

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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

Rulemaking 08-12-009
(Filed December 18, 2008)
Phase III Energy Data Center

**OPENING COMMENTS
OF THE DIVISION OF RATEPAYER ADVOCATES**

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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	SUMMARY OF DRA RECOMMENDATIONS.....	2
III.	DISCUSSION	4
	A. USE CASES.....	4
	1. Use Case 1	5
	2. Use Case 2	8
	3. Use Case 3	12
	4. Use Case 4	13
	5. Use Case 5	16
	6. Use Cases 6, 8, 11	16
	7. Use Case 7	17
	8. Use Case 12	19
	B. IMPLEMENTATION PROTOCOLS.....	20
	1. DRA Modifications to the IOUs Strawperson Proposal Offer a Reasonable Dispute Resolution Process.....	20
	2. DRA Recommends the IOUs Create a Web Portal To Post and Index Data Requests for Increased Transparency.	20
	3. Advisory Committee	21
	4. DRA’s Proposed Dispute Resolution Process.....	22
	C. PROPOSED NON-DISCLOSURE AGREEMENTS.....	24
	1. PG&E Strawperson NDA for PII Requests Under Contract with Utilities for a Primary Purpose.....	24
	2. “NDA-Light” for Non-PII Requests.....	25
	3. NDA for Data Obligations Under State or Federal Law or by Commission Order	25
	D. IMPLEMENTATION COST AND COST RECOVERY	25
IV.	CONCLUSIONS	30

APPENDIX A. Sample Web Portal Data Request

APPENDIX B. DRA Redlines to the IOU Strawperson Proposal Process, As Modified in Response to Comments” (Report, p. 88.)

APPENDIX C. DRA Proposed Third-Party Dispute Resolution Process

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I. INTRODUCTION

In accordance with the February 27, 2013 *Administrative Law Judge's Ruling Setting Schedule to Establish "Data Use Cases," Timelines for Provision of Data, and Model Non-Disclosure Agreements* ("ALJ Ruling")¹ and the July 10, 2013 *Administrative Law Judge's Ruling Revising Schedule for Filing Use Cases, Comments and Replies; Adding Use Case to the Record, and Inviting Comments and Replies* ("Revised Ruling"),² the Division of Ratepayer Advocates ("DRA") hereby submits its comments on the Working Group Report ("Report") submitted on July 10, 2013.³ DRA's comments are timely filed in accordance with the Revised Ruling.

¹ ALJ Ruling, p. 18.

² Revised Ruling, p. 2.

³ Report, p. 1.

II. SUMMARY OF DRA RECOMMENDATIONS

DRA seeks to protect the privacy interests of millions of consumers served by California’s Investor Owned Utilities (“IOUs”). Consumers entrust sensitive energy usage data to private utilities. Energy data released too broadly or unnecessarily breaches consumer trust and violates consumers’ constitutional right to privacy.⁴ Therefore, DRA recommends a transparent process that streamlines release of non-Personally Identifiable Information (“non-PII”) data and is protective of consumer privacy. For data requests requiring Personally Identifiable Information (“PII”) for a primary purpose, DRA supports confidentiality and cybersecurity protocols to safeguard consumers’ personal information. The following summarizes DRA’s recommendations on individual use cases presented in the Report;

- **Use Case 1: Non-PII and PII requests by local governments.** DRA recommends granting access to non-PII under the utility-proposed implementation process. PII data should be released with consumer consent.
- **Use Case 2: Monthly energy usage data for research institutions, which may be PII.** DRA recommends granting non-PII data access requests for research institutions, but not granting access to PII data. Non-PII data requests currently accommodated as sharing arrangements under California Government Code Section 6254.5(e) should be handled through the utility “one-stop” process.
- **Use Case 3: Hourly energy usage data by research institutions, which may be PII.** DRA recommends the same data access as granted in Use Case 2.
- **Use Case 4: Quasi-Individual Information (“QII”) data requests by government agencies to evaluate energy efficiency programs.** DRA recommends treatment of QII as PII, and denying PII requests unless release of the information to the requesting agency is required under state

⁴ Cal. Const., Art. 1, Sec. 1.

or federal law. Broad data requests violate the California Information Practices Act⁵ (“IPA”) and the Commission’s Privacy Rules.⁶

- **Use Case 5: PII energy use and billing data requested by nonprofits and environmental groups.** DRA recommends denying PII requests but allowing access to non-PII reports. DRA strongly objects to releasing customer billing data without consent.
- **Use Case 6: Solar installation company seeking PII for commercial purposes.** DRA recommends denying PII requests but allowing access to non-PII reports.
- **Use Case 7: Building benchmarking data for AB 758/1103 compliance.** DRA recommends granting aggregated or whole building data to landlords under an NDA or affidavit in a manner protective of consumer privacy, with the technical solutions to aggregation and anonymization should be determined in future workshops. Additionally, DRA argues that the landlord-tenant relationship is contentious and tenant energy usage data should be subject to strict privacy controls.
- **Use Case 8 – Energy efficiency contractor seeking PII to validate quality and value of energy efficiency work.** DRA recommends denying PII requests, but allowing access to non-PII reports.
- **Use Case 9: Government agency requesting to share weatherization program participation by building.** DRA agrees with the Report; this use case falls outside the scope of this proceeding.
- **Use Case 10: Government agency seeking information on HVAC compliance under Title 24.** DRA agrees with the Report; this use case falls outside the scope of this proceeding.
- **Use Case 11: PII requests by energy efficiency contractors, consultants and others.** DRA recommends denying PII requests, but allowing access to non-PII reports.
- **Use Case 12: DECA data request using unique anonymization method to create model of California electric grid.** DRA recommends accommodating this request to the extent other non-PII reports are available to other use cases.
- **Changes to the IOU Strawperson proposal:** DRA recommends the Commission order the utilities to set up a web portal to post and track third-party requests for customer energy usage data in a public manner. The

⁵ California Information Practices Act; Cal. Civ. Code § 1798 et seq.

⁶ D.11.07-056. Attachment D.

Commission should adopt DRA’s proposal to create a two-step dispute resolution process and reject those portions of the Report’s Strawperson proposal that delegate the duty to resolve third-party disputes to the Advisory Committee.

- **Model Non-Disclosure Agreements (“NDAs”):** DRA proposes separate NDAs for: (1) data requests under contract with utilities; (2) non-PII data releases and (3) data released under state or federal law or by Commission order.
- **Cost Implementation and Cost Recovery:** DRA generally recommends that utilities collect user fees from data requestors, however, details of the implementation costs and cost recovery should be further discussed in a ratesetting phase of this proceeding or a separate application.

III. DISCUSSION

DRA offers recommendations on the twelve use cases in Section A, below. DRA’s recommendations on implementation protocols are discussed in Section B. Proposed NDAs are discussed in Section C and implementation costs and cost recovery are discussed in Section D.

A. USE CASES

DRA reviewed the proposed use cases according to the ALJ Ruling’s request to identify use cases that: (1) request non-PII data, (2) potentially requesting PII data “where a model non-disclosure agreement and other protections can permit the provision of data,” and (3) requesting PII where “special consideration by the Commission, including non-routine protections” may be warranted.⁷ DRA’s recommendations, below, are discussed by use case.

Since many use cases may call for non-PII and PII data, DRA’s recommendations refer separately to requests for PII and non-PII data. Generally, DRA supports the streamlined release of non-PII reports in a transparent manner. Even in cases where DRA

⁷ ALJ Ruling, p. 1.

recommends restriction of PII data access, DRA sees access to non-PII data reports as a useful alternative which is also protective of consumer privacy. DRA defers specific recommendations on the technical solutions proposed by various technical experts hired to work on the proceeding to the extent that the Report deferred its own recommendation.⁸

1. Use Case 1

a) Non-PII Data

The Report proposes standardized reports consisting of non-PII data for compliance with energy efficiency programs implemented by local governments.⁹ This includes local governments' requests for: (1) "[a]ggregated data that illustrate the status of progress toward adopted energy and GHG reduction goals," and (2) "[a]ggregated data that illustrate the outcomes of a given energy program."¹⁰ DRA agrees. The streamlined release of aggregated or anonymized data protective of consumer privacy is critical to fulfilling local governments' successful implementation of Climate Action Plans and other energy efficiency programs.¹¹

b) Requests for PII Energy Usage Data from the Local Governments Should Be Considered Secondary Purpose Requests.

While the Report assumes that local governments will not request granular data,¹² local governments have indicated the need for "granular, anonymized data at the address

⁸ Technical Issues with Anonymization & Aggregation of Detailed Energy Usage Data as Methods for Protecting Customer Privacy, R 08-12-009 (April 1, 2013).

⁹ Working Group Report Pursuant to February 26, 2013 Administrative Law Judge's Ruling, Phase III Energy Data Center ("Report") at 88-32.

¹⁰ Report, Appendix A, p. 2.

¹¹ *Id.*

¹² The report makes an exception for building benchmarking data requests under AB 758/1103, which are

level, on a monthly usage basis” to measure the effectiveness of energy efficiency programs.¹³ For example, the Local Government Sustainable Energy Coalition (“LGSEC”) Use Case 1 summary requests PII by requesting to monitor energy efficiency changes at the building level, which is at the address level.¹⁴ Address-level data is reidentifiable, and therefore considered “covered information” according to Energy Division’s proposed framework for anonymized data access.¹⁵ Moreover, various governmental entities may simultaneously administer multiple energy efficiency programs for various customer classes.¹⁶ Thus, DRA addresses the potential for local government access to PII information below.

DRA recommends the Commission consider local government’s data requests for PII or QII data under voluntary programs as a secondary purpose.¹⁷ Local governments may attempt to seek access to PII data directly from the utility to as a primary purpose under the assumption that they are “providing services as required by state or federal law.”¹⁸ For example, local governments can strive to meet greenhouse gas emissions

discussed separately under Use Case 7. Workshop Report, p. 60.

¹³ Report, Appendix A, p. 2. See also, data requests for building benchmarking compliance are addressed separately under Use Case 7; Data requests for government agencies requesting granular data for public policy work are discussed in Use Case 4. Workshop Report, Appendix A, p. 11-15.

¹⁴ Aggregate “sector” level data does “not allow for additional, more granular analysis related to evaluating the efficacy of specific policies and programs, let alone the efficacy of a given energy upgrade project at the building level.” Workshop Report, Appendix A, p. 4.

¹⁵ Address and parcel level data is considered “Covered Information – Requir(ing) customer consent.” Alope Gupta, CPUC Energy Division, Suggested Framework for Energy Data Access (& Augmenting “One-Stop” Joint-IOU Process), Jun. 10, 2013, pp. 11-17.

¹⁶ For example, the City of San Francisco runs several energy efficiency programs for both residential and commercial buildings, www.sfenvironment.org/energy/energy-efficiency. See also, Department of Energy (DOE), Database of State Incentives for Renewables & Efficiency (DSIRE), www.dsireusa.org.

¹⁷ D.11-07-056, Attachment D, Rule 1(d) and Rule 6(d).

¹⁸ D.11-07-056, Attachment D, Rule 1(c).

goals under Assembly Bill (AB) 32 by adopting voluntary programs.¹⁹ However, to the extent that participation in energy efficiency programs, Climate Action Plans,²⁰ and other programs included in Use Case 1 is voluntary under state and federal law, local government’s requests for QII²¹ fall outside the purview of the California Public Utilities Code²² Section 8380(e)(3) exception and the Commission’s Privacy Rules.²³ Local ordinances requiring access to granular data are also preempted to the extent that local ordinances cannot curtail consumer privacy protections provided under state law.²⁴

DRA recommends local governments obtain access to QII or PII energy usage data with customer consent, consistent with the requirements for third-party providers such as direct access (“DA”) in Electric Rule 22 and demand response (“DR”) providers in proposed Electric Rule 24.²⁵ Data access requirements of local governments should be

¹⁹ The California Global Warming Solutions Act of 2006 (Assembly Bill 32, or A.B. 32) represents the nation’s first sweeping effort to regulate greenhouse gas emissions. The law sets an aggressive goal for reducing emissions, but leaves open the question of how to reach the goal.” Stern, Henry, Necessary Collision: Climate Change, Land Use, and the Limits of A.B. 32, 35 Ecology L.Q. 611 (2008).

²⁰ Local Government Operations Protocol *For the quantification and reporting of greenhouse gas emissions inventories*, (May, 2010).

²¹ A property’s address is QII of a nature where customer identify is readily identifiable. This makes the data “covered information” that should be subject to heightened privacy procedures afforded to PII.

²² All “Section” references reference the California Public Utilities Code unless otherwise specified.

²³ Pub. Util. Code § 8380; D. 11-07-056, Attachment D, p. 2.

²⁴ *See generally, Briseno v. City of Santa Ana*, 6 Cal. App. 4th 1378 (holding that where the state legislature balanced the benefits and burdens of a regulation, the state law preempts local regulation).

²⁵ In direct access, for example, see PG&E Electric Rule 22, Sheet 13, which states, “By electing to take Direct Access service from an ESP, the customer consents to the release to the ESP metering information required for billing, settlement and other functions required for the ESP to meet its requirements and twelve (12) months of historical usage data.”

For demand response providers, customer enrollment, see Rule 24, described as the following: “In Section B.2(e) of the proposed Rule 24, the process to enroll a customer in a DR Provider program begins with a Customer Information Service Request sent to one of the Utilities by the DR provider. The Utility is then required to provide customer data to the DR provider. (We refer to this as the Customer Process.)” D.12-11-025, p. 29.

analogous to DA and DR providers for three reasons: (1) all three administer programs to individual energy users, (2) they all seek granular energy use data that include PII, and (3) they all administer programs in direct competition with utilities.²⁶

Like DA and DR providers, local governments can readily incorporate customer consent (using the Commission’s currently authorized Customer Information Service Request, or “CISR” form) in the application and enrollment process. Therefore, like DA and DR providers, local governments must apply the utilities’ CISR forms for consent and satisfy any CPUC Electronic Data Exchange requirements.²⁷ Moreover, once OpenADE²⁸ is available, the new information exchange platform should help streamline customer consent and access to granular data.²⁹

2. Use Case 2

Use Case 2 discusses requests for data access by researchers that may not directly support or relate to utility operations, but nonetheless may support California’s overall energy and environmental policy goals, such as by researching ways to model energy usage and demand on a statewide or regional basis, rather than only on a utility-specific

²⁶ Demand response providers compete with utilities for energy generation. Local governments compete with utility-run energy efficiency programs.

²⁷ Rule 25 established streamlined access for customer access through an online application process. *See* SCE Advice letter 2693-E, PG&E Advice Letter 3995-E, and SDG&E Advice Letter 2328-E, DRA Protest Nov. 16, 2011.

²⁸ OpenADE refers to an online application process whereby consumers manager third party access to their energy usage data for energy efficiency programs. *See* A. 12-03-002.

²⁹ “Energy savings verification through utility data was sporadic or did not occur at all, even with homeowner’s approval for the release of data.” California Energy Commission (“CEC”) Comprehensive Energy Efficiency Program for Existing Buildings Scoping Report, CEC-400-20120015 (Aug. 2012), p. 102.

or program-specific basis.³⁰ This type of research can provide general “public” benefits to consumers and businesses in California.³¹

a) State Research Institutions and the Practice of Sharing Arrangements

California Government Code Section 6254.5(e) allows state agencies to share information—including customer energy usage data with PII— without compromising data confidentiality.³² The Report indicates the California IPA applies to collection and disclosure of personally identifiable information by a state agency—even where the data is collected indirectly from the utilities by the Commission. The Report finds broad energy data collection by government agencies, as part of an ongoing database, to violate the California IPA, which prohibits state agencies from “collecting customer-specific information unless customers are notified and consent in advance, or the collection of the information is for a specific, statutory regulated purpose.” As noted in the Report, the California IPA permits state agencies to disclose PII to other agencies and research institutions under explicit limitations:

- Disclosure to a researcher, if (1) he or she provides assurance that the information will be used solely for statistical research or reporting purposes, and (2) he or she does not receive the information in a form that will identify the individual, Cal. Civ. Code § 1798.24(h); and
- Disclosure to a researcher within the University of California system, provided that the request is approved by

³⁰ Report, p. 62.

³¹ Report, p. 62.

³² Cal. Govt. Code § 6254.5(e) allows state agencies share data “to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.”

the Committee for the Protection of Human Subjects, Cal.
Civ. Code § 1798.24(t).

Currently, the Commission extends data sharing to a variety of governmental agencies, but not to private research institutions. This puts the Commission in the position of data broker for a subset of research institutions, which also transfers liability away from the utilities to the Commission through Section 583.³³

The goal of the current proceeding is to develop a transparent, streamlined process for utilities to respond to data requests in a consistent manner based on clearly defined criteria. In order to lessen the burden of the Commission acting as data broker, the Commission should consider using the “one-stop” process developed in this proceeding for data requests for public research institution. Under the IPA, the Commission cannot transfer data “in a form that will identify the individual,” which is considered non-PII data in this proceeding.³⁴ Therefore, non-PII data requests to research institutions are readily incorporated into the streamlined “one-stop” process for data requests as proposed in the Report.³⁵ It is also beneficial to limit state research requests to the “one-stop” process so that research requests align with the Commission’s Privacy Rules, which incorporate the Commission’s most current interpretation on the technical solutions by which privacy is maintained.³⁶

³³ Cal. Pub. Util. Code § 583 states, “No information furnished to the commission by a public utility...except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor.”

³⁴ Cal. Civ. Code § 1798.24(h).

³⁵ PG&E, Draft Streamlined, “One-Stop” Utility Process for Energy Usage Data Access (May 5, 2013); Report, p. 88-92.

³⁶ Technical Solutions Memo.

For the most part, this use case discusses the interests of the UCLA California Center for Sustainable Communities (“CCSC”) and the Energy Institute at Haas, both state research institutions. Therefore, the recommendation for transferring data access protocol of non-PII data from Commission data request to utility “one-stop” process is directly applicable.

b) Data Requests from Non-Governmental Research Institutions Not Directly Relating To or Supporting Utility Operations or Programs are Secondary Purpose Requests; “Public Benefit” is Insufficient Justification to Release PII data

Use Case 2 did not discuss requests from non-government research institutions who may seek access to PII data with claims it will provide general “public” benefits to customers and businesses in California. The Privacy Rules clearly limit PII disclosure without customer consent for only “primary purposes,” which involve the collection storage, use or disclosure of information to:

- (1) provide or bill for electrical power or gas,
- (2) provide for system, grid or operational needs,
- (3) provide services as required by state or federal law or as specifically authorized by order of the Commission, or
- (4) plan, implement, or evaluate demand response, energy management, or energy efficiency programs under contract with an electrical corporation, under contract with the Commission, or as part of a Commission authorized program conducted by a governmental entity under the supervision of the Commission.³⁷

Based on the Privacy Rules definition described above, there is no “public benefit” exception which allows PII disclosure without customer consent. Utilities may only

³⁷ D.11-07-056, Attachment D, Rule 1(c).

provide energy data access to research institutions for a secondary purpose with appropriate customer notice and authorization.

Utilities should also be prohibited from contracting with a research institution in order to transform a secondary purpose data request into a primary purpose request, effectively circumventing the primary purpose definition “under contract with the electrical corporation.” These contracts relate to the operation of *utility-specific* demand response, energy management, or energy efficiency programs adopted by the Commission, and are not meant to capture any stakeholder who provides similar services. The Commission clarified the definition of “primary purpose” as it relates to third party demand response providers in Decision (D.)12-11-025, stating: “We agree with DRA’s interpretation that DR providers enrolling customers in DR for the purposes of bidding into the CAISO market do not fall under the definition of primary purposes.”³⁸ The decision reasoned, “the third parties are *not* conducted as utility programs, but are conducted as independent services that the third parties provide directly to utility customers.”³⁹ Therefore, a wholesale Commission order releasing data to private entities based on vague “public benefit” justifications has the unintended effect of releasing customer PII data regardless of the user’s intent.

3. Use Case 3

The Report describes Use Case 3 as “[r]esearch institutions seeking anonymous, individual hourly energy consumption data [which] *could be PII if it contained sufficient characteristics to permit reverse engineering.*”⁴⁰ The Commission should prohibit research institutes from accessing customer PII usage data for Use Case 3 for the reasons and justifications stated above in Use Case 2. However, DRA does not oppose the

³⁸ D.12-11-025, p. 40.

³⁹ *Id.*, p. 41.

⁴⁰ *Id.*

Report’s recommendation that the “energy usage data under Use Case 3 . . . should be provided to government agencies such as the Energy Commission on an anonymized, aggregated non-PII basis, and subject to appropriate non-disclosure.”⁴¹ The Report’s recommendation is consistent with Section 8380(e)(1) and thus should be permitted.

Additionally, research institutions access to PII should be subject to an NDA with a government agency tasked to conduct public policy research that is required by state or federal law. All other PII requests not pursuant to a government agency contract should be considered secondary purposes.

4. Use Case 4

Use Case 4 encompasses data requests from “[o]ther governmental entities, like the CEC’s Energy Upgrade California Program, seeking energy efficiency program participation data by customer identification number in order to cross-reference this data with other program data.”⁴² The data requested is granular and can be “reverse engineered.”⁴³

DRA recommends PII data be released under a model NDA and cybersecurity protection for data access by government agencies under Use Case 4, as required by state or federal law. DRA recognizes that certain governmental entities are authorized to access customer PII energy usage data by state or federal law under Section 8380(e)(3), but broad access to data is restricted by the Fair Information Practice Principles (“FIPPs”) and the California Constitution, Article 1, Section 1.⁴⁴ Therefore, DRA agrees with the Report’s assessment that providing government entities *broad access* to customer PII

⁴¹ Report, p. 66.

⁴² Report, p. 55.

⁴³ *Id.*

⁴⁴ Report, p. 26.

usage data on an ongoing basis is unnecessary and may violate the California IPA and state Constitutional privacy protections.

In Use Case 4,⁴⁵ the Report rejects government agencies’ “broad rights to collect customer-specific PII from utilities for purposes unrelated to utility programs or operations or regulatory oversight of utilities, as long as the government agencies agree to protect the customer information from public disclosure.”⁴⁶ DRA agrees. Broad access to energy usage data violates the FIPPs and the Commission’s Privacy Rules of Purpose Specification (Rule #3), Data Minimization (Rule #5) and Use and Disclosure Limitation (Rule #6).⁴⁷ DRA also agrees that overly broad collection also violates the California IPA, which prohibits state agencies from “collecting customer-specific information unless customers are notified and consent in advance, or the collection of the information is for a specific, statutory regulated purpose.”⁴⁸ Finally, the collection of overly broad data violates California Constitution, Article 1, Section 1 unless the data is collected with “compelling justification.”⁴⁹ For example, in *Hayden v. White*, the California Supreme Court held that collecting information on students regardless of whether they were suspected of criminal activity was overbroad and in violation of the state’s constitutional privacy protections.⁵⁰

While DRA recognizes the concerns in the Report, DRA recommends that the Commission consider PII access for Use Case 4 on a case-by-case basis. Government

⁴⁵ As well as Use Case 3.

⁴⁶ *Id.* at 66.

⁴⁷ D.11-07-056, Attachment D: *Rules Regarding Privacy and Security Protections for Energy Usage Data*.

⁴⁸ Report, p. 66.

⁴⁹ *Hayden v. White*, 13 Cal.3d 757, 761 (1975).

⁵⁰ *Id.*

agencies may collect energy usage data to meet specific regulatory requirements, subject to appropriate non-disclosure agreements. For example, the California Energy Commission has a regulatory mandate to analyze the effectiveness of energy policy under the Warren-Alquist Act and Senate Bill 1389. It states:

The Warren-Alquist Act (Division 15 of the Public Resources Code) is the legislation that created and gives statutory authority to the California Energy Commission. The Act designates the Energy Commission as the state's primary agency for energy policy and planning.

Senate Bill 1389 (Bowen and Sher, Chapter 568, Statutes of 2002) requires that the Commission adopt and transmit to the Governor and Legislature a report of findings every two years. That report is called the Integrated Energy Policy Report or IEPR (pronounced eye'-per).

The IEPR Committee, listed above, provides oversight and policy direction related to collecting and analyzing data needed to complete the *Integrated Energy Policy Report* on trends and issues concerning electricity and natural gas, transportation, energy efficiency, renewables, and public interest energy research.⁵¹

Based on the above, the Commission is not required to provide broad, unlimited access to customer specific information to the CEC pursuant to a sharing arrangement, but can grant program-specific requests for PII. For example, when the CEC measures the effectiveness of an energy efficiency program under a program like the Energy Upgrade Program, the PII data request must be narrowly tailored to meet the specific goals of the program in order to be lawful under the FIPPs. Just like the police must limit data collection to students suspected of criminal activity in *White v. Hayden*, the CEC

⁵¹ <http://www.energy.ca.gov/energypolicy/>

must limit its search to participants of energy efficiency programs. A baseline assessment of non-participants can be achieved through review of aggregated data.

Therefore, DRA recommends Commission sharing arrangements with other governmental agencies be consistent with the FIPPs and appropriate non-disclosure agreements.

5. Use Case 5

DRA strongly opposes the adoption of Use Case 5. Instead, DRA agrees with the Report's recommendation that "non-governmental organizations and financial institutions should not be provided with customer-specific billing, credit and collection information for purposes of on-bill financing programs unless the customer authorizes access to such information."⁵² To the extent non-governmental organizations seek access to customer PII usage data that is not a primary purpose, it is incumbent upon that non-governmental organization to request individual consent from the customer. Otherwise, such disclosures are unlawful pursuant to Section 8380(e)(2) which "prohibits the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the customer's prior consent to that use."

6. Use Cases 6, 8, 11

DRA agrees with the Report's recommendation of providing commercial entities streamlined access to only non-PII data absent customer consent. DRA agrees Use Cases 6, 8 and 11 allows access only to standardized non-PII data reports absent customer consent.⁵³

⁵² Report, p. 68.

⁵³ *Id.* at 69-72.

7. Use Case 7

DRA agrees with the Report's proposal for further technical discussions prior to selecting a method of aggregation and also argues for the sensitivity of building benchmarking data.⁵⁴ Significant disagreement remains over the technical aspects of releasing tenant energy use data. Therefore, DRA supports holding further workshops and supports any solution that remains protective of consumer privacy – whether it is a modified 15/15 rule as proposed in the Report or another method.⁵⁵

DRA also supports releasing aggregated data protecting tenant privacy for a landlords' compliance with building benchmarking requirements under AB 758/1103.⁵⁶ Whichever method is selected, DRA recommends requiring 1) proof of building ownership and 2) signing an affidavit,⁵⁷ potentially as part of a NDA specifically prepared for building benchmarking purposes. Additionally, the Commission should address additional safeguards needed to ensure that individual tenant energy use information is not inadvertently released through the release of whole building data when individual energy use data is released by a portion of the building's tenants through consent.⁵⁸

Compliance with building-benchmarking regulations is extremely sensitive because it gives landlords an interest in their tenant's energy use that previously did not exist. Building benchmarking serves to monetize energy efficiency in a landowner's

⁵⁴ See generally, AB 758 and AB 1103.

⁵⁵ *Id.*

⁵⁶ *Id.* at 74-83.

⁵⁷ DRA's recommendation aligns with SDG&E's proposal to release energy usage data "pursuant to an affidavit signed by the requestor indicating that he/she is the building owner of record and establishing the purpose the request is for and shall only be used for AB1103 compliance." *Id.* at 77.

⁵⁸ For example, if nine tenants give consent for the release of their energy data, the subsequent release of whole energy use building data effectively releases the tenth tenant's energy use without consent.

buildings by requiring building energy use to be quantified upon sale, transfer or lease of a building.⁵⁹ Whole building energy use data conflates tenant energy use with building efficiency, which is solely based on properties of the building rather than the tenant's use of the property. Therefore, the effects of high-energy using tenants may reduce the building's energy efficiency rating, devaluing the landlord's property.

Privacy controls become increasingly important as California energy efficiency programs become increasingly prescriptive. For example, the California Long Term Energy Efficiency Strategic Plan of 2008 “calls for ‘100% percent of existing multi-family homes to have a 40% decrease in purchased energy from 2000.’”⁶⁰ To comply with increasingly restrictive energy efficiency laws, landlords will likely turn to cheap and expedient energy efficiency measures to reduce their building's energy use. However, as landlords exhaust cheap, easily affordable energy efficiency options, they will look for other ways to decrease their energy use. Rather than reducing their total energy use through costly energy efficiency measures, they may look to reduce their total energy use by eliminating tenants with higher energy use. High-energy users in multi-family homes commonly include the elderly and stay at home parents with children or tenants who work from home.⁶¹ In the commercial sector, landlords may discriminate against certain industries with higher energy use. The Commission must guard against

⁵⁹ AB 758 and AB 1103

⁶⁰ Report, Appendix A, p. 42.

⁶¹ “[F]amilies or seniors in older, less energy-efficient homes or who live in hotter, inland areas of the state are likely to be in the upper tiers.” Haghani, Michael, Political Posturing Preventing Practical Energy Rate Policy, <http://ivn.us/california/2013/07/10/partisan-political-posturing-preventing-practical-energy-rate-policy/>

these unintended consequences by providing strong privacy protections for tenant energy use data.⁶²

8. Use Case 12

Use Case 12 encompasses Distributed Energy Consumer Advocates' (DECA) request for randomized data within a geographically bounded area. The data requestor would "attest that the bounded area contained no uniquely identifiable Customers."⁶³

The DECA use case provides the public with a working model of the majority of California's electricity grid, with a particular focus on the ability to model all electricity consumers' consumption at sub-hour time interval and to tie that data to actual weather conditions, building data, etc. The use case allows for the overlaying of wholesale market data including wholesale production run simulations providing prices and emissions. Expected users of this data are policy advocates, distributed generation providers, energy efficiency marketers and evaluators, and local governments.⁶⁴

DRA agrees with the Report's recommendation and supports DECA's access to only non-PII reports data reports.⁶⁵ In addition, DRA recommends that the standardized reports release energy usage data in intervals no shorter than one hour. Energy usage data increases in sensitivity with decreases in the time interval.⁶⁶ The most grievous invasions of privacy are at intervals of less than one hour, including data signatures which reveal appliance use, internet video content streaming, showering and other intimate activities

⁶² This is consistent with the Commission's ongoing actions to properly incentivize parties. For example, the ERAM program removed the utility's incentive to increase customers' energy use by decoupling energy profits from energy use. CEC, p.94.

⁶³ Report, p. 87.

⁶⁴ Report, p. 34.

⁶⁵ Report, pp. 86-88.

⁶⁶ Technical Issues with Anonymization & Aggregation of Detailed Energy Usage Data as Methods for Protecting Customer Privacy. EFF & Samuelson Law, Technology & Public Policy Clinic at the University of California, Berkeley School of Law, Apr. 1, 2013.

within the home.⁶⁷ For data reports at the subhourly level, DRA proposes that the risks to consumer privacy outweigh the benefits of energy efficiency planning.

B. IMPLEMENTATION PROTOCOLS

1. DRA Modifications to the IOUs Strawperson Proposal Offer a Reasonable Dispute Resolution Process

DRA supports most of the IOU Strawperson proposal's recommendations to standardize third-party access to energy usage data because it obviates the need to build a costly and duplicative Energy Data Center. Properly implemented, a "one-stop" process will also replace the inconsistent release of consumer data with a uniform⁶⁸ policy embodying the Commission's Privacy Rules. Finally, a "one-stop" process also protects consumer privacy by reducing the quantity of database "vaults" subject to cyber-attack.

The IOU Strawperson proposal provided in the Report offers a good starting framework, but further improvements are necessary to resolve potential disputes. DRA provides redline edits to the modified Utility Strawperson proposal process (Appendix B), and explains its recommendations below.

2. DRA Recommends the IOUs Create a Web Portal To Post and Index Data Requests for Increased Transparency.

DRA recommends the Commission order the utilities to set up a web portal to post and track third-party requests for customer energy usage data in a public manner. On this web portal, DRA proposes the following information be shared:

⁶⁷ Legal Considerations for Smart Grid Energy Use Data Sharing, EFF and the Samuelson Law, Technology & Public Policy Clinic at the University of California, Berkeley, School of Law, Apr. 1, 2013.

⁶⁸ A uniform process would institute the same energy data request procedures at all investor owned utilities.

- **Request:** The completed request form for data access (based on the utilities' electronic input form for third-parties to request energy usage data access)
- **Status:** Whether the request is in process or complete
- **IOU Response:** Whether the request is granted or not granted. If not granted, the utility will post the specific reasons for why it is not providing the data or other options for providing data access.
- **Follow up:** Whether the third party sought informal/formal review at the Commission. The IOUs shall include, but is not limited to, a link to the Commission's Advisory Letter, links to the appropriate Commission docket card if a third-party files Expedited Complaint against the utility. (DRA discusses this process in more depth, below.)

DRA's web portal proposal is reasonable because it: (1) it increases procedural transparency for requesting energy usage data; (2) helps track specific requests and outcomes in an organized, public manner, and (3) provides Commission oversight to evaluate whether the rules are working in a uniform, consistent manner across all three utilities. Appendix A is a DRA proposal of a "Sample Web Portal Data Request Form".

3. Advisory Committee

The Report proposes an Energy Usage Data Access Advisory Committee to help resolve disputes. It states,

6. An Energy Usage Data Access Advisory Committee should be considered, modeled on the Procurement Review Group established under the utilities' Long Term Procurement Plans. The Advisory Committee will consist of representatives from each of the utilities, the Commission's Energy Division, the Division of Ratepayer Advocates, representatives of consumer and privacy advocacy groups, and other interested parties. The Advisory Committee will meet at least once a quarter to review and advise on the implementation of the utilities' energy usage data access programs, and to consider informally any disputes regarding

energy usage data access and make other informal advisory recommendations regarding technical and policy issues related to energy usage data access.⁶⁹

An advisory committee may be useful for parties to review and advise on the implementation of the utilities' energy usage data access programs. A quarterly meeting allows the three IOUs to share specific problems and solutions to maintain consistency in the application of the rules. A quarterly meeting also allows the IOUs to inform the Commission and other parties—including DRA—whether the rules need further clarification or adjustments. Should changes to the rules be required after these informal meetings, parties may seek a Petition for Modification to further refine the rules.

DRA disagrees that the Advisory Committee acts as the arbiter of an informal dispute process for data requests. The IOU Strawperson proposal fails to provide clear guidelines of how this informal dispute process works, nor offers suggestions on whether third-parties would have an opportunity to provide input. The Commission should reject the Report's proposal to resolve disputes through the Advisory Committee.

4. DRA's Proposed Dispute Resolution Process

Following the Commission's own Rules of Practice and Procedure and current Commission practices, DRA proposes a two-step process that affords third-parties the opportunity to appeal to the Commission when a utility initially denies a request.

First, after a utility's rejection for data access, the third-party should submit a letter of appeal to the Commission. Similar to the utilities' advice letter process in General Order 96-B, this informal complaint process should be delegated to Commission Staff. Because the nature of the dispute is primarily legal, the Commission can delegate authority to its Legal Division to resolve disputes through an Advisory Letter.⁷⁰ The

⁶⁹ Report, pp. 90-91.

⁷⁰ The Commission delegates Legal Division staff the authority to resolve requests for Commission data

Advisory Letter, while not an official Commission position, would serve to analyze the third-party request and offer an informal resolution to the parties. Should the Advisory Letter not allow the parties to settle their differences, the third-party may utilize the Commission's Expedited Complaint Process.⁷¹

The Expedited Complaint Process is a procedure for quickly handling formal complaint cases. This process ensures a hearing, without a court reporter, within 30 days after an answer to a complaint is filed. Only the complainant and the answer are heard; the parties represent themselves. An ALJ prepares a Draft Decision, and the final decision is made by the full Commission.⁷²

Using the Expedited Complaint Process is reasonable because it is already an existing procedure that allows the Commission to resolve disputes by third parties against the utilities.⁷³ Additionally, dispute resolution by utilities is inappropriate since "it is not the role of the Utilities...to determine disputes."⁷⁴

requested through the Public Records Act, or General Order 96-C. In *Decision Adopting Policies for Demand Response Direct Participation*, D.12-11-025, the Commission indicated it is not appropriate for Energy Division to determine disputes (D.12-11-015, p. 36).

⁷¹ Rules of Practice and Procedure, p. 41-42, http://docs.cpuc.ca.gov/WORD_PDF/AGENDA_DECISION/143256.PDF.

⁷² D.12-11-025, p. 35.

⁷³ Rules of Practice and Procedure, Rule 4.1(a)(1) states that a complaint may be filed by "any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, setting forth any act or thing done or omitted to be done by any public utility including any rule or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission."

⁷⁴ D.12-11-025, p. 36. ("While we recognize the need for expediency in resolving these matters, it is not the role of the Utilities or Energy Division staff to determine disputes. As such, we adopt the Commission's current formal Complaint Process where the Commission would resolve disputes...The formal Complaint Process provides the options of the Expedited Complaint Procedure as well as Alternative Dispute Resolution.")

The power to oversee and enforce rules regarding the data distribution under Section 8380 should remain with the Commission rather than an Advisory Committee. DRA’s two-step dispute resolution process is reasonable because it offers third-parties and the utilities an opportunity to resolve disputes in an informal manner, and then formally through the Commission’s existing Complaint Processes. The dispute resolution process also handles complaints in a transparent, consistent manner, which affords the parties due process. Based on the reasons set forth above, the Commission should adopt DRA’s proposal as reasonable and reject those portions of the Strawperson proposal which delegate this duty to the Advisory Committee.

C. PROPOSED NON-DISCLOSURE AGREEMENTS

The use cases vary widely in the degree of granularity requested as well as authorization under Section 8380 and the Commission’s Privacy Rules. Therefore, DRA proposes separate NDAs for: (1) data requests under contract with utilities; (2) non-PII data releases and (3) data released under state or federal law or by Commission order.

1. PG&E Strawperson NDA for PII Requests Under Contract with Utilities for a Primary Purpose

DRA agrees with SCE’s analysis of PG&E’s Strawperson NDA; the NDA is only appropriate for data requests where the utility has a contractual relationship with the utility and is obtaining the data for a primary purpose under Section 8380(e)(2).⁷⁵ The contractual relationship is reflected in the mutuality of disclosure between utility and contractor under Sections 1 and 2.⁷⁶ The survey attached to the Strawperson NDA, titled “SCOPE OF ENERGY USAGE DATA RESEARCH,” reflects the utilities’ obligation to contract for a “primary purpose” under 8380(e)(2) while the cybersecurity requirements

⁷⁵ Workshop Report, at 92-93.

⁷⁶ ENERGY USAGE DATA NON-DISCLOSURE AND USAGE OF INFORMATION AND AGREEMENT.

embodied in the form titled “Confidentiality and Data Security” reflect heightened security requirements required for transmitting PII data.⁷⁷

2. “NDA-Light” for Non-PII Requests

DRA recommends a less stringent NDA, or “NDA-Light,” for the release of non-PII data under Section 8380(e)(1) for data requests by landlords for building benchmarking compliance under AB 758/1103. The terms of the NDA should contain language reflecting the sensitive nature of the data received and terms of use requiring landlords to restrict use to compliance with building benchmarking requirements. The NDA requires no primary purpose survey or cybersecurity compliance.

3. NDA for Data Obligations Under State or Federal Law or by Commission Order

DRA also recommends an NDA for data requests proffered in compliance with Section 8380(e)(3), as “required or permitted under state or federal law or by an order of the commission.”⁷⁸ DRA is aware that SCE is planning to submit a draft NDA in its opening comments and plans to comment on this NDA in its reply comments.⁷⁹ Generally, DRA expects that such an NDA reflects the unilateral conveyance of information from the utility to the data user, unlike the mutual conveyance of information reflected in the PG&E Strawperson NDA in Sections 1 and 2. This NDA should require compliance with a cybersecurity protocol but include no primary purpose survey.

D. IMPLEMENTATION COST AND COST RECOVERY

Section VIII of the Report addresses the implementation costs and cost recovery associated with executing any order resulting from this proceeding. The Report recommends utility reimbursement for the “reasonable and incremental costs of

⁷⁷ PG&E NDA Strawperson, Exhibit A, Scope of Energy Usage Data and Exhibit B, Confidentiality and Data Security.

⁷⁸ Pub. Util. Code § 8380(e)(3).

⁷⁹ *Id.*

implementing energy usage data access under the use cases”⁸⁰ either through direct fees on data access users or through recovery from ratepayers.⁸¹ The Report recommends:

The Commission should address all cost recovery issues before requiring the utilities to implement any new data sharing requirements in this proceeding, including not only the privacy protocols for protecting customer-specific information from re-identification, but also the administrative requirements for processing and fulfilling energy usage data access requests from third-parties.

DRA agrees it is practical to address all cost recovery issues prior to requiring the utilities to implement any new data sharing requirements in this proceeding.

The Commission should open a ratesetting phase or separate application process to develop a record to address cost elements. Presently, the record lacks sufficient evidence and information for the Commission to make a calculated and thoughtful determination on the reasonableness of costs associated with this proceeding. As TURN states “there is no consensus yet on cost recovery, and that the issue of costs and methods for cost recovery were not specifically discussed in the Working Group sessions.”⁸² DRA agrees. In fact, the Report stipulates that “the utilities are unable to estimate the precise costs of implementing energy usage data access at this time.”⁸³ In light of the parties’ positions and Report’s findings, it is premature to make any meaningful conclusion regarding costs and cost recovery this proceeding. Therefore, at a minimum, the Commission should open a ratesetting phase or separate application process to develop a record that addresses the following cost elements:

- Third-Party User Fee Rates

⁸⁰ Report, p. 93.

⁸¹ Report, pp. 93-94.

⁸² Report, p. 95.

⁸³ Report, p. 94.

- Preliminary Development of Any New and Need Systems
- Hardware and Licenses
- Pre-disclosure Review of Third Party’s Information Security and Privacy Controls and Protections
- Labor
- Program Management and Training
- Customer Education and Outreach
- Cost Allocations
- Summary of Capital and Expense Forecasts

The Commission should also develop a record that examines the utilities’ existing investments in Smart Meter infrastructure, alternative and/or already approved cost recovery sources (i.e., general rate cases, separate applications, Electric Program Investment Charge (“EPIC”) program, etc.), and relationship between this proceeding and similarly related proceedings, such as A.12-03-002 et al.⁸⁴ Also, as the Commission is aware, this proceeding is categorized as “quasi-legislative” and thus is not the appropriate procedural vehicle to address substantive cost and cost recovery issues.

DRA also recommends that the Commission require utilities to file separate applications to present their plans to comply with the Commission’s final orders in this proceeding. The Commission applied this approach in D.11-07-056 when it ordered the utilities to file applications⁸⁵ within six months of that decision, which proposed implementation plans and associated costs to provide third parties access to customer energy usage data via the utility’s backhaul⁸⁶ when authorized by the customer.⁸⁷ The

⁸⁴ A.12-03-002, In the Matter of the Application of Pacific Gas and Electric Company for Adoption of its Customer Data Access Project; *Also see*, A.12-03-003 (SDG&E), and A.12-03-004 (SCE).

⁸⁵ *See* A.12-03-002, et. al.

⁸⁶ In D.11-07-056, the Commission stated it had the authority to require the utilities to permit the transmission of consumer usage data to third parties via the backhaul so long as the customer agreed to

Commission, in part, found it necessary to require separate applications because “[comments] provide by SCE and PG&E raised substantial factual issues concerning the costs of implementing a standards-based program for providing third-parties with access to covered data over the backhaul.”⁸⁸ DRA argues that the near identical substantial factual issues are pertinent to this proceeding and necessitate similar consideration and treatment. Apart from customer consent, the scope of this proceeding, the Report, and DRA’s recommendations made herein focus on providing third-parties with access to energy usage data in some format. At the minimum, it is reasonable to apply the same implementation and costs review standards to this proceeding as the Commission did in the aforementioned applications. However, because this proceeding centers on data transfers without customer consent and the benefits focuses more on third-party requestors , it is particularly important to ensure the execution of any developed implementation plans are sound and that the costs are just and reasonable to ratepayers.

the transfer of the data (D.11-07-056, p. 37.). For the purposes of this discussion, backhaul refers to energy usage data obtained by third-parties from an internet connection with the utility.

⁸⁷ D.11-07-056, Ordering Paragraph 8, p. 165 states:

8. 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 the 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 applications should propose eligibility criteria and a process for determining eligibility whereby the Commission 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.

⁸⁸ D.11-07-056, p. 113.

Therefore, DRA urges the Commission to order the utilities to file separate applications. Whereas the Commission will institute broad policy in this rulemaking, the individual application process is much better suited to examine more specific implementation plans and cost recovery proposals. As noted above, the Report recommends utility reimbursement for the “reasonable and incremental costs of implementing energy usage data access under the use cases”⁸⁹ either through direct fees on data access users or through recovery from ratepayers.⁹⁰

Though some initial start-up costs may be recovered from ratepayers, DRA recommends that utilities collect user fees from data requestors to fund the ongoing execution of third party access to customer energy usage data as directed in this proceeding. Ratepayers have already invested considerably in Smart Meters with the expectation of receiving reasonable benefits and returns on those investments. While Smart Meter circuitry represents a sunken cost, ratepayers continue to create value by generating energy use information. Ratepayers should receive benefits from the value they create and should not be forced to bear unnecessary additional costs for tangibly benefiting data requestors. For example, commercial energy efficiency contractors benefit financially by using energy data to target marketing to customers, ultimately increasing their profit-margins. Local energy efficiency programs also save money implementing energy efficiency programs by targeting their outreach efforts. Also, energy efficiency programs readily incorporate the costs for data requests within their administrative budget.

Moreover, it is inappropriate to charge all customers the same basic rate for maintaining a data request access when data requests for different subsets of customer information will vary substantially by geography and user class. Indeed, the Report

⁸⁹ Report, p. 93.

⁹⁰ Report, pp. 93-94.

recommends establishing user fees prior to requiring utilities to implement a data sharing process.²¹ DRA agrees it is prudent to address all cost recovery issues upfront rather than retroactively. Therefore, as stated above, DRA recommends that the Commission order the utilities to address user fees, along with all other cost recovery issues, as a component of their proposed implementation plans via separate ratesetting applications.

It is inappropriate and unfair to California ratepayers for the Commission to blindly presume that costs associated with this proceeding are just and reasonable absent any understanding of the actual cost for the data. Except for costs already authorized in other proceedings, the Commission should not allow the utilities to begin recording costs related to the implementation of any decision adopted in this proceeding until the Commission has fully examined tangible cost projections and parties have had the opportunity to comment on those projections.

IV. CONCLUSIONS

For the reasons set forth in these comments, the Commission should adopt the DRA recommendations in Section II-Summary of DRA Recommendation, discussed above.

²¹ *Id.*

Respectfully submitted,

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Appendix A

SAMPLE WEB PORTAL DATA REQUEST FORM

Data Requestor:

Company Name _____

Address _____

Phone _____

Contact: _____

Email _____

Data requested:

- Aggregate/Anonymous data, standard catalogue format
- Aggregate/Anonymous data, personalized format
- Personally Identifiable Information Request

Purpose of data request:

- Under Contract with utility
- Compliance with State or Federal Law
- Under CPUC Commission Order
- None of the above _____

Primary Purpose under P.U. Code Section 8380? [*IOU to define this according to the Privacy Rules***]**

- Yes (see utility primary purpose survey)
- No

Initial Disposition by Utility:

- Data access granted, Reason _____
- Data access denied, Reason _____

Appeal to CPUC Complaint Process:

- Yes, date _____

CPUC Disposition:

- Grant, Date/Reason _____
- Deny, Date/Reason _____

Appendix B

DRA Redlines to the IOU Strawperson” Process, As Modified in Response to Comments” (Report, p. 88.)

1. Each utility will establish a consistent, streamlined, “one-stop” process for providing authorized third-parties with energy usage data access where permitted by law and Commission privacy and ratemaking rules. The process will include the following:
 - a. Single point-of-contact in the utility for filing and processing of third-party energy usage data requests. The single point-of-contact will include a single email mailbox or website and other contact information to which requests for energy usage data access may be transmitted.
 - b. The single point-of-contact information will be provided prominently and conveniently on the utility’s website.
 - c. The utility’s website will provide access to an electronic input form for third-parties to request energy usage data access, comparable to the “template” provided in the Phase 3 ALJ ruling (Attachment A to ALJ Sullivan’s ruling of 2/27/13). The form will be consistent among PG&E, SCE, SDG&E and SoCalGas.
 - d. The utility’s website will explain DRA’s two-step dispute resolution process for any
 - e. The utility will set up a web portal to post third-party requests for customer energy usage data in a public manner. On this web portal, DRA proposes the following information be reported:
 - i. Completed request for data access (based on the utilities’ electronic input form for third-parties to request energy usage data access)
 - ii. Whether the request is in process or complete
 - iii. Whether the request is granted or not granted. If not granted, the utility will post the specific reasons for why it is not providing the data or other options for providing data access.
 - iv. Whether the third party sought informal/formal review at the Commission of the denial for data access and the disposition of that review. This shall include, but is not limited to, a links to the Commission’s Advisory Letter, links to the appropriate Commission docket card if a third-party files Expedited Complaint against the utility.
2. The utility website is expected to eventually include a “catalogue” of standard energy usage data access reports, in the most commonly requested formats among PG&E, SCE, SDG&E and SoCalGas, that can be made available to third parties at a cost-

based fee. Such standard reports will be made available to third parties within e.g., 7-10 business days of receiving a completed request form if all privacy, security and contractual controls are in place and subject to a reasonable volume of requests being processed at the same time.

3. Within e.g., 7- 10 business days of receiving a form from a third-party requesting energy usage data access, the utility will respond by phone, email or in writing regarding whether the information on the form is complete and, if incomplete, what additional information is required for the utility to process the request.

4. Within e.g., 30 business days of receiving a complete request for energy usage data access from a third-party, the utility will respond by email or in writing regarding whether it is able to grant the request and with a proposed schedule and estimated cost for compiling and providing access to the data. If the utility responds that it cannot grant access to the data, it will provide specific reasons for why it is not providing the data or other options for providing data access (such as providing data access using a pre-approved report from the data access “catalogue” or suggested modifications to the request such that it could be granted). If the third-party disagrees with the utility’s rejection of its request for data access or the alternative options offered by the utility, the third-party may bring the dispute for informal review through the Advisory Letter process to be mailed to the Commission’s Legal Division~~discussion before the Energy Usage Data Access Advisory Committee established below.~~ After an Advisory Letter is received, a third-party may seek to file a formal complaint pursuant to the Commission’s Rules of Practice and Procedure.

5. Prior to receiving access to energy usage data, a third-party will execute a standard confidentiality agreement if required by the utility, with substantially consistent terms and conditions among PG&E, SCE, SDG&E and SoCalGas. In addition, if a predisclosure review of the third-party’s information security and privacy controls and protections is required by the utility, the requirement and criteria for the review will be substantially consistent among PG&E, SCE, SDG&E and SoCalGas and published in advance and available on the utilities’ websites.

6. An Energy Usage Data Access Advisory Committee should be considered, modeled on the Procurement Review Group established under the utilities’ Long Term Procurement Plans. The Advisory Committee will consist of representatives from each of the utilities, the Commission’s Energy Division, the Division of Ratepayer Advocates, representatives of consumer and privacy advocacy groups, and other interested parties. The Advisory Committee will meet at least once a quarter to review and advise on the implementation of the utilities’ energy usage data access programs, and to ~~discuss~~consider informally any disputes regarding energy usage data access and make other informal advisory recommendations regarding technical and policy issues related to energy usage data access.

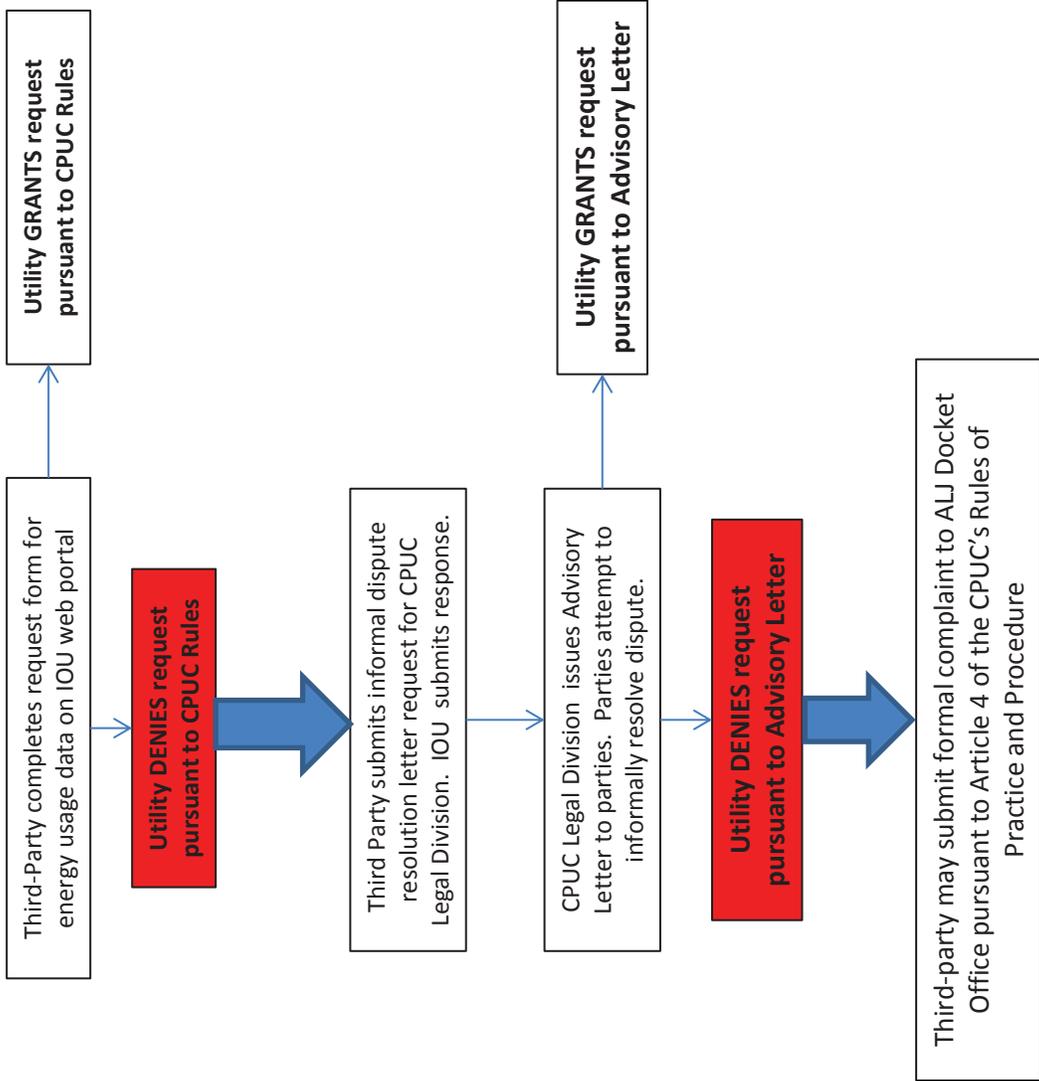
7. Nothing in this process requires or authorizes a utility or a third-party to violate any existing privacy or information security laws, rules or orders, including the Commission’s

privacy rules and the California Information Practices Act. Nothing in this process requires or authorizes a utility or a third-party to transfer, sell, or license energy usage data that consists of the utilities' intellectual property, trade secrets, or competitively-sensitive data. The transfer, sale or licensing of such intellectual property, trade secrets and competitively-sensitive data will be subject to Commission review and approval consistent with existing Commission rules and orders regarding the sale, transfer or licensing of utility assets.

8. All data outputs will be in standard formats. Data will be accessible in specified formats such as comma-delimited, XML, or other agreed-upon formats. Customized outputs or formats should be avoided or subject to higher cost fees. The Advisory Committee can review formats annually to ensure that the utilities are consistent with current technology trends for data sharing formats.

9. Mechanisms for handling data delivery for requests of all sizes in a secure manner should be standardized. Some requests are very small and require very little effort to transmit or deliver. Others can be gigabytes in size. In addition, sensitive customer information or other confidential information must be transmitted to the third party with reasonable encryption, rather than e-mailed. By standardizing delivery mechanisms, utilities and third parties will provide pre-approved delivery methods for sensitive information, reducing risk as well as the time to transmit and receive the data. The other interested parties in the Working Group generally supported the utilities' proposal, with some recommended clarifications and enhancements. For example, LGSEC and CCSC disagreed with the requirement that third-parties accessing customer-specific energy usage data undergo an information security review by the utility to ensure that the third-parties privacy protocols and controls are adequate. LGSCE and CCSC also requested that the processing protocols, data formats and deadlines be consistent across the utilities. DRA requested more standardization and transparency on the processing of data access requests and the formatting and transmittal of data to recipients.

Appendix C: DRA Proposed Third-Party Dispute Resolution Process



IOU Web Portal
The IOU web portal should include the following:

Request: Third-party completed request form info

Status: Whether the request is in process or complete

IOU Response: Whether the request is granted or not granted. If not, the utility will post the specific reasons for why or other options for providing data access.

Appeal Status: If request is at informal/formal review at the CPUC. This shall include, but is not limited to, a link to the Commission's Advisory Letter, links to the appropriate Commission docket card if a third-party files Expedited Complaint against the utility.