEd asserts, Section 465.90(b) is inconsistent with Section 16-107.5, in that it unreasonably requires greater review of a meter aggregation application than the rules currently require for review of other applications for net metering. ComEd explains that current net metering rules provide for the electricity supplier to notify the applicant whether or not it is authorized to participate in the supplier's program. If a party is allowed to submit a net metering application involving meter aggregation at all, this should be the process that governs the supplier's review. In ComEd's view, a simple notice to the applicant that the supplier's program does not permit meter aggregation should be sufficient. The current rules also allow the supplier to simply provide the applicant with its reasons for denying an application.

ComEd also does not believe it is necessary to provide a response to each such application, since its current policy does not allow such services. In addition to its operational burdens, particularly with respect to billing, and the lack of appropriate cost recovery and cost allocation mechanisms for these additional services, ComEd does not allow meter aggregation, because it is not made whole for the cost of delivery services offset by such a unit's output or any credits carried forward. All other delivery service customers would be required to pay these costs, and such subsidization would be unreasonable and unfair to them.

ComEd asserts that Section 16-107.5 was added to the Act in 2007 and a rulemaking, Docket 07-0483, was initiated to implement the statute. According to ComEd, several of the same parties in this docket had requested both then and now that the Commission impose a reporting requirement documenting the consideration that each electricity provider gave to meter aggregation.

Staff had opposed the request, noting the above limitations on the Commission's authority. (Docket 07-0483, Staff Rep. Comments at 4-5; internal citations omitted). In response to ELPC's argument that electricity providers should report the results of their consideration of meter aggregation, Staff notes that Section 16-107.5 does not require such providers to do anything more than consider. There is no reporting requirement in the statute. (*Id*. at 11). ComEd states that Staff's position in Docket 07-0483 was based solely upon principles of statutory interpretation, which must be applied here. ComEd notes that the Commission agreed with Staff. (Docket 07-0483, Second Notice Order, at 12).

ComEd points out that the General Assembly has amended Section 16-107.5 three times since the 2007 rulemaking and not once did it take the opportunity to impose a reporting requirement. ComEd argues that the Commission should not now do what the

General Assembly repeatedly failed to do. CUB/EDF's recommended revision "to provide evidence of appropriate consideration" should also be rejected for the reasons stated above.

Regarding ComEd's second concern with the proposed Section 465.90, ComEd further proposes that it should contain a provision whereby, if an electric utility does not offer meter aggregation to net metering customers who purchase supply from the utility, but a RES will in the electric utility's service territory, that decision does not obligate the electric utility to provide a delivery service credit to the RES's customer, and to compute taxes, fees and the utility's delivery service charges. The provision should recognize that the customer remains responsible for all taxes, fees, and utility delivery service charges otherwise applicable to the gross amount of electricity delivered to such customer.

ComEd also agrees with CUB/EDF that the term "electric supplier" should be changed to "electric provider." ComEd states that Section 465.90 should also be clarified to recognize that a customer remains at all times responsible for taxes, fees and utility delivery charges that would otherwise be applicable to the gross amount of electricity delivered to such customers. ComEd argues that such clarification is more consistent with Section 16-107.5(l), that "each electricity provider" shall consider meter aggregation.

D. CUB/EDF

CUB/EDF supports the inclusion of Section 465.90 as described in Staff's Report, however CUB/EDF proposes additional changes to meet the intent of the statute and improve utility net metering programs as follows:

a) Electricity ~~suppliers~~ providers shall separately consider each application for meter aggregation for the purposes of net metering and shall determine whether to allow meter aggregation for purposes of net metering on the basis of the facts and circumstances presented in each application.

b) Each electricity provider shall establish an application form and publish on its website procedures to enable eligible customers to participate in the meter aggregation as part of the net metering program offered by the electricity provider. Each electricity provider shall designate a point of contact and provide contact information on its website. The point of contact shall be able to direct questions concerning meter aggregation request submissions and the meter aggregation process to knowledgeable individuals within the company. Application procedures shall follow those established in Section 465.35(b-k).

c) When considering an application for meter aggregation, an electricity provider shall not deny a prospective net metering customer's application in a manner that violates this Part, 83 Ill. Adm. Code 466 or Section 16-107.5 of the Act.

d) Whenever an electricity ~~supplier~~ provider determines that it will not allow meter aggregation for the purposes of net metering, the electricity ~~supplier~~ provider shall provide an explanation of its determination, based on the facts and circumstances presented in the application, in a written document simultaneously filed with the Chief Clerk of the Commission and provided to the applicant, within 30 days after receiving the application.

(CUB/EDF Init. Comments at 5).

CUB/EDF states that not every customer is clear as to the process for requesting meter aggregation, what components of Part 465 and Section 16-107.5 of the Act establish the criteria for considering meter aggregation requests, in what timeframe is the electricity provider required to answer a request for meter aggregation, and in what form should the communication take. CUB/EDF states that Staff's proposed amendments will require utilities to consider each proposal separately and on each proposal's individual merits. The amendments also require a written explanation when a proposal for meter aggregation is denied. The explanation will be filed with the Commission and provided to the requester within 30 days. The amendments will further prevent utilities from categorically rejecting meter aggregation, and will help inform the Commission and stakeholders such as CUB/EDF as to what additional improvements or changes may be necessary to net metering programs. CUB/EDF asserts that publicly posting these explanations with the Commission will enable interested customers and developers to access information that will assist them in making informed decisions regarding proposed projects.

In CUB/EDF's view, it is undisputed that the Commission has general authority over any matters covered by the Act, over acts relating to public utilities, and the authority to direct public utilities to do what is reasonably necessary to effect a legislative objective. ComEd's position is that it may simply inform anyone who inquires that it does not allow meter aggregation, thereby meeting its statutory obligation to "consider" by ignoring applications, requests and inquiries. According to CUB/EDF, such an interpretation is contrary to the Act and renders part of the net metering law meaningless. There are a range of examples in the statue for consideration, not a general directive to consider meter aggregation on a one-time basis and without regard to any actual application. Furthermore, CUB/EDF states that such an interpretation is inconsistent with the policies of net metering in general to promote investment in renewable resources and stimulate economic growth.

CUB/EDF points out that the Act allows meter aggregation where the generation source is not on the customer's premises. Section (l)(1) refers to "properties" in the plural, not premises, and makes clear that properties can be owned or leased by multiple customers. Section (l)(2) specifically gives the example of a rooftop solar resource shared by multiple customers. CUB/EDF argue that there would be no need to include specific examples if the General Assembly did not intend for electric suppliers to consider

a range of meter aggregation scenarios. In CUB/EDF's view, this prevents suppliers from making a blanket decision to refuse a grant of meter aggregation.

CUB/EDF concludes that the Commission has the responsibility, therefore, to ensure that the goals of the General Assembly are met. The Commission not only has the authority and power necessary to supervise all public utilities, but has active functions of policymaking and supervision. According to CUB/EDF, this means the Commission may not only initiate hearings on its own motion, but it also has wide discretion to shape proceedings brought by others. The Commission has wide authority to consider public utilities' actions beyond any specific conduct questioned in a docket, even a rate case filed under Section 9-201.

E. Elevate Energy

Elevate Energy generally supports the new Section 465.90. To Elevate Energy's knowledge, Illinois utilities have never specified why they have declined to adopt meter aggregation. Stakeholders have simply been told that it has been "considered" and ruled out without any explanation of the process or standards considered. (Docket 15-0156, ComEd Motion to Dismiss at 5). Clearly, Elevate Energy argues, if the General Assembly mandated that utilities specifically consider meter aggregation, they recognized its potential importance. Elevate Energy asserts that utilities should be subject to some form of review in meeting this requirement and Staff's proposed written report shows significant progress over the status quo.

Elevate Energy states that net metering is often cited as one of the most successful policies encouraging customers to invest in renewable energy, because it is both simple and provides direct, tangible benefits in the form of lower electricity bills. Many market segments are emerging as standout opportunities for growth, including low-income populations, households in multifamily buildings, renters, homes, businesses, and non-profit community centers with physical restrictions, such as shaded or insufficient roofs. Community-owned solar expands solar energy access to these previously unobtainable market segments; however, Elevate Energy states it is only viable with the practice of meter aggregation. Elevate Energy notes that a recent National Renewable Energy Laboratory report predicts that community solar could constitute 3.1-6.3 GW of installed capacity from 2015-2020, representing an additional $4.7-$9.3 billion of cumulative investment. In Elevate Energy's opinion, Illinois should be an active participant in this expanding market in order to share in the economic benefits it offers.

Elevate Energy did not comment on the proposed changes to Section 465.90 proffered by CUB/EDF.

F. City

The City argues that the addition of Section 465.90 is required to give meaning to the legislative language of net metering in Section 16-107.5(l) of the Act. Because such

projects offer significant economic and environmental benefits to city residents, the City supports clarification of consumers' ability to propose and construct community net metering projects now. The City insists that the Commission must, at a minimum, include Staff's proposed Section 465.90 language in its final revisions; however, the City recommends adopting the modifications of CUB/EDF.

Utilities have argued since the initial net metering Docket, 07-0483, that Section 16-107.5(l) requires a utility to declare only that it has considered as a matter of policy, and unconnected to any specific proposal, whether to allow meter aggregation. The City argues that this wholly discretionary interpretation is incorrect. The City states that no language points to either the more general or the more specific interpretation. In the City's opinion, the absence of a clarifying Commission interpretation has led to a situation where ComEd and Ameren have interpreted the Section to stymie all initiatives, using technology that the General Assembly specifically named as one means of implementing the net metering policy it enacted. The City agrees that the Commission cannot interpret a statutory provision contrary to its plain meaning; however, the City argues that the plain meaning, if there is one, is precisely the opposite of ComEd's preferred interpretation. The City reasons that, where a provision is ambiguous, the Commission is obliged to interpret it in order to carry out the legislature's directives and policy.

The City states that the Commission's interpretation of net metering provisions must be read in harmony with the Act in its entirety. Under the Act, the City argues, Commission oversight requires it to ensure that ComEd and Ameren are using regulated utility investment in a prudent and reasonable manner to provide "adequate, efficient, environmentally safe and least-cost public utility services." (220 ILCS 5/1-102; 228 ILCS 5/8-401). The City asserts that the utilities' refusal to consider specific meter aggregation proposals means it is impossible for the Commission to ensure that regulated utilities are providing efficient, environmentally safe, and least-cost services.

The City further points out that there is no substantive documentation to show that utilities have engaged in even general consideration of meter aggregation. To advance renewable energy and meter aggregation policies, the Commission must give clear meaning to Section 16-107.5(l).

The City argues that Section 465.90 defines the minimum that is reasonably necessary to fully accomplish the net metering objectives of Section 16-107.5(a). For many Illinois residents and businesses, particularly in Chicago, net metering can only be feasibly provided through meter aggregation. Meter aggregation is necessary to construct community solar projects on the City's thousands of multi-family residential buildings, commercial multi-tenant buildings, and brownfields. The City points out that, despite the legislature's net metering expansion directives, years after enactment of the statute there is no meter aggregation in Illinois.

The City further argues that ComEd's Initial Comments err in claiming that it is unreasonable for the Commission to require more procedural review of specific meter

aggregation proposals than when suppliers consider other net metering proposals. Certain net metering proposals, however, are simply required; suppliers have no discretion. Yet, the City states, meter aggregation was not mandated immediately and almost unconditionally, as it was for many residential customers. (See 220 ILCS 516-107.5(d)).

The City asserts that, to ensure the Commission is informed about the consideration process, and to ensure equitable treatment of customers making the proposals, it is reasonable for the Commission to establish a process for that consideration. The City claims an important element of that process is the requirement that, where meter aggregation is denied, the supplier explain in writing its reasoning. In that way, the Commission, the applicant, and the public can understand the criteria for successful implementation of legislative policy and the analysis undertaken prior to denying the proposal. In addition, the Commission's rate oversight duties under the Act require it to ensure that regulated utility investments are used in a prudent and reasonable manner, and provide "adequate, efficient, reliable, environmentally safe and least-cost public utility services." (220 ILCS 5/9-101, 9-201(c), 1-102). Similarly, the Commission has the authority to inform itself and to report to the General Assembly about "new and prospective [utility] technologies," especially disruptive technologies such as community solar. (220 ILCS 5/4-304(2)). The City argues that, without information that would be available to the Commission through written considerations of specific proposals under Section 465.90, the Commission cannot ensure that new technology investments that enable net metering are used and are useful to consumers, including those for whom meter aggregation is a necessary gateway to net metering benefits.

CUB/EDF proposes certain modest additions to Section 465.90. (CUB/EDF Init. Comments at 5-6). The City supports CUB/EDF's additions. In the City's opinion, the proposed changes help to ensure simple, reasonable procedural steps for submitting a meter aggregation proposal to an electricity supplier, and likewise ensure that the electricity supplier's consideration occurs efficiently and is meaningful. The City urges the Commission to adopt Section 465.90, as modified by CUB/EDF in its Initial Comments.

G. ELPC

ELPC strongly supports the Commission's proposed amendments to Part 465 net metering rules, and recommends that they be adopted in their entirety.

Section 16-107.5(l) of the net metering statute requires electricity providers to "consider" whether to allow meter aggregation for the purpose of net metering. For the purposes of this section, "meter aggregation" would allow multiple customers to effectively net meter their utility bills on a pro-rata basis for the type of shared facilities described in the statute. ELPC states that the National Renewable Energy Lab has estimated that nearly 50% of residential and business customers are currently unable to host a solar PV system because they are renters, lack sufficient roof space, or live in multi-unit housing.

ELPC states that shared renewable projects facilitated by meter aggregation can help promote fairness and access to renewable energy markets for these customers, who often live in dense urban areas and are frequently lower income customers.

By including Section 16-107.5(l) in the net metering statute, ELPC argues that the General Assembly clearly intended that good faith consideration of meter aggregation projects take place. However, ELPC is not aware of any meter aggregation projects that have been proposed or "considered" in Illinois since the net metering statute was adopted in 1997. It is ELPC's understanding that developers are reluctant to propose meter aggregation projects, because there is no precedent and no process to guide the utilities' consideration of them. The Commission's proposed language will address that uncertainty by creating a standardized review process for meter aggregation proposals. Furthermore, ELPC states that the requirement for a written statement of reasons will also help project developers discover how to better tailor their applications and correct any problems that arise.

In ELPC's opinion, the standardized process proposed by Section 465.90 will help further the General Assembly's intent that meter aggregation be fairly considered by electricity providers, and will help promote equity and the overall legislative goals of the net metering statute.

ComEd opposes Section 465.90, arguing that the Commission's meter aggregation procedures conflict with Section 16-107.5(l) of the Act. ELPC argues that ComEd is not correct. It is a long-settled principle of administrative law that agencies must have the authority and flexibility to fill gaps and reasonably implement commands of the legislature through rules. (See *Chevron U.S.A. v. NRDC*, 467 U.S. 837, 843 (1984) (quoting *Morton v. Ruiz*, 415 U.S. 199, 231 (1974)); see also, *Business & Professional People for Public Interest v. Illinois Commerce Com*., 146 Ill. 2d 175, 206 (Ill. 1991)("*BPI II*")). According to ELPC, the Commission's proposal to require a case-by-case consideration of meter aggregation fills a gap left by the utilities' failure to consider any meter aggregation projects in Illinois since the legislature adopted Section 16-107.5. A determination that the legislature intended something more than a one-time "global" consideration is consistent with the statute and is entitled to deference, particularly in light of the net metering statute's overall goals to "encourage private investment in renewable energy resources, stimulate economic growth, enhance the continued diversification of Illinois' energy resource mix, and protect the Illinois environment." (220 ILCS 5/16-107.5(a)).

ELPC disagrees with ComEd's argument that the more "straightforward" reading of Section 16-107.5 calls for a one-time, global review, rather than a case-by-case review, arguing that "[a] plain reading of Section 16- 107.5(l) only requires an electricity supplier to 'consider' – *in the singular* – whether to allow meter aggregation to eligible customers." (ComEd Init. Comments at 7; emphasis added). ELPC states that, because the statute applies to multiple electricity suppliers, it is basic English grammar to use the singular verb "consider" in the statute. It would not have made sense, for example, for the statute

to use a plural verb: "each electricity provider shall *considers* whether to allow meter aggregation for the purposes of net metering…." (220 ILCS 5/16-107.5(l)).

Instead, ELPC states, the Legislature required utilities to "consider" meter aggregation in various (plural) scenarios: "(1) properties owned or leased by multiple customers …(2) individual units, apartments, or properties owned or leased by multiple customers …" (*Id.)*(emphasis added). ELPC argues that, if the legislature intended only a one-time, global consideration, it is unlikely the legislature would have provided these multiple detailed examples to help guide the review. In ELPC's opinion, a more reasonable interpretation is that the legislature intended a case-by-case review. In any case, the Commission has the authority and discretion to resolve any ambiguity on this point to effectuate the purposes of the statute. (*BPI II*, 146 Ill. 2d at 208).

ELPC further states that statutes should also be interpreted to avoid absurd results. (*People v. Hanna*, 207 Ill. 2d 486, 498 (2003)). ELPC argues that it cannot have been the legislature's intent that no consideration of meter aggregation has taken place over the past eight years, that no written record of any utilities' decisions not to offer meter aggregation exists, that no customer has any idea what they might do differently to develop a more acceptable meter aggregation proposal, and that the Commission lacks the ability to do anything about this.

The ELPC further argues that ComEd's position, that the legislature just intended utilities to do some internal thinking about meter aggregation without any response to their customers, is not reasonable and should be rejected. As ELPC notes, ComEd also argues that the proposed rule is "unreasonable" because it "requires greater review for a meter aggregation application than the rules currently require for review of other applications for net metering." (ComEd Init. Comments at 8). In reality, ELPC argues, the statute and the proposed rule provide the utility with *more discretion* with respect to meter aggregation than other applications for net metering. In ELPC's view, it is not clear why this is "unreasonable." Moreover, ELPC maintains that RESA's argument that this is "burdensome" should be rejected out of hand. (RESA Init. Comments at 3).

Section 465.90 simply requires electricity providers to "provide an explanation of its decision, based on the facts and circumstances presented in the application, in a written document." According to ELPC, it is a matter of common courtesy, and is not "burdensome," to provide applicants with a response to their proposals, particularly since meter aggregation is very important to renters, low-income households, and other traditionally disadvantaged customer groups. (*See* Elevate Energy Init. Comments at 2; the City Init. Comments at 4).

Finally, ELPC argues that ComEd's concerns that net metering is "unfair" and would lead to "subsidization" is not supported by any actual data, ignores the many benefits of distributed generation, ignores the structural protection already provided by the Illinois net metering statute, and ignores the extremely low penetration of net metering customers currently on ComEd's system. The Illinois net metering statute includes a 5%

program cap to keep the overall program size reasonable. (220 ILCS 5/16-107.5(j)). This program cap, which applies equally to traditional net metering and meter aggregation, was raised from 1% to 5% in 2011 as part of Public Act 097-0616, commonly known as the "Smart Grid" bill (SB 1652), in part because ComEd and other stakeholders claimed that investments in Advanced Metering Infrastructure (AMI) would help deliver customer benefits like distributed generation and energy efficiency.

ELPC points out that, over the past four years since SB1652 was adopted, ComEd has not even reached a 1% level of net metering penetration. In fact, ELPC argues that ComEd's latest net metering report indicates less than one tenth of one percent (0.096%) net metering capacity to peak demand supplied. In ELPC's opinion, it is unreasonable for ComEd to oppose the Commission's rule in this docket while at the same time representing to the legislature and to the Commission that it will use AMI investments to help deliver distributed generation and other customer benefits.

Moreover, ELPC states that ComEd's "subsidization" rationale for refusing to consider meter aggregation ignores the legislature purposes stated in Section 16-107.5(a) of the Act and the many additional benefits of distributed generation. ELPC points to independent studies done in many states which show that the benefits of net metering frequently outweigh the costs.

ELPC cites a recent report that profiled 11 recent solar valuation studies and concluded that individuals and businesses that decide to "go solar" generally deliver greater benefits to the grid and society than they receive through net metering.[1] ELPC argues that, contrary to ComEd's argument, it is likely that net metering customers are actually subsidizing the utilities' other customers, not the other way around. ELPC concludes that the Commission should give no weight to ComEd's unsupported arguments that net metering is "unfair."

ComEd also suggests that electric utilities should not be required to provide delivery credits to customers in cases where a RES decides to offer meter aggregation to its customers. (ComEd Init. Comments. at 9). ELPC disagrees. According to ELPC, it is important to maintain coordination between the RES and utility so that meter aggregation customers receive bill credits for both their electricity supply and delivery services. To the extent ComEd is concerned about the "fairness" of meter aggregation, this concern is addressed by the fact that the net metering statute is "capped" at 5% of the utilities' peak demand supplied.

H. ICEA

With regard to meter aggregation, ICEA is not opposed to formal programs of meter aggregation run by utilities or RES-initiated meter aggregation. However, ICEA's

[1] Environment America, *Shining Rewards: The Value of Rooftop Solar for Consumers and Society* (June 2015), available at http://www.environmentamerica.org/reports/amc/shining-rewards.

support is conditioned on the terms of the meter aggregation being competitively neutral, and involving safeguards against an Integrated Distribution Company (as defined in Part 452 of the Commission's Rules) owning or operating generation. "Competitive neutrality" is really a multifaceted inquiry, which would include the following components:

- If a RES customer participates in a meter aggregation arrangement, is the customer still eligible for RES service?

- If a customer whose meter is aggregated wishes to switch RES, what is the process to maintain all of the customer's rights, obligations, and credits?

- May the RES still use utility services such as purchase of receivables for a customer in a meter aggregation arrangement whose account is otherwise eligible?

ICEA is concerned that if meter aggregation is addressed on an *ad hoc* basis, there could be significant customer confusion and the potential for some customers being unknowingly penalized.

I. MidAmerican

MidAmerican notes that CUB/EDF proposes additional language to Staff's added requirements for electricity suppliers to consider meter aggregation. CUB/EDF recommends adding two new sections outlining an application process and website procedures, along with a statement obligating electricity providers to comply with the law. MidAmerican argues that these proposed changes are unreasonable, burdensome and unnecessary. Moreover, as ComEd points out, Staff's proposed language already imposes reporting requirements not mandated by the statute. Therefore, MidAmerican argues, to expand the requirements even further as CUB/EDF suggests, does not effectuate the statutory intent, but rather places unreasonable operational burdens on electricity suppliers. Consequently, MidAmerican concludes that the Commission should reject CUB/EDF's changes and adopt Staff's proposed language. To the extent that the Commission finds it reasonable to make changes to Staff's proposed language, MidAmerican does not object to ComEd's changes to Section 465.90, or in the alternative, ComEd's changes to Section 465.90(b).

J. Ameren

Staff's proposed language would require an electric supplier to explain why it would not allow meter aggregation for net metering. The AG, CUB/EDF and ELPC have identified the need for utilities to explain in writing why they reject meter aggregation proposals, stating that such communication does not occur. Ameren argues that the current Section 465.35(f) requires precisely such communication:

> Electricity providers shall provide applicants with a single point mailing address for all net metering applications to which a completed application must be sent. Electricity providers shall date-stamp each completed application upon receipt and completeness determination. Upon receipt of a completed and executed application, electricity providers shall, within 10 business days after receipt of an application or completion of an open enrollment period, notify an applicant as to whether it is authorized to participate in the electricity provider's net metering program. *An electricity provider shall state, in writing, its reasons for denying a prospective net metering customer's application.*

(Section 465.35(f); emphasis added).

In response to CUB/EDF's proposed language to Section 465.90(b) requiring electric providers to furnish a single point of contact for customers who apply for meter aggregation, and that electric providers provide an application form for net metering on their websites, Ameren states that the current Section 465.35(f) already provides a single point of contact for all net metering purposes:

> Electricity providers shall provide applicants with a single point mailing address for all net metering applications to which a completed application must be sent.

(Section 465.35(f)). Accordingly, Ameren asserts that CUB/EDF's proposed language is unnecessary and should not be included in the final version of the rule.

CUB/EDF also proposes language to Section 465.90 that prohibits electric suppliers, when considering an application for meter aggregation, from denying the application in a way that violates 83 Ill. Adm. Code 466 or Section 107.5 of the Act. Ameren points out that the current Section 465.35(f) already includes this language:

> An electricity provider shall not deny a prospective net metering customer's application in a manner that violates this Part, 83 Ill. Adm. Code 466 or Section 16-107.5 of the Act.

(Section 465.35(f)). Ameren argues that the proposed language is redundant and should not be included in the final version of the rule.

Regarding the City's and ELPC's position that they are not aware that utilities have considered meter aggregation, Ameren argues that these assertions are disingenuous. Ameren communicates directly with customers regarding net metering and is not currently required or allowed to disclose whether an application was filed or what its response was.

Finally, ComEd proposes language to Section 465.90 recognizing that, if a RES offers meter aggregation to its customers in the electric utility's service territory, the electric utility is not obligated to change its billing system to provide a delivery service credit to the RES' meter aggregation customers or to compute taxes, fees, and utility's delivery service charges. Ameren supports these proposed modifications and agrees that it is important to prevent a RES in its service territory from affecting the utility's operations. The provision should also recognize that a customer remains responsible for all taxes, fees, and utility delivery service charges that would otherwise be applicable to electricity delivered to customers.

K. Staff

Staff states that RESA argues this Section "goes far beyond the requirements of Section 16-107.5(l)…[and that t]here has been no justification for the additional burdens regarding meter aggregation created by proposed Section 465.90." (RESA Init. Comments at 2-3). ComEd similarly argues the Draft Rule propounded in the Initiating Order is "inconsistent" with, and "imposes obligations that are not required under, Section 16-107.5(l)". (ComEd Init. Comments at 5-6). Ultimately, both RESA and ComEd argue that the entire Section should be omitted from the Draft Rule. (*Id.* at 3). Staff disagrees.

Staff states that the Draft Rule is based on a reasonable interpretation of the statute and provides the necessary details of the statutory requirement. (*Lake County Board of Review v. The Property Tax Appeal Board of the State of Illinois*, 119 Ill. 2d 419, 427 (1988); *Dept. of Finance v. Cohen*, 369 Ill. 510 (1938); *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc*., 467 U.S. 837, 844 (1984)). It also details the application of the principles established by the statute, based upon a reasonable interpretation of the statutory language. Section 16-107.5(l) requires all electricity providers to consider meter aggregation. Staff states that the Draft Rule provides guidance as to the Commission's reasonable interpretation of a detailed application of the statutory requirement, and should remain in the Commission's Draft Rule as drafted. (*Lake County Board of Review v Property Tax Appeal Board*, 119 Ill. 2d, 419, 427). Staff asserts that Section 465.90 merely requires electricity providers to consider each application for meter aggregation separately, make a determination for each case based on the particular facts and circumstances, and to provide an explanation of its determination to both the applicant and the Commission.

ComEd also argues that the word "consider," which appears in Section 16-107.5(l), should be read in the singular. (ComEd Init. Comments at 7). Staff respectfully observes that the singular and plural forms of the verb "consider" are the same. (*See* "consider," *Merriam-Webster.*com, July 2015). Therefore, as used, the word "consider" is ambiguous in the Act. (5/16-107.5(l)). Staff states that the Commission may reasonably interpret the word "consider" to be either the singular or plural form, and the courts will uphold any reasonable interpretation of an ambiguous statute by an administrative agency. (*Chevron* at 843). Staff argues that the Draft Rule reasonably interprets the term in the plural form, and Staff recommends that the Commission continue doing so.

Finally, ComEd argues that "the same rules" should apply to all net metering applicants, therefore, the Commission should not require an explanation of why an application for meter aggregation was denied. (ComEd Init. Comments at 8). First, according to Staff, ComEd's premise that an entity may simply deny net metering for non-meter aggregations without an explanation is incorrect. The statute and Draft Rule are very clear that electricity providers *must* allow net metering for eligible customers as long as the 5% cap has not been met. (*See, generally,* Section 5/16-107.5).

To the extent net metering was denied, Staff states that the electricity provider would have to have made specific considerations, which the Commission could verify in making its determination. (*See id.).* According to Staff, this is not the case for meter aggregation. (Section 5/16-107.5(l)). Moreover, Staff asserts that the General Assembly has indicated the Commission should treat meter aggregation applications differently than other types of net metering applications. (*See id.).* The statute is clear that the definition of eligible customers in Section (b)(i) must not be read to limit the requirements of Section (l). (*Id.)*; "notwithstanding the definition of 'eligible customer' in item (i) of Section (b) of this Section." Additionally, Section (l) makes it clear that a different group of customers are considered to be "eligible customers" for purposes of meter aggregation. (*Id.);* "for the types of eligible customers described in this Section." Therefore, Staff argues that the Commission should continue to treat this different type of net metering differently, and to the extent the Draft Rule does that, there is nothing improper in doing so.

CUB/EDF requests that the explanations contemplated under this Section be posted publicly by the Commission and makes certain proposed language changes to the Section. (CUB/EDF Init. Comments at 5-6). First, Staff recommends that, should the Commission determine that these explanations be posted publicly, it should be done by the electricity suppliers making the decisions themselves. This would accomplish the CUB/EDF purpose without involving the Commission, which would only be unnecessarily inserted into the electricity suppliers' process at added cost to the Commission, should the CUB/EDF proposal be adopted.

Second, CUB/EDF suggests that the term "electricity supplier" should be changed to "electricity provider" throughout this Section. (*Id.).* "(E)lectricity supplier" refers to the entity actually supplying the customer with electricity, while "electricity provider" is a broad term that refers to both the entity supplying electricity *and* the entity delivering the electricity; these terms could refer to one single entity or two separate entities, based on the specific customer's situation. (*See* Draft Rule at 2). In Staff's opinion, it would be inappropriate for an entity merely delivering electricity to make the determination contemplated in Section 465.90. As such, CUB/EDF's proposed modification should be rejected. Staff argues that this is true despite the statutory language in Section 16/107.5(l), which refers to "electricity provider." If both the entity delivering and the entity supplying electricity were to make a determination pursuant to this Section, then there could be customers for whom meter aggregation is permissible for supply purposes, but not delivery, and vice versa. Staff asserts that this would lead to an absurd result, as customers must have meter aggregation approved for both delivery and supply for meter

aggregation to take place. Staff notes that statutes must be interpreted to avoid impractical or absurd results. (*Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2014 IL App (1st) 132011, ¶ 26, 16 N.E.3d 801, 809-10, appeal denied, 21 N.E.3d 713 (Ill. 2014), citing *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 21, 354 Ill. Dec. 825, 958 N.E.2d 1021). Thus, the possibility that different entities could make different determinations, one determination effectively rendering the other meaningless, should be avoided.

Similarly, ComEd argues that the rule should recognize that a supplier's decision to allow meter aggregation should not require a delivery service provider to provide delivery service credit. (ComEd Init. Comments at 9). ELPC points out in its Initial Comments that "ComEd has responded [to net metering inquiries] with, since they are not supply[ing] the power, they are not the company responsible for setting up the new metering." (ELPC Init. Comments, Attach. 3 at 3). While ComEd has not made this argument in this Docket, Staff states that the logical conclusion of this statement is that an electric utility that only provides delivery service to a customer is not supplying the power, and therefore the electric utility should have no responsibility or authority to determine the metering of the customer, including whether the customer may participate in meter aggregation. (*See id).* Additionally, Staff argues that an electric utility should not be able to disclose delivery service credits, or circumvent the otherwise applicable statutory and regulatory guidelines as to taxes, fees, and delivery service charges, as ComEd proposes to do. As such, Staff concludes the Commission should maintain this Section as originally drafted.

L. Commission Analysis and Conclusion

RESA and ComEd both object to Staff's proposed Section 465.90, arguing that it requires far more than is contemplated by Section 16-107.5(l) of the Act. Each party disagrees with the provision of the statute that requires all applications to be separately considered, and that denials have to be documented in a timely manner. (RESA Init. Comments at 2; Reply at 5; ComEd Init. Comments at 6; Reply at 4). ComEd argues that it does not believe it is necessary to provide a response to each meter aggregation application, in light of the fact that its current policy does not allow such services. (ComEd Init. Comments at 8). ComEd's position is that "consider" under the plain language of the statute is singular, in contrast to the proposed rule that contemplates multiple, unique applications requiring the electricity supplier to file timely reports detailing the reason for each denial. (ComEd Reply Comments at 7).

Section 16-107.5(l) brings into the net metering fold those customers who do not own or operate a solar, wind or other eligible renewable electrical generating facility, do not therefore fit the description of eligible customer in Section 16-107.5(b)(i), and consequently do not share the benefits of net metering. To that end, meter aggregation pursuant to Section 16-107.5(l) includes "properties owned or leased by multiple customers that contribute to the operation of an eligible renewable electrical generating facility", and "individual units, apartments, or properties owned or leased by multiple

customers and collectively served by a common eligible renewable electrical generating facility." (Section 16-107.5(l)(1), (2)). This section clearly contemplates applications from a wide variety of multi-unit dwellings.

ComEd's objection to meter aggregation stems from what it claims is its inability to recover the full cost of delivery to these multi-unit buildings, obligating it to impose higher costs on its other customers, causing them to subsidize the meter aggregation customers. (ComEd Init. Comments at 8). ComEd's objection is well taken, but it cannot realistically say that delivery costs would be the same for each multi-unit net metering applicant. These dwellings would not be of uniform size and it is a virtual certainty that delivery costs will vary from structure to structure. It is just as plausible as not to believe that ComEd could, or would, recover its delivery costs from some of these multi-unit dwellings. Moreover, ComEd failed to offer any specific data with regard to what portion of its costs it currently cannot recover or from what types of buildings. Accordingly, it is unclear to what extent meter aggregation customers would be subsidized by other customers. Furthermore, it is unclear whether any subsidization outweighs the potential benefits of meter aggregation.

This is all the more reason for ComEd to consider each meter aggregation application separately. To allow ComEd, or any provider of electricity, to essentially ignore these applications based upon a blanket policy of disallowing meter aggregation, without explanation, distorts the purpose of Section 16-107.5(l) and is fundamentally unfair to customers. Over time, the explanations for denial of meter aggregation provided by the electric supplier will aid the Commission and the legislature with the data necessary to address and correct whatever deficiencies may be identified in the net metering/meter aggregation program.

For these reasons, the Commission finds that Section 16-107.5(l) contemplates separate consideration of meter aggregation applications, and Section 465.90(a) does not, therefore, exceed its requirements.

The issue raised by Staff with regard to the revisions proposed by CUB/EDF and ComEd is that changing "electricity supplier" to "electricity provider" would include both a supplier and a deliverer of electricity, whereas an "electricity supplier" means supplier only. In order for meter aggregation to occur, both supply and delivery have to be aggregated. (Staff Reply Comments at 13). Insofar as it is a utility's policy not to allow meter aggregation for delivery of electricity, meter aggregation would not be available to customers living in multi-unit housing. Rendering meter aggregation unavailable to these customers would possibly bar a significant number of them from the benefits of net metering altogether, which runs counter to the overall concept of the program. For that reason, the Commission rejects the proposal of both CUB/EDF and ComEd to change "electricity supplier" to "electricity provider."

Moreover, the Commission, by rejecting the change from "electricity supplier" to "electricity provider," recognizes that the supplier is the party that negotiated the contract

with the customer and is the source of the customer's power. It should not be within the purview of the entity not supplying the electricity to frustrate the purpose of the net metering program by disallowing meter aggregation. The Commission agrees with Staff's proposal that a determination whether to allow meter aggregation should be left exclusively to electricity suppliers.

Further, the Commission finds that Section 465.90(b) is complementary to Section 465.90(a). Requiring adherence to the terms of 465.90(b) will furnish documentation that each entity has given separate consideration to applications for meter aggregation, as required by Section 465.90(a) and Section 16-107.5(l). For that reason, the Commission finds that Section 465.90(b) does not exceed the requirements of Section 16-107.5(l).

For the same reasons as discussed above, the Commission finds the first sentence of ComEd's proposed Section 465.90(a) to be inadequate. Merely stating that "(E)lectricity providers shall consider meter aggregation" simply echoes the general provision in Section 16-107.5(l), and does not clarify whether such consideration is on a general basis or for each application. (ComEd Reply Comments, App. at 15).

ComEd's second sentence in Section 465.90(b) conflicts with the intent of Section 16-107.5(l) to legitimately consider meter aggregation. This sentence would allow the utility (the deliverer) to deny meter aggregation on a general basis, which in turn could effectively prevent any meter aggregation. Contrary to ComEd's claim that Staff's proposed Section 465.90 fails to safeguard the "statutory right of each utility and RES to decide for itself whether it will offer meter aggregation…" the Commission has found above that the "electricity supplier" is the proper entity to determine whether to allow meter aggregation. This covers the utility if it is the supplier. (ComEd Reply Comments at 9).

The first sentence of ComEd's proposed Section 465.90(b) attempts to exempt the utility from providing delivery service credits in cases where the utility did not offer meter aggregation to customers in its service area, but an ARES did. This sentence, however, is in direct conflict with Staff's proposed Sections 465.50(a)(3), (b)(3) and (c)(3). Each of these sections require the electric utility to provide the delivery credit to the customer, where the electric utility is not the electricity supplier. There is no exemption provided for instances where meter aggregation is offered in a utility's service area by an entity other than the utility.

Furthermore, the second sentence of ComEd's proposed Section 465.90(b) is unnecessary, because Sections 465.50(a)(5), (b)(4) and (c)(5) already impose upon the customer responsibility for all taxes, fees, and utility delivery charges applicable to the net amount of electricity used, and Section 465.50(d)(5) imposes the same charges on customers for the gross amount of electricity used.

With regard to CUB/EDF's proposed changes, the Commission has already rejected changing "electricity supplier" to "electricity provider". (CUB/EDF Init. Comments at 5-6, proposed §465.90(a)). Regarding CUB/EDF's proposed Section 465.90(b), the

Commission finds that it is the customer's obligation to inquire into the availability of meter aggregation. Information concerning meter aggregation can take whatever form the individual electricity supplier deems expedient. As long as the information is complete, readily available, and the application process is not unduly burdensome to the applicant, the process does not need to be offered in a standardized format.

The Commission finds that CUB/EDF's proposed Section 465.90(c) is also unnecessary. Requiring an electricity supplier to document its reason for denying a meter aggregation request under Staff's proposed Section 465.90(b) would sufficiently identify whether the electricity supplier acted outside the requirements of Part 466 or Section 16-107.5 of the Act.

The Commission disagrees with Ameren that current Section 465.35(f) already requires a written explanation for the denial of a meter aggregation request. (Ameren Reply Comments at 2). What current Section 465.35(f) and proposed Section 465.35(e) require is a written explanation for denial of net metering. Neither section specifically addresses meter aggregation. In an effort to reduce ambiguity, the Commission finds that Staff's proposed Section 465.90(b) is reasonable.

For the foregoing reasons, the Commission finds that Staff's proposed Section 465.90 is appropriate and necessary and should be adopted without change.

XI. FINDINGS AND ORDERING PARAGRAPHS

With the passage of the first notice period, which must measure at least 45 days, the Commission may now submit the second notice of the proposed amendments to the Joint Committee on Administrative Rules. The Commission, having reviewed the entire record herein and being fully advised in the premises, is of the opinion and finds that:

(1) the Commission has jurisdiction over the subject matter of this proceeding;

(2) the recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact; and

(3) the proposed rulemaking amending 83 Ill. Adm. Code 465, as reflected in the Appendix to this Order, should be submitted to the Joint Committee on Administrative Rules pursuant to Section 5-40(c) of the Illinois Administrative Procedure Act to begin the second notice period.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the proposed rulemaking amending 83 Ill. Adm. Code 465, as reflected in the Appendix to this Order, be submitted to the Joint Committee on Administrative Rules pursuant to Section 5-40(c) of the Illinois Administrative Procedure Act to begin the second notice period.

IT IS FURTHER ORDERED that this Order is not final; it is not subject to the Administrative Review Law.

By Order of the Commission this 12th day of November, 2015.

(SIGNED) BRIEN SHEAHAN

CHAIRMAN