



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

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Order Instituting Rulemaking to Consider Smart)
Grid Technologies Pursuant to Federal) Rulemaking 08-12-009, Phase 2
Legislation and on the Commission's own) (Filed December 18, 2008)
Motion to Actively Guide Policy in California's)
Development of a Smart Grid System.)

SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E)
REPLY COMMENTS ON WORKSHOP ISSUES

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The California Public Utility Commission (Commission) initiated Phase 2 of this Smart Grid Rulemaking to determine whether and how privacy protections in Attachment D of Decision (D.)11-07-056 (Privacy Rules) should be applied to gas corporations, community choice aggregators (CCAs), and electric service providers (ESPs).¹ In their opening comments on February 3, 2012, Respondents² and The Utility Reform Network (TURN) answered questions about the applicability of the Privacy Rules. TURN supports the application of the Privacy Rules to ESPs, but takes no position on their applicability to CCAs.³ ESPs and CCAs dispute the Commission's authority to impose the Privacy Rules on them.

In this reply, Southern California Edison (SCE) responds to selected issues raised in Respondents' opening comments, demonstrates that the Commission has jurisdiction over ESPs and CCAs for consumer protection reasons, and shows why the Commission's Privacy Rules should apply to CCAs and ESPs. In particular, as the Commission recently held in Decision (D). 11-07-056, interval usage data gathered by the investor-owned

¹ D.11-07-056, Ordering Paragraph 12 at p. 167.

² Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCalGas), Southwest Gas Corporation (SWGAs), Marin Energy Authority (MEA), the City and County of San Francisco (CCSF), and the Alliance for Retail Energy Markets (AReM).

³ TURN Comments at p. 1, footnote 1.

utilities' (IOUs) advanced metering infrastructures (AMI) invokes customer privacy interests that must be adequately protected under state law.⁴ The Commission found this to be the case whether the data is collected, used and stored by the IOUs to provide electricity service, or collected, used and stored by third parties who obtain it from the IOUs pursuant to Commission authorization, IOU tariffs or customer consent.⁵ Because ESPs and CCAs obtain AMI customer data from the IOUs pursuant to IOU tariffs and/or customer consent, ESPs and CCAs should be required to protect this data just as other third parties who are permitted to access this data from the IOUs must do. The Commission has consumer protection jurisdiction over CCAs and ESPs and is therefore the appropriate agency to enforce these privacy protections.

A. Background: The Commission Can and Should Protect AMI Customer Data

The Commission has rightly noted that recent legislation clarifies and enhances the Commission's authority over Smart Grid customer data privacy.⁶ Through the additions in Senate Bill (SB) 1476 to Division 4.1 of the Public Utilities code,⁷ the state legislature demonstrated its intent to protect the privacy and security of interval usage data generated by AMI. The Commission in D.11-07-056 concluded that "SB 1476 (Chapter 497, Statutes of 2010) clarified Commission responsibility and authority to protect the privacy and security of customer usage data arising from Smart Meters."⁸ Further, "SB 1476 provides guidance and authority to the Commission to protect the privacy of energy consumption data in possession of utilities *or in the possession of third parties responsible for system, grid, or operational needs, or energy efficiency*

⁴ See California Senate Bill (S.B.) 1476, codified (in relevant part) at Pub. Util. Code § 8380.

⁵ A Covered Entity under D.11-07-056 includes third parties that access protected data from the IOU on 11 or more customers. See D.11-07-056, pp. 49-50 and Conclusion of Law 9(1) (a) at p. 150.

⁶ D.11-07-056, p. 149 and Conclusions of Law 1, 5, 8 at pp. 149-150.

⁷ See Pub. Util. Code §§ 8380-8381.

⁸ D.11-07-056, Conclusion of Law 1 at p. 149.

*programs.*⁹ Accordingly, per D.11-07-056, the Commission has authority to protect AMI consumption data in the possession of ESPs and CCAs.

B. The Commission’s Privacy Rules Should Apply To CCAs and ESPs

In their opening comments, the CCAs and ESPs make much of the fact that they are not expressly named as an entity in Public Utilities Code § 8380.¹⁰ However, as noted above, the Commission in D.11-07-056 found it has authority under § 8380 to protect the data when it is in the possession of third parties accessing it from the IOUs.¹¹

Moreover, it is well established that the Commission has regulatory oversight of CCAs and ESPs for consumer protection reasons. Section 394 *et seq.* provides the Commission authority over ESPs for customer data confidentiality, among other minimum consumer protections.¹² The Commission may approve, reject, suspend or revoke an ESP’s registration¹³ as well as hear consumer complaints against ESPs.¹⁴ The Commission is responsible for the oversight of minimum standards and consumer protection for direct access customers who receive service through an ESP.

The Commission also regulates CCAs for consumer protection purposes. As in the case of ESPs, the Commission requires that the CCA register¹⁵ and create an implementation plan with specific elements.¹⁶ In Section 366.2, the legislature expressly provided that the Commission may, in its registration process, “require additional information to ensure compliance *with basic consumer protection rules* and other procedural matters.”¹⁷

⁹ *Id.*, Conclusion of Law 5 at p. 149 (emphasis added).

¹⁰ All references to code sections are to the California Pub. Util. Code unless otherwise specified.

¹¹ D.11-07-056 Conclusions of Law 1 and 5 at pp. 149-150.

¹² See Pub. Util. Code § 394.4.

¹³ Public Utilities Code Sections 394.1, 394.25.

¹⁴ Pub. Util. Code § 394.2.

¹⁵ Pub. Util. Code § 366.2(c)(17).

¹⁶ Pub. Util. Code § 366.2(c)(3).

¹⁷ Pub. Util. Code § 366.2(c)(17) (emphasis added).

Thus, the Commission has authority to ensure that CCAs and ESPs provide adequate protections for AMI usage data of an IOU's electric customers. There is no basis for not extending this consumer protection. The Commission imposes resource adequacy requirements¹⁸ and energy efficiency, audits and reporting requirements¹⁹ on all load serving entities and also enforces confidentiality provisions.²⁰ In addition, consumer protection arguments are even stronger in instances where a customer did not actively choose to disclose his/her consumption data,²¹ as in the case of CCA customers who must opt-out of CCAs if they do not want their data to be shared.

C. SCE Agrees with Some of CCSF's Proposed Changes

CCSF in its comments proposes that CCAs be treated as third parties that receive AMI data and that they should be restricted to the use of the data like electric corporations and third parties.²² SCE agrees with CCSF that CCAs are covered entities.²³

However, CCSF's suggested changes to the Privacy Rules "Use and Disclosure Limitation" are confusing. The edits erroneously suggest that CCAs have the same power as the Commission to order a resolution to disclose information to a third party.²⁴ SCE would support changes that are consistent with the Commission's tariff on CCA access to data.²⁵ Both CCSF²⁶ and MEA²⁷ argue that they should not have to comply

¹⁸ Pub. Util. Code § 380.

¹⁹ Pub. Util. Code § 381.1.

²⁰ The Commission is already responsible for establishing minimum standards for ESPs for customer privacy, including usage information. *See* Pub. Util. Code § 394.4(a) ("Confidentiality: Customer information shall be confidential unless the customer consents in writing. This shall encompass confidentiality of customer specific billing, credit, or usage information.")

²¹ *See e.g.* Pub. Util. Code § 8380(f) (stating that where a customer chooses to disclose data to an unaffiliated third party, the utility is not responsible for the use or security of the data).

²² CCSF Comments at p. 5.

²³ CCSF Comments at p. 3.

²⁴ CCSF Comments at p. 5 (revisions to 6(b) "Primary Purposes") and p. 6 (revisions to 6(c)(1) "Initial Disclosure by an Electrical Corporation").

²⁵ *See* SCE's Tariff Rule 23(C).

with the use and disclosure aspects of the Privacy Rules because it is IOU data. While that is true, CCAs collect and store that data, and to the extent that CCAs make AMI data available, they should have the same rules and protections in place.

D. Failure To Extend Privacy Rules Leaves IOU Customer Data Unprotected

The Public Records Act does not exempt IOU customer data from disclosure as claimed by MEA and CCSF.²⁸ They cite to Government Code § 6254.16, and CCSF notes that the Public Records Act excludes from disclosure information obtained for “utility customers of local agencies.”²⁹ The utility customer data of “local agencies” may be exempt from disclosure under this act; however, investor-owned utilities are not “local agencies” within the definition of this Act.³⁰

(a) “Local agency” includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

Thus, Government Code § 6254.16 allows a city or public agency to *choose* to refuse to respond to a request for the customer usage information of a local agency (but not IOU data) under the Public Records Act.

Government Code § 6254.16 explicitly does not cover IOU customer usage data from a smart meter, which is the subject of the Privacy Rules. Even if it did cover IOU

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²⁶ CCSF Comments at p. 6 (“CCAs should not be required to comply with other aspects of the Privacy Rules, in particular, those that require IOUs to make smart meter and other data available to customers.”).

²⁷ MEA Comments at p. 8 (“MEA neither installs nor reads its customers’ meters nor does MEA bill its customers directly. MEA is wholly dependent on PG&E for its data, including SmartMeter data.”).

²⁸ MEA Comments at p. 6 (claiming “Government Code Section 6254.16 exempts utility customer information, including utility data, from disclosure under the Public Records Act, except under specific circumstances” and therefore, rules for public agencies already require MEA to protect this data).

²⁹ CCSF Comments at p. 4.

³⁰ See CA Government Code Section 6252(a).

customer usage data, it does not *prohibit* a city or public agency from disclosing the customer information as the Privacy Rules are supposed to do. Therefore, Government Code § 6254.16 does not affirmatively protect IOU customer usage information. It merely allows a city or public agency to choose not to provide the information if requested.³¹

Thus, utility customer data is unprotected under the Public Records Acts, and it is also unprotected by the CCA Non-Disclosure Agreement.³² SCE is aware of several instances in which a local government disclosed settlement agreements between it and SCE under the Public Records Act.

In addition, any suggestion that the California Civil Code induces public agencies to protect consumer AMI data is inaccurate as well. MEA claims that the State Information Practices Act (Civil Code §§ 1798, et. seq.) imposes the same rules as the California Public Records Act.³³ In fact, the civil code concerns itself with other types of personal information – name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history³⁴ – not AMI usage information.

Thus, IOU customer data disclosed to local governments pursuant to a Commission order may be disclosed by local governments to members of the public under the Public Records Act absent the application of the Privacy Rule or other protections from the Commission.

³¹ *Accord* CCSF Comments at p. 4.

³² MEA Comments at p. 6 (alleging that “customer data is protected by contract through the CCA Non-Disclosure Agreement”).

³³ MEA Comments at p. 6, footnote 8.

³⁴ *See* Cal. Civil Code Section 1798.3(a).

E. **From the Customers' Point of View - Consumer Protection and Equity Concerns Require Commission Action and Involvement**

The Commission must design legal rules that will protect consumers in California by ensuring that entities with access to their data have appropriate incentives and rules in place to protect that data. As a general principle, and for policy coherence and fairness, similar data should be treated similarly. In this state, because AMI data is protected as sensitive information, it should be treated as such downstream, even when it leaves the hands of the utility. Failure to require this would leave AMI data unprotected, and would leave consumers without adequate recourse.

SCE agrees with TURN and SDG&E that there is no policy justification not to protect AMI data and that a failure to do so would cause customer confusion. “Consumers should be able to rely upon a consistent standard policy regarding privacy and confidentiality no matter who provides their energy services.”³⁵ “From a legal and practical matter, covered consumption data and personal identifiable information in the possession of SDG&E for its electric and gas customers is the same and cannot be treated differently.”³⁶

In addition, for reasons of judicial economy and equity, to the extent that a customer takes issue with the way that AMI data was used, that customer should be able to take its concerns to the Commission regardless of whether the data was misused or mishandled by an IOU, an ESP or a CCA.

F. **Conclusion**

In this proceeding, the Commission will decide what kind of protections it will afford to the customers of IOUs. Will it be a coherent, logical and comprehensive

³⁵ TURN Comments at p. 4.

³⁶ SDG&E Comments at p. 4.

privacy protection that will follow customers' usage data regardless of who happens to access it, or will it follow the sectoral and patchwork protection that would allow the protection and the remedy to vary based on whether the customer is served by an IOU, ESP or CCA? SCE supports the former.

Respectfully submitted,

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