

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
	:	
Verified Petition for Declaratory Ruling	:	20-0686
pursuant to Section 200.220 of the	:	
Illinois Commerce Commission’s Rules	:	
of Practice.	:	

ORDER

By the Commission:

I. INTRODUCTION

On September 9, 2020, Commonwealth Edison Company (“ComEd”) filed a Verified Petition for Declaratory Ruling (“Petition”) with the Illinois Commerce Commission (“Commission”) pursuant to Section 200.220 of the Commission’s Rules of Practice, 83 Ill. Adm. Code 200.220. Section 200.220 is authorized by Section 10-101 of the Public Utilities Act (the “PUA”), 220 ILCS 5/10-101. ComEd’s Petition requests that the Commission issue a declaratory ruling on a live controversy under Section 16-108.6 of the PUA, 220 ILCS 5/16-108.6 (“Provisions relating to Smart Grid Advanced Metering Infrastructure Deployment Plan”). More specifically, ComEd requests that the Commission declare that ComEd has met the advanced metering infrastructure (“AMI”) meter implementation requirements of Section 16-108.6 of the PUA if ComEd, as a participating utility, complies with its Commission-approved Revised Smart Grid Advanced Metering Infrastructure Deployment Plan (the “AMI Plan”), without any material deficiency in implementation, through the end of the implementation period.

No objections or other statements regarding the request for a declaratory ruling were filed. No party, including Staff of the Commission, filed any response pursuant to Section 200.220(e). No petitions to intervene were filed.

II. APPLICABLE LAW

Section 200.220(a) states in part: “When requested by the affected person, the Commission may in its sole discretion issue a declaratory ruling with respect to: 1) the applicability of any statutory provision enforced by the Commission or of any Commission rule to the person(s) requesting a declaratory ruling....” 83 Ill. Adm. Code 100.220(a).

Courts and the Commission have held that the Commission may properly grant declaratory relief in circumstances such as the Petition describes, and, in particular, that a question of whether the law authorizes or bars a specific utility action is within the scope of the Commission’s jurisdiction to issue a declaratory ruling on the law’s applicability to a person and proposed action. *E.g., MidAmerican Energy Corp. v. Ill. Commerce Comm’n*, 367 Ill. App. 3d, 163, 169 (3d Dist. 2006) (finding Commission Order properly

considered a declaratory ruling); *In re Integrys Energy Serv.*, Docket No. 09-0165, Order at 7-9 (Nov. 12, 2009) (a declaratory ruling can explore how a provision of law applies to a proposed action). See also *In re Cent. Ill. Pub. Serv. Co.*, Docket No. 06-0338, Order (Apr. 18, 2007); *In re ISG Hennepin, Inc.*, Docket No. 02-0549, Order (Oct. 1, 2002).

III. PETITION FOR DECLARATORY RULING

ComEd is a corporation organized and existing under the laws of the State of Illinois, with its principal office in Chicago, Illinois. ComEd provides electric delivery services and, in some cases, electric power and energy to approximately 4 million customers in the northern portion of Illinois. ComEd is a public utility within the meaning of Section 3-105 of the PUA, 220 ILCS 5/3-105, and an electric utility within the meaning of Section 16-102 of the PUA, 220 ILCS 5/16-102.

Section 16-108.6(c), (c)(3), and (c)(4) of the PUA address the AMI Plan, stating as follows:

After consultation with the Smart Grid Advisory Council, each participating utility shall file a Smart Grid Advanced Metering Infrastructure Deployment Plan (“AMI Plan”) with the Commission within 180 days after the effective date of this amendatory Act of the 97th General Assembly [P.A. 97-616] or by November 1, 2011, whichever is later, or in the case of a combination utility as defined in Section 16-108.5, by April 1, 2012, provided that a participating utility shall not file its plan until the evaluation report on the Pilot Program described in this subsection (c) is issued. The AMI Plan shall provide for investment over a 10-year period that is sufficient to implement the AMI Plan across its entire service territory in a manner that is consistent with subsection (b) of Section 16 108.5 of this Act. The AMI Plan shall contain:

(3) a deployment schedule and plan that includes deployment of AMI to all customers for a participating utility other than a combination utility...;

(4) annual milestones and metrics for the purpose of measuring the success of the AMI Plan in enabling Smart Grid functions; and enhancing consumer benefits from Smart Grid AMI[.]

220 ILCS 5/16-108.6(c), (c)(3), (c)(4).

Section 16-108.6(a) of the PUA defines “Smart Grid” in a manner that identifies goals of the applicable Smart Grid provisions.

“Smart Grid” means investments and policies that together promote one or more of the following goals:

(1) Increased use of digital information and controls technology to improve reliability, security, and efficiency of the electric grid.

(2) Dynamic optimization of grid operations and resources, with full cyber security.

(3) Deployment and integration of distributed resources and generation, including renewable resources.

(4) Development and incorporation of demand-response, demand-side resources, and energy efficiency resources.

(5) Deployment of "smart" technologies (real-time, automated, interactive technologies that optimize the physical operation of appliances and consumer devices) for metering, communications concerning grid operations and status, and distribution automation.

(6) Integration of "smart" appliances and consumer devices.

(7) Deployment and integration of advanced electricity storage and peak-shaving technologies, including plug-in electric and hybrid electric vehicles, thermal-storage air conditioning and renewable energy generation.

(8) Provision to consumers of timely information and control options.

(9) Development of open access standards for communication and interoperability of appliances and equipment connected to the electric grid, including the infrastructure serving the grid.

(10) Identification and lowering of unreasonable or unnecessary barriers to adoption of Smart Grid technologies, practices, services, and business models that support energy efficiency, demand-response, and distributed generation.

220 ILCS 5/16-108.6 (definition of "Smart Grid").

Section 16-108.6(e) of the PUA provides for AMI Plan implementation reporting to the Commission and progress review by the Commission, and updating of the Plan if and as needed, stating as follows:

On April 1 of each year beginning in 2013 and after consultation with the Smart Grid Advisory Council, each participating utility shall submit a report regarding the progress it has made toward completing implementation of its AMI Plan. This report shall:

(1) describe the AMI investments made during the prior 12 months and the AMI investments planned to be made in the following 12 months;

(2) provide sufficient detail to determine the utility's progress in meeting the metrics and milestones identified by the utility in its AMI Plan; and

(3) identify any updates to the AMI Plan.

Within 21 days after the utility files its annual report, the Commission shall have authority, either upon complaint or its own initiative, but with reasonable notice, to enter upon an investigation regarding the utility's progress in implementing the AMI Plan as described in paragraph (1) of this subsection (e). If the Commission finds, after notice and hearing, that the participating utility's progress in implementing the AMI Plan is materially deficient for the given plan year, then the Commission shall issue an order requiring the participating utility to devise a corrective action plan, subject to Commission approval and oversight, to bring implementation back on schedule consistent with the AMI Plan. The Commission's order must be entered within 90 days after the utility files its annual report. If the Commission does not initiate an investigation within 21 days after the utility files its annual report, then the filing shall be deemed accepted by the Commission. The utility shall not be required to suspend implementation of its AMI Plan during any Commission investigation.

The participating utility's annual report regarding AMI Plan year 10 shall contain a statement verifying that the implementation of its AMI Plan is complete, provided, however, that if the utility is subject to a corrective action plan that extends the implementation period beyond 10 years, the utility shall include the verification statement in its final annual report. Following the date of a Commission order approving the final annual report or the date on which the final report is deemed accepted by the Commission, the utility's annual reporting obligations under this subsection (d) shall terminate, provided, however, that the utility shall have a continuing obligation to provide information, upon request, to the Commission and Smart Grid Advisory Council regarding the AMI Plan.

220 ILCS 5/16-108.6(e).

On April 23, 2012, ComEd filed a Petition for Statutory Approval of its original proposed AMI Plan with the Commission, thereby initiating Docket No. 12-0298. On June 22, 2012, the Commission issued its final Order in that docket, finding ComEd's proposed

AMI Plan consistent with Section 16-108.6(c) of the PUA and approving the AMI Plan conditioned on certain modifications. On December 5, 2012, the Commission issued its Order on Rehearing that made certain further modifications to the AMI Plan. ComEd's AMI Plan has been revised further from time to time by the Commission in later dockets.

ComEd has been filing Smart Grid Advanced Metering Annual Implementation Progress Reports ("AIPR") since 2013. The Commission has never found a material deficiency in ComEd's AMI Plan implementation and by October 1, 2018, ComEd had attempted to exchange every single meter on its system for an AMI meter. As of December 31, 2019, ComEd has deployed AMI meters at 99.9% of metered customer locations, or over 4.2 million AMI meters. The AMI meter communication "mesh network" functions properly at this level of deployment. There remain fewer than 6,000 (5,814 as of December 31, 2019) metered locations without AMI meters. Those locations involve AMI meter refusing customers. The high percentage of AMI meter deployments, and the low and declining numbers of non-AMI meter locations, reflect the diligent and reasonable efforts of ComEd personnel.

While ComEd states that its AMI Plan has been a success and intends to continue its diligent efforts and its filing of the required reports, ComEd believes that it is not a practical possibility that ComEd, using reasonable and practical efforts consistent with the AMI Plan, or reasonable and practical expanded or additional means outside of the AMI Plan, can achieve a "perfect score" of 100% deployment at literally "all" metered customer locations by July 2022, the current "sunset date" for ComEd's Commission-approved tariff relating to customers who refuse AMI meters or AMI meter operation, Rider NAM – Non AMI Metering ("Rider NAM"). ComEd believes that, as a practical matter, it cannot be expected to overcome the persistent objections and stated concerns of the customers at those almost 6,000 non-AMI meter locations. Rider NAM itself includes language that recognizes that ComEd will not or may not be able to achieve a literal 100% AMI meter deployment level by July 2022. See Rider NAM, Ill. C. C. No. 10, 7th Revised Sheet No. 447. ComEd has considered various potential expanded or additional efforts to achieve literal 100% deployment, such as putting all refusing customers into the disconnection process, but that and other hypothetical alternatives are not preferable for the utility and for its customers for various practical reasons such as burdens, costs, loss of service, lost revenues, and/or effects on customer relationships.

Accordingly, ComEd believes that its best course of action is: (1) to recognize that at the conclusion of the AMI meter deployment period there will remain a relatively small number of Rider NAM participants; (2) to accommodate customers' participation in Rider NAM beyond the end of AMI deployment; (3) to cap the number of such participants in order to preserve AMI mesh network performance; (4) to continue to collect reasonable charges (as they may be updated from time to time) from the refusing customers as provided for in the tariff; and (5) to continue to inform customers of the benefits of AMI, encourage acceptance of AMI meters, and phase out Rider NAM through the voluntary acceptance of AMI Meters. ComEd's planned approach is superior to ComEd being compelled to undertake burdensome and costly new or expanded efforts in an effort to move to a "perfect score" of 100%.

Section 16-108.6 of the PUA focuses on establishment of the AMI Plan, reports, and material deficiencies in implementation of the Plan. The language does not require

a “perfect score” of 100% deployment at metered locations. Section 16-108.6(c) states that the AMI Plan “shall contain *** (3) a deployment schedule and plan that includes deployment of AMI to all customers for a participating utility.” 220 ILCS 5/16-108.6(c) and (c)(3). Section 16-108.6(e) is the reporting and compliance provision of Section 16-108.6. Section 16-108.6(e) provides for corrective action if there is a “material deficien[cy]” in implementation of the AMI Plan. Section 16-108.6(c) as such and in combination with Section 16-108.6(e) does not demand “perfect” 100% AMI meter deployment.

Furthermore, a desire for “perfection” in AMI meter deployment in effect would ignore that some customer load is unmetered and therefore such load would not be captured by even a literal 100% AMI meter deployment level at metered locations.

In addition, and in the alternative, Illinois case law authorizes the Commission to read Section 16-108.6 to be met by substantial compliance. Illinois courts have found that “typically, use of the word ‘shall’ in a statutory provision indicates that the legislature intended a mandatory, rather than directory provision.” *Behl v. Gingerich*, 396 Ill. App. 3d 1078, 1086, (4th Dist. 2009). “However, a mandatory provision does not always require strict compliance.” *Id.* “Substantial compliance can satisfy even a mandatory provision.” *Id.*, citing *Jakstas v. Koske*, 352 Ill. App. 3d 861, 864 (2nd Dist. 2004). In determining whether substantial rather than strict compliance with a mandatory statutory requirement may be accepted, a two-fold analysis must be conducted that includes analyzing the following: (1) whether the purpose of the statute is achieved without strict compliance and (2) whether the defendant (or in this case the applicable interested parties) suffer any prejudice due to the failure to strictly comply with the statute. *Behl*, 396 Ill. App. 3d at 1086, citing *Jones v. Industrial Comm’n*, 188 Ill. 2d 314, 324-326 (1999). Generally, to ascertain the purpose of a statute, one is to look to the statutory language used therein and give words their plain and ordinary meaning. *Behl*, 396 Ill. App. 3d at 1087, citing *M.D. Electrical Contractors, Inc. v. Abrams*, 228 Ill. 2d 281, 287 (2008). “It is not sufficient to read a portion of the statute in isolation. We must, instead, read the statute in its entirety, keeping in mind the subject it addresses and the legislature’s apparent objective in enacting it.” *Behl*, 396 Ill. App. 3d at 1087, citing *M.D. Electrical*, 228 Ill. 2d at 287.

ComEd states that based on Sections 16-108.5 and 16-108.6, it can be seen that the overall purpose of the relevant provisions was to install additional smart meters to further support the overall purposes of promoting economic development; allowing utilities to continue to provide quality electric service to customers; and, reinforcement of safety, security, and reliability of the State’s utility infrastructure. The installation of smart meters to 99.9% of ComEd’s metered customers fulfills the overall purposes of Section 16-108.6(c) and (c)(3). The AMI meter communication “mesh network” functions properly at this level of deployment, as noted earlier. The mesh network working means that the overall AMI deployment works. Furthermore, no person or entity will experience unfair and material harm or prejudice by ComEd not achieving literal 100% AMI meter deployment at metered locations.

ComEd argues that there also is a rule of statutory construction that statutes should be construed in a manner that avoids absurd, unreasonable, or unjust results that the legislature could not have intended. See, e.g., *Dynak v. Bd. of Educ. of Wood Dale Sch. Dist. 7*, 2019 Ill. App. 2d 180551, ¶ 19 (2d Dist. 2019, *aff’d*, 2020 IL 125062, ¶¶ 16, 24, 27 (2020)). Here, reading the applicable statutory language to require ComEd to adopt

extra, costly measures to try to achieve “perfect” 100% AMI meter deployment would be an unreasonable result that would be contrary to the interests of customers as a whole.

ComEd notes that the Commission previously addressed whether the AMI Plan needed to provide for installation of AMI meters at all metered locations in Docket No. 13-0552. *Commonwealth Edison Co., Submission of Rider NAM, Non AMI Metering*, Docket No. 13-0552, Order (Feb. 5, 2014). However, concluding that the AMI Plan must provide for installation of AMI meters at all metered locations is not the same thing as concluding that the utility not only has to follow the AMI Plan (must have no material deficiency in implementation) but in fact ultimately must achieve “perfect” 100% AMI deployment at all metered locations. ComEd argues that the former conclusion does not compel or warrant the latter. In any event, the facts now, over six years later, do not warrant reading Section 16-108.6(c), (c)(3), and (e) to require “perfect” 100% AMI meter deployment. Prior Commission orders are not *res judicata* or binding “precedents” and, instead, the Commission has the authority, for good cause, to assess the matter anew and to reach a different conclusion when warranted. “The concept of public regulation includes of necessity the philosophy that the commission shall have the power to deal freely with each situation as it comes before it, regardless of how it may have dealt with a similar or even same situation in a previous proceeding.” *Mississippi River Fuel Corp. v. Ill. Commerce Comm’n*, 1 Ill. 2d 509, 513 (1953). The Commission is not prohibited from changing its policies with respect to substantive issues, so long as the changes are not effectuated in an arbitrary and capricious manner. *United Cities Gas Co. v. Ill. Commerce Comm’n*, 225 Ill. App. 3d 771, 782 (4th Dist. 1992). The issue before the Commission now, over six years later, is what constitutes compliance or substantial compliance under the applicable statutory language and whether ComEd reasonably has defined compliance or substantial compliance in this instance. With the benefits of over six years of new facts as well as the circumstances and options looking forward, plus the applicable law, the Commission may and should conclude that the requested declaratory ruling is not inconsistent with the 2014 decision, and, in any event, even more importantly, may conclude that the request is warranted and should be granted regardless of the conclusions made regarding the AMI Plan in 2014.

Accordingly, ComEd requests that the Commission issue a declaratory ruling that sets forth that ComEd will have achieved full compliance, or, alternatively, substantial compliance, with Section 16-108.6(c), (c)(3), and (e) if it has implemented the AMI Plan, without material deficiencies, through the end of the implementation period.

IV. COMMISSION ANALYSIS AND CONCLUSION

While the Commission previously determined that Section 16-108.6 of the PUA required an AMI Plan that covered all metered locations, the Commission agrees with ComEd that, with respect to Plan implementation, Section 16-108.6 does not require achieving “perfect” 100% deployment at all metered locations. In brief, for the reasons indicated in the Petition and reflected earlier in this Order, reading the statutory language to require literal 100% deployment would not be consistent with its language regarding material deficiencies in implementation nor with the applicable goals of the statute.

ComEd has deployed AMI meters at 99.9% of metered customer locations, or over 4.2 million AMI meters. The AMI meter communication “mesh network” functions properly

at this level of deployment. There remain fewer than 6,000 metered locations without AMI meters. Those locations involve AMI meter refusing customers. The high percentage of AMI meter deployments, and the low and declining numbers of non-AMI meter locations, reflect the efforts of ComEd personnel. ComEd also has submitted the required AIPRs. The Commission never has found a material deficiency in ComEd's AMI Plan implementation.

Requiring ComEd to engage in expanded or additional efforts to achieve AMI meter deployments at all the remaining locations by July 2022 would not be reasonable or beneficial from practical perspectives for customers or the utility. In so stating, the Commission is not finding or suggesting that customers can or should reject AMI meters.

Accordingly, the Commission concludes that ComEd will have achieved full compliance with Section 16-108.6(c), (c)(3), and (e) if it has implemented the AMI Plan, as revised, without material deficiencies, through the end of the implementation period. In light of that conclusion, the Commission need not reach the subject of "substantial compliance," but the Commission agrees that implementation without material deficiency also would constitute substantial compliance.

V. FINDINGS AND ORDERING PARAGRAPHS

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

- (1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, distribution, and sale of electricity to the public in Illinois and is a public utility as defined in Section 3-105 of the Public Utilities Act;
- (2) the Commission has jurisdiction over Commonwealth Edison Company and the subject matter of this proceeding;
- (3) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (4) Commonwealth Edison Company's Petition for Declaratory Ruling should be and is granted; and
- (5) ComEd will have achieved full compliance with Section 16-108.6(c), (c)(3), and (e) if it has implemented the AMI Plan, as revised, without material deficiencies, through the end of the implementation period.

IT IS THEREFORE ORDERED that the Verified Petition for Declaratory Ruling is granted and the Commission declares that ComEd will have complied with Section 16-108.6(c), (c)(3), and (e) of the Public Utilities Act if ComEd has implemented the AMI Plan, as revised, without material deficiencies, through the end of the implementation period.

IT IS FURTHER ORDERED that pursuant to Section 10-113(a) of the Public Utilities Act and 83 Ill. Adm. Code 200.880, any application for rehearing shall be filed within 30 days after service of this Order on the party.

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

By Order of the Commission this 5th day of November, 2020.

(SIGNED) CARRIE ZALEWSKI

Chairman