

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to Consider Smart Grid Technologies Pursuant to Federal Legislation and on the Commission's Own Motion to Actively Guide Policy in California's Development of a Smart Grid System.

Rulemaking 08-12-009  
(Filed December 18, 2008)

**REPLY COMMENTS  
OF THE DIVISION OF RATEPAYER ADVOCATES  
ON STAFF PROPOSAL FOR ENERGY DATA CENTER**

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While many commenters oppose the idea of an Energy Data Center (Center), the few who support it either do not address, or dismiss, the privacy implications of its creation.<sup>1</sup> The fact that those wanting the data do not address privacy illustrates the risk of moving forward without first addressing privacy protections and concerns. As the Commission’s Division of Ratepayer Advocates (DRA) stated in Opening Comments, anyone with access to customer-specific data, including an Energy Data Center, must put privacy first rather than treating it as an afterthought, and be subject to explicit privacy rules.

On reviewing the opening comments, DRA suggests that the Commission take further input – by way of workshops, hearings, and legal briefs – on three discrete subjects. We are gratified that the Assigned Commissioner has already scheduled one such workshop, but believe more workshops or other proceedings – and perhaps briefing – will be necessary.

### **1. Customer-Specific or Aggregated Data? Disclosure of Customer-Specific Data May be Unlawful Without Strict Protections**

First, the Assigned Commissioner should clarify whether an Energy Data Center, as proposed, would handle customer-specific data. If Staff proposes only the use of aggregated data, DRA’s concerns about privacy are lessened, so long as the Commission defines aggregated data in a way that means the data does not disclose customer-specific information. The Electronic Frontier Foundation (EFF) and California Center for Sustainable Energy (CCSE),<sup>2</sup> among others, offer helpful observations on the different

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<sup>1</sup> See, e.g., Distributed Energy Consumer Advocates (DECA) 12/17/12 Comments; Local Government Sustainable Energy Coalition (LGSEC) 12/17/12 Comments at 4 (“By passage of AB 1103 (and SB 1476 (e)(3)) the Legislature determined that the public interest in energy efficiency (such as reducing climate change emissions) is *greater in some instances than the absolute protection of energy customer privacy.*” Emphasis added.). However, DRA does not necessarily dispute the value of the efforts these and other commenters make.

<sup>2</sup> EFF 12/17/12 Comments at 6; CCSE 12/17/12 Comments at 16.

types of aggregation, and it is essential that the Commission take additional on-the-record input on this issue.

If Staff proposes the use of customer-specific data, legal and constitutional provisions may bar disclosure of such data to a centralized data repository. In addition to the law DRA cited in Opening Comments, EFF cites Civil Code § 1798.24, which prohibits a state agency from disclosing “any personal information in a manner that would link the information disclosed to the individual to whom it pertains,” with exceptions including research, but this research exception requires that the data be aggregated “in a form that will not identify the individual.” EFF also cites Civil Code § 1798.24(t), relating to disclosure to the University of California (UC), which the Commission must study given Staff’s proposal to house an Energy Data Center at a UC campus.<sup>3</sup>

If the law bars disclosure of customer-specific data, all of the commenters’ arguments about the usefulness of a Center may be irrelevant. If an Energy Data Center is facially lawful, it must be set up to protect privacy, with protections perhaps beyond the Non-Disclosure Agreement (NDA) the Commission and Investor Owned Utilities (IOUs) currently use. Such protection must include: 1) having adequately trained staff and sufficient hardware and software to ensure that recipients of data can protect the privacy of the data; 2) having a duty to protect privacy, with potential liability for negligent or intentional release, and 3) providing consumer notice and credit restoration services in the event of such release.

## **2. Need for Energy Data Center?**

Second, and only after determining that it is lawful under privacy jurisprudence the Commission must find that there is a demonstrated need for an Energy Data Center.

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<sup>3</sup> EFF 12/17/12 Comments at 10.

The IOUs have existing or proposed procedures that may make a Center unnecessary,<sup>4</sup> and point out that some delays in or refusals to furnish data to third parties actually are the result of inappropriate third party requests for data.<sup>5</sup> Staff assumes that all such action demonstrates a need for an Energy Data Center,<sup>6</sup> when it may in fact be that the data that third parties request is excessive or violative of existing privacy rules.

While it might be more convenient for all customer data – customer-specific, aggregated or otherwise – to be available free for the asking, such availability would violate the obligation the Commission and the IOUs have to protect the privacy of customers. Therefore, the Commission must closely examine how third parties would be using data and determine that an Energy Data Center is necessary to satisfy that need.

### **3. Who Pays?**

Third, the Commission must examine whether ratepayers should fund disclosure of their own data, or whether, instead, the “market” should fund the data exchange for which so many third parties clamor.<sup>7</sup> This examination must take place in a ratesetting proceeding. The Commission should examine how other markets monetize data, and consider whether these methods are a workable alternative to ratepayer funding.

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<sup>4</sup> See, e.g., Pacific Gas & Electric (PG&E) 12/17/12 Comments at 4; San Diego Gas & Electric (SDG&E) proposes that the IOUs work together to develop “uniform and transparent” rules. SDG&E 12/17/12 Comments at 3. As it noted in its Opening Comments, DRA does not agree that the “15/15” rule is still adequately protective of aggregated data, but does support uniform and transparent rules. See Southern California Edison (SCE) 12/17/12 Comments at 3-4.

<sup>5</sup> See, e.g., PG&E Comments at 7, SCE Comments at 4.

<sup>6</sup> See *Energy Data Center Briefing Paper*, at 1.

<sup>7</sup> See, e.g., DECA Comments at 5 (proposing no-fee access to data); CCSE Comments at 11 (same).

#### 4. Conclusion

DRA looks forward to further effort to derive a solution that is workable for all involved, while preserving customers' constitutional right to privacy and minimizing ratepayer cost.

Respectfully submitted,

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