

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**
07-17-13
03:58 PM

July 17, 2013

Agenda ID #12255
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 12-03-002 ET AL.

This is the proposed decision of Administrative Law Judge (ALJ) Timothy J. Sullivan. This item is targeted to appear on Agenda No. 12255 for the Commission's September 5, 2013 Business Meeting, but may appear on a later agenda. Interested persons may monitor the Business Meeting agendas, which are posted on the Commission's website 10 days before each Business Meeting, for notice of when this item may be heard. The Commission may act on the item at that time, or it may hold an item to a later agenda. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Timothy J. Sullivan at tjs@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ TIMOTHY J. SULLIVAN for KVC
Karen V. Clopton, Chief
Administrative Law Judge

KVC:lil

Attachment

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Pacific Gas and Electric
Company for Adoption of its Customer
Data Access Project. (U39E).

Application 12-03-002
(Filed March 5, 2012)

And Related Matters.

Application 12-03-003
Application 12-03-004

**DECISION AUTHORIZING PROVISION OF CUSTOMER ENERGY DATA TO
THIRD PARTIES UPON CUSTOMER REQUEST**

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DECISION AUTHORIZING PROVISION OF CUSTOMER ENERGY DATA TO THIRD PARTIES UPON CUSTOMER REQUEST**1. Summary**

This decision approves the applications of Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company for authority to provide third parties access to customer data when requested by the customer.

More specifically, this decision authorizes Pacific Gas and Electric Company to increase electric rates and charges a total of \$9 million over four years as the reasonable level of revenue requirements necessary to support the Customer Data Access Project. This decision approves Southern California Edison's application to provide third-party access to customer usage data and to recover up to \$7.588 million to develop its platform and an additional \$1.512 million in incremental ongoing operations costs for 2013-2014. This decision approves San Diego Gas & Electric Company's request to offer third parties access to data under its umbrella term "Customer Energy Network." Each company shall file conforming tariffs within 90 days of adoption of this decision.

The decision also resolves outstanding issues that are needed to implement the service. Specifically, this decision decides that it is appropriate to offer this service to customers at a price of zero. The implementation schedules proposed by each company for implementing this service are reasonable and each utility may proceed to implement the service as soon as they are ready.

This decision adopts criteria that third parties must meet in order to be eligible to receive customer data. The decision adopts the "wait and see" registration proposal, which permits third parties to receive consumption data

provided that (a) they obtain the requisite customer authorization; (b) they meet the technical eligibility requirements; (c) they acknowledge receipt of the relevant tariff rule(s); and (d) they are not otherwise prohibited by the Commission from receiving such data.

The decision, however, establishes an expedited process to remove a third party from the list of registered companies if the third party fails to comply with the rules for protecting and using the customer's consumption data. When a utility suspects possible violations of tariff rules, a notice to the third party and to the Commission's Energy Division triggers a 21-day period to remedy suspected violations. The Energy Division, at its discretion, may facilitate a resolution of these issues. If the issues are not resolved, the utility should file a Tier 2 advice letter to remove a third party from the registration list (and provide notice to customers of this filing). If the utility acts in this way, it bears no liability for misuse of customer data from the time of the provision of notice to the third party and to the Energy Division. The Commission, not a utility, bears responsibility to remove a third party from the list of those eligible to receive data and may do so either through action on an advice letter or through some other appropriate form of Commission action.

This proceeding is closed.

2. Background

Decision (D.) 11-07-056, *Decision Adopting Rules to Protect the Privacy and Security of the Electricity Usage Data of the Customers of Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric*

Company (Privacy Decision)¹ sought to enable customers to make their energy usage data available to third parties of their choice. To accomplish this, the Privacy Decision, in Ordering Paragraph 8, directed Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) to:

Within six months of the mailing of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric must each file an application that includes tariff changes which will provide third parties access to a customer's usage data via the utility's backhaul when authorized by the customer. The three utilities should propose a common data format to the extent possible and be consistent with ongoing national standards efforts. The program and procedures must be consistent with policies adopted in Ordering Paragraphs 6 and 7 and the Rules Regarding Privacy and Security Protections for Energy Usage Data in Attachment D of this decision. The application should propose eligibility criteria and a process for determining eligibility whereby the Commission can exercise oversight over third parties receiving this data. The three utilities are encouraged to participate in a technical workshop to be held by the Commission in advance of the filing date. The applications may seek recovery of incremental costs associated with this program.

This triggered the three applications that are the subject of this proceeding.

2.1. Procedural Background

On March 5, 2012, PG&E filed Application (A.) 12-03-002; SDG&E filed A.12-03-003; and SCE filed A.12-03-004.

¹ A copy of the privacy decision is available from the Commission's website at http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/140369.htm.

On March 8, 2012, Resolution ALJ 176-3290 reached a preliminary determination that each of these proceedings was ratesetting and that hearings would be necessary.

On April 9, 2012, the Division of Ratepayer Advocates (DRA), Marin Energy Authority (MEA) and the Alliance for Retail Energy Markets (AReM) filed protests in A.12-03-002. In addition The Technology Network (TechNet) filed a response in A.12.03-002.

Also on April 9, 2012, DRA and AReM filed protests in A.12-03-003 and A.12-03-004. TechNet filed responses in A.12-03-003 and A.12-03-004.

On April 9, 2012, DRA also filed a Motion for Consolidation in each of the three proceedings.

On April 17, 2012, via an e-mail to the service list in each Application, Administrative Law Judge (ALJ) Sullivan consolidated the three applications into one proceeding.²

On April 19, 2012, SDG&E filed a reply to the protests in A.12-03-003. On April 19, 2012, SCE filed a reply to the protests in A.12-03-004.

On April 25, 2012, an Administrative Law Judge's Ruling scheduled a Prehearing Conference (PHC) for May 14, 2012.

On May 25, 2012, an Assigned Commissioner's Ruling and Scoping Memo identified issues for resolution, made provision for the filing of a joint report by PG&E, SCE, and SDG&E, and established a cycle for comments and replies.

On July 30, 2012, PG&E, SCE, and SDG&E filed and served a *Joint IOU [Investor-Owned Utilities] Report on the Informal All-Party Discussions Regarding the*

² The e-mail ruling consolidating the three proceedings was memorialized by a formal ruling filed on April 25, 2012.

Issues Identified in the Assigned Commissioner's Ruling and Scoping Memo (Joint Report).

On August 20, 2012, EnerNOC, Inc. (EnerNOC), TechNet, AReM, Open Energy Network (OPEN), and Distributed Energy Consumer Advocates (DECA) filed comments on the Joint Report.

On August 28, 2012, PG&E, DECA, DRA, SCE and SDG&E filed reply comments.

On September 27, 2013, DECA filed a Motion for Leave to File a Late-Filed Notice of Intent to Claim Intervenor Compensation, as well as a Notice of Intent to Claim Intervenor Compensation. ALJ Sullivan, via a December 20, 2012 e-mail, approved the late filing.

On February 21, 2013, PG&E filed a Motion to Adopt Procedural Stipulation (Stipulation). The ALJ, via a February 25, 2013 e-mail ruling, set Friday March 1 as a due date for responses to the motion. No party filed in opposition to the motion. The ALJ, via a March 14, 2013 e-mail, granted the motion and adopted a stipulation but modified the briefing cycle envisioned in the stipulation.

Opening Comments or Briefs were due by March 20, 2013, and timely filed by DRA.

Replies were due on April 11, 2013 and timely filed by EnerNOC, PG&E, and SCE.

Subsequently, via an April 15, 2013 e-mail ruling, the ALJ granted DRA's request for a sur-reply brief and granted all parties the opportunity to file a sur-reply brief. On April 15, 2013, DRA filed a sur-reply brief.

On May 14, 2013, SolarCity Corporation (SolarCity) filed a Motion for Party Status. On May 22, 2013, via an e-mail to the service list, ALJ Sullivan granted SolarCity's Motion for Party Status.

2.2. Jurisdiction

As noted above, the proximate cause of these three applications was D.11-07-056, which required PG&E, SCE and SDG&E to propose tariff changes to provide third-parties access to a customer's usage data via the utility's backhaul – an electronic path from the utility to the third party – when authorized by the customer. In addition, D.11-07-056 set forth criteria that the Commission applies to determine if the proposed services comply with the privacy policies adopted by the Commission.

The Commission's jurisdiction over the tariffing of this service flows from Public Utilities Code Section 701,³ which gives the Commission broad regulatory jurisdiction over public utilities:

701. The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

This broad authority is refined through additional sections of the code.

The jurisdiction of the Commission over the offering of new tariffed services by regulated electric corporations is very clear. Under § 454:

(a) Except as provided in Section 455, no public utility shall change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified.

³ All statutory references are to the Public Utilities Code unless otherwise noted.

Thus, the three utilities may not offer this service until the Commission finds that the new rate is justified.

3. Joint Report and Stipulation

The Joint Report provides key information on the status of informal discussions among the parties seeking to clarify and to resolve the issues identified in the Scoping Memo.

The Stipulation, supported by all parties active in the proceeding at the time, noted that all parties agreed to the following:

1. The parties agree that all pleadings filed by the parties to date in the proceeding, including the applications, protests and responses to the applications; the motions for party status; the Joint IOU Report; and opening and reply comments to the Joint IOU Report, are admitted into evidence and included in the record of the proceeding without objection.
2. The parties agree that, in addition to the above, the transcript of the May 14, 2012 PHC and the testimony served in connection with each IOU application are all admitted into evidence and included in the record of the proceeding without objection.
3. The parties agree that, while contested issues remain and must be resolved by the Commission in its decision on these applications, formal evidentiary hearings on issues identified in the Assigned Commissioner's Ruling and Scoping Memo (cost, pricing, timing, other proceedings and third parties) are unnecessary and that the stipulated record and comments heretofore filed or to be filed as noted below are sufficient for purposes of issuing a Proposed Decision (PD) on the merits. The parties agree that DRA and all other parties may file a round of briefs/comments on the remaining contested issues, including 1) cost of implementation as impacted by 3) below; 2) whether the IOUs' consent forms comply with the Privacy decision, 3) whether Community Choice Aggregation/Direct Access (DA) providers should pay for data - and whether, therefore, a proposed PG&E settlements with them should be disapproved; and 4) whether an IOU may cut off third-party

access to data for violating the rules protecting data privacy, and the mechanics of such process, according to the following schedule: Opening Comments: March 13, 2013; Reply Comments: April 4, 2013.⁴

4. The parties agree that the Assigned ALJ may, after considering the foregoing record and round of comments due in March-April 2013, thereafter issue a PD on the merits of the application based on the stipulated record evidence. The parties reserve in full their rights to file comments on the PD in accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure.⁵

Based on this unopposed stipulation, we identify *Pacific Gas and Electric Company, Smart Grid Customer Data Access (CDA) Project, Prepared Testimony* (March 5, 2012) as Exhibit PG&E-1 and move it into the record of this proceeding as evidence. Similarly, we identify *Testimony of Southern California Edison Company in Support of Its Application for Approval of Proposal to Enable Automated Access of Customer Usage Data To Authorized Third Parties and Approval of Cost Recovery Mechanism* (March 5, 2012) as Exhibit SCE-1 and move it into the record of this proceeding as evidence. In addition, we identify *Prepared Direct Testimony of Ted M. Reguly On Behalf of San Diego Gas & Electric Company* (March 5, 2012) as Exhibit SDG&E-1 and we identify *Prepared Direct Testimony of Brendan Blockowicz on Behalf of San Diego Gas & Electric Company* (March 5, 2012) as Exhibit SDG&E-2 and move both exhibits into the record of this proceeding as evidence.

⁴ An ALJ Ruling of March 14 amended this schedule. Opening Comments/Briefs were due March 20, 2013 and Reply Comments/Briefs were due April 11, 2013.

⁵ *Stipulation Regarding Record and Waiver of Evidentiary Hearings, A.12-03-002, A.10-03-003, A.12-03-004, Customer Data Access Applications* (February 21, 2013) at 4-5 (Attached to *Motion of Pacific Gas and Electric Company to Adopt Procedural Stipulation* (February 21, 2013).)

In addition, we move into the record of this proceeding as evidence (without further identification) the applications, protests and responses to the applications; the motions for party status; the Joint IOU Report; and opening and reply comments to the Joint IOU Report; and the transcript of the May 14, 2012 PHC.

4. Issues Before the Commission

The central issue before the Commission is whether to grant, deny, or grant with conditions the applications of PG&E, SCE, and SDG&E to provide the proposed third-party access to customer usage data via the “back haul.”

Each company describes in detail the services it plans to offer to make information available.

PG&E proposes to implement the CDA Project, which it describes in testimony. PG&E describes the project and its proposed implementation in phases as follows:

Phase 1 will focus on the development of the infrastructure/systems required to share customer electric meter interval data in the OpenADE ESPI [Energy Service Provider Interface] Release 1.0 format.

... Phase 2 will focus on increasing the types of customer data that will be supported by the CDA platform to support OpenADE ESPI Release 1.5.

... Phase 3 is expected to address the data and technology requirements to exchange data related to Home Area Networks [HAN] as highlighted in the anticipated OpenADE ESPI Release 2.0 format.⁶

⁶ *Id.* at 1-8.

SCE plans to provide third-party access to energy usage data through its “Energy Service Provider Interface (ESPI) process.”⁷ SCE describes this as “a technology platform and infrastructure such that customer-authorized third-party requests for data can be supported in a secure, automated manner, consistent with the ESPI standard adopted by the North American Energy Standards Board (NAESB).”⁸ SCE notes that its “ESPI proposal focuses on the automated exchange of interval usage data, and thereby provides simpler access to customer data than currently available methods, such as the Green Button.”⁹

SDG&E already has implemented a program to provide third-party access to data. The SDG&E program is called “Customer Energy Network” which SDG&E sees “as a long term platform for distributing Smart Meter consumption data to authorized third parties.”¹⁰ SDG&E describes its current initiative as “implementation of recently ratified standards.”¹¹

SDG&E’s testimony provides details on how SDG&E plans to evolve this service. SDG&E states that it proposes to enhance Customer Energy Network (CEN) in the following ways:

- Modify CEN to utilize the NAESB ESPI standard for information data exchange.
- Develop a robust, configurable solution to support multiple third parties and associated program eligibility rules.

⁷ Ex. SCE-1 at 1.

⁸ *Id.* at 2.

⁹ *Id.* at 3.

¹⁰ Ex SDG&E-2 at 1.

¹¹ *Id.* at 2.

- Enhance the web-based user interface to allow customers to view eligible third parties and associated program details.
- Create an automated electronic customer authorization and enrollment process that supports multiple third parties.
- “Refactor” (or make technical enhancements to) the application to incorporate lessons learned from Google PowerMeter around data quality, monitoring, and exception management.¹²

In making a decision concerning each of the proposed services, the Commission must determine whether the proposed service conforms to the privacy policies adopted in D.11-07-056 and whether the proposed terms of service and rates merit a finding of reasonable. The Scoping Memo stated that:

[t]he scope of the proceeding includes all issues related to the implementation of a backhaul program to provide third parties access to a customer’s usage data based upon the consent of the customer. In addition, the scope of the proceeding includes all issues presented in the applications and the refined issues growing out of the parties’ protests and the PHC.¹³

The Scoping Memo stated that at the PHC, the discussion among parties indicated that the issues identified in the proceeding fell into the following categories:

1. Cost – Whether the costs that are associated with the implementation of these programs are reasonable?
2. Pricing – What are the pricing issues for this service? What pricing issues arise concerning Community Choice Aggregators and Electric Service Providers (ESPs)?
3. Timing – What is the appropriate schedule for resolving the issues in this proceeding? Do all three utilities need to proceed at

¹² *Id.* at 2-3.

¹³ Scoping Memo at 5.

the same schedule, or can utilities that are ready to proceed act?
Is coordination needed across these three applications?

4. Other Proceedings – What is the relationship between this proceeding and other tariff filings and rules development, particularly those arising from D.11-07-056?

5. Third Parties – What policies should apply to third parties receiving the data? What procedures should the Commission adopt to ensure third-party compliance with privacy safeguards adopted by the Commission?¹⁴

Subsequently, PG&E, SCE, and SDG&E jointly filed a report that addressed the issues identified above. The report indicated provided information on the informal discussions intended to resolve and clarify these open issues.

5. Discussion and Analysis

For each issue identified in the Scoping Memo, this decision will present the analysis of the Joint Report, the Stipulation, the response and replies of parties, and then a discussion and resolution of outstanding issues.

5.1. Cost – Whether the costs that are associated with the implementation of these programs are reasonable?

The issues pertaining to costs first arose in the separate application of each of the electric utilities. A brief summary of the cost discussion in the applications follows.

The PG&E Application states that it requests the Commission to authorize PG&E:

... to increase electric rates and charges to collect a total of \$9 million over 4 years as the reasonable level of revenue requirements necessary to support its Customer Data Access

¹⁴ *Id.*

Project as described in this Application and PG&E's prepared testimony. This level of revenue requirements supports PG&E's overall request of \$19.4 million (\$ 8.91 million capital and \$10.45 million expense) to fund the Project.¹⁵

The SCE Application states that SCE proposes "to recover \$7.588 million to develop its platform, and additional \$1.512 million in incremental ongoing operations costs for 2012-2014."¹⁶

The SDG&E Application states:

At this time, and as detailed in the testimony of Mr. Brendan Blockowicz, SDG&E is not requesting additional funding for the proposed Backhaul Program as specifically outlined in this Application. ... Depending on whether actual customer adoption rates exceed SDG&E's preliminary estimates owing to the effect of an unknown factor, or if a substantially different backhaul process were to be adopted by this Commission, then additional funding may be essential, whereby SDG&E reserves the right to request any associated incremental funding necessary to reasonably implement the program after a closer examination of the known variances against anticipated costs.¹⁷

The Joint Report states that "during informal discussions, DRA stated that it had reviewed the IOUs' testimony regarding casts and determined that it no longer planned to dispute the costs associated with the implementation of the ESPI platforms."¹⁸ The Joint Report further states "the IOUs propose that the three cost proposals be adopted."¹⁹

¹⁵ PG&E Application at 1.

¹⁶ SCE Application at 2-3.

¹⁷ SDG&E Applications at 5.

¹⁸ Joint Report at 4.

¹⁹ *Id.*

The Stipulation moved the three applications and supporting documents into evidence, as well as the Joint Report and comments of the parties.

Concerning costs, PG&E estimates that the total project cost over four years will total \$19,353,621 and require an increase in revenue requirement over the first four years of \$9,014,183.²⁰

Concerning costs, SCE estimates a capital cost \$7.588 million plus operating costs of \$1.512 million in 2013 and 2014 for a total of \$9.1 million.²¹

SDG&E, in contrast, notes that it “has already requested funding for providing third parties with access to customer energy usage data as described in SDG&E’s General Rate Case application, A.10-12-005.²² Concerning SDG&E’s CEN- Phase 3, SDG&E states that “all costs are allocated to SDG&E” and requests “no additional funding at this time.”²³

5.1.1. Comments and Replies Pertaining to Costs

No party provided any comments either opposing the requests for cost recovery or disputing the cost estimates provided in the applications of PG&E and SCE.

No party provided comments on SDG&E’s proposal, which requested no additional cost recovery in this application, but indicated that the costs associated with this service were under consideration in SDG&E’s General Rate Case (GRC).

²⁰ PG&E Ex. 1 at 1-9.

²¹ Ex. SCE-1 at 4.

²² Ex. SDG&E-1 at 3.

²³ *Id.* at 3.

5.1.2. Discussion of Cost-Related Issues

To approve the tariffing of this service and the recovery of costs, the Commission must reach a determination that the associated costs are reasonable. Since the costs incurred by SDG&E associated with this service are under review in SDG&E's GRC, no further action is needed to review SDG&E's costs.

For PG&E and SCE, the Commission must make a determination that the costs incurred in the provision of the service are reasonable. Such a determination requires evidence. With the stipulation, the data on costs and testimony supporting costs provided by PG&E and SCE enters into the record. Moreover, there is no evidence disputing the reasonableness of costs claimed by PG&E and SCE.

PG&E's testimony documents the source of the CDA project. PG&E documents the estimated operation and maintenance costs, including the costs of third-party account management staff, customer support staff, program management staff, call center training and customer education and awareness.²⁴ Table 2-1 provides a summary of these operations and maintenance costs for the years 2014-2016. In addition, the testimony provides an estimate of the information technology related costs related to setting up the computer systems and portals to handle the customer requests for third-party access.²⁵ These costs total \$8,576,573 for the first phase of data access²⁶ and \$3,027,489 for the second phase of data access.²⁷ After the new service is developed, it will then transition

²⁴ Ex. PG&E-1 at 2-8.

²⁵ *Id.*, Table 3-1, at 3-14.

²⁶ *Id.*

²⁷ *Id.* at 3-15.

into the information technology portfolio, where it will incur operating and maintenance expenses, which PG&E summarizes in Table 3-4.²⁸ PG&E includes a chapter titled “Results of Operations” which documents the development of “revenue requirements” used to support the capital expenditures and expenses.

Finally, PG&E integrates revenue requirements to support both the capital investments and operations expenses into Table 5-1, which itemizes revenue requirements for the years 2013-2016 and estimates the total revenue requirement for 2013 through 2016 as \$19.4 million.²⁹ Specifically, PG&E estimates project costs of \$6,965,548 in 2013, \$6,421,314 in 2014, \$2,880,926 in 2015 and \$3,085,833 in 2016, for a total of \$19,353,621 over this 4 year period. Costs, if any, beyond this period will be considered in PG&E 2016 GRC.³⁰

PG&E proposes “to establish a Customer Data Access Balancing Account (CDABA) to record and recover the actual costs of the CDA project from 2013-2016.”³¹ PG&E proposes that:

The CDABA would be a one-way balancing account, which would allow PG&E to record the revenue requirement associated with the actual Operations and Maintenance (O&M) expense and capital cost incurred to implement the CDA Project.³²

PG&E will transfer the year-end balance of the CDABA,[2] up to the amount as authorized by the Commission, to Distribution Revenue Adjustment Mechanism (DRAM), and will consolidate the transferred amount with other DRAM revenue as part of the

²⁸ *Id.* at 3-16.

²⁹ *Id.* at 5-2.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

Annual Electric True-Up (AET) process. If PG&E spends more than the authorized amount, PG&E must seek Commission authorization to recover the difference in rates.³³

No party opposed PG&E's development of costs or its proposal for cost recovery.

Based on the record in this proceeding and our review of PG&E's testimony, we find PG&E's summary of project costs of \$19.4 million (\$8.91 million capital and \$10.45 million expense) to be a reasonable estimate of project costs. Therefore it is reasonable for PG&E to increase its rates by a total of \$9 million over 4 years as the reasonable level of revenue requirements necessary to support its CDA Project. We therefore grant PG&E's request of \$19.4 million (\$8.91 million capital and \$10.45 million expense) to fund the Project. In addition, we authorize PG&E to establish a CDABA to record and recover the actual costs of implementing the CDA project from 2013 through 2016, as requested. PG&E costs beyond 2016 for this program should be considered in PG&E's GRC for test year 2016.

Turning now to SCE, we find that SCE provides testimony and information pertaining to its costs and cost recovery. SCE, like PG&E, plans to offer an ESPI platform for the transfer of data. SCE plans to develop a simple electronic form based on its "Customer Information Standardized Request, or CISR"³⁴ by which a customer can request the transfer of consumption data to a third party. The information would be then made available to third parties in the ESPI format. SCE provides information on the capital costs associated with

³³ *Id.*

³⁴ Ex. SCE-1 at 21.

developing a computer process for both these tasks to total \$7,588,000 over the years “pre-2012, 2012 and 2013.”³⁵ In addition, once the ESPI system is developed and implemented, operating the service will incur labor expenses for managing third-party relationships, customer support, processing, and training. SCE estimates that these labor costs will total \$1.035 million over 2013 and 2014.³⁶ Finally, SCE estimates that operating the system will require additional non-labor expenses, associated with communications, IT licensing, and other matters totaling \$477,000 over 2013 and 2014.³⁷

SCE proposes to recover the recorded revenue requirements to cover these costs through its Base Revenue Requirement Balancing Account (BRRBA) mechanism. Specifically, SCE requests “approval to recover the recorded revenue requirements associated with \$1.512 million in O&M expenses and \$7.588 million in capital expenditures over the 2012 through 2014 period through its BRRBA.”³⁸ For the period after 2014, the costs of this program will be considered in SCE’s General Rate Cases.

For the period through 2014, SCE testimony states:

Each month, SCE will record its actual capital-related revenue requirement and the actual incremental O&M costs in the distribution subaccount of the BRRBA. The recorded O&M costs will be expenses associated with the ESPI activities authorized by the Commission in this proceeding. The capital-related revenue requirement will consist of depreciation, taxes and authorized return based on actual recorded rate base, including plant

³⁵ *Id.* at 27.

³⁶ *Id.* at 30.

³⁷ *Id.*

³⁸ *Id.* at 33.

additions, accumulated depreciation reserve and accumulated deferred taxes, associated with the ESPI platform activities authorized by the Commission in this proceeding.³⁹

Concerning the issue of whether a subsequent “reasonableness review” is necessary. SCE argues that no reasonableness review is needed. SCE argues that:

SCE’s incurred costs that are consistent with the scope and the costs as adopted by the Commission should not be subject to an after-the-fact reasonableness review. The Commission will presumably perform a full review of forecasted costs in this Application. Thus, no further reasonableness review should occur. However, if the scope of activities differs from what the Commission approves, then SCE will file an Application, a Petition for Modification of the decision approving this Application, or use other appropriate procedural vehicles, to request approval of the activities and recovery of the additional costs associated with these activities.⁴⁰

This recommendation, in SCE’s view, does not mean that the sums will not be subject to Commission review. SCE explains:

Pursuant to the Commission-adopted process for reviewing SCE’s BRRBA activity, the recorded entries associated with the ESPI platform will be reviewed by the Commission in SCE’s annual Energy Resource Recovery Account (ERRA) review applications. This review will ensure that all ESPI-related program cost entries into the account are stated correctly and are consistent with Commission decision(s).⁴¹

No party to this proceeding has raised objection to SCE’s estimates of costs or its proposed ratemaking treatment of booking the costs into a subaccount of the BRRBA, which include recorded incremental operating and maintenance

³⁹ *Id.* at 34.

⁴⁰ *Id.* at 36.

⁴¹ *Id.* at 37.

costs and capital related revenue requirements and limit the reasonableness review of ESPI-related entries in the BRRBA to ensure all recorded costs are associated with the ESPI activities as set forth in this decision.

Based on the record in this proceeding and our review of SCE's estimated cost, we conclude that it is reasonable for SCE to increase rates to recover an estimated capital cost of \$7.588 million plus operating costs of \$1.512 million in 2013 and 2014 for a totals of \$9.1 million, with an expected implementation date of twelve months after a final decision.

Based on the record of this proceeding and our understanding of the rate-making process, this decision finds SCE's proposed ratemaking treatment of the costs prior to its 2015 GRC as reasonable. Specifically, it is reasonable for SCE to record revenue requirements in the distribution subaccount of the BRRBA for recovery through the annual ERRRA application. It is also reasonable, in light of our review of the proposed costs in this application, to limit the reasonableness review of ESPI-related entries in the BRRBA to ensuring that all recorded costs are associated with the ESPI activities approved in this decision.

For SDG&E, since the funding level for this program was reviewed in its GRC, no further action on costs or rate recovery is needed at this time.

5.2. Pricing of Backhaul Services; Prices for Community Choice Aggregators and DA Providers

The Joint Report states that:

None of the IOUs propose to charge fees for the use of the ESPI [Energy Service Provider Interface] platforms, and this basic feature of the IOUs applications applies equally to IOU customers wishing to obtain automated usage data and to third parties who have obtained the requisite customer authorization. No non-IOU party to this consolidated proceeding has proposed

that customers or authorized third parties should be charged a fee to use the ESPI platform. Thus, the parties have reached a consensus that no fees should be assessed for using the ESPI platform.⁴²

The Joint Report, however, indicates that the “IOU parties disagree about the relationship, if any, between the lack of fees proposed in this proceeding and the existence of rate schedules that impose fees pursuant to prior Commission decisions in the Community Choice Aggregator and Direct Access contexts.”⁴³ The Joint Report notes that AReM and MEA allege that “the applications provided unfair and inequitable treatment of ESPs and CCAs.”⁴⁴ The Joint Report notes that “PG&E has agreed to modify its proposal in this proceeding and its applicable DA and CCA tariffs...”⁴⁵ PG&E’s proposal would provide that:

If the Commission’s decision in this proceeding results in customer usage data being provided to ESPs/Community Choice Aggregators at no cost and that provision of data is largely analogous to the services provided as part of the IOUs’ DA and [Community Choice Aggregators] CCA fee tariffs for Meter Data Management Agent (MDMA) services, the DA and CCA MDMA fee shall be reset consistent with the outcome of this proceeding; that is, only the cost of incremental services, if any, above and beyond the services provided at no cost under the decision in this proceeding shall be collected as part of the DA and CCA MDMA fee.⁴⁶

⁴² Joint Report at 4.

⁴³ *Id.* at 4-5.

⁴⁴ *Id.* at 5.

⁴⁵ *Id.*

⁴⁶ *Id.* at 5.

PG&E also states that, alternatively,

[T]he Commission in this proceeding could achieve the same result as proposed by PG&E, AReM and MEA without requiring modifications to the DA or CCA tariffs, by authorizing the IOUs to provide the customer energy usage data authorized in this proceeding to ESPs and CCAs without charge and (for CCAs) without the need for customer authorization to the extent that the provision of data is largely analogous to the services provided as part of the IOUs' DA and CCA fee tariffs for Meter Data Management Agent (MDMA) services.⁴⁷

SCE and SDG&E, however, "decline to join PG&E's agreement with AReM and MEA," arguing that the "agreement unnecessarily links the outcome of this consolidated proceeding with DA/CCA issues pending or set for resolution in unrelated proceedings."⁴⁸ SCE and SDG&E urge that the Commission "focus its decision in this proceeding on one narrow, undisputed consensus among all parties---that no customers or authorized third parties should be charged fees for using the ESPI platform to obtain usage data from IOUs."⁴⁹ SCE and SDG&E argue that "declining to join PG&E's proposal/agreement with AReM and MEA does not give rise to an issue that can or should be litigated in this proceeding..."⁵⁰

5.2.1. Comments and Replies Pertaining to Pricing

No party expressed opposition to the proposal that no fees should be assessed on customers wishing to obtain automated usage data and to third

⁴⁷ *Id.* at 5-6.

⁴⁸ *Id.* at 6.

⁴⁹ *Id.*

⁵⁰ *Id.*

parties who have obtained the requisite customer authorization for using the ESPI platform.

AReM reports that it supports the PG&E proposal to provide customer usage data to ESPs or CCAs at no cost as long as the requirements adopted in this proceeding are largely analogous to the service now provided to ESPs and CCAs for a fee. Under this proposal, ESPs and CCAs would receive this information at no costs without obtaining a customer authorization. AReM requests that:

[T]he Commission direct SCE and SDG&E to adopt the same, simple solution described by AReM, MEA and PG&E in their joint settlement: If the customer usage data being provided pursuant to this proceeding at no cost is 'largely analogous' to the services provided to ESPs and CCAs for a fee, the IOU's fee shall be reset consistent with the outcome of this proceeding.⁵¹

In Reply Comments, DRA argues strongly against the arguments and positions of AReM, MEA and PG&E. Specifically, DRA argues that

The joint settlement hardly deals with the "same" issues nor presents a "simple" solution as described by AReM. The focus of this proceeding— the raw ESPI data pulled from the IOU's back-office systems—is a completely different factual issue than the IOU's Direct Access (DA) and CCA fee tariffs for Meter Data Management (MDMA) services to provide "billing quality data." The definition of "billing quality data" is clearly disputed, and should be subject to further review by the Commission.⁵²

DRA concludes by urging the Commission to deny the request of PG&E and AReM, asking that the Commission "focus its decision in this proceeding on this one, narrow, undisputed consensus among all parties---that no customers or

⁵¹ AReM Comments at 3.

authorized third parties be charged fees for using the ESPI platform to obtain usage data from the IOUs.”⁵³

In Reply Comments, SDG&E argues that neither SCE nor SDG&E were parties to the settlement between PG&E and AReM and therefore “should not be held to any agreements made therein.”⁵⁴ SDG&E, however, states:

Because SDG&E does not plan to charge third parties a fee to access information via the ESPI platform, SDG&E agrees that the “same” information which can be accessed for free by third parties should be free for all third parties including CCAs and ESPs. SDG&E has no desire to discriminate against CCAs and ESPs for the “same” information.⁵⁵

SDG&E, however, argues that

“Largely analogous” information, on the other hand, is different. First, the term “largely analogous” is not clearly defined in the record of these proceedings. Secondly, said “largely analogous” information may conceivably drive up cost for the utility to gather and process. This becomes an even greater issue if the CCA and ESP are envisaging billing quality data. The information accessed via the ESPI platform is not necessarily billing quality.⁵⁶

SDG&E concludes its argument stating that “SDG&E should not be required to abide or be bound by an application proceeding or negotiated settlement which they were not a party.”⁵⁷

⁵² DRA Reply Comments at 5.

⁵³ *Id.*

⁵⁴ SDG&E Reply Comments at 2.

⁵⁵ SDG&E Reply Comments at 2.

⁵⁶ *Id.* at 2.

⁵⁷ *Id.*

5.2.2. Further Comments

Following the filing of the stipulation on February 21, 2013, parties were provided an opportunity to opening, reply and sur-reply comments or briefs.

In an Opening Brief,⁵⁸ DRA argues “The Commission should reject at this stage the proposed PG&E settlement identified in the parties’ Joint Report filed July 30, 2012 to provide customer energy usage data to DA providers and Community Choice Aggregators (CCA) at no cost.”⁵⁹

PG&E, in response,⁶⁰ argues that DRA misunderstands the PG&E proposal. PG&E states:

PG&E, MEA and AReM are not proposing that the scope or costs of the Customer Data Access Project be expanded to cover special, customized data needs of CCAs or DA providers. Instead, all that is being proposed is that if the Customer Data Access Project makes available data to third-parties at no cost that is largely analogous to the data that is provided under the CCA and DA fee tariffs for Meter Data Management Agent services, then the CCAs and DA providers should be entitled to that same data at no cost under the CCA and DA fee tariffs.⁶¹

DRA, in its sur-reply brief, states that it “withdraws its objection to the joint proposed settlement of MEA, AReM and PG&E,”⁶² and cites PG&E’s

⁵⁸ *Opening Brief of the Division of Ratepayer Advocates* (DRA Brief), March 13, 2013.

⁵⁹ DRA Brief at 1.

⁶⁰ *Reply Comments of Pacific Gas and Electric Company*, April 11, 2013 (PG&E 4/11/13 Reply).

⁶¹ *Id.* at 2.

⁶² *Sur-Reply Brief of the Division of Ratepayer Advocates on Pacific Gas and Electric Company’s Reply Brief*, April 15, 2013 (DRA Sur-Reply Brief) at 2.

clarification that “the data at issue are not broader than that it provides without additional charge to third parties.”⁶³

5.2.3. Discussion of Pricing-Related Issues

This decision finds that the undisputed consensus between all parties – that no customers or authorized third parties be charged fees for using the ESPI platform to obtain usage data from PG&E, SCE or SDG&E is a reasonable policy and consistent with the filings in this proceeding.

In its subsequent filings, PG&E has clarified that its agreement with AReM and MEA is not a settlement of pricing issues that are the subject of other proceedings but a clarification that these third-parties will have equal access to the consumption data provided by PG&E at the request of a customer to third parties. There are no objections to PG&E’s offering this service to CCAs or DA providers. We find that there is no reason to treat CCAs or DA providers differently from any other third-party.

5.3. Timing for Resolution of Outstanding Issues

The Scoping Ruling asked for comments pertaining to “the appropriate schedule for resolving the issues in this proceeding.”⁶⁴

The Joint Report states that “[p]arties agree that the issues in this proceeding should be resolved in an expedited manner.”⁶⁵ The Joint Report asks

⁶³ *Id.*

⁶⁴ Scoping Memo at 5.

⁶⁵ Joint Report at 7.

for “a Final Decision in this proceeding in the third quarter of 2012.”⁶⁶ The Joint Report also reports

SDG&E has begun project planning to implement its Customer Energy Network (CEN) ESPI platform with a potential implementation date of late 2012. SCE does not plan to begin developing its ESPI platform until the Commission issues a Final Decision in this proceeding. SCE will be able to deploy its ESPI platform within approximately 12 months of a Final Decision. (In its Application, SCE assumed a Final Decision in the third quarter of 2012, resulting in an implementation date in July 2013. PG&E assumed a Final Decision in the first quarter of 2013, which would enable implementation of Phase 1 of PG&E’s Customer Data Access (CDA) ESPI platform in the third quarter of 2014.⁶⁷

PG&E expected that its usage data would be available to all customer classes simultaneously. SCE anticipated that it would be available to residential and to small and medium business customers by July 2013, with the availability to large non-residential customers (demand above 200 kilowatt (kW)) not yet determined.⁶⁸ SDG&E anticipated that it could make the data available to residential and to small and medium business customers by December 2012, with the availability to large non-residential customers (demand above 200 kW) not yet determined.⁶⁹

5.3.1. Comments and Replies Pertaining to Timing

Several parties commented on timing issues.

⁶⁶ *Id.*

⁶⁷ *Id.* at 8, footnotes omitted.

⁶⁸ *Id.* at 9.

⁶⁹ *Id.* at 9.

EnerNOC commented that “some of the detail” concerning the types of data and timing failed to make the Joint Report.⁷⁰ EnerNOC specifically sought clarity on issues pertaining to “whether the data is, or is not, billing quality data.”⁷¹

OPEN asks that the Commission require the three electric utilities “to provide more detail in their implementation plans with respect to the rollout of the ESPI platform to specific customer classes.”⁷² OPEN argues that “[t]o effectively enable private sector innovation, third parties need to know, for each customer class, which customers will be eligible for GreenButton/ESPI services and when the data sharing platform will be rolled out.”⁷³

In reply, SCE argues that EnerNOC’s comments are not relevant, arguing:

This information [pertaining to the different types of data] was not included in the Joint IOU Report because the provision of data other than usage data, from smart meters, is outside the scope of D.11-07-056 and is thus not required by the IOUs’ ESPI applications. Ordering Paragraph 8 of D.11-07-056 required each of the IOUs to “file an application that includes tariff changes which will provide third parties access to a customer’s usage data via the utility’s backhaul when authorized by the customer.”⁷⁴

⁷⁰ EnerNOC Comments at 5.

⁷¹ *Id.* at 5.

⁷² OPEN Comments at 5.

⁷³ *Id.*

⁷⁴ SCE Reply Comments at 5.

In a similar vein, SCE notes that “customers with demands equal to or above 200 kW do not have Edison ... smart meters” and therefore are “outside the scope of this proceeding.”⁷⁵

In reply to OPEN, SCE notes that “[v]irtually all commercial customers with demands less than 200 kW will have a SmartConnect meter and, therefore, will have data available through SCE’s ESPI platform when it gets deployed.”⁷⁶

In reply to EnerNOC, SDG&E states:

There are technical and customer requirements that must be met before this service can be provided to a given customer (for example, the customer must have a smart meter for the information to be retrieved in a timely manner). In general terms, the service will be largely available by the end of 2012.⁷⁷

5.3.2. Discussion of Issues Related to Timing

The press of Commission work has caused more time to have passed since the filing of the report, comments and replies. SDG&E’s proposed implementation date has already passed.

SCE rightly points out that this proceeding concerns the data generated by Smart Meters, which do not serve customers with demand above 200 kW. Thus, issues concerning the rollout of a service to these customers fall outside the scope of this proceeding. In addition, the focus of this proceeding is to provide information on “usage data” as quickly as possible, and the utilities are not required to provide other data at this time.

⁷⁵ *Id.*

⁷⁶ *Id.* at 6.

⁷⁷ SDG&E Reply Comments at 4.

The request of parties for more information on the timing of the availability the backhaul service to residential and business customer with demand lower than 200 kW is, however, reasonable. Therefore, this decision will require that the advice letters filed to tariff these services, which are due within 90 days of the adoption of this decision, state the expected date at which the service will be available.

5.4. Relationship of Applications to Other Proceedings

The Joint Report explored the relationship of these applications to other proceedings that would result from D.11-07-056. The Joint Report identified two proceedings whose resolution need not be resolved before issuance of this decision and those that may need resolution. Concerning proceedings whose resolution need not be resolved, the Joint Report states:

The parties agreed that the following advice filings, ordered in D.11-07-056, need not be resolved before issuance of a Final Decision in this proceeding:

- Advice Letters on the Provision of Price, Usage and Cost Information, and results of “methodological discussions [with CAISO] and a proposal for providing wholesale prices” (OP # 5, 6, and 7 of D.11-07-056); and
- Home Area Network (HAN) Implementation Plan Advice Letters (OP # 11).

The parties also agreed that the Commission need not approve the wholly unrelated Rule 24 (which has not yet been fully drafted or litigated, and which awaits resolution in Phase IV of the Demand Response Order Instituting Rulemaking, R.07-01-041) before it issues a Final Decision in this proceeding. Finally, the Parties agreed that the question whether the privacy rules adopted by the Commission in D.11-07-056 apply to ESPs and CCAs is being determined in Phase 2 of R.08-12-009, not in

this proceeding. It is unclear whether the result of that proceeding will have an impact on this one.⁷⁸

All of the parties “agreed that the only filings upon which the outcome of this proceeding *may* be dependent are the Advice Letters each IOU filed on October 27, 2011 ... pursuant to Ordering Paragraph #1 of D.11-07-056...”⁷⁹ Specifically, the Joint Report states:

Because the IOUs’ ESPI platforms will be used to transmit AMI usage data (i.e., “Covered Information”) to customer authorized third parties (i.e., “Covered Entities”), the tariff rules proposed in the Data Privacy Advice Filings are relevant to this proceeding, even if those proposed rules do not specifically address additional tariff requirements that are implicated in the context of automated data transmission, including third-party eligibility and “registration” with the IOUs, etc. Moreover, to the extent that the new tariff rules resulting from resolution of this proceeding – regarding automated data transmission – refer to, or are based on, the final tariff rules adopted in the pending Data Privacy Advice Filings, it would, as a practical matter and from an efficiency perspective, be beneficial for the Commission to have resolved the first set of Advice Filings before it considers the next.⁸⁰

The Joint Report, however, argues:

[T]he parties concluded that it may not necessarily be improper or unwise for the Commission to issue a Final Decision in this proceeding without first resolving the pending Data Privacy Advice Filings. Rather, a Final Decision in this proceeding could simply direct that the IOUs’ ESPI platforms be consistent with

⁷⁸ Joint Report at 9-10, footnotes omitted.

⁷⁹ Joint Report at 10, emphasis in original. The Joint Report states that “all of the Parties other than EnerNOC” (at 10) hold this position, but the EnerNOC Opening Comments (at 6) clarify that EnerNOC holds this position as well.

⁸⁰ Joint Report at 10, footnote omitted.

the privacy rules adopted in D.11-07-056, as implemented in the Data Privacy Advice Filings. This is because OP #1 of D.11-07-056 already adopted Attachment D to the same decision, i.e., the Rules Regarding Privacy and Security Protections for Energy Usage Data, which rules already govern the treatment of Covered Information by the ESPI platforms proposed in this proceeding.⁸¹

The Joint Report summarizes that while it would be “preferable” that tariff filings resulting from this application refer to or be based on “*final* tariff rules” adopted in the Privacy Advice Letters, it is “not necessary” to hold up resolution.⁸²

5.4.1. Comments and Replies of Parties

DRA Comments urge the Commission to “resolve the pending IOUs advice letter filings on privacy.”⁸³ DRA argues that “[u]ntil the IOUs’ Tier 2 Advice Letter filings are adopted, the current tariffs do not address the Privacy Rules.”⁸⁴ DRA also states that “the common third-party eligibility criteria outlined in the Joint IOU Report conflicts with the conclusion that the IOUs’ proposed Privacy Rule tariff changes are not necessary for a final decision in this proceeding.”⁸⁵ And further, DRA points out that “third parties could not acknowledge receipt of utility tariffs” [a proposed requirement] absent a resolution of the IOU Privacy tariffs.”⁸⁶ DRA, however, points out that

⁸¹ *Id.* at 11.

⁸² *Id.*

⁸³ DRA Comments at 2.

⁸⁴ *Id.* footnotes omitted.

⁸⁵ *Id.* footnotes omitted.

⁸⁶ *Id.* at 3.

Attachment D of D.11-07-056, not tariff rules, “is the principal governing document.”⁸⁷ Instead, “DRA recommends that the Commission require a third party to provide confirmation that it has reviewed and will comply with the Attachment D of D.11-07-056.”⁸⁸

No other party provided comments or replies on this matter.

5.4.2. Discussion of Issues Related to the Relationship of the Applications to Other Outstanding Proceedings

At this point in time, the Commission anticipates that the advice letters filed pursuant to the Commission’s Privacy Decision, D.11-07-056, will be adopted prior to the filing of advice letters implementing this decision. These tariffs, when adopted, should provide helpful guidance in drafting the advice letters needed to implement this decision.

Parties are right to point out the tariffs will be helpful, but not necessary to the filing of advice letters in this proceeding. Nevertheless, the adoption of advice letters by the Commission should both render concerns on this matter moot and provide the requested guidance.

Moreover, DRA has it exactly correct on the legal issues associated with this proceeding – Attachment D of D.11-07-056 sets the privacy policies, the tariffs proposed in the advice letters should follow the privacy policies adopted in Attachment D.

In summary, there is no reason to postpone adoption of this decision.

⁸⁷ *Id.* at 4.

⁸⁸ *Id.*

5.5. What Policies Should Apply to Recipients of Data? What Liability Issues Arise for Utilities in the Transmission of Customer Data?

The Joint Report noted that parties agreed that certain policies and principles should apply to customer-authorized third parties receiving data via the IOUs' ESPI platforms:

- Third-party eligibility criteria should be common across the IOUs;
- For purposes of the privacy rules, Conclusion of Law #9 of D.11-07-056 establishes that the Commission has oversight over “any third party, when authorized by the customer, that accesses, collects, stores, uses, or discloses covered information relating to 11 or more customers who obtains this information from an electrical corporation”;
- Consistent with the Commission’s oversight of Covered Entities, a third party will not be “eligible” to receive automated data from the IOUs’ ESPI platforms to the extent that the Commission directs the IOU(s) to stop transmitting data to that third party; and
- The Commission, not the IOUs, bears responsibility for exercising regulatory oversight of Covered Entities to resolve formal complaints or conduct investigations into allegations or suspicions of potential or actual misuse of customer data by Covered Entities.⁸⁹

In addition, the Joint Report noted that parties agreed to common “third-party eligibility criteria” that should apply across the three applicants.

These include:

- *Provision of basic company information:* The third party must provide to the utility basic information about its company and how to contact its company. This information should include:

⁸⁹ Joint Report at 12.

company name; mailing address; and the names, telephones numbers, mailing addresses, and email addresses for any key business and technical contacts at the company.

- *Demonstrate technical ability to connect to and access data from the utility's ESPI platform:* The third party will work with the utility to verify that the third party can technically access and obtain data from the utility's ESPI platform.
- *Acknowledge receipt of the utility's tariff(s) governing customer usage data privacy, and the automated transmission of usage data to customer-authorized third parties:* Parties expect that when the Commission resolves the Data Privacy Advice Filings, each utility will have a tariff rule governing customer usage data privacy. Parties also expect that upon the conclusion of this proceeding, each utility's tariff rules will be updated (either with a new rule or modifications to existing rules) to govern the provision of automated customer usage data to authorized third parties. Each utility will provide its relevant tariff rule(s) to any third party registering to access the utility's ESPI platform and the third party must acknowledge receipt of the tariff rules(s) before it can receive the automated data transmission.
- *Absence from Commission's prohibited list:* Should the Commission include a third party's name on a list of parties prohibited from receiving automated data, that party will not be "eligible" to receive data unless the Commission orders otherwise.⁹⁰

Concerning the process by which a third party registers with a utility in order to receive ESPI data, the Joint Report notes that the parties have agreed to a process characterized as "wait-and-see," where parties are eligible to receive ESPI data provided that they meet four conditions: "(a) they obtain the requisite customer authorization; (b) they meet the technical eligibility requirements;

⁹⁰ *Id.* at 12-13.

(c) they acknowledge receipt of the relevant tariff rule(s); and (d) they are not otherwise prohibited by the Commission from receiving such data.”⁹¹ The Joint Report also acknowledges “that the Commission may elect at a later date, in the exercise of its jurisdiction, to revise the registration criteria.”⁹²

There was less agreement concerning what actions should lead to a suspension or revocation of a third party’s access to data, or who should take responsibility for such action. The Joint Report identified three different scenarios that would cause suspension or revocation:

(1) the customer requests that the IOU discontinue providing their data to the third party, (2) the Commission orders one or more IOUs to suspend or revoke a third party’s access to customer data via the ESPI platform, and (3) the IOU reasonably suspects that the third party is or may be violating the Commission’s data privacy rules.⁹³

The Joint Report states that when a customer requests that the utility discontinue providing data to a third party, the utility should “immediately terminate the third party’s automated access to the data of the customer who revoked the authorization.”⁹⁴ Parties also agreed “that the IOU should notify the third party of the suspension or revocation of access.”⁹⁵

The Joint Report also states that when the Commission orders the suspension or revocation of a third party’s access to customer data via the ESPI platform, the parties agreed that “it would be appropriate and necessary for the

⁹¹ *Id.* at 13.

⁹² *Id.* at 13-14.

⁹³ *Id.* at 14-15, footnotes omitted.

⁹⁴ *Id.* at 15.

IOU(s) to comply with the Commission's order if it has not been stayed or enjoined by the appropriate court or agency."⁹⁶ As with the first case, parties also agreed "that the IOU should notify the third-party of the suspension or revocation of access."⁹⁷

Concerning the third case, where a utility elects to suspend a third party's access based on the utility's reasonable suspicion that the third party violated terms of the data privacy tariffs, the Joint Report indicated no agreement among that parties, and instead reported positions and who supported them. The Joint Report begins with the position of SCE and SDG&E, which links its position to D.11-07-056 statement that the "limitation on liability does not apply when the utility has acted recklessly."⁹⁸ SCE and SDG&E state that "it is appropriate to temporarily suspend transmission of customer usage data to any third party reasonably suspected of violating the utility's Commission-approved data privacy practices."⁹⁹ In addition, SDG&E states that "utilities must have discretionary ability to revoke the third party's access to the customer's data in the event of an obvious and egregious violation to assure compliance with other state and federal laws, which could impose liability or expose the IOUs to potential facilitation claims if the utility fails to take appropriate and timely corrective action regarding any known violation of customer privacy."¹⁰⁰ In the

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ D.11-07-056 at 35.

⁹⁹ Joint Report at 16.

¹⁰⁰ *Id.*

case of “suspected violations,” SDG&E proposed to report the matter “to the Commission for input” before acting.¹⁰¹

The Joint Report states that EnerNOC, OPEN and TechNet (Third Parties) “understand and acknowledge that while the IOUs are not responsible for the use or misuse of customer data once it has been securely transferred to a customer-authorized third party, ... the IOUs may still be liable ... for reckless transmission.”¹⁰² The Third Parties, however, argue “that any suspension or revocation of data access must be Commission-directed after the third party has had an opportunity to respond to the concerns being raised by the customer.”¹⁰³ The Third parties also oppose the suspension of access to customer data by a utility upon suspicion because, in their view, such action would constitute an enforcement action “before the proper enforcement authority, the Commission, has done so.”¹⁰⁴ The Third Parties argue that suspension of access to customer data without an opportunity to address complaints and suspicions “would amount to a denial of the third parties’ due process rights.”¹⁰⁵

SCE proposes that “when it reasonably suspects that a third party may be violating tariffs, it will notify the affected customer(s) and the third party that data access will temporarily be suspended pending an order directing otherwise from the Commission.”¹⁰⁶ SCE proposes an expedited proceeding before an ALJ

¹⁰¹ *Id.*

¹⁰² *Id.* at 17.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

within 5 business days of the decision to cut off data access, at which the third party

... bears the burden to demonstrate that: (1) there is a serious risk of irreparable harm to the customer(s) absent an order to reinstate transmission; (2) the third party is likely to prevail on the merits of the underlying controversy; and (3) a comparison of the harm to the customer(s) versus the harm to the third party, on balance, favors the third party.¹⁰⁷

SCE argues that such a speedy proceeding “is not without precedent.”¹⁰⁸

SCE also recommends that the Commission monitor the frequency of such a proceeding and, if needed, reassess “whether it is appropriate for the Commission to undertake a registration process for third parties before they will be permitted to receive automated usage via the ESPI platform.”¹⁰⁹

PG&E approaches the issue of acting “recklessly” in overseeing the activities of a third party and argues that this standard may conflict with § 8380(f), which, PG&E asserts, “places the responsibility for protecting customer-authorized third party access squarely on the customer and the third party, consistent with customer choice.”¹¹⁰ PG&E also raises questions concerning a utility’s suspension of data access, and asks that the Commission define the “reckless” standard so that a utility was not “reckless” where a customer authorized third-party access to energy usage data. In that case, PG&E states that:

¹⁰⁷ *Id.* at 18.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 18-19.

¹¹⁰ *Id.* at 19.

PG&E would support deleting the utility suspension right proposed by SCE if the Commission modifies D.11-07-056 to remove the liability of the utility for “reckless” actions where the customer has authorized the third party to access customer energy usage data via the utility’s backhaul consistent with Public Utilities Code Section 8380(f).¹¹¹

On this topic, the Third Parties state that they “want the Commission to be the authority that determines whether third parties are acting in violation of the Privacy Decision and whether data access should be rescinded.”¹¹² The Third Parties also argue that the proposal of SCE and SD&E could have a number of negative impacts. They argue that a default position of suspension or termination “could lead to frequent interruptions to third parties’ businesses,” that the Commission may lack “sufficient resources to decide ‘expedited’ proceedings within five days,” and that with a unclear notion of reckless action, utilities will “err on the side of caution.”¹¹³ The Third Parties conclude that this approach “would result in an unworkable framework that puts the third parties’ businesses at risk at all times.”¹¹⁴

After providing this detailed discussion, the Joint Report concludes that there are two options for the Commission:

Option #1: Permit the IOUs to temporarily suspend a third party’s access to the ESPI platform if the IOUs have a reasonable suspicion that the third party may have violated the Commission’s privacy rules, unless and until the Commission orders otherwise. A secondary consideration for this Option #1 is whether the

¹¹¹ *Id.*

¹¹² *Id.* at 20.

¹¹³ *Id.* at 21.

¹¹⁴ *Id.*

Commission could implement an expedited (5-day) process for resolving the threshold question about whether transmission should resume pending a fuller investigation into the allegations. Under this Option #1, the IOUs would notify the customers and the third party about its intention to suspend the third party's access to the ESPI platform.

Option #2: If an IOU reasonably suspects that a third party may have violated the Commission's privacy rules, it will be absolved of liability under its tariffs if it continues to transmit data to the authorized third party provided that the IOU expeditiously informs the customer and the third party of any information regarding possible wrongdoing so that either can seek remedies under their contract or at the Commission. In other words, the Commission should clarify the IOUs' potential liability for acting "recklessly" and affirmatively state that continuing to transmit data to a third party after prompt notification of a potential violation of the Commission's privacy rules to the Commission will not be deemed a reckless transmission of data. The Commission retains authority at all times to investigate the issue on its own motion or pursuant to a complaint by the customer, consistent with evidentiary and other procedures that preserve the third party's due process rights, to determine the appropriate remedy, if necessary.¹¹⁵

Finally, the Joint Report states that "all parties agreed that ... the proposed third-party eligibility and registration criteria are adequate and reasonable."¹¹⁶ This process is also called SCE's self-certification process.

5.5.1. Comments and Replies of Parties

EnerNOC Comments state that it supports SCE's self-certification process, desires "an easy, electronic or paper authorization process for the customer," "a

¹¹⁵ *Id.* at 21-22.

¹¹⁶ *Id.* at 22.

reasonably short processing time ... of that authorization.”¹¹⁷ EnerNOC also asks for “a Safe Harbor period before terminating third-party data access upon notification by the customer to ensure that the customer understands that its services provided by the third party will co-terminate with the data access.”¹¹⁸

In addition, EnerNOC points out that until the Commission adopts tariffs implementing privacy rules, “third parties could not acknowledge receipt of utility tariffs that address customer data privacy rules.”¹¹⁹ EnerNOC asks that the Commission clarify “if acknowledgement of Attachment D to the Privacy Decision is a substitution for utility tariffs until the advice letters are approved.”¹²⁰

OPEN supports “a simple registration process for third party service provides” as proposed in the Joint Report.¹²¹ OPEN argues that:

Imposing additional hurdles to participation in the early stages of ESPI implementation, when the marketplace for data-driven efficiency services is immature, will discourage experimentation and creativity at precisely the moment when California seeks to foster innovation.¹²²

OPEN also asks that the customer authorization process be “free of barriers to participation.”¹²³ Specifically, OPEN “supports SCE’s suggestion that the online authorization forms be pre-populated with certain account-specific

¹¹⁷ EnerNOC Comments at 2.

¹¹⁸ *Id.* at 3.

¹¹⁹ *Id.* at 6.

¹²⁰ *Id.*

¹²¹ OPEN at 6.

¹²² *Id.* at 7.

information, and that its website will be updated to show the range of authorized third party service providers.”¹²⁴

OPEN argues:

[T]hat the Commission should clarify the concept of recklessness to make clear that an IOU will not be deemed liable for continuing to transmit data to an authorized third party if the IOU timely reports to the Commission, the customer, and the third party a documented claim or concern regarding compliance with the Commission’s rules. In other words, the IOU may not suspend or terminate the transmission of data to a customer-authorized third party unless and until the Commission orders the IOU to take such remedial action or the customer withdraws its authorization.¹²⁵

OPEN expresses concern regarding the proposal of SCE and SDG&E, which it characterizes as a proposal to “suspend or terminate data access as a proactive measures to avoid the potential for liability when there have been no factual findings,” which OPEN argues “would lead to frequent interruptions to third parties’ businesses and cause irreparable financial and reputational harm.”

TechNet argues that “the Commission should ensure that the customer authorization process remains simple and convenient.”¹²⁶ TechNet also endorses “pre-populating the form with information already in the utility’s possession” as “vital to eliminate many of the errors that will otherwise slow the authorization process.”¹²⁷ TechNet, however, request that “the Commission and other parties

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*, underline in original.

¹²⁶ TechNet Comments at 4.

¹²⁷ *Id.* at 4.

... have an opportunity to review the customer authorization process and forms prior to their use.”¹²⁸ TechNet cites the example of PayPal, and argues that if “third parties develop and wish to institute a third-party-led authorization process, the utilities will expeditiously act upon such a request.”¹²⁹

TechNet also recommends

[T]hat the utilities not have a fact-finding role or the ability to unilaterally terminate access, unless directed by the Commission. If a utility expeditiously turns over credible evidence of significant third party violations to the Commission for investigation that should establish the presumption that the utility has not acted recklessly, leaving the Commission to exercise its role to determine the appropriate remedy. The credible evidence should be provided to the third party and the customer coincident with the information being provided to the Commission. The third party should have an opportunity in any Commission action to dispute or challenge the charges and, depending upon the severity of the charge, should have an opportunity to remedy the situation within a reasonable period of time determined by the Commission. The Commission should have a process that allows it to act in exigent circumstances.¹³⁰

DECA also argues that the decision to terminate or suspend a third party should reside in the Commission. DECA recommends:

[T]he Commission should instead require utilities to receive approval from Energy Division staff for terminating or suspending third party access to customer data where the utility believes a violation of Commission rules has occurred. This process can be authorized in a decision in this proceeding to

¹²⁸ *Id.* at 5.

¹²⁹ *Id.* at 5-6.

¹³⁰ *Id.* at 8-9.

occur after a formal letter to the Energy Division is drafted by a utility.¹³¹

Alternatively, DECA recommends “the use of an advice letter as a mechanism for addressing suspension of access to customer data by third parties.”¹³² In all cases, however, DECA recommends that the Commission “clarify that the term ‘reckless’, as used in D.11-06-056, does not apply to utility inaction while the utility is waiting for Commission staff to approve or deny a utility’s request to terminate or suspend third party access to customer data or during a reasonable time period while the utility is preparing such a request.”¹³³

In reply comments, PG&E supports TechNet’s proposal for permitting “customers ... to obtain the on-line authorization form to fill out from other sources in addition to the utility” but that PG&E must “retain the ability to process, verify and authenticate the customer’s authorization of a third party.”¹³⁴

PG&E opposes EnerNOC’s request for a “safe harbor,” arguing that:

If a customer terminates third-party access in a manner inconsistent with the agreement between the customer and the third party, that is a matter for the customer and the third party to resolve consistent with their agreement, not a matter for the Commission to dictate or arbitrate.¹³⁵

¹³¹ DECA Comments at 4.

¹³² *Id.*

¹³³ *Id.* at 5.

¹³⁴ PG&E Reply Comments at 2.

¹³⁵ *Id.* at 3.

In Reply Comments, SCE argues that “TechNet’s request for a third-party-led authorization is unripe.”¹³⁶ In addition, SCE argues that EnerNOC’s safe harbor proposal is “unreasonable.”¹³⁷

SDG&E, in Reply Comments, also argues against EnerNOC’s safe harbor proposal. Arguing from the perspective of customer service, SDG&E states that “if ultimately the customer requests the termination of data transfer, SDG&E must promptly honor that request to terminate the flow of unauthorized personal information.”¹³⁸

5.5.2. Further Comments on Policies Applicable to Data Recipients, Liability, and Consent Forms

DRA argues that “IOUs should have discretion to suspend provision of customer energy usage data to any third party reasonably suspected of violating the Privacy Rules in order to protect customer privacy.”¹³⁹ DRA holds that:

The IOUs must have discretion to temporarily suspend third party access to customer usage data when they have a reasonable suspicion that a third party is violating the Privacy Rules. Without such discretion, the privacy protections lack substance. Prohibiting the IOUs from taking action on possible violations would expose customers to privacy threats from potential bad actors.¹⁴⁰

In addition, DRA argues that the IOU consent forms filed with advice letters should disclose the purpose for each third-party use of the customer’s

¹³⁶ SCE Reply Comments at 8.

¹³⁷ *Id.* at 4.

¹³⁸ SDG&E Reply Comments at 2.

¹³⁹ DRA Brief at 5.

¹⁴⁰ *Id.* at 7.

energy usage data and require the third parties to provide annual notices to the customer with an option to revoke authorization.

EnerNOC argues against allowing IOUs to suspend third-party access to data based on suspicion. EnerNOC contends that “[s]uspension or termination of data access would be the remedy for a *finding* that a third party had not acted in compliance with the Privacy Rules.”¹⁴¹ EnerNOC instead supports the Third Parties’ Proposal, in which

[T]he utility would have to submit its information to support its “reasonable suspicion” to the attention of this Commission. If the IOUs do that in a timely manner, they should not be found to have acted recklessly because they will have alerted the Commission of their suspicion of a potential breach of customer privacy and requested the Commission to investigate their claim. In such a process, the third party, consistent with due process, would have notice and an opportunity to be heard to address or remedy the allegations before an objective body.¹⁴²

EnerNOC points out that D.11-07-056, which envisions covered entities acting when they conclude that there is a “pattern or practice” of violative behavior that is a material breach of a contract is very different from a “reasonable suspicion” of a tariff violation by an IOU. In particular, EnerNOC notes that “customer data access ... may not [involve] a contractual relationship with a utility.”¹⁴³

Finally, EnerNOC opposes DRA’s request for revisions to the consent form and an annual notice. EnerNOC argues that:

¹⁴¹ *Reply Brief of EnerNOC*, April 11, 2013, at 4.

¹⁴² *Id.* at 5.

¹⁴³ *Id.* at 7.

[I]f those ... items were included on the consent form, ... the third party would be demonstrating compliance to the IOUs. However, the Privacy Rules designate the Commission as the authority for determining compliance with their Privacy Rules.¹⁴⁴

PG&E states that it agrees “that if the utilities are liable for third-party violations of the Commission’s privacy rules even where the third-party access is authorized and controlled by the customer, then the utilities should and must have authority to suspend such access upon a reasonable belief that the privacy rules are being violated by the third party.”¹⁴⁵ PG&E also points out that “Section 8380(f) expressly exempts a utility from liability for the security, use or misuse of customer energy usage data by a third party where the customer chooses to disclose the data to the third party”¹⁴⁶

Finally, PG&E argues that DRA’s objection to the utilities’ privacy tariff advice letters is outside the scope of this proceeding, which PG&E contends “deals solely with the utilities’ Customer Data Access Project applications.”¹⁴⁷

SCE, in its April 11, 2013 Reply, supports the DRA position that IOUs should have the discretion to temporarily suspend provision of customer energy usage data to any third party reasonably suspected of violating the privacy

¹⁴⁴ *Id.* at 8.

¹⁴⁵ PG&E 4/11/13 Reply at 4.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 5.

rules.¹⁴⁸ SCE, however, argues that DRA's concerns about the contents of the customer consent form are outside the scope of this proceeding.¹⁴⁹

5.5.3. Discussion

This decision finds that the third-party eligibility criteria that are proposed in the Joint Report are reasonable and consistent with the law because they ensure that a third party provides the basic information by which it can be accountable for the customer's data which it receives and has the technical competence to process the data. In addition, the utility is required to provide the third party with both a copy of the tariffs implementing the privacy rules along with Attachment D of D.11-07-056, which contain the privacy rules. Finally, the decision reasonably prevents the provision of consumer data to any third party on the Commission's list of prohibited companies.

As a result, this decision adopts the following as eligibility criteria, which were included in the Joint Report:

- *Provision of basic company information:* The third party must provide to the utility basic information about its company and how to contact its company. This information should include: company name; mailing address; and the names, telephone numbers, mailing addresses, and email addresses for any key business and technical contacts at the company.
- *Demonstrate technical ability to connect to and access data from the utility's ESPI platform:* The third party will work with the utility to verify that the third party can technically access and obtain data from the utility's ESPI platform.

¹⁴⁸ *Southern California Edison Company's Reply Comments to the March 13, 2011 Opening Comments of the Division of Ratepayer Advocates*, April 11, 2013 (SCE 4/11/13 Reply) at 3.

¹⁴⁹ *Id.* at 4.

- Acknowledge receipt of the utility's tariff(s) and Attachment D of governing customer usage data privacy, and the automated transmission of usage data to customer-authorized third parties and Attachment D of D.11-07-056: Parties expect that when the Commission resolves the Data Privacy Advice Filings, each utility will have a tariff rule governing customer usage data privacy. Parties also expect that upon the conclusion of this proceeding, each utility's tariff rules will be updated (either with a new rule or modifications to existing rules) to govern the provision of automated customer usage data to authorized third parties. Each utility will provide its relevant tariff rule(s) to any third party registering to access the utility's ESPI platform and the third party must acknowledge receipt of the tariff rules(s) before it can receive the automated data transmission. In addition, each utility will provide Attachment D of D.11-07-056 to the third party, since this is the source of the tariffs.
- Absence from Commission's prohibited list: Should the Commission include a third party's name on a list of parties prohibited from receiving automated data, that party will not be "eligible" to receive data unless the Commission orders otherwise.¹⁵⁰

These criteria are reasonable and serve to protect a customer's privacy from unwanted or inadvertent disclosure of personal data associated with smart meters.

Concerning the process by which a third party registers with a utility in order to receive ESPI data, we find it reasonable to adopt the process agreed to by the parties in this process that is characterized as "wait-and-see." Parties are eligible to receive ESPI data provided that they meet four conditions: (a) they obtain the requisite customer authorization; (b) they meet the technical eligibility

¹⁵⁰ Joint Report at 12-13.

requirements; (c) they acknowledge receipt of the relevant tariff rule(s) and Attachment D; and (d) they are not otherwise prohibited by the Commission from receiving such data. This approach creates a reasonable process whereby responsible parties who acknowledge the privacy rules can rapidly obtain access to data when authorized by a customer, yet it is a process that can also prohibit the provision of data to companies prohibited by the Commission.

The decision next turns to the major issues of concern to parties in this proceeding, the definition of “reckless” and the process for suspending a third party’s access to the ESPI platform.

Based on the arguments of the parties and our considerations of the public interest, this decision adopts a policy based on a consideration of both options presented in the Joint Report. Specifically, if a utility reasonably suspects that a third party has violated the Commission’s privacy rules, it will be absolved of liability under its tariffs if it continues to transmit data to the authorized third party provided that the utility expeditiously informs the third party and Commission’s Energy Division with a notice of the suspected tariff violation along with any information regarding possible wrongdoing and that the utility seeks to resolve the suspected tariff violations with the third party. The utility and the third party will have a 21-day period in which to resolve the suspected violations, during which time the utility will continue transmission of data. At its discretion, Energy Division staff may facilitate resolution of the issues between the utility and the third party, and may grant an additional 21-day for resolving the matter.

If the matter is not resolved during the period set for resolution, the utility shall file an Tier 2 advice letter that seeks to move the third party to the list of entities ineligible to receive customer data. Notice of this filing should also be

provided to all customers who have selected that third party to receive their usage data. The utility will continue transmission of data until Commission action resolves the matter. A utility who acts in this fashion will be deemed not to have made a reckless transmission of data.

In other words, the Commission clarifies that if a utility company continues to transmit data to a third party after prompt notification of a potential violation of the Commission's privacy rules to the third party, and to the Commission's Energy Division, seeks to resolve the matter, and, upon the end of the resolution period files a Tier 2 advice letter with the Commission that seeks to move the third party to a list of companies that are no longer eligible to receive data, then the utility will not be deemed to have made a reckless transmission of data.

Under the Tier 2 advice letter process, the Commission retains authority to address the advice letter in an expedited way administratively, the authority to investigate the issue on its own motion, the authority to address a complaint by the customer, and the authority to determine the appropriate remedy, if necessary, for any tariff violation. Following this procedure absolves the utility of liability concerning the continued transmission of data, ensures that the customer receives empowering information, and enables the Commission to respond to alleged misuses of customer information in a prompt fashion. The advice letter review process, moreover, does not place the utilities in a fact-finding role but does enable the Commission to terminate access expeditiously should the Commission find that credible evidence warrants such action.

This decision rejects PG&E's request that the Commission modify D.11-07-056 to remove the liability of the utility for "reckless" actions whenever

the customer has authorized the third party to access customer usage data. Instead, this decision makes clear that a utility that responds to indications of tariff abuses by a third party consistent with the procedures adopted in this decision is not reckless.

To clarify further, it is reasonable for the Commission, in its oversight of the utilities and smart meters, to take responsibility for ordering the suspension of third-party access to customer data. Under the procedures adopted in this decision, it is not necessary nor is it reasonable for a utility to suspend access to customer data based on *suspicion* that a third party may be violating tariffs.

Concerning SCE's suggestion that online authorization forms be "prepopulated with certain account specific information," this decision finds that this is in the customer's interest, and an appropriate thing to do. Prepopulating can reduce error rates and transaction costs.

Concerning the proposal that EnerNOC calls a "safe harbor," this decision finds that there is no need to force a utility to delay action on any customer's request to terminate the flow of information to a third party. There are two relationships at issue in such a request: the relationship between the customer and the utility and the relationship between the customer and the third party. It is unwise for regulatory policy to conflate these two relationships. The utility owes prime responsibility to its customer and the customer expects that the Commission will exercise its regulatory authority to maintain the customer's interest in this relationship. It is the obligation of the third party to maintain and/or repair its relationship with the customer.

Concerning DRA's objection to the utilities' privacy tariff advice letters, we find that this issue is outside the scope of this proceeding, which deals solely with the utilities' CDA Project applications.

5.6. Other Matters

The Joint Report also included a list of details concerning the ESPI platforms that had the support of the parties to this proceeding. The Joint Report lists the following details:

- The customer will initiate authorization by selecting a registered third party from a drop-down list and indicating the accounts for which it is providing data access;
- After the customer submits the appropriate written authorization (hard copy or online), the IOUs will begin to provide third-party access to historical data within anywhere from 24 hours to 5 days.
 - Subsequent access will include updates of data on a lagged basis of up to 24 hours with the prescribed interval information (either hourly for residential or 15-minute for non-residential).¹⁵¹

The consensus details on how to provide the ESPI platform described above are reasonable.

It is good for California that all three utilities propose to implement this program through the use of a common data platform, ESPI. To the extent possible the utilities should implement this program in a uniform way, including standard feature sets, user interface and available data. To promote this outcome, the three utilities should collaborate with each other, with third parties and relevant standards-related organizations as to develop common requirements for the ESPI platforms to promote uniformity in system implementation with respect to access to the system by third parties (such as, but not limited to, standards version, user interface and features, data types and

¹⁵² *Id.* at 24.

formats, registration and security processes, authorization forms, etc.). The common requirements shall be published by the utilities in a joint Advice Letter (Tier 1) filing to be made within 90 days of the adoption of this decision.

The Joint Report also states that there are two issues that need resolution:

(1) whether and how the CCA and DA fee schedules should be modified consistent with the “no fee” structure agreed upon here, and (2) the process by which the IOUs can reasonably mitigate their liability for reckless transmission of customer data.¹⁵²

Concerning the CCA and DA fee schedule, this is an issue beyond the scope of this proceeding. Although PG&E, SCE and SDG&E must provide information to CCAs and DAs on an equal footing with any other third party, as discussed above, it is beyond the scope of this proceeding to adopt a fee schedule for providing data to CCAs and DAs. That is an issue for the proceedings concerned with CCAs and DAs.

Concerning the IOUs’ concern for reasonably mitigating their liability for reckless transmission of customer data, the process outlined above addresses and resolves this matter.

6. Categorization and Need for Hearing

Resolution ALJ 176-3290 categorized these proceedings as ratesetting and preliminarily determined that hearings would be necessary. The Scoping Memo affirmed that this proceeding was ratesetting, but, after noting that parties were exploring whether it was possible to settle outstanding issues, stated that it was “unable to either affirm or reverse” the preliminary determination that hearings would be necessary.

Due to the Stipulation filed in this proceeding on February 21, 2013, we determine that there are no outstanding factual issues, and hearings are not necessary.

7. Comments on Proposed Decision

The PD of ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on ____, and reply comments were filed on ____ by ____.

8. Assignment of Proceeding

Commissioner Michael R. Peevey is the assigned Commissioner and Timothy J. Sullivan is the assigned ALJ in this proceeding.

Findings of Fact

1. On March 5, 2012, PG&E timely filed A.12-03-002, SDG&E timely filed A.12-03-003 and SCE timely filed A.12-03-004.
2. To facilitate the management of this proceeding, the ALJ consolidated the separate applications into one proceeding on April 17, 2012.
3. The Joint Report filed in this proceeding on July 30, 2012 demonstrated substantial consensus on policies associated with the provision of third-party access to customer usage data with the authorization of the customer.
4. The Stipulation of February 21, 2013 indicated that all parties agreed to move into the record of this proceeding all pleadings by parties to the proceeding, the transcript and the testimony served in connection with each utility's application.

¹⁵² *Id.* at 24.

5. The Stipulation of February 21, 2012 indicated that all parties agreed that evidentiary hearings on issues identified in the Scoping Memo were not needed.

6. Since there are no objections by any party, it is reasonable to identify *Pacific Gas and Electric Company, Smart Grid Customer Data Access (CDA) Project, Prepared Testimony* (March 5, 2012) as Exhibit PG&E-1 and move it into the record of this proceeding as evidence.

7. Since there are no objections by any party, it is reasonable to identify *Testimony of Southern California Edison Company in Support of Its Application for Approval of Proposal to Enable Automated Access of Customer Usage Data To Authorized Third Parties and Approval of Cost Recovery Mechanism* (March 5, 2012) as Exhibit SCE-1 and move it into the record of this proceeding as evidence.

8. Since there are no objections by any party, it is reasonable identify *Prepared Direct Testimony of Ted M. Reguly On Behalf of San Diego Gas & Electric Company* (March 5, 2012) as Exhibit SDG&E-1 and we identify *Prepared Direct Testimony of Brendan Blockowicz on Behalf of San Diego Gas & Electric Company* (March 5, 2012) as Exhibit SDG&E-2 and move both exhibits into the record of this proceeding as evidence.

9. Since there are no objections by any party, it is reasonable to move into the record of this proceeding as evidence without further identification the applications, protests and responses to the applications; the motions for party status; the Joint IOU Report; and opening and reply comments to the Joint IOU Report, and the transcript of the May 14, 2012 PHC.

10. PG&E's CDA Project, if authorized, would share customer electric meter interval data using a standardized format known as OpenADE EPSI Release 1.0, when authorized by the customer.

11. SCE seeks approval to share customer electric meter interval data using the ESPI standard with third parties when authorized by the customer.

12. SDG&E currently provides third-party access to data when authorized by customers in a program called CEN.

13. SDG&E seeks authority to evolve the current program to adopt an Energy Services Provider Interface standard and to support web-based user interface and in other ways that enhance its usability.

14. The evidentiary record in this proceeding that the reasonable costs associated with PG&E CDA Project for the next four years amount to a total of \$19.4 million (\$ 8.91 million capital and \$10.45 million expense). PG&E estimates project costs of \$6,965,548 in 2013, \$6,421,314 in 2014, \$2,880,926 in 2015 and \$3,085,833 in 2016, for a total of \$19,353,621 over this 4-year period.

15. The evidentiary record in this proceeding indicates that the trajectory of capital and other costs associated with PG&E's CDA for the next 4 years will require an increase in revenue requirement that amounts to \$9,014,183 over this same period.

16. It is reasonable for PG&E to establish a CDABA to record and recover the actual costs of the CDA project from 2013-2016. The CDABA would be a one-way balancing account, which would allow PG&E to record the revenue requirement associated with the actual O&M expense and capital cost incurred to implement the CDA Project.

17. It is reasonable for PG&E to recover funds booked to the CDABA by transferring the year-end balance of the CDABA, up to the amount as authorized by the Commission, to DRAM, and to consolidate the transferred amount with other DRAM revenue as part of the AET process.

18. It is also reasonable to require that if PG&E spends more than the authorized amount. PG&E must obtain Commission authorization to recover the difference in rates.

19. It is reasonable that PG&E's costs associated with this program in years beyond 2016 should be considered in PG&E's Test Year 2016 GRC.

20. It is reasonable for SCE to incur capital costs associated with developing a computer process for both this program to total \$7,588,000 over the years "pre-2012," 2012 and 2013.

21. It is reasonable for SCE to incur labor costs associated with operating its ESPI program up to a total of \$1,035 million over 2013 and 2014.

22. It is reasonable for SCE to incur non-labor expenses associated with communications, IT licensing and other matters associated with this programs totaling \$477,000 over 2013 and 2014.

23. It is reasonable to consider SCE's costs of this program beyond 2014 in SCE's next GRC.

24. It is reasonable for SCE to recover recorded revenue requirements associated with its ESPI program in the distribution subaccount of the BRRBA and for the Commission to review these costs in SCE's annual ERRA proceeding. The review of costs does not include a general "reasonableness review," but instead should ensure that all ESPI-related program costs entries into the account are stated correctly and are consistent with Commission decisions.

25. Because SDG&E's costs associated with its ESPI program to provide third-party access to consumption data, when authorized, were reviewed in the SDG&E GRC, it is not necessary to review them in this proceeding.

26. PG&E, SCE, and SDG&E plan to offer third-party access to customer interval data, when authorized by the customer, for no charge to either the customer or to the third party.

27. Because of the nature of the costs associated with providing third-party access to customer consumption data, it is reasonable to offer access at a fee of zero.

28. PG&E has clarified that its agreement with AReM and MEA is not a settlement of pricing issues that are the subject of other proceedings, but recognition that AReM and MES will have equal access to the consumption data provided by PG&E at the request of a customer to third-parties.

29. It is not reasonable to treat CCAs or DA providers differently from any other third party.

30. Because of the passage of time, it is reasonable for PG&E, SCE, and SDG&E to implement the proposed services as soon as possible upon the adoption of this decision and to make a tariff filing within 90 days of the adoption of this decision.

31. There are no other proceedings that would deter implementation of these proposed services.

32. It is reasonable to require that the OpenADE ESPI platforms have the following features:

- The customer will initiate authorization by selecting a registered third party from a drop-down list and indicating the accounts for which it is providing data access;
- After the customer submits the appropriate written authorization (hard copy or online), the IOUs will begin to provide third-party access to historical data within anywhere from 24 hours to 5 days; and

- Subsequent access will include updates of data on a lagged basis of up to 24 hours with the prescribed interval information (either hourly for residential or 15-minute for non-residential);

33. It is reasonable to require that third-party eligibility criteria should be common across SDG&E, SCE and PG&E.

34. It is reasonable to require the provision of basic company information by all third parties who will receive customer data to the utility from which it seeks data.

35. It is reasonable to require that a third party receiving customer data must provide to the utility basic information about its company and how to contact its company. This information should include: company name; mailing address; and the names, telephones numbers, mailing addresses, and email addresses for any key business and technical contacts at the company.

36. It is reasonable to require that a third party seeking access to data demonstrate technical ability to connect to and access data from the utility's ESPI platform. It is also reasonable to require that the third party work with the utility to verify that the third party can technically access and obtain data from the utility's ESPI platform.

37. It is reasonable to require that a third party seeking access to data acknowledge receipt of the utility's tariffs governing customer usage data privacy and the automated transmission of usage data to customer-authorized third parties.

38. It is reasonable for the Commission to create a list of third parties who are prohibited from receiving customer usage data from a utility, even when authorize by customers.

39. It is reasonable to require that any third party seeking access to data not be on the list of third parties prohibited from receiving customer usage data.

40. It is reasonable to require that each utility offering third-party access to usage data when authorized by customers include in its tariff sheets the Commission adopted list of third parties prohibited from receive customer usage data.

41. It is reasonable for the Commission to authorize utilities to use a registration process characterized as “wait-and-see,” where parties are eligible to receive ESPI data provided that they meet four conditions: (a) they obtain the requisite customer authorization; (b) they meet the technical eligibility requirements; (c) they acknowledge receipt of the relevant tariff rule(s); and (d) they are not otherwise prohibited by the Commission from receiving such data.

42. It is reasonable to require that when a customer requests that the utility discontinue providing data to a third party, that the utility immediately terminate the third party’s automated access to the data of the customer who revoked the authorization.

43. It is reasonable to permit utilities providing the service authorized in this decision to pre-populate certain account-specific information in online authorization forms.

44. It is reasonable to require that a utility update its website to show the range of authorized third-party service providers.

45. It is reasonable to require that if a utility reasonably suspects that a third party has violated the Commission’s privacy rules, that the utility expeditiously informs the third party and the Commission’s Energy Division with a notice of the suspected tariff violation, along with any information regarding possible wrongdoing and that the utility seeks to resolve the suspected tariff violations with the third party.

46. It is reasonable to afford the utility and the third party a 21-day period in which to resolve the suspected violations, during which time the utility will continue transmission of data.

47. It is also reasonable that Energy Division staff, at their discretion, work to facilitate resolution of the issues between the utility and the third party, and for Energy Division staff to grant an additional 21-day for resolving the matter.

48. If the matter is not resolved during the period set for resolution, it is reasonable to require the utility to file a Tier 2 advice letter that seeks to move the third party to the list of entities ineligible to receive customer data. Notice of this filing should also be provided to all customers who have selected that third party to receive their usage data.

49. It is reasonable for the utility to continue transmission of data until Commission action resolves the matter.

50. It is reasonable that a utility who acts consistent with the steps in findings 45 through 49 should not be deemed to have made a reckless transmission of data from the time of the notice until Commission action resolving the matter.

51. It is reasonable for the Commission, in its oversight of the utilities and smart meters, to take responsibility for ordering the suspension of third-party access to customer data. Under the procedures adopted in this decision, it is not necessary nor is it reasonable for a utility to suspend access to customer data based on *suspicion* that a third party may be violating tariffs.

52. It is not reasonable to require a utility to delay action on a customer's request to terminate the flow of information to a third party.

53. It is reasonable to require the utilities, to the extent possible, to implement this data service in a uniform way though through the use of a common data platform, ESPI. To the extent possible the utilities should implement this

program in a uniform way, including standard feature sets, user interface and available data.

54. It is reasonable for the Commission to require the utilities to file a Tier 1 Advice Letter within 90 days of the adoption of this decision to tariff this service. The advice letter review process will permit the Commission to promote common requirements for the ESPI platforms and to promote uniformity in system implementation with respect to access to the system by third parties and customers.

Conclusions of Law

1. D.11-07-056 required PG&E, SCE and SDG&E to propose tariff changes to provide third parties access to a customer's usage data via the utility's backhaul when authorized by the customer and set forth criteria that the Commission applies to determine if the proposed services comply with the privacy policies adopted by the Commission.

2. The Commission jurisdiction over the tariffing of these service flows from § 701, which gives the Commission broad regulatory jurisdiction over public utilities.

3. Section 454 requires that the Commission find rates and services justified.

4. There is no legal reason to treat CCAs or DA providers differently from any other third party seeking access to customer consumption data.

5. Because of the passage of time, it is reasonable for PG&E, SCE, and SDG&E to implement this program upon adoption by the Commission.

6. Conclusion of Law #9 of D.11-07-056 establishes that the Commission has oversight over "any third party, when authorized by the customer, that accesses, collects, stores, uses, or discloses covered information relating to 11 or more customers who obtains this information from an electrical corporation."

7. Consistent with the Commission's oversight of Covered Entities, a third party will not be "eligible" to receive automated data from the IOUs' ESPI platforms to the extent that the Commission directs the IOU(s) to stop transmitting data to that third party.

8. The Commission bears responsibility for exercising regulatory oversight of Covered Entities to resolve formal complaints or conduct investigations into allegations or suspicions of potential or actual misuse of customer data by Covered Entities.

9. The Commission should create a list of third parties who are not eligible to receive customer usage data from utilities.

10. If a third party's access to customer data is suspended or revoked by the Commission in any way, or if the Commission places a third party on the list of third parties who are not eligible to receive customer data, then it is appropriate and necessary for utilities to comply with the Commission's actions, unless these actions are stayed or enjoined by the appropriate court or agency.

11. A utility that responds to indications of tariff abuses by a third party consistent with the procedures adopted in this decision is not reckless. Specifically, a utility has not acted recklessly if it provides notice to, the third party and the Commission, seeks to resolve the matter with the third party, and, absent a resolution, files an advice letter seeking to move the third party to the list of entities ineligible to receive customer data.

12. DRA's objections to the utilities' privacy tariff advice letters are outside the scope of this proceeding, which deals solely with the utilities' CDA Project applications.

13. Hearings are not necessary in this proceeding.

14. PG&E should be authorized to provide third parties access to customer data when requested by the customer.

15. SCE should be authorized to provide third parties access to customer data when requested by the customer.

16. SDG&E should be authorized to provide third parties access customer data when requested by the customer.

17. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The document titled Pacific Gas and Electric Company, Smart Grid Customer Data Access Project, Prepared Testimony (March 5, 2012) is identified as Exhibit PG&E-1 and moved into the record of this proceeding as evidence.

2. The document titled Testimony of Southern California Edison Company in Support of Its Application for Approval of Proposal to Enable Automated Access of Customer Usage Data To Authorized Third Parties and Approval of Cost Recovery Mechanism (March 5, 2012) is identified as Exhibit SCE-1 and moved into the record of this proceeding as evidence.

3. The document titled Prepared Direct Testimony of Ted M. Reguly On Behalf of San Diego Gas & Electric Company (March 5, 2012) is identified as Exhibit SDG&E-1 and the document titled Prepared Direct Testimony of Brendan Blockowicz on Behalf of San Diego Gas & Electric Company (March 5, 2012) is identified as Exhibit SDG&E-2 and both exhibits are moved into the record of this proceeding as evidence.

4. The evidentiary record of this proceeding shall include, without further identification, the applications of the three utilities, the protests and responses to the applications; the motions for party status; the Joint Investor-Owned Utilities (IOU) Report; and opening and reply comments to the Joint IOU Report, and the transcript of the May 14, 2012 Prehearing Conference.

5. Pacific Gas and Electric Company is authorized to offer its Data Access Project subject to the conditions in ordering paragraphs 17-20 below.

6. Pacific Gas and Electric Company is authorized to increase rates and charges up to \$9,014,183 over the next 4 years to meet the costs associated with the Customer Data Access Project, which total of \$19.4 million (\$8.91 million capital and \$10.45 million expense) over 4 years. If Pacific Gas and Electric Company spends more than this authorized amount, Pacific Gas and Electric Company must obtain Commission approval to recover additional costs in rates

7. Pacific Gas and Electric Company is authorized to establish a Customer Data Access Balancing Account (CDABA) to record and recover the actual costs of the Customer Data Access Project from 2013-2016. The CDABA would be a one-way balancing account, which would allow Pacific Gas and Electric to record the revenue requirement associated with the actual operations and maintenance expense and capital cost incurred to implement the Customer Data Access Project.

8. Pacific Gas and Electric is authorized to recover funds booked to the Customer Data Access Balancing Account (CDABA) by transferring the year-end balance of the CDABA, up to the amount as authorized by the Commission, to Distribution Revenue Adjustment Mechanism (DRAM), and to consolidate the transferred amount with other DRAM revenue as part of the Annual Electric True-Up process.

9. Pacific Gas and Electric Company's (PG&E) costs and revenue requirements associated with this program beyond 2016 shall be considered in PG&E's future General Rate Case proceedings.

10. Southern California Electric Company is authorized to offer third-party access to customer data, when authorized by the customer, using the OpenADE Energy Service Provider Interface Release 1 data platform, as requested, subject to the conditions in ordering paragraphs 17-20 below.

11. Southern California Electric Company (SCE) is authorized to increase rates and charges to meet the costs associated with this service to recover capital costs associated with developing a computer process for both these tasks to total \$7,588,000 over the years pre-2012, 2012 and 2013 and to recover labor costs that total \$1,035 million over 2013 and 2014 and to recover non-labor expenses totaling \$477,000 over 2013 and 2014. If SCE spends more than this authorized amount, SCE must obtain Commission approval to recover additional costs in rates.

12. For the period through 2014, Southern California Edison Company is authorized to record capital related revenue requirement and increment operating and maintenance costs associated with this new service in the distribution subaccount of its Base Revenue Requirement Balancing Account. Following standard regulatory practice, the capital-related revenue requirement will consist of depreciation, taxes and authorized return based on actual recorded rate base, including plant additions, accumulated depreciation reserve and accumulated deferred taxes, associated with the OpenADE Energy Service Provider Interface Release 1 data platform activities authorized by the Commission in this proceeding.

13. Pursuant to the Commission-adopted process for reviewing Southern California Edison Company (SCE) activities recorded in the Base Revenue Requirement Balancing Account, the recorded entries associated with this service will be reviewed by the Commission in SCE's annual Energy Resource Recover Account review applications. The scope of this review is limited to ensure that the cost entries into the account are state correctly and consistent with Commission decisions. The scope does not include a further reasonableness review of this service and its costs.

14. Southern California Electric Company's (SCE) costs and revenue requirements associated with this program beyond 2014 shall be considered in SCE's future General Rate Case proceedings.

15. San Diego Gas & Electric Company (SDG&E) is authorized to modify its Customer Energy Network service to evolve into an OpenADE Energy Service Provider Interface Release 1 data platform as requested. SDG&E does not request additional rate changes to recover costs of evolving its current service.

16. To the extent possible, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) shall offer a service that provides third parties access to customer usage data when authorized by the customer, under identical terms and conditions. The OpenADE Energy Service Provider Interface platforms of PG&E, SCE and SDG&E shall have the following features:

- The customer will initiate authorization by selecting a registered third party from a drop-down list and indicating the accounts for which it is providing data access;
- After the customer submits the appropriate written authorization (hard copy or online), the utility will begin to provide third-party access to historical data within anywhere from 24 hours to 5 days;

- Subsequent access will include updates of data on a lagged basis of up to 24 hours with the prescribed interval information (either hourly for residential or 15-minute for non-residential);

17. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) are authorized to file a Tier 1 advice letter seeking approval of tariffs offering the proposed data access services within 90 days of the adoption of this decision. PG&E, SCE, and SDG&E shall collaborate with each other, with third parties seeking the data, and with relevant standards-related organizations to develop common tariffs that offer, to the extent possible, common data platforms, common access to data by third parties, and common methods of interacting with customers.

18. The tariffs offering third parties access to customer usage data when authorized by the customer shall have the following characteristics:

- The tariffs must have a price of zero for both customers and third parties
- The service offered by the tariff must use a common OpenADE Energy Service Provider Interface data platform.
- The tariffs shall require that to receive customer usage data when authorized by the customer, a third party must do the following:
 - Provide to the utility basic information about its company and how to contact its company. This information should include: company name; mailing address; and the names, telephones numbers, mailing addresses, and email addresses for any key business and technical contacts at the company.
 - Demonstrate technical ability to connect to and access data from the utility's OpenADE Energy Service Provider Interface data platform. It is also reasonable to require that the third party work with the utility to verify that the

third party can technically access and obtain data from the utility's OpenADE Energy Service Provider Interface data platform.

- Acknowledge receipt of the utility's tariffs governing customer usage data privacy and the automated transmission of usage data to customer-authorized third-parties.
- Not be on list of third parties whom the Commission has prohibited from receiving customer usage data, even when authorized by customers.
- The tariffs shall include a list of third parties whom the Commission has prohibited from receiving customer usage data, even when authorized by customers.
- The tariffs shall provide that when a customer requests that the utility discontinue providing data to a third party, that the utility immediately terminate the third party's automated access to the data of the customer who revoked the authorization.
- As a condition of tariffing, the utility must utility update its website to show the range of authorized third-party service providers.

19. Any utility providing the tariff services approved in this decision may pre-populate certain account-specific information in online authorization forms.

20. Any utility providing the tariff services approved in this decision must, if the utility reasonably suspects that a third party has violated the Commission's privacy rules and/or the terms of this tariff to inform the third party and Commission's Energy Division with a notice of the suspected tariff violation along with any information regarding possible wrongdoing. The utility shall seek to resolve the suspected tariff violations with the third party. The utility and the third party will have a 21-day period in which to resolve the suspected violations, during which time the utility will continue transmission of data. At its

discretion, Energy Division staff may facilitated resolution of the issues between the utility and the third party, and may grant an additional 21-day for resolving the matter. If the matter is not resolved during the period set for resolution, the utility shall file a Tier 2 advice letter that seeks to move the third party to the list of entities ineligible to receive customer data. Notice of this filing should also be provided to all customers who have selected that third party to receive their usage data. The utility will continue transmission of data until Commission action resolves the matter. A utility who acts in this fashion will be deemed not to have made a reckless transmission of data.

21. Hearings are not necessary in this proceeding.
22. Application (A.) 12-03-002, A.12-03-003 and A.12-03-004 are closed.

This order is effective today.

Dated _____, at San Francisco, California.