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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

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.

(U39E)

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

**REPLY COMMENTS OF PACIFIC GAS AND  
ELECTRIC COMPANY (U 39 E) ON CUSTOMER PRIVACY AND  
SECURITY ISSUES**

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Dated: November 8, 2010

Attorney for  
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OF THE STATE OF CALIFORNIA**

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COMPANY (U 39 E) ON CUSTOMER PRIVACY AND  
SECURITY ISSUES**

**I. INTRODUCTION**

Pursuant to the October 29, 2010, Administrative Law Judge's Ruling, Pacific Gas and Electric Company ("PG&E") hereby provides its reply comments on proposals for providing customers with access to their energy usage and price data while protecting the security of the data and the privacy of the customers.

**II. COMMENTS ON "STRAWPERSON" PRIVACY PRINCIPLES SUBMITTED BY  
CENTER FOR DEMOCRACY AND TECHNOLOGY AND PG&E**

At the workshop on October 25, 2010, the Center for Democracy and Technology (CDT) and PG&E jointly presented a draft of privacy principles which reflected our mutual discussions on a possible consensus for adoption by the Commission. The draft was subject to detailed and candid discussion, including discussion by PG&E, CDT and other interested parties regarding potential revisions, additions and deletions.

Based on the workshop discussions and some subsequent discussions with CDT and other parties, PG&E believes that the October 25 draft can be improved and enhanced with further revisions. PG&E has incorporated these revisions into a revised draft which is attached as

Appendix A. Under each of the revised sections of the revised draft, PG&E has provided comments and explanations of the revisions for consideration by the Commission and parties. Depending on the degree of consensus that may emerge from other parties' reply comments, PG&E is hopeful that the revised draft can now be used as the basis for a proposed decision updating and codifying the Commission's customer privacy principles and policies.

In addition to PG&E's substantive recommendations on codification of the Commission's privacy policies, PG&E also requests that the Commission authorize utilities to file expedited applications for recovery of any significant incremental costs that they may incur in order to comply with these privacy policies. PG&E does not expect to incur significant incremental costs, but is unable to determine its costs of compliance until the Commission issues a final decision in this phase of the proceeding. PG&E notes that this approach is consistent with the Commission's prior Advanced Metering Infrastructure decisions which have authorized the utilities to seek recovery for additional reasonable costs incurred to meet new data access standards.

### **III. COMMENTS ON PROPOSALS FOR COMMUNICATING PRICING INFORMATION TO CUSTOMERS**

At the October 26 workshop, Commission staff asked for comments on whether the Commission should mandate that particular forms of pricing information be required to be provided to customers as part of their web-based and electronic energy usage information. Further, in the questions posed in advance of the workshop, the Commission staff requested input on what pricing information should be provided to residential and non-residential customers, and input on standards around pricing information.

PG&E currently provides both residential and non-residential customers with pricing information on PG&E's website, and specifically customers can obtain information about their current rate via an on-line rate information center. Residential and non-residential customers with a

SmartMeter™ device can download to their own computer system not only their interval usage data, but also the pricing associated with that particular interval. Large, medium, and small business as well as agricultural customers have access to a robust set of relatively sophisticated rate analysis tools; these will be made available for residential customers as dynamic rates become available for them as well.

Already, PG&E customers have significantly more information about their energy use and bills than just a few years ago. Today, nearly 2 million of PG&E's residential customers with SmartMeters™ have internet-based access not only to their electricity and gas usage data on an hourly, 24/7 interval basis, but also to web-based tools for forecasting and calculating their energy usage and costs, using a cost calculator based on their trended usage. Customers are able to see their estimated month-end bill and compare that with usage in the prior year. Through PG&E's "Energy Alerts" program, customers can also sign up to receive email, text or phone messages as they transition from one of the upper tiers into a higher tier. Non-residential customers with SmartMeter™ devices have access to their usage data on a 15 minute, 24/7 interval basis, as well as specific rate calculators for comparing their different rate options. (Per the Commission's Advanced Metering Infrastructure decisions, this energy usage data is available to a customer one day after actual usage.)

As various pricing and rate programs are introduced to residential and non-residential customers, PG&E agrees that the Commission should ensure that utilities provide customers with clear, understandable pricing information and related tools. However, we believe that the Commission should not mandate or provide prescriptive direction to utilities regarding exactly what form, or how that pricing information should be provided to customers. Instead, we recommend that customers and their feedback should be the primary driver of specific

communications features and requirements. The on-line tools will need to evolve as we better understand how customers use the information provided, and what types of rate comparison tools and pricing information are most helpful. PG&E looks forward to implementing further enhancements over the next few years as new pricing and rate programs become available.

Finally, the nationwide working groups addressing both the Smart Energy 2.0 standard for Home Area Networking (HAN), and the Open Automated Data Exchange (ADE) standard are addressing privacy, security, and pricing models, with standards likely to be approved during 2011. PG&E is supporting an industry consensus based on this standards effort that can be adopted for communications from the meter to within a premise and between the utility and third parties.

#### **IV. CONCLUSION**

PG&E appreciates the opportunity to support a consensus approach on customer privacy and third party access issues at the Commission.

Respectfully Submitted,

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By: \_\_\_\_\_ /s/  
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**APPENDIX A – Privacy Policies and Procedures  
PG&E Recommended Revisions to  
October 25, 2010 Workshop Draft**

**1. DEFINITIONS**

- (a) **Covered Entity.** A “covered entity” is (1) any electric service provider, electrical corporation, gas corporation or community choice aggregator, or (2) any third party that collects, stores, uses, or discloses covered information *that it has obtained under contract with or as an agent of any electrical corporation, gas corporation, electric service provider, or community choice aggregator.*

**PG&E COMMENT:** PG&E will brief the issue of the Commission’s direct jurisdiction over third parties, but recommends at a minimum that the Commission assert jurisdiction over third parties who are agents or contractors of a utility, electric service provider or community choice aggregator pursuant to Public Utilities Code Sections 2110 and 2111, which cover violations by agents of utilities, and persons and entities other than utilities.

- (b) **Covered Information.** “Covered information” is any electrical or gas *usage* information *identifying* an individual, family, household, *residential or non-residential customer of an electrical corporation, gas corporation, electric service provider, or community choice aggregator*, except that covered information does not include *such* information from which information *identifying the customer* has been removed such that the *customer* cannot reasonably be identified or re-identified.

**PG&E COMMENT:** PG&E agrees with revising the definition of covered information to include “usage” information rather than the more precise “consumption data” definition used in SB 1476. However, PG&E recommends that the definition be clarified to precisely include identity related information on utility customers, rather than the broader, less precise definition recommended by CDT.

- (c) **Primary Purposes.** The “primary purposes” for the collection, storage, use or disclosure of covered information are to—
- (1) provide or bill for electrical power or natural gas,
  - (2) fulfill other operational needs of the electrical or natural gas system or grid,
  - (3) provide services as required by state or federal law or *authorized by* an order of the Commission, or
  - (4) implement demand response, energy management, or energy efficiency programs operated by, or on behalf of and under contract with, an electrical or gas corporation, *electric service provider, or community choice aggregator.*

**PG&E COMMENT:** Consistent with SB 1476 and the Commission’s general authority over public utilities, the definition of “primary purpose” should include not only the referenced specific purposes, but also purposes that the Commission may expressly authorize by order that are consistent with its overall jurisdiction over public utility facilities and activities.

- (d) **Secondary Purpose.** “Secondary purpose” means any purpose that is not a primary purpose.

## **2. TRANSPARENCY (NOTICE)**

- (a) **Generally.** Covered entities shall provide customers with meaningful, clear, accurate, specific, and comprehensive notice regarding the collection, storage, use, and disclosure of covered information.
- (b) **When Provided.** Covered entities shall provide notice in their first paper correspondence with the customer, if any, and shall provide conspicuous posting of the notice or link to the notice on the home page of their website.
- (c) **Form.** The notice shall be labeled “Privacy Policy: Notice of Collection, Storage, Use and Disclosure of Energy Usage Information” and shall—
  - (1) be written in easily understandable language,
  - (2) be no longer than is necessary to convey the requisite information.
- (d) **Content.** The notice shall state clearly—
  - (1) the identity of the covered entity,
  - (2) the effective date of the notice,
  - (3) the covered entity’s process for altering the notice, including how the customer will be informed of any alterations, and where prior versions will be made available to customers, and
  - (4) the title and contact information, including email address, postal address, and telephone number, of an official at the covered entity who can assist the customer with privacy questions, concerns, or complaints regarding the collection, storage, use, or distribution of covered information.

## **3. PURPOSE SPECIFICATION** The notice required under section 2 shall provide—

- (a) an explicit description of—
  - (1) each category of covered information collected, used, stored or disclosed by the covered entity, and, for each category of covered information, the reasonably specific purposes for which it will be collected, stored, used, or disclosed, and
  - (2) each category of covered information that is disclosed to third parties, and, for each such category, (i) the purposes for which it is disclosed, and (ii) the **number** of third parties to which it is disclosed;

**PG&E COMMENT:** PG&E contracts with hundreds of third parties for the purposes of operating its utility system and providing utility services to customers, and thus providing the identity of each and every contractor with whom it shares covered information for utility operational purposes is commercially unreasonable and burdensome. The Commission retains the discretion to request the identity of each contractor from utilities as part of normal regulatory oversight.

- (b) the periods of time that covered information is retained by the covered entity;
- (c) a description of—

- (1) the means by which customers may view, inquire about, or dispute their covered information, and
- (2) the means, if any, by which customers may limit the collection, use, storage or disclosure of covered information and the consequences to customers if they exercise such limits.

#### **4. INDIVIDUAL PARTICIPATION (ACCESS AND CONTROL)**

- (a) **Access.** Covered entities shall provide to customers upon request convenient and secure access to their covered information—
  - (1) in an easily readable format that it is *at a level of detail sufficient for the customer to utilize reasonably available energy management or energy efficiency products but in no event* at a level no less detailed than that at which the covered entity discloses the data to third parties.
  - (2) The Commission shall, by subsequent rule, prescribe what is a reasonable time for responding to customer requests for access.

**PG&E COMMENT:** These privacy policies should not go beyond privacy standards and attempt to prescribe the design or implementation of substantive utility programs, such as energy management or energy efficiency programs.

- (b) **Control.** Covered entities shall provide customers with convenient mechanisms for—
  - (1) granting and revoking authorization for secondary uses of covered information,
  - (2) disputing the accuracy or completeness of covered information that the covered entity is storing or distributing for any primary or secondary purpose, and
  - (3) requesting corrections or amendments to covered information that the covered entity is collecting, storing, using, or distributing for any primary or secondary purpose.
- (c) **Disclosure Pursuant to Legal Process.**
  - (1) Except as otherwise provided in this rule or expressly authorized by state or federal law or by order of the Commission, a covered entity shall not disclose covered information except pursuant to a warrant or other court order naming with specificity the customers whose information is sought. Unless otherwise directed by a court, *law, or order of the Commission*, covered entities shall treat requests for real-time access to covered information as wiretaps, requiring approval under the federal or state wiretap law *as necessary*.

**PG&E COMMENT:** Disclosure required by legal process should be governed by rules or orders of the courts or the Commission, and not limited to one particular form of legal process.

- (2) Unless otherwise prohibited by court order, law, or order of the Commission, a covered entity, upon receipt of a demand for disclosure of covered information pursuant to legal process, shall, prior to complying, notify the customer in writing and allow the customer 7 days to appear and contest the claim of the person or entity seeking disclosure.
- (3) Nothing in this rule prevents a person or entity seeking covered information from

demanding such information from the customer under any applicable legal procedure or authority.

(4) Nothing in this section prohibits a covered entity from disclosing covered information with the consent of the customer, where the consent is express, written and specific to the purpose and to the person or entity seeking the information.

(5) Nothing in this rule prevents a covered entity from disclosing, in response to a subpoena, the name, address and other contact information regarding a customer.

(6) On an annual basis, covered entities shall report to the Commission the number of times that customer data has been sought pursuant to legal process without customer consent, and for each such instance, whether it was a civil or criminal case, whether the covered entity complied with the request as initially presented or as modified in form or scope, and how many customers' records were disclosed. ***The Commission may require the covered entity to make such reports publicly available without identifying the affected customers, unless making such reports public is prohibited by state or federal law or by order of the Commission.***

**PG&E COMMENT:** Disclosure to the public of legally-compelled sharing of covered information should be subject to the discretion of the Commission and applicable law, and not mandated by this rule.

## **5. DATA MINIMIZATION**

- (a) **Generally.** Covered entities shall collect, store, use, and disclose only as much covered information as is reasonably necessary ***or as authorized by the Commission*** to accomplish a specific primary purpose identified in the notice required under section 2 or for a specific secondary purpose authorized by the customer.
- (b) **Data Retention.** Covered entities shall maintain covered information only for as long as reasonably necessary ***or as authorized by the Commission*** to accomplish a specific primary purpose identified in the notice required under section 2 or for a specific secondary purpose authorized by the customer.
- (c) **Data Disclosure.** Covered entities shall not disclose to any third party more covered information than is reasonably necessary ***or as authorized by the Commission*** to carry out on behalf of the covered entity a specific primary purpose identified in the notice required under section 2 or for a specific secondary purpose authorized by the customer.

**PG&E COMMENT:** PG&E agrees with the general goal of minimizing the scope and retention of covered information, but this goal should be balanced against the need by the Commission and utilities to maintain records and data for operational and policy purposes, such as resolution of customer billing disputes; energy policy planning and analysis; and cost of service review authorized by the Commission.

## **6. USE AND DISCLOSURE LIMITATION**

- (a) **Generally.** Covered information shall be used solely for the purposes specified by the covered entity in accordance with section 3.

(b) **Primary Purposes.** A covered entity may use covered information for primary purposes without customer consent.

(c) **Disclosures to Third Parties to Carry Out a Primary Purpose.**

(1) Initial Disclosure by a Covered Entity. A covered entity may disclose covered information to a third party without customer consent for a primary purpose, provided that the covered entity shall, by contract, require the third party to agree to collect, store, use, and disclose covered information under policies, practices and notification requirements no less protective than those under which the covered entity itself operates as required under this rule.

(2) Subsequent Disclosures. Any entity that receives covered information derived initially from an electrical corporation, gas corporation, electric service provider or community choice aggregator may disclose such covered information to another entity without customer consent for a primary purpose, provided that the entity disclosing the covered information shall, by contract, require the entity receiving the covered information to use the covered information only for such primary purpose and to agree to store, use, and disclose the covered information under policies, practices and notification requirements no less protective than those under which the electrical corporation, gas corporation, electric service provider or community choice aggregator from which the covered information was initially derived itself operates as required by this rule.

~~(3) Terminating Disclosures to Entities Failing to Comply With Their Privacy Assurances. When an entity discloses covered information to any other entity under this subsection 6(e), it shall specify by contract that it shall be considered a material breach if the receiving entity engages in a pattern or practice of storing, using or disclosing the covered information in violation of the receiving entity's commitment to handle the covered information under policies no less protective than those under which the gas or electrical corporation, electric service provider or community choice aggregator from which the covered information was initially derived itself operates [in compliance with this rule]. If an entity disclosing covered information finds that an entity to which it disclosed covered information is engaged in a pattern or practice of storing, using or disclosing covered information in violation of the receiving entity's privacy and data security commitments related to handling covered information, the disclosing entity shall cease disclosing covered information to such receiving entity.~~

**PG&E COMMENT:** PG&E will brief the issue of whether the Commission can directly regulate third parties which have no direct contractual or agency relationship with a utility. However, as a matter of public policy and practical implementation, PG&E does not recommend that utilities or their third party contractors or agents be required to enforce these privacy principles through the indirect means of commercial lawsuits or civil actions for breach of contract. PG&E also does not recommend that such third parties be required to directly register or be certified by the Commission, because the benefit of such third party certification is likely to be offset by the

deterrence of third parties from developing and providing new products and services to customers using covered information in a manner consistent with privacy rules already applicable to all entities under general law.

- (d) **Secondary Purposes.** No covered entity shall use or disclose covered information for any secondary purpose without obtaining the customer’s prior, express, written authorization for each such purpose, provided that authorization is not required when information is—
- (1) provided to a law enforcement agency in response to lawful process;
  - (2) authorized by the Commission pursuant to its jurisdiction and control.
- (e) **Customer Authorization.**
- (1) **Authorization.** Separate authorization by each customer must be obtained for each secondary purpose.
  - (2) **Revocation.** Customers have the right to revoke, at any time, any previously granted authorization.
  - (3) **Expiration.** Customer consent shall be deemed to expire after two years, after which time customers will need to reauthorize any secondary purposes.
- (f) **Parity.** Covered entities shall permit customers to cancel authorization for any secondary purpose of their covered information by the same mechanism initially used to grant authorization.

#### 7. DATA QUALITY AND INTEGRITY

~~Covered entities shall ensure that covered information they collect, store, use, and disclose is reasonably accurate and complete.~~

**PG&E COMMENT:** Commission rules and tariffs already specify the accuracy and completeness required for various types of utility information, including billing and metering information, program information, and information provided to regulators. These principles should not attempt to supplement or conflict with the existing rules.

#### 7. DATA SECURITY

- (a) **Generally.** Covered entities shall implement reasonable administrative, technical, and physical safeguards to protect covered information from unauthorized access, destruction, use, modification, or disclosure.
- (b) **Notification of Breach.** *Upon request by the Commission*, covered entities shall notify the Commission of breaches of *privacy under this policy relating to covered information*.

**PG&E COMMENT:** Existing federal and state “red flag” laws already regulate and provide for notification of specific privacy breaches to the customers affected by the breaches. These privacy principles should not require duplicative notification to the Commission of such breaches or breaches of these principles unless the Commission expressly requests.

#### 8. ACCOUNTABILITY AND AUDITING

- (a) **Generally.** Covered entities shall be accountable for complying with the requirements

herein, and must make available to the Commission upon request or audit—

- (1) the privacy notices that they provide to customers,
- (2) their internal privacy and data security policies,
- (3) the identities of agents, contractors and other third parties to which they disclose covered information, the purposes for which that information is disclosed, indicating for each category of disclosure whether it is for a primary purpose or a secondary purpose, and
- (4) copies of any secondary-use authorization forms by which the covered party secures customer authorization for secondary uses of covered data.

- (b) **Customer Complaints.** Covered entities shall provide customers with *a process* for reasonable access to covered information, for correction of inaccurate covered information, and for *addressing* customer complaints *regarding covered information under these rules*.

**PG&E COMMENT:** Existing Commission rules and processes already govern the resolution and redress of customer complaints regarding utility services. These privacy principles should not require additional, new or conflicting procedures.

- (c) **Training.** Covered entities shall provide reasonable training to all employees and contractors who use, store or process covered information.

- (d) **Audits.** Each covered entity shall conduct an independent audit of its *data* privacy practices *periodically as required by the Commission* to monitor compliance with its data privacy commitments, and shall report the findings to the Commission.

**PG&E COMMENT:** The timing and scope of auditing requirements should be set by the Commission separately from these privacy principles, in order to allow flexibility and minimize unnecessary burden and expense.

- (e) **Disclosures.** On an annual basis, covered entities shall disclose to the Commission—
- (1) the number of authorized third parties accessing covered information,
  - (2) the number of non-compliances with this rule or with contractual provisions required by this rule experienced by the covered entities or authorized third parties, and
  - (3) the number of customers affected by such non-compliances.

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is 77 Beale Street, San Francisco, California 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On November 8, 2010, I served a true copy of:

**REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) ON  
CUSTOMER PRIVACY AND SECURITY ISSUES**

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for **R.08-12-009** with an email address.

[XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service list for **R.08-12-009** without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in San Francisco, California on November 8th, 2010.

\_\_\_\_\_  
/s/  
MARTIE WAY

# THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA EMAIL SERVICE LIST

Last Updated: November 5, 2010

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# THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SERVICE LIST

Last Updated: November 5, 2010

## CPUC DOCKET NO. R0812009

Total number of addressees: 291

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Last Updated: November 5, 2010

## CPUC DOCKET NO. R0812009

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