



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

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

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

**REPLY COMMENTS OF
THE CENTER FOR DEMOCRACY & TECHNOLOGY
TO ASSIGNED COMMISSIONER'S RULING OF SEPTEMBER 27, 2010**

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¹ Berkeley Law students Heather Patterson and Evan White, and Jim Dempsey of CDT, participated in the drafting of these reply comments.

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I. Introduction

The Center for Democracy & Technology ("CDT")² files these reply comments in response to the Assigned Commissioner's Ruling of September 27, 2010 ("Ruling"), the opening responses submitted by parties on October 15, 2010, and discussion points raised at the October 25 and 26 workshops. In our October 15 Opening Response, CDT and the Electronic Frontier Foundation ("EFF")³ provided a proposed rule to protect customer privacy interests in Smart Grid data.⁴ The CDT-EFF proposal offered a simple, balanced response to the Ruling's request for "policies and procedures that will help protect the privacy of a customer's data, will help ensure its security and will permit access to the information by authorized third parties."⁵ Building on earlier rulings in this proceeding, we set forth a concrete set of Smart Grid privacy safeguards, based on the widely accepted Fair Information Practice principles ("FIPs").

² CDT is a non-profit, public interest organization with broad experience and expertise in matters of consumer privacy and emerging technologies. CDT has offices in Washington, DC and San Francisco, California.

³ EFF is a non-profit member-supported organization based in San Francisco, California, that works to protect free speech and privacy rights in an age of increasingly sophisticated technology.

⁴ See Appendix A to Proposed Smart Grid Privacy Policies and Procedures – Opening Response of the Center for Democracy & Technology and the Electronic Frontier Foundation to Assigned Commissioner's Ruling of September 27, 2010 (Oct. 15, 2010), available at <http://docs.cpuc.ca.gov/EFILE/CM/125121.PDF> ("Opening Response").

⁵ Assigned Commissioner's Ruling of September 27, 2010 at 6.

In these reply comments, CDT provides a revised version of our proposed privacy rule that reflects the further information supplied by other parties in their opening responses and commentary during the workshop discussions.⁶ The revised rule, containing a set of annotations explaining the revisions, is attached hereto as Appendix A-1, and a clean version of the revised rule is attached hereto as Appendix A-2. We attach hereto as Appendix B the “strawperson” proposal that CDT offered at the October 25 and 26 workshops. We thank the parties that provided information about their data use and privacy practices in opening responses and at the workshops, and those who provided constructive comments on the proposed rules during the workshops. We believe that substantial progress has been made toward consensus, and we urge the Commission to adopt the revised rule.

Our revised rule continues to reflect the Commission’s decision, and the parties’ broad general consensus, to implement the FIP principles. The revisions we have made reflect useful and constructive feedback from workshop discussions, including comments from PG&E, DRA, TURN, and other parties. More generally, our revised rule continues to reflect the goals of the Commission and parties to protect customer usage data, to bring order to the welter of regulations covering various aspects of the Smart Grid environment, and to accommodate and support innovation in technology and business practices. Importantly, the proposed rule fills gaps in the present framework—especially those gaps created by the inadequate and outdated “notice-and-choice” model of privacy protection—by using the full set of FIPs and “operationalizing” them for easy implementation by Smart Grid entities.

As we explained in the workshops, the rule provides clear requirements for Smart Grid entities’ treatment of customer information but does not attempt to prescribe specific business models or technologies.

II. Revisions to the Proposed Rule in Response to Opening Responses and the Workshop Discussion

We perceive broad agreement regarding fundamental aspects of the proposed privacy rule. For example, the rule should cover all customer- or household-specific energy usage data

⁶ EFF’s attorney, Lee Tien, requested that we communicate EFF’s regrets that it is unable to participate in this round of the proceeding, due to severe limitations on its staffing imposed by Mr. Tien’s travel schedule. Given those limitations, EFF has been unable to contribute to the revisions to the proposed rule, but wishes to convey its continued full support for the FIPs model and its general support for the proposed rule.

that can reasonably be re-identified with a specific customer or household. The rule should allow for a limited set of data collections, uses, and disclosures to be made without customer consent, in order for utilities and their contractors to carry out energy delivery, billing, and energy- and grid-management operations (we are calling these “primary purposes”). And in general, the rule should allow for customers—operating with full information about their choices—to consent to a wide range of “secondary purposes,” including disclosures to third parties not operating under contract to provide services on behalf a utility. Finally, the rule should be simple and flexible enough to support technology development and innovative business models.

At the workshop, parties offered useful feedback on the original proposed rule, which we have reflected in a number of revisions. For example, under our revised proposal, “primary purposes” include the provision of services as required by state for federal law, or by an order of the Commission (Sections 1(c)(3) and 4(c)(1) and (2)). In response to Tendril’s opening response⁷ and Verizon’s workshop comments, electronic communications are now explicitly covered in the notice section (Section 2(b)). To address legitimate concerns regarding liability, we have specified a “reasonableness” standard for implementing the provisions on purpose specifications, data minimization, access, and training. We have also made various technical improvements that clarify to whom various aspects of the rule apply, that more clearly reflect Commission orders and authorizations, and that reflect Commission and statutory terminology.

III. Aspects of the Proposed Rules that Must Not Be Revised

We highlight here certain aspects of the proposed rule that are fundamental to the full implementation of the FIPs and to meaningful customer privacy protection. These aspects of the rule must not be eroded.

First, the distinction between *primary* and *secondary* purposes (Sections 1(c) and 1(d)) must be clear and must be maintained. Informed, prior customer consent is an essential element of the FIP principles. Because primary purposes are excepted from the customer consent requirement, the Commission should take care not to enlarge this category to include any purposes that would leave customers vulnerable to unexpected or unknown collection, use, or

⁷ Opening Response of Tendril Networks at 10-11 (Oct. 15, 2010), *available at* <http://docs.cpuc.ca.gov/efile/RESP/125127.pdf>.

disclosure of the highly revealing information that is covered by the rule. As such, unconsented (“primary”) purposes must be tied directly to the provision of energy services and utility operations that have been approved by and are subject to oversight by the Commission. It is legitimate to allow sharing and use of data for these purposes without customer consent because they are core to the energy service that is the main purpose of the utility-customer relationship, and because the Commission’s ongoing oversight serves to protect customers in lieu of consent. Broadening the concept of primary purposes, however, would destroy the effectiveness of the rule and, moreover, would be inconsistent with current statutory requirements.⁸ Flexibility, allowing for utilities to manage their operations by using third-party services without obtaining consent, is built into the definition of “primary purposes.” However, third parties who are not providing services on behalf of the utility via a contractual relationship must always obtain consent from customers in order to collect, store, use, or disclose the revealing data covered by the rule. Consent is required by current law.⁹ It is the practice to which the utilities have consistently stated they adhere.¹⁰ In addition, some purposes—for example, the use of covered information for marketing purposes—are not core to energy provision or utility operations and directly implicate customer privacy interests. The Commission should make clear that such purposes require consent even when they are undertaken by utilities.

Second, entities must identify and describe to customers the *specific* purposes for which covered information will be collected, stored, used, or disclosed (Section 3). We have revised the proposed rule to clarify that *reasonable* specificity is sufficient; however, suggestions to erode the rule by removing the specificity requirement should be rejected. The purpose specification is the linchpin of the proposed rules; other key provisions (including Section 5

⁸ See e.g., Senate Bill No. 1476, Chapter 497, Statutes of 2010, *available at* http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_1451-1500/sb_1476_bill_20100929_chaptered.pdf.

⁹ See e.g., CAL. PUB. UTIL. CODE § 394.4(a) (“Customer information shall be confidential unless the customer consents in writing. This shall encompass confidentiality of customer specific billing, credit, or usage information.”); see also Senate Bill No. 1476, Chapter 497, Statutes of 2010, *available at* http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_1451-1500/sb_1476_bill_20100929_chaptered.pdf.

¹⁰ Opening Response of Pacific Gas and Electric Company (U 39 E) to Assigned Commissioner’s Ruling on Customer Privacy and Security Issues at 2-3 (Oct. 15, 2010), *available at* <http://docs.cpuc.ca.gov/efile/RESP/125111.pdf>; Opening Response of San Diego Gas & Electric Company’s (U 902-E) at 7 (Oct. 15, 2010) *available at* <http://docs.cpuc.ca.gov/efile/RESP/125086.pdf>; Prehearing Conference Statement of Southern California Edison Company (U 338-E) at 5-6 (Oct. 15, 2010) *available at* <http://docs.cpuc.ca.gov/efile/RESP/125126.pdf>.

(Data Minimization) and Section 6 (Use and Disclosure Limitation)) are tied to the purpose specification. If purposes are not specifically described, the other elements of the rule become meaningless.

As with other aspects of the proposed framework, the purpose specification requirement is technology- and business-model-neutral. Rather than dictating certain purposes or preconceiving particular technologies or business models, it simply requires entities to identify and communicate why they intend to collect data, how they intend to use it, and with whom they intend to share it, before customers are asked to consent to sharing data.¹¹ If specificity is not required, one of the main underlying mechanisms of the proposed rule—to inform customers of how revealing information about them will be used, so that they are able to meaningfully choose with whom to share their data—is negated. As we noted in our Opening Response, a main source of the failure of the outdated notice-and-choice model is the lack of useful, actionable information in traditional consent mechanisms, which tend to be underspecified.¹² Further, basic consumer protection and data security principles teach that any entity using revealing covered information should be able to identify and communicate why it is collecting, storing, using, or disclosing that information.

Third, the *data minimization* requirement must be preserved. As with purpose specification, we have revised the rule to make clear that *reasonableness* is the standard parties must follow when collecting, storing, using, and disclosing covered information. This change addresses legitimate concerns about strict liability for data practices, but preserves the fundamentally important principle that Smart Grid entities tie their collection, retention, use, and disclosure of covered information to specified purposes. Workshop discussion of the data minimization principle centered on data retention requirements. As we noted in the workshop,

¹¹ We note that both DRA and TURN, in opening responses and during the workshops, advocate that some purposes should be prohibited. *See, e.g.*, Opening Response of the Division of Ratepayer Advocates at 3, 5 (Oct. 15, 2010), *available at* <http://docs.cpuc.ca.gov/efile/RESP/125117.pdf>; Opening Response of The Utility Reform Network at 2, 8-9 (Oct. 15, 2010), *available at* <http://docs.cpuc.ca.gov/efile/RESP/125119.pdf>. In response to a question from TechNet, TURN mentioned use for divorce proceedings as an example of a problematic use; in DRA's opening response, it argued that all allowed purposes should be tied to the State's energy goals. CPUC Smart Grid Consumer Privacy and Access Workshop (R.08-12-009) (Oct. 25, 2010). While CDT has drafted its proposed rule to be neutral with regard to purposes in order to support competition and innovation in Smart Grid devices and services, it agrees with DRA and TURN that some uses of revealing covered information might be especially troubling and require separate treatment.

¹² *See* Opening Response of the Center for Democracy & Technology and the Electronic Frontier Foundation (Oct. 15, 2010) *available at* <http://docs.cpuc.ca.gov/efile/CM/125121.pdf>.

the proposed rule does *not* require any specific timeframe for data retention and our proposed revisions specifically reflect that reasonable retention policies may vary based on Commission requirements and different purposes for collecting and storing data. Without a data minimization requirement, Smart Grid entities may—for reasons good, ill, or indifferent—develop business practices and technologies that collect far more data than is necessary, exposing customers (and the companies themselves) to unreasonable risk of breaches or unconsented disclosures of revealing covered information. As we described more fully in our March 9, 2010 comments, data minimization is a powerful tool for protecting against security and privacy threats.¹³ It is a basic security “best practice”¹⁴ that customers will and should be able to expect of any entity using revealing covered information. Moreover, in light of many recent high-profile breaches of sensitive consumer data,¹⁵ customer confidence that Smart Grid technologies and business practices employ sufficient privacy and security practices will be key to the growth and development of the Smart Grid marketplace. Reasonable data minimization requirements are

¹³ See Joint Comments of the Center for Democracy & Technology and the Electronic Frontier Foundation on Proposed Policies and Findings Pertaining to the Smart Grid at 17-18 (March 9, 2010) *available at* <http://docs.cpuc.ca.gov/efile/CM/114696.pdf>.

¹⁴ See, e.g., Privacy Rights Clearinghouse, *Fact Sheet 12: Checklist of Responsible Information-Handling Practices* (Oct. 2010), *available at* <http://www.privacyrights.org/fs/fs12-fohandling.htm#Intro2> (last visited Nov. 7, 2010) (“To the greatest extent possible, companies should employ principles of data minimization, that is, collecting only data that is actually necessary to conduct their business, and collecting such information only for the stated purpose.”); Knowledge at Wharton, *Time for a Data Diet? Deciding What Customer Information to Keep – and What to Toss* (March 18, 2009), *available at* <http://knowledge.wharton.upenn.edu/article.cfm?articleid=2186> (last visited Nov. 7, 2010) (discussing the recommendations of Wharton marketing professors Eric Bradlow and Peter Fader, who advocated for Data Minimization at a Wharton Information Security Best Practices Conference on Jan. 29-30, 2009, and stating, “Fader and Bradlow argue that companies are taking on undue risk to their reputations by hoarding data with little business benefits. While companies generally disclose what data they keep in little-read privacy statements, consumers can still be surprised when breaches occur. ‘Companies are actively collecting data without realizing the work involved,’ says Fader. ‘And given how companies are stretched thin, they can’t manage the data correctly. Keeping detailed data is a blessing and a curse.’”); Ed Sutherland, *Less Data, More Security* (Jan. 17, 2007), *available at* <http://www.internetnews.com/bus-news/article.php/3654211/Less-Data-More-Security.htm> (last visited Nov. 7, 2010) (explaining that security experts now advise data minimization because information is a liability).

¹⁵ See, e.g., Caroline Davies, *Google Investigated Over Household Data Privacy Breaches* (Oct. 24, 2010), *available at* <http://www.guardian.co.uk/technology/2010/oct/24/google-investigated-data-privacy-breaches> (last visited Nov. 7, 2010) (discussing Google’s recent over-collection of personal customer information that prompted that firm to apologize to customers, “We want to delete this data as soon as possible, and...apologise again for the fact that we collected it in the first place. We are mortified by what happened.”); Electronic Privacy Information Center (March 15, 2010), *available at* <http://epic.org/privacy/reidentification> (last visited Nov. 7, 2010) (discussing Netflix’s cancellation of a popular contest after learning that 99% of users in its database can be re-identified if it becomes known when and how those users rated six movies).

thus integral to both the Commission's responsibility to protect customers and its responsibility to support Smart Grid deployment.

Fourth, both the *accountability and auditing* and the *data quality and integrity* requirements should be maintained. Without robust and predictable accountability and auditing requirements, including regular disclosures of relevant practices to the Commission and meaningful customer redress mechanisms, there can be no oversight or enforcement, rendering the customer privacy protections fundamental to the rule ineffective. For this reason, accountability and enforcement are crucial to implementing the overall FIPs framework. The concepts of data quality and integrity are likewise important. In the workshops, parties expressed legitimate concerns about strict liability or warranty requirements flowing from the data quality and integrity requirements, which we have addressed by again clarifying that the standard Smart Grid entities must meet is *reasonable* accuracy and completeness of covered information. While these requirements reflect (and do not override) Commission rules and tariffs for utilities, they are also intended to cover third parties that are not necessarily subject to tariffs or other requirements.

More generally, important customer controls provided by the proposed rule should be maintained. Customers must consent to collection, storage, use, or disclosure of their covered information only with full and meaningful information, and they must be able easily to revoke previously granted authorizations (Section 6(e) and (f)). Further, customers should be given an opportunity to reauthorize any secondary purpose after a reasonable amount of time (Section 6(e)(3)). Especially given the nascent state of the Smart Grid marketplace, customers may change their minds in light of new information, or they may no longer desire or require services. As such, consent to secondary purposes should not, as suggested by the California ISO, last indefinitely.¹⁶ Recognizing that some parties have expressed reservations about burdens imposed by reauthorization, we propose that the Commission consider the hybrid format suggested by Tendril in its opening response, that distinguishes between active and inactive

¹⁶ Prehearing Conference Statement of the California Independent System Operator Corporation at 5 (Aug. 13, 2010), *available at* <http://docs.cpuc.ca.gov/efile/ST/122147.pdf>.

users, where active users are considered to allow their consent to continue, but inactive users' consent becomes "stale" and expires.¹⁷

IV. The Proposed Rules Should Apply to All Smart Grid Entities Collecting, Storing, Using, or Disclosing Covered Information

In our Opening Response, we described the different parties to whom Smart Grid data will flow: utilities themselves; third parties under contract with a utility to provide services to or on behalf of the utility; third parties that receive data from a utility but are not providing services for the utility;¹⁸ and third parties who receive information directly from the customer.¹⁹ While parties will discuss jurisdiction in November 22 comments, we reiterate that the rules we suggest should extend to all Smart Grid entities, including all categories of third parties. As pointed out by UCAN in its opening response²⁰ and in the workshops, the Commission's privacy protections, however well intentioned, will be ineffective without appropriate enforcement mechanisms. While CDT has left the specific question of Commission jurisdiction to parties more knowledgeable of the Public Utility Code, we strongly agree with UCAN, DRA,²¹ TURN,²² and others that enforcement is a critical issue. Customer privacy controls are futile without practical methods for enforcing them.

As discussed in the workshops, there are a number of enforcement options available to the Commission. As a first alternative, should the Commission decide that its jurisdictional power is

¹⁷ Opening Response of Tendril Networks at 10-11 (Oct. 15, 2010), *available at* <http://docs.cpuc.ca.gov/efile/RESP/125127.pdf>. We note that Tendril suggests 12 months as the period of inactivity that should elapse before a customer is considered "inactive"—we think that a shorter time period, perhaps 3 months, is more appropriate.

¹⁸ As further described in the annotations to Section 1 of our revised rule (see Appendix A-1), CDT includes entities that receive data from the meter, a utility-owned device, in this category of third parties. We understand that accessing data from the meter requires some permission or authorization of the utility or the provision of some access information from the utility, and thus occurs under some agreement with the utility.

¹⁹ Opening Response of the Center for Democracy & Technology and the Electronic Frontier Foundation at 3-4 (Oct. 15, 2010) *available at* <http://docs.cpuc.ca.gov/efile/CM/125121.pdf>.

²⁰ Opening Response of the Utility Consumers' Action Network (Oct. 15, 2010), *available at* <http://www.cpuc.ca.gov/efile/RESP/125118.pdf>.

²¹ Opening Response of the Division of Ratepayer Advocates (Oct. 15, 2010), *available at* <http://docs.cpuc.ca.gov/efile/RESP/125117.pdf>.

²² Opening Response of The Utility Reform Network at 2, 8-9 (Oct. 15, 2010), *available at* <http://docs.cpuc.ca.gov/efile/RESP/125119.pdf>.

sufficient to reach all third parties, then our original proposed rule, as set out in our Opening Response, will cover all parties. Should this not be the case, however, in our revised rule we propose an alternative to protecting covered information as it flows in the Smart Grid environment: enforcement by appropriate regulators via a “chain of custody” contractual model (Section 6(c)).

V. Conclusion

We commend the Commission on its careful consideration of the consumer privacy risks presented by the emerging Smart Grid. We respectfully urge the Commission to adopt the revised policies and procedures set out in Appendices A-1 and A-2. These proposals implement the full set of FIPs that the Commission has recognized as critical to safeguarding consumer privacy. Implementation of this proposal will support development of the Smart Grid in California by protecting consumer privacy and providing a solid platform from which to sustain innovation.

Respectfully submitted this November 8, 2010 at San Francisco, California.

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**APPENDIX A-1 – Privacy Policies and Procedures
CDT Revisions Responding to Comments, Questions and Recommended Changes to the
October 25-26, 2010 Workshop “Strawperson”**

INTRODUCTORY COMMENT: CDT and EFF proposed in Appendix A to their Opening Response a recommended privacy rule for the smart grid. Thereafter, PG&E indicated that the CDT/EFF proposal was a good starting point and offered some suggestions for revisions. At the October 25-26, 2010 workshop, CDT presented, and PG&E and the other parties commented on, a “strawperson” consisting of a marked-up version of the CDT/EFF proposal in which we indicated areas where CDT and PG&E agreed that the proposed rule could be clarified or otherwise improved and in which we bracketed some language where we did not have consensus or that required further consideration. In reply to the comments at the workshop, CDT offers the following suggestions and comments for resolving the remaining issues associated with the proposed privacy rules. We used as our starting point the strawperson presented at the workshop; a copy of the workshop “strawperson” is attached as Appendix B.

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 [relating to __ or more households or residences.]

CDT Comment: CDT has not taken the lead in briefing the issue of the Commission’s jurisdiction over third parties, but we believe that the Commission should exercise its jurisdiction to the fullest extent. We agree with other parties that the Commission’s jurisdiction includes, at a minimum, third parties that obtain covered information under contract with or as an agent of a utility, electric service provider or community choice aggregator. We also believe that the concept of “obtaining covered information from a utility” encompasses entities that receive data from the meter (which is, after all, a utility-owned device). Especially because extracting data from the meter requires, we understand, some permission or authorization of the utility or the provision of some access information from the utility, it seems that the third parties taking data from the meter are doing so under agreement with the utility and thus should come under the jurisdiction of the Commission just as much as entities that receive data from a point further upstream in the utility’s network. The fact that third parties taking data from the utility’s meter may not be “agents” of the utility is, if anything, a stronger ground for Commission exercise of jurisdiction: Since the utility may have little basis for controlling the data usage and onward disclosure practices of those third parties, the Commission’s role is all the more important.

- (b) **Covered Information.** “Covered information” is ~~any energy~~ electrical or gas usage information concerning when associated with any information that can reasonably be used to identify an individual, family, household, or residence, or non-residential customer, except that covered information does not include electrical or gas usage information from which identifying information has been removed such that it cannot reasonably be identified or re-identified with an individual, family, household, or residence or non-residential customer cannot reasonably be identified or re-identified

~~_____] or gas consumption data that includes the name, account number, or residence of the customer, or from which the name, account number or residence of the customer may be derived].~~

CDT COMMENT: Given the diversity of data and data usages that may emerge as the smart grid develops, we believe that it would be better to use a somewhat broader definition of “usage information” instead of the potentially narrower “consumption data” definition used in SB 1476. As presented above, the “except” clause serves to clarify that various forms of aggregated data are not regulated if the data cannot be re-associated with a particular customer or household. From the viewpoint of the utility, the data we are concerned with is data that can identify a customer account. However, because usage data may reveal the activities not merely of an individual customer, but of a household or family, the broader formulation “individual, family, household, or residence” is important. And because it is possible to identify a person or family by many means in addition to utility account number or service address, we therefore include information that, while it may not be used by the utility to identify its customer, can be used by a third party to identify an individual, family, household or residence. While CDT is focused on the privacy interests of individuals and families, we do not have any objection to adding a reference to non-residential customers.

- (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 ~~required~~ or specifically authorized by an order of the Commission, or
 - (4) implement demand response, energy management, ~~for~~ energy efficiency~~, or other utility~~ programs operated by, or on behalf of and under contract with, an electrical or gas corporation, electric service provider, or community choice aggregator.

CDT COMMENT: We agree with PG&E and workshop comments that the definition of “primary purpose” should include purposes that the Commission may expressly authorize by order that are consistent with its overall jurisdiction over public utility facilities and activities, so long as it is clear that the collection, storage, use or disclosure of covered information will be reasonably necessary to the provision of the authorized services, just as it is to the provision of electrical power or billing. The Commission may consider making that clear in (c)(3) and (4). As we explain more fully in the narrative portion of this reply, because primary purposes do not require customer consent, they must be narrowly defined.

- (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 *or electronic* 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.

CDT COMMENT: We added the italicized language at the suggestion of Tendril and Verizon.

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 [~~for a secondary purpose, or for a primary purpose under which the third party is providing services directly to customers~~], and, for each such category, (i) the purposes for which it is disclosed, and (ii) the identities of the third parties to which it is disclosed;
- (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.

CDT COMMENT: We found the workshop discussion of this section useful. As we explain further in the narrative portion of this reply, in order for the FIPs framework to operate effectively, entities must be *reasonably specific* in describing their collection, use, storage, and disclosures of information.

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 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 ~~{for demand response, energy management or energy efficiency purposes}~~.
 - (2) The Commission shall, by subsequent rule, prescribe what is a reasonable time for responding to customer requests for access.
- (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.

CDT COMMENT: PG&E has suggested the above edits and we agree with them.

- (2) Unless otherwise prohibited by court order ~~or~~ law, or ~~by~~ 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 should~~ ~~covered entity shall~~ 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.

CDT COMMENT: PG&E suggested the above edits, and we agree with them.

5. DATA MINIMIZATION GUIDELINE

- (a) **Generally.** Covered entities ~~{shall}~~{should} 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}~~{should} 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}~~{should} 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.

CDT COMMENT: As further explained in the narrative portion of this reply, reasonable data minimization requirements are important to implementing the FIPs framework. CDT understands that PG&E will suggest the foregoing formulation; CDT agrees with this formulation.

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 gas or electric corporation covered entity~~ An electric service provider, electrical corporation, gas corporation or community choice aggregator may collect, store and use covered information for primary purposes without customer consent. Other covered entities may collect, store and use covered information only with prior customer consent, except as otherwise provided here.

CDT COMMENT: The purpose of this subsection is to make it clear that a provider of energy service (an electric service provider, electrical corporation, gas corporation or community choice aggregator) should not have to obtain customer consent to collect, store or use energy information in the course of providing the energy service (that is, to collect, store and use the information for a primary purpose); in this limited circumstance, the provision of the service and the collection, storage and use of the information are so inextricably intertwined that consent could not realistically be withheld. Any other covered entity that collects, stores or uses covered

information should obtain prior customer consent. Such consent will be readily obtainable in the course of the process of signing up for the service offered by the covered entity.

The purpose of the next section is to make it clear that a covered entity does not need prior consent to disclose covered information to third parties to carry out a primary purpose under contract with an on behalf of the disclosing entity. Taken together, subsections (b) and (c) mean that –

- Where data is collected by a utility in the context of providing energy services, and where such data is disclosed to third parties for use in providing energy-related services on behalf of and under contract with the utility (that is, for a primary purpose), prior customer consent is not needed for the collection/storage/use or for the disclosure. Such collection/storage/use and disclosure are consistent with customer expectations about the collection and use of energy usage information.
- When covered information is collected by or flows to entities that are not utilities, and is being used for purposes (even a primary purpose) other than providing services under contract with a utility, prior consent must be obtained. This too enforces customer expectations.
- Once a non-utility obtains customer consent to collect, store and use energy usage data, the covered entity can disclose the data without customer consent to a third party for use in providing services on behalf of and under contract with the disclosing entity. This allows covered entities to use third parties to perform data processing functions that the disclosing entity is otherwise authorized to perform.

(c) Disclosures to Third Parties ~~{to Carry Out a Primary Purpose}~~.

~~{(1) Initial Disclosure from a Utility.} A [gas or electrical corporation, electric service provider or community choice aggregator] [covered entity] may disclose covered information to a third party without customer consent [for a primary purpose] [when the third party is performing a primary purpose on behalf of a gas or electrical corporation, electric service provider or community choice aggregator][covered entity], provided that the [gas or electrical corporation, electric service provider or community choice aggregator] [covered entity] shall, by contract, require the third party [to commit, through a published privacy notice] to collect, store, use, and disclose covered information under policies and practices no less protective than those under which the [gas or electrical corporation, electric service provider or community choice aggregator] [covered entity] itself operates [in compliance with [as required under] this rule] [and, if the information is being disclosed for demand response, energy management or energy efficiency purposes, the gas or electric corporation, electric service provider or community choice aggregator permits customers to opt out of such disclosure].~~

CDT COMMENT: The brackets in the strawperson version of the proposed (c)(1) were very complicated, so we have recreated this section and signified new revisions in bold and italics. In response to workshop discussion, we propose the following:

(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 *being carried out under contract with and on behalf of the entity disclosing the data*, provided that the covered entity disclosing the data shall, by contract, require the third party to agree to collect, store, use, and disclose the 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 and, if the information is being disclosed for demand response, energy management or energy efficiency purposes, the disclosing entity permits customers to opt out of such disclosure.

CDT COMMENT: We understand that one or more third parties already offer opt-out.

~~{(2) Onward-Subsequent Disclosures. Any entity that receives covered information derived initially from a gas or electrical 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 commit, through a published privacy notice agree to store, use, and disclose the covered information under policies, and practices and notification requirements 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 as required by this rule[in compliance with this rule].}~~

CDT COMMENT: CDT understands that PG&E will suggest the foregoing formulation for subsection (c)(2), and CDT agrees with this formulation. However, given the way we have suggested that (c)(1) be revised, there may be no need for (c)(2).

(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(c), 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.

CDT COMMENT: Recognizing that modern data processing practices may involve a chain of disclosures, CDT proposed the foregoing subsection (c)(3) in an effort to both permit such flexible arrangements and to create downstream enforcement of privacy rules. We attempted to implement a concept widely accepted in the commercial sphere: a contractual chain of downstream responsibility, in which the party at the top of the stream has the right to insist that its next immediate downstream partner abides by privacy rules, that the second tier partner require its third tier partners to abide by the same rules, and so on. After considering comments at the workshop by SCE, PG&E, and others, CDT appreciates the utilities' reluctance to be required by rule to treat violation of these privacy principles (especially violations by entities with which they have no direct contractual relationship) as a breach of contract. However, deleting subsection (c)(3) would leave an enforcement gap: If a utility passes data to a third party, and that third party passes the data downstream, who has control over the practices of the third tier entity? In this regard, the Commission's resolution of the jurisdiction issue may be critical. If it does not decide to exercise direct enforcement over all third parties in such a data chain, the Commission may want to adopt its own chain-of-custody concept in which it asserts jurisdiction at least over all third parties that obtain data originally collected by a utility.

(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) ~~required~~ ~~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.

CDT COMMENT: As we discussed in our narrative, Section 6(e)(3) could also be replaced by Tendril's suggestion of a rule that distinguishes between *active* and *inactive* users..

(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 or otherwise compliant with applicable rules and tariffs regarding the quality of energy usage data.}~~

CDT COMMENT: Based on comments offered at the workshop, we believe that the foregoing will strike the right balance with regard to the data quality and integrity requirement. CDT

recognizes that Commission rules and tariffs already specify the accuracy and completeness required for various types of utility information, and it was not our intent here to propose a rule that would conflict with those existing rules. However, it is necessary to impose a data quality obligation on those covered entities not otherwise subject to existing rules and tariffs.

8. 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.** Covered entities shall disclose any breach in accordance with section 1798.82 of the Information Practices Act. In addition, Upon request by the Commission, covered entities shall notify the Commission of security breaches of covered information.~~

CDT COMMENT: Existing laws already require notification of data breaches to the customers affected by the breaches. These privacy principles should not require duplicative notification to customers, but there should be some way for the Commission to directly receive information about such breaches. As we noted at the workshop, CDT's intent was not for the Commission to separately enforce section 1798.82; these changes reflect that discussion.

9. ACCOUNTABILITY AND AUDITING

- (a) **Generally.** Covered entities shall be accountable for complying with the requirements herein, and must ~~file with~~ ~~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.

CDT COMMENT: CDT understands that PG&E will suggest the foregoing formulation; CDT agrees with this formulation.

- (b) ~~**Redress 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.~~

CDT COMMENT: CDT understands that PG&E will suggest the foregoing formulation; CDT agrees with this formulation.

- (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 ***and security*** practices periodically as required by the Commission to monitor compliance with its data privacy ***and security*** commitments, and shall report the findings to the Commission.

CDT COMMENT: Appropriate security practices, while not sufficient to protect privacy, are necessary to protect privacy. The above is our preferred formulation of the audit requirement, based on the “strawperson” draft. We understand that PG&E will recommend something similar to the above, **without the italicized language.**

- (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.}

**APPENDIX A-2 – Revised Privacy Policies and Procedures
Clean Version**

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 [relating to __ or more households or residences].
- (b) **Covered Information.** “Covered information” is any electrical or gas usage information when associated with any information that can reasonably be used to identify an individual, family, household, or residence, or non-residential customer, except that covered information does not include electrical or gas usage information from which identifying information has been removed such that an individual, family, household, or residence or non-residential customer cannot reasonably be identified or re-identified.
- (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 specifically 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.
- (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 or electronic 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, and
 - (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 identities of the third parties to which it is disclosed;
- (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 is 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.
- (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.
- (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.

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

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.** An electric service provider, electrical corporation, gas corporation or community choice aggregator may collect, store and use covered information for primary purposes without customer consent. Other covered entities may collect, store and use covered information only with prior customer consent, except as otherwise provided here.
- (c) **Disclosures to Third Parties.**
- (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 being carried out under contract with and on behalf of the entity disclosing the data, provided that the covered entity disclosing the data shall, by contract, require the third party to agree to collect, store, use, and disclose the 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 and, if the information is being disclosed for demand response, energy management or energy efficiency purposes, the disclosing entity permits customers to opt out of such disclosure.
 - (2) **Subsequent Disclosures.** Any entity that receives covered information derived initially from a gas or electrical 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 gas or electrical 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(c), 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

- (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 or otherwise compliant with applicable rules and tariffs regarding the quality of energy usage data.

8. 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 security breaches of covered information.

9. 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

- (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.
- (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 and security practices periodically as required by the Commission to monitor compliance with its data privacy and security commitments, and shall report the findings to the Commission.
- (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 the number of customers affected by such non-compliances.

**APPENDIX B –
Handout from Consumer Privacy & Access Workshop, October 25, 2010, circulated to the
service list on October 26, 2010.**

NOTE: Bracketed language marked in blue font reflects suggestions by PG&E; text marked in green font marks suggestions by CDT in response. Blackline underline and strikethrough designates changes both CDT and PG&E thought should be made.

**Privacy Policies and Procedures
(Brackets and redline – under discussion)**

1. DEFINITIONS

- (a) **Covered Entity.** A “covered entity” is (1) any electrical service provider, electrical corporation, gas corporation or community choice aggregator, or (2) any third party that collects, stores, uses, or discloses covered information [relating to ___ or more households or residences].²³
- (b) **Covered Information.** “Covered information” is [any energy usage information concerning an individual, family, household, or residence, except that covered information does not include information from which identifying information has been removed such that it cannot reasonably be identified or re-identified with an individual, family, household, or residence][electrical or gas consumption data that includes the name, account number, or residence of the customer, or from which the name, account number or residence of the customer may be derived].
- (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, ~~and~~
 - (3) provide services as required by state or federal law or [required [or authorized] by an order of the Commission, or
 - (4) implement demand response, energy management, [or] energy efficiency[, or other utility] programs operated by, or on behalf of and under contract with, an electrical or gas corporation.
- (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.

²³ Comment: Some further thought needs to be given to the interplay between this threshold and the rules for legal process; we are concerned about unregulated governmental access to energy usage information from landlords of smaller apartment buildings.

- (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 [for a secondary purpose, or for a primary purpose under which the third party is providing services directly to customers], and, for each such category, (i) the purposes for which it is disclosed, and (ii) the identities of the third parties to which it is disclosed, ~~and (iii) the value of the disclosure to the customer;~~
- (b) the periods of time that covered information is retained by the covered entity;
- (c) a description of ~~the choices available to customers and the means by which they may exercise those choices, including the means by which they may —~~
 - (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; ~~and~~
- ~~(d) the consequences to the customer, if any, of refusing consent to the covered entity, in whole or in part, regarding the collection, storage, use, or distribution of covered information.~~

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 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 [for demand response, energy management or energy efficiency purposes].
 - (2) The Commission shall, by subsequent rule, prescribe what is a reasonable time for responding to customer requests for access.

- (b) **Control.** Covered entities shall provide customers with convenient mechanisms for—
- (1) granting and revoking authorization for secondary uses of ~~their~~ 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, covered entities shall treat requests for real-time access to covered information as wiretaps, requiring approval under the federal or state wiretap law.
 - (2) Unless otherwise prohibited by court order or law or by 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 energy usage 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 should~~ covered entity shall 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.

5. DATA MINIMIZATION [GUIDELINE]

- (a) **Generally.** Covered entities [shall][**should**] collect, store, use, and disclose only as much covered information as is **[reasonably]** necessary 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][**should**] maintain covered information only for as long as **[reasonably]** necessary 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] **[should]** not disclose to any third party more covered information than is **[reasonably]** necessary to carry out on behalf of the covered

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 ~~gas or electric corporation~~ 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 from a Utility.] A [gas or electrical corporation, electric service provider or community choice aggregator] [covered entity] may disclose covered information to a third party without customer consent [for a primary purpose] [when the third party is performing a primary purpose on behalf of a gas or electrical corporation, electric service provider or community choice aggregator][covered entity], provided that the [gas or electrical corporation, electric service provider or community choice aggregator] [covered entity] shall, by contract, require the third party [to commit, through a published privacy notice] to collect, store, use, and disclose covered information under policies and practices no less protective than those under which the [gas or electrical corporation, electric service provider or community choice aggregator] [covered entity] itself operates [in compliance with [as required under] this rule] [and, if the information is being disclosed for demand response, energy management or energy efficiency purposes, the gas or electric corporation, electric service provider or community choice aggregator permits customers to opt-out of such disclosure].

[(2) Onward Disclosures. Any entity that receives covered information derived initially from a gas or electrical 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 commit, through a published privacy notice to store, use, and disclose the covered information under policies and practices 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].]

[(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(c), 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.]

- (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) [required][authorized] by the Commission pursuant to its jurisdiction and control over electric and gas corporations.
- (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 use 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.]

8. DATA SECURITY

- (a) **Generally.** Covered entities shall implement ~~appropriate~~reasonable administrative, technical, and physical safeguards to protect covered information from unauthorized access, destruction, use, modification, or disclosure.
- (b) **[Breach.** Covered entities shall disclose any breach in accordance with section 1798.82 of the Information Practices Act. In addition, covered entities shall notify the Commission of breaches of covered information.]

9. ACCOUNTABILITY AND AUDITING

- (a) **Generally.** Covered entities shall be accountable for complying with the ~~principles~~requirements herein, and must [file with] [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) **Redress.** Covered entities shall provide customers with mechanisms for ~~appropriate~~reasonable access to covered information, for correction of inaccurate covered information, and for redress in the event of a violation of these rules.]
- (c) **Training.** Covered entities shall provide ~~appropriate~~reasonable training to all employees and contractors who use, store or process covered information.
- (d) **Audits.** Covered entities shall conduct an independent audit of [[data] security] and privacy practices at least [once per year] to monitor compliance with its privacy [and [data] security] commitments, and shall report the findings to the Commission.
- (e) **Disclosures.** On an annual basis, covered entities shall disclose to the Commission—
 - (1) the number and identities of authorized third parties accessing ~~customer energy~~usagecovered information,
 - (2) [the number of security breaches experienced by the electrical corporation or gas corporation, and
 - (3) the number and percentage of customers affected by breaches of covered information.]

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of this document, REPLY COMMENTS OF THE CENTER FOR DEMOCRACY & TECHNOLOGY TO ASSIGNED COMMISSIONER'S RULING OF SEPTEMBER 27, 2010, on all parties identified on the attached official service list for Proceeding: R08-12-009. Service was completed by serving an electronic copy on their email address of record and by mailing paper copies to parties without email addresses.

Executed on November 8, 2010 at Berkeley, California

/s/ Evan B. White

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