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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

**COMMENTS OF TENDRIL NETWORKS, INC.
IN RESPONSE TO ASSIGNED COMMISSIONER'S RULING
DATED SEPTEMBER 27, 2010**

October 15, 2010

Tendril Networks welcomes the opportunity to continue to inform the development of appropriate policies regarding data access, privacy and security. We view these policies as critical to realizing direct consumer benefit from smart grid technology. These policies are necessary in order to implement consumer data access objectives outlined by the Commission in Decision 09-12-046. We understand that the scope of the Commission's deliberations at this point are limited to only certain aspects of the policy objectives outlined in D.09-12-046.

Tendril has previously provided comments within this proceeding that are relevant to these questions. These comments were provided on October 26; December 7, 2009; March 9; August 13, 2010. Additionally, representatives from Tendril participated in workshops held in this proceeding on May 27, 2009 and March 19, 2010.

We continue to emphasize from these earlier comments that the provision of timely and actionable information is a strong policy priority of both the United States and the State of California. Subsequent findings published by the Department of Energy (DOE) further support

the importance and appropriate nature of these policies, which we will describe in these comments.

In the Ruling dated September 27, 2010, the Commission has solicited comments and proposals addressing how consumers may enable third parties to access their specific energy usage information. We believe that there are workable frameworks by which consumers may benefit from third-party services while protecting their reasonable expectations of privacy. We further believe that the Commission has jurisdiction to establish that consumer consent is provide in an informed manner and where adequate enforcement mechanisms are available to consumers.

We note that state commissions are increasingly acknowledging the need for consumers to realize direct benefits from smart grid technology. As has been observed in this proceeding, “One of the early lessons learned in the Smart Grid evolution is that the installation of a smart meter, without simultaneously providing the consumer with a means by which to view and utilize the data being collected, leaves consumers in a position where they may question the benefits of Smart Meter and Smart Grid technologies.”¹

Similarly, the DOE’s studies during the past year have concluded that ,”Long-term success of Smart Grid technologies depends upon understanding and respecting consumers’ reasonable expectations of privacy, security, and control over who has access to potentially revealing energy-usage data.”²

Therefore, we continue to believe that the provision both historical and real-time information to consumers is a critical function of achieving a successful smart grid initiative in California. And just as important, we agree with the stated observation that it is critical that the regulations developed by the Commission avoid “potential unintended barriers to the development and deployment of innovative smart grid technologies that will deliver information from the meter to the consumer.”³

Comments

We offer several observations that we hope will help advance these discussions and assist the Commission in reaching a decision consistent with the policy objectives and timeframes established in this proceeding.

1. Data access policies should recognize different types of third parties in the design of privacy regulation

Several parties have noted that the Commission should anticipate different types of “third parties” that may imply the need for different regulatory approaches. In our view, there are two dominant classes of third parties that may have access to customer usage information.

The first class of third party includes those entities that are directly engaged by utilities for the purpose of implementing energy efficiency, demand response or other programs that contribute to the regulated operations of the utility service. We anticipate that these entities will be contractually obligated to maintain the same data security and privacy protections to which the utility is bound. For this class of third party, “opt out” program designs may be appropriate if they receive regulatory approval.

The second class of third party includes those entities that are directly engaged by consumers for the purpose of providing enhance access and energy management services. We anticipate that these entities will be authorized by direct customer consent that is informed by a clear data use or privacy policy. As such, these entities will only receive customer information as the result of an “opt in” decision on the part of the consumer. As a result, these entities (and not the utility) will be responsible for protecting consumer information in accordance with an accepted data use policy. Below, we propose a framework that provides further detail on potential certification procedures and enforcement mechanisms.

As others in this proceeding have asserted, we agree that utilities should be permitted to hire third parties to provide data analysis and other “information-based customer engagement tools to help the utility pursue efficiency and customer engagement strategies.”⁴

2. *Data access policies should distinguish between utility and consumer domains and provide appropriate mechanisms for transfer of data between the two*

As we have described above, we believe the record supports recognition of two domains for customer information. It has been suggested in this proceeding that the meter can be considered an appropriate demarcation point between these domains.

The first is the “utility domain,” in which data use and privacy are governed by a variety of Commission rulings and legislation. Additionally, there are types of information that are generated within this domain to which the customer should have reasonable rights of access. Based on the record within this proceeding, this information extends beyond simply the information provided to the customer for billing. Specifically, smart meters have been deployed on the basis that they will provide enhanced information that will benefit both the utility and the consumer to make wiser energy choices and implement effective energy management strategies. Therefore, at a minimum, we believe that the consumer should have access to time-interval data and information (such as voltage) that may inform the consumer about the quality of service being provided. Additionally, while we recognize it is beyond the scope of this phase of the proceeding, this includes real-time “actionable” information available from the meter directly into the home area environment.

The second is the “consumer domain,” in which data use and privacy should be governed by agreement between the consumer and the third party service provider. We note that under this framework, the utility may offer energy management services or programs on an “opt in” basis. In this domain, it is particularly important that, “Consumers should

decide whether and for what purposes any third-party should be authorized to access or receive [customer energy usage data (CEUD)]. Consumer control of third-party access to CEUD would promote the development of a competitive, open, transparent, and innovating marketplace for the use and management of energy-consumption data.”⁵

3. *Appropriate data interfaces should be enabled between the utility and consumer domains*

With regard to consumer access to information, we believe that there are two relevant interfaces that should be considered between these domains. Protocols and standards exist for both that provide sufficient security and privacy protections to satisfy commission objectives. The first interface – addressed in this phase of the proceeding – provides for the transfer of historical time-interval data between the utility and the consumer domains. This can be accomplished without requiring the release of any personally identifiable information using the OpenADE protocol. The second interface – scheduled to be addressed in the near future – is the transfer of real-time information directly from the meter into the consumer domain. Currently, this can and is being accomplished using the Smart Energy Profile data standard.

Several parties have asserted that the meter represents an appropriate demarcation point where “the smart grid ends and the ownership of the infrastructure by the homeowner begins...in-home technology should not be considered part of the smart grid to be managed by the utility, unless, of course, the home owner had chosen the utility as its energy management provider.”⁶ We believe such a demarcation is appropriate and valuable for the purposes of the Commission objectives.

4. *Privacy protections are enhanced by communications architectures that put the consumer in direct control of in-home devices and data*

Earlier this summer, the United States Department of Energy (DOE) issued two separate Requests for Information addressing data privacy and smart grid communications needs. On October 5, 2010, DOE released two summary reports that stated preliminary conclusions and points of industry consensus. It is worth noting that these reports are specifically intended to, “Assist both policymakers and private and public entities interested in understanding how legal and regulatory regimes are evolving to better accommodate innovation, privacy and data-security.” In that regard, these summary reports are particularly relevant to this proceeding and the questions currently posed by the Commission.⁷

We note, in particular, the consensus finding from,

At any given moment, many consumers are likely to have widely varying views about how they want to balance the privacy and efficiency implications of energy-usage data generated by certain Smart Grid technologies, and their views may evolve significantly over time as real-world experience demonstrates added-value by revealing the relative advantages of differing sets of choices. Consequently, consumers should have rights to protect the privacy of their own CEUD and control access to it. Well-designed implementations of Smart Grid technologies should also empower individual consumers to make a wide array of choices about whether or how to manage their own energy-consumption data via home energy management systems.⁸

These conclusions with regard to data privacy have corresponding communication architecture implications. Specifically, they suggest that data access should not depend on any single communication network or rely on utility access into the consumer domain. As the DOE note with regard to communications needs,

Many communications and networking technologies can be used to support Smart Grid applications, including traditional twisted-copper phone lines, cable lines, fiber optic cable, cellular, satellite, microwave, WiMAX, power line carrier, and broadband over power line, as well as short-range in-home technologies such as WiFi and ZigBee.⁹

They further note that, “Because in-home applications are primarily intended to inform consumers of their energy use, such applications are not likely to be considered ‘mission critical,’ and the required level of reliability may fall into the 99 percent to 99.99 percent range.”¹⁰

Finally, the DOE concludes that,

As noted above, in-home applications can leverage AMI networks, but can also exist separately from such utility-driven systems. For instance, both traditional meters and AMR meters can be connected to the HAN via bolt-on technologies. For example, products may leverage a website working in concert with a WiFi-enabled sensor that reads traditional meters to allow consumers to monitor their energy use, compare their energy consumption with neighboring homes, and learn how to improve energy efficiency. Other approaches will involve a more extensive suite of hardware and software products to enable additional Smart Grid consumer applications. For example, consumers might view their home energy consumption and electricity pricing in real-time via a wall-mounted device, control certain appliances and thermostats remotely via smartphone, and shut off conventional appliances through the use of ZigBee-connected outlets. As the National Cable & Telecommunications Association notes, these applications, whether they use an existing meter or a smart meter, allow consumer-facing functions without the need for any communications technologies beyond those already installed in an Internet-connected home.¹¹

We include these findings here because of their relevance to these discussions of privacy and smart grid architecture. As we have described above, we believe it is appropriate to separate the utility domain from the consumer domain. The DOE investigation (which represents the most comprehensive nationwide survey of multiple stakeholders on these topics and specifically intended to assist state regulators and policy makers) indicates that this distinction between utility and consumer domains is not only preferable from a privacy point of view but also preferable in terms of communications architecture.

We encourage the Commission to review these report and include them within the record for this proceeding.

- 5. No party is proposing unauthorized disclosure of consumer information without consumer consent. Such disclosure is currently prohibited by state law.*

Several comments (both written and in hearing) allude to the need to protect consumers from the unauthorized disclosure of consumer information. While not always explicitly stated, the implied assumption is that there is a risk of data disclosure that may occur to parties outside of Commission jurisdiction without consumer knowledge or authorization. We fail to find any indication in the record that any party is proposing such disclosure in this proceeding.

Further, it is our understanding that in this context California law and Commission rulings already prevent the release of consumer energy data without the consumer's express consent. Additionally, legislation enacted this year in California (SB1476) further confirms these restrictions on the unauthorized release of consumer data without prior consent.

We believe it would be valuable for the Commission to clarify that they are not considering establishing rules for release of customer usage data to any third party that is not either (1) bound by utility requirements as a subcontractor, or (2) in receipt of specific and informed customer consent. We believe such clarification would help focus the discussion on specific issues that are being considered by the Commission (and not hypothetical situations that have not been proposed by any party in the proceeding).

6. Enabling real-time information directly from the meter into the consumer domain is achievable with current protocols widely available in the market. The Commission should move quickly to resolve any dispute regarding technical capabilities that prevent successful achievement of Commission policy objectives.

The Commission established in D.09-12-049 that utilities in California, "shall provide to their customers with a smart meter access to usage data on a real-time or near real-time basis no later than the end of 2011." As others have noted in this proceeding, "Many existing smart meters - millions of which already have been installed, and millions more of which are planned for deployment in the near future - have the capacity to deliver near real time information to consumers via secure home area networks ("HAN"). This capacity is delivered by a Zigbee radio supporting a HAN protocol called Smart Energy Profile, currently in version 1.0 ("SEP 1.0")."¹²

Indeed, one California utility is currently providing real-time information through this protocol. Specifically, "SDG&E is adopting the Smart Energy Profile (SEP) standard and

protocol for HAN devices, including IHDs.”¹³ However, other utilities have asserted that, “Providing customers with near real-time usage data through the HAN is dependent on the ratification of the Smart Energy Profile version 2.0 (SEP 2.0), which is anticipated for 2011.”¹⁴

As we have argued elsewhere in this proceeding, we fail to see any justification in the record of this proceeding to support the assertion by SCE that achieving the objective established by the Commission is in any way “dependent” on the development of a future standard. As noted above, to the contrary, at least one California utility is *currently deploying* in-home technology using the Smart Energy Profile. Similarly, deployments in other states¹⁵ confirm that the Smart Energy Profile in its current form does not present a technical barrier to presentment of real-time information to the consumer and the consumer HAN.

Although these questions are anticipated to be included in future phases of this proceeding, we note that there appears to be sufficient divergence on this issue to warrant a comprehensive discussion. We urge the Commission establish an inquiry phase as soon as possible to identify any technical barriers that may prevent achieving Commission policy objectives by the end of 2011.

7. Wholesale price information has value to the consumer and may lead to smart grid innovations that are consistent with Commission objectives

While some parties have questioned the value of providing wholesale pricing data to consumers, we see this as a critical element of the smart grid evolution. As the California ISO has argued, “One of the ultimate smart grid goals of both the ISO and the Commission is to enable retail electric consumers to evolve from being recipients of energy to active participants in managing energy use for both their benefit and for the benefit of the grid. Usage and pricing data provided to retail customers should be presented to them in a manner that facilitates this evolution.”¹⁶

As one example, we believe that innovations such as “shadow pricing” can help inform consumers early of the potential benefits of dynamic pricing regimes. And, it may allow them to experiment with energy management strategies in advance of opting in to different pricing regimes. For example, there may be third parties (both commercial and non-commercial) that would be enabled to develop solutions that facilitate the evolution envisioned by the California ISO. Consider a non-profit organization that might develop tools to allow consumer to see the impact of different proposed rate structures in advance of their adoption. Similarly, community choice aggregators might wish to demonstrate the options available under pricing systems that are tied directly to wholesale prices in order to promote the potential benefits available to consumers.

Indeed, the California ISO itself may choose to develop educational tools of this sort, which should be enabled by California’s smart grid infrastructure. As they further note, “The ISO’s wholesale prices are designed explicitly to reflect temporal and locational grid conditions. While the precise wholesale price may not always convey actionable information to retail customers, providing a meaningful signal correlated with the ISO wholesale price can help customers understand when their individual actions can have the greatest impact on the grid. The ISO encourages the Commission to explore ways to create such signals.”

For these reasons of enabling what the DOE has called “unpredictable innovations” we believe that establishing transparency in wholesale pricing is a vital component of the smart grid.¹⁷ Further, at least one utility has asserted that, “the mechanics of posting prices or a price is not a difficult task.”¹⁸

8. Customer consent should include electronic formats and should not expire arbitrarily

Because the smart grid anticipates the widespread use of electronic equipment and communications formats, consumers should be enabled to provide consent through

appropriate electronic form. We believe this is widely accepted by the parties in this proceeding, but urge the Commission to clarify the scope of what forms of “consent” will be deemed appropriate.

Further, we believe that once granted this consent should not expire on an arbitrary timeframe. The California ISO and others have suggested that, “The Commission should allow such consent to be provided through multiple means, including electronic formats. Once that consent is provided, it should be presumed binding until the customer revokes that consent.”¹⁹

Recognizing that some parties have expressed reservations about ongoing consent, we propose that the Commission consider a hybrid format where *active* users shall be considered to allow their consent to continue until they revoke that consent. Other consumers may become *inactive*. In these situations where there is an extended period of inactivity (perhaps 12 months), the consent may appropriately be considered “stale” and thus expire.

Proposal

We look forward to the ongoing discussions with other parties regarding the appropriate procedures for consumers to authorize third parties to serve as energy management and information partners. We offer an abbreviated or “skeleton” framework for what we believe may be appropriate for data access.

We note that this framework is consistent with the DOE’s conclusion that there is widespread consensus that third-party access should, “Include a prohibition on disclosure of consumer data to third parties in the absence of affirmative consumer authorization, and that the authorization should specify the purposes for which the third party is authorized to use the data, the term of the authorization, and the means for withdrawing an authorization. Commenters also generally agreed that authorized third parties should be required to protect the privacy and security of

consumer data and use it only for the purposes specified in the authorization, and that states should define the circumstances, conditions, and data that utilities should disclose to third parties.”²⁰

Similarly, the DOE has concluded that there is, “Broad consensus that empowering consumers to authorize disclosure of the CEUD to third-party service providers will promote innovation.”²¹ This is a key objective of the Commission that should continue to be prioritized.

1. *Utilities shall establish open platforms that utilize widely recognized standards and protocols for information exchange.*

Each utility shall be establish a data exchange platform for releasing information to third parties in usable digital form. As many parties have observed, the Open ADE protocols provide a framework for this kind of data transfer that *does not require the exchange of any private data.*

For example, TURN observed that, “The ability of the OpenADE data transfer protocols to effectively deliver energy use information *without* the transfer of any identifiable customer information has been acknowledged by others in this proceeding.”²²

Similarly, the utilities seem to agree that, “the Commission should adopt the industry standard for energy usage data transfer. Open ADE is expected to have an established standard by year-end 2010 or early 2011. Utilities transferring and third parties receiving customer energy usage data should adhere to Open ADE.”²³

2. *Utilities should establish a common disclosure statement that informs consumers of the limitations on liability when data is released*

Utilities have reasonable concerns regarding the limitations on liability that they require as data is released to third parties. We believe that a common statement, approved by the

Commission, should be accompany any request by consumers to release data. This statement would inform consumers, in essence, that they will hold the utility harmless from the actions of third parties that do not have a contractual agreement with the utility.

Again, this is consistent with DOE findings that, “Third-party service providers, not utilities, should assume legal responsibility for protecting the security and privacy of CEUD that utilities disclose pursuant to a consumer authorization.”²⁴

3. Third parties should register with the Commission to receive authorization to receive data on behalf of a customer. Such registration shall include an acceptable “data use policy” that is reviewed by the Commission.

Any third parties seeking to offer services to consumers shall be required to register with the Commission. As a condition of registration, these entities must propose a “data use policy” that describes what information they anticipate receiving from the host utility, how that information will be used and with whom it will be shared. Third parties will be required to properly disclose this “data use policy” to consumers as a condition of their granting consent. Only registered third parties will be allowed access to consumer data from the host utility.

4. The Commission shall establish minimum criteria for acceptable “data access policies”

As part of this proceeding, the Commission should establish the minimum threshold elements of an acceptable “data use policy.” By so doing, they will provide guidance to entities seeking authorization to accept energy use data on behalf of consumers as to what are appropriate uses and applications. As a minimum threshold, we believe that entity must establish that they will be providing a valuable core function related to energy management and energy efficiency.

The Commission may also establish a process by which these standards for data use policies are revised regularly in order to ensure that they appropriately reflect changing circumstances that we can expect from innovation.

5. *The Commission shall monitor third party activities and receive consumer feedback. In the event of a violation, the Commission will revoke verification and refer entities to the appropriate state or federal agency for enforcement actions.*

Ensuring adequate consumer protection is a vital component of enabling data access to authorized third parties. Recognizing that enforcement may be beyond both the jurisdiction and operational capability of the Commission, they can refer incidents to the appropriate agency (Attorney General, for example) with a recommendation for enforcement.

We recognize that these proposals are merely a framework for discussion purposes. We look forward to the upcoming process of establishing a consensus framework.

Conclusion

Tendril appreciates the opportunity to provide these comments to the Commission. We support the Commission's continued efforts to advance the development of robust smart grid and a marketplace for energy services. We look forward to further opportunities to provide input to the Commission.

Submitted on October 15, 2010 at Boulder, Colorado.

TENDRIL NETWORKS, INC.

/s/ CAMERON BROOKS

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¹ See “Prehearing Conference Statement of the Technology Network,” August 13, 2010

² Department of Energy, “Data Access and Privacy Issues related to Smart Grid Technologies,” October 5, 2010, page 2. Available from the Department of Energy at <http://www.gc.energy.gov/1592.htm>.

³ See TechNet.

⁴ See “Prehearing Conference Statement of OPower, Inc.,” August 13, 2010.

⁵ DOE “Privacy”, page 11.

⁶ See “Prehearing Statement of CTIA – The Wireless Association,” August 13, 2010.

⁷ These reports are available from the Department of Energy at <http://www.gc.energy.gov/1592.htm>.

⁸ DOE “Privacy”, page 10.

⁹ Department of Energy, “Communications Requirements of Smart Grid Technologies,” October 5, 2010, page. 3.

¹⁰ DOE “Communications”, page 13.

¹¹ DOE “Communications”, page 15-16.

¹² See TechNet.

¹³ See “Prehearing Conference Statement of San Diego Gas & Electric Corporation (U 902-E) & Southern California Gas Company (U 904 G),” August 13, 2010, page 7.

¹⁴ “Prehearing Conference Statement of Southern California Edison Company (U 338-E),” page 4.

¹⁵ We are aware of commission-approved deployments in many states using the current Smart Energy Profile. These include, but are not limited to, California, Texas, Arizona, Alaska, New York, Massachusetts, Missouri, Illinois, Indiana, Connecticut and Maryland.

¹⁶ See “Prehearing Conference Statement of the California Independent System Operator Corporation,” August 13, 2010.

¹⁷ DOE “Privacy”, page 5.

¹⁸ See SDG&E.

¹⁹ See CAISO.

²⁰ DOE “Privacy”, page 3.

²¹ DOE “Privacy”, page 12.

²² See, for example, “Prehearing Conference Statement of the Utility Reform Network,” August 13, 2010.

²³ See SDG&E. *See also*, SCE.

²⁴ DOE “Privacy”, page 17.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**COMMENTS OF TENDRIL NETWORKS, INC.**” in **R.08-12-009** by electronic service, and by U.S. Mail to those parties who have not provided an electronic address:

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Copies were also sent via Federal Express to Commissioner Nancy Ryan and to Administrative Law Judge Timothy J. Sullivan.

Executed on **October 15, 2010** at Boulder, Colorado.

/s/ CAMERON BROOKS

Cameron Brooks



California Public Utilities Commission

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