ATTACHMENT A

Senate Bill No.
1476

CHAPTER
497

An act to add Chapter 5 (commencing with Section 8380) to Division 1.1 ~~1.1~~ of, and to repeal Section 393 of, the Public Utilities Code, relating to public utilities.

[Approved by Governor September 29, 2010. Filed with
Secretary of State September 29, 2010.]

legislative counsel s digest

SB 1476, Padilla. Public utilities: customer privacy: advanced metering infrastructure.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined.

Existing law requires the commission to conduct a pilot study of certain customers of each electrical corporation to determine the relative value to ratepayers of information, rate design, and metering innovations using specified approaches, but prohibits this data from being used for any commercial purpose, unless authorized by the customer.

This bill would repeal the provisions relating to the pilot study.

This bill would prohibit an electrical corporation or gas corporation from sharing, disclosing, or otherwise making accessible to any 3rd

party a customer's electrical or gas consumption data, as defined, except as specified, and would require those utilities to use reasonable security procedures and practices to protect a customer's unencrypted electrical and gas consumption data from unauthorized access, destruction, use, modification, or disclosure. The bill would prohibit an electrical corporation or gas corporation from selling a customer's electrical or gas consumption data or any other personally identifiable information for any purpose.

The bill would prohibit an electrical corporation or gas corporation from providing an incentive or discount to a customer for accessing the customer's electrical or gas consumption data without the prior consent of the customers. The bill would require that an electrical or gas corporation that utilizes an advanced metering infrastructure that allows a customer to access the customer's electrical and gas consumption data to ensure that the customer has an option to access that data without being required to agree to the sharing of his or her personally identifiable information with a 3rd party.

The bill would provide that, if the electrical corporation or gas corporation contracts with a 3rd party for a service that allows a customer to monitor his or her electricity or gas usage, and the 3rd party uses the data for a secondary commercial purpose, the contract between the electrical or gas

corporation and the 3rd party shall provide that the 3rd party prominently discloses that secondary commercial purpose to the customer.

The bill would adopt nearly identical requirements applicable to a local publicly owned electric utility with respect to electrical consumption data, as defined.

The people of the State of California do enact as follows:

SECTION 1. Section 393 of the Public Utilities Code is repealed.

SEC. 2. Chapter 5 (commencing with Section 8380) is added to Division 1.2 ~~1.2~~ of the Public Utilities Code, to read:

Chapter 5. Privacy Protections for Energy Consumption Data

8380. (a) For purposes of this section, "electrical or gas consumption data" means data about a customer's electrical or natural gas usage that is made available as part of an advanced metering infrastructure, and includes the name, account number, or residence of the customer.

(a) ~~(a)~~ (1) An electrical corporation or gas corporation shall not share, disclose, or otherwise make accessible to any third party a customer's electrical or gas consumption data, except as provided in subdivision (e) or upon the consent of the customer.

(1) ~~(1)~~ An electrical corporation or gas corporation shall not sell a customer's electrical or gas consumption data or any other personally identifiable information for any purpose.

(2) ~~(2)~~ The electrical corporation or gas corporation or its contractors shall not provide an incentive or discount to the customer for accessing the customer's electrical or gas consumption data without the prior consent of the customer.

(3) ~~(3)~~ An electrical or gas corporation that utilizes an advanced metering infrastructure that allows a customer to access the customer's electrical and gas consumption data shall ensure that the customer has an option to access that data without being required to agree to the sharing of his or her personally identifiable information, including electrical or gas consumption data, with a third party.

(b) ~~(b)~~ If an electrical corporation or gas corporation contracts with a third party for a service that allows a customer to monitor his or her electricity or gas usage, and that third party uses the data for a secondary commercial purpose, the contract between the electrical corporation or gas corporation and the third party shall provide that the third party prominently discloses that secondary commercial purpose to the customer.

~~(c) An electrical corporation or gas corporation shall use reasonable security procedures and practices to protect a customer's unencrypted electrical or gas consumption data from unauthorized access, destruction, use, modification, or disclosure.~~

(c) An electrical corporation or gas corporation shall use reasonable security procedures and practices to protect a customer's unencrypted electrical or gas consumption data from unauthorized access, destruction, use, modification, or disclosure.

(d) ~~(d)~~ (1) Nothing in this section shall preclude an electrical corporation or gas corporation from using customer aggregate electrical or gas consumption data for analysis, reporting, or program management if all information has been removed regarding the individual identity of a customer.

(1) ~~(1)~~ Nothing in this section shall preclude an electrical corporation or gas corporation from disclosing a customer's electrical or gas consumption data to a third party for system, grid, or operational needs, or the implementation of demand response, energy management, or energy efficiency programs, provided that, for contracts entered into after January 1, 2011, the utility has required by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the customer's consent.

(2) ~~(2)~~ Nothing in this section shall preclude an electrical corporation or gas corporation from disclosing electrical or gas consumption data as required or permitted under state or federal law or by an order of the commission.

(e) ~~(e)~~ If a customer chooses to disclose his or her electrical or gas consumption data to a third party that is unaffiliated with, and has no other business relationship with, the electrical or gas corporation, the electrical or gas corporation shall not be responsible for the security of that data, or its use or misuse.

8381. (a) For purposes of this section, "electrical consumption data" means data about a customer's electrical usage that is made available as part of an advanced metering infrastructure, and includes the name, account number, or residence of the customer.

(a) ~~(a)~~ (1) A local publicly owned electric utility shall not share, disclose, or otherwise make accessible to any third party a customer's electrical consumption data, except as provided in subdivision (e) or upon the consent of the customer.

(1) ~~(1)~~ A local publicly owned electric utility shall not sell a customer's electrical consumption data or any other personally identifiable information for any purpose.

(2) ~~(2)~~ The local publicly owned electric utility or its contractors shall not provide an incentive or discount to the customer for accessing the customer's electrical consumption data without the prior consent of the customer.

(3) ~~(3)~~ A local publicly owned electric utility that utilizes an advanced metering infrastructure that allows a customer to access the customer's electrical consumption data shall ensure that the customer has an option to access that data without being required to agree to the sharing of his or her personally identifiable information, including electrical consumption data, with a third party.

(b) ~~(b)~~ If a local publicly owned electric utility contracts with a third party for a service that allows a customer to monitor his or her electricity usage, and that third party uses the data for a secondary commercial purpose, the

contract between the local publicly owned electric utility and the third party shall provide that the third party prominently discloses that secondary commercial purpose to the customer.

(c) ~~(c)~~ A local publicly owned electric utility shall use reasonable security procedures and practices to protect a customer's unencrypted electrical consumption data from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the customer's consent.

(d) ~~(d)~~ (1) Nothing in this section shall preclude a local publicly owned electric utility from using customer aggregate electrical consumption data for analysis, reporting, or program management if all information has been removed regarding the individual identity of a customer.

(1) ~~(1)~~ Nothing in this section shall preclude a local publicly owned electric utility from disclosing a customer's electrical consumption data to a third party for system, grid, or operational needs, or the implementation of demand response, energy management, or energy efficiency programs, provided, for contracts entered into after January 1, 2011, that the utility has required by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

(2) ~~(2)~~ Nothing in this section shall preclude a local publicly owned electric utility from disclosing electrical consumption data as required under state or federal law.

(e) ~~(e)~~ If a customer chooses to disclose his or her electrical consumption data to a third party that is unaffiliated with, and has no other business relationship with, the local publicly owned electric utility, the utility shall not be responsible for the security of that data, or its use or misuse.

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(END OF ATTACHMENT A)

ATTACHMENT B

ATTACHMENT B

Appendix A

List of Current Statutes, Regulations, Decisions and Protocols Related to Customer Privacy Applicable to California Energy Utilities from Appendix A of Opening Responses of Pacific Gas and Electric Company to Assigned Commissioner's Ruling on Customer Privacy and Security Issues, October 15, 2010

California Constitution

1. **Cal. Constit., Art. I, section 1**. Each citizen has the right to privacy.

Statutes

1. **California Public Utilities Code Section 8380 (enacted by SB 1476 (Padilla), 2010 Stats., Ch. 497.)** – Privacy protections for customer energy consumption data collected by California energy utilities using advanced metering infrastructure

Accessed by typing in "SB1476" at http://www.assembly.ca.gov/acs/acsframeset2text.htm

2. **California Public Utilities Code Section 394.4** – Privacy protections for customer energy consumption data collected by non-public utility electric service providers

3. **California Public Utilities Code Section 583** – Prohibits disclosure of confidential information provided by CPUC-jurisdictional public utilities to the CPUC unless ordered released by the CPUC

4. **California Public Utilities Code Section 2894, 2894.10** – Restrictions on disclosure of customer specific information by telecommunications providers.

5. **California Public Utilities Code Section 6354(e)** – Energy utilities must report to municipalities the names and addresses of customers who transport gas or electricity, for purposes of enforcing taxes and fees. Municipalities shall not disclose such customer information to third parties.

~~6. **California Civil Code Sections 1798.81, 1798.81.5, 1798.82, 1798.83, 1798.84 and**~~
6. **California Civil Code Sections 1798.81, 1798.81.5, 1798.82, 1798.83, 1798.84 and 1798.85** – Customer privacy and personal information protections applicable to California businesses generally, including California energy utilities

7. **California Business and Professions Code Section 22575** – Requires online posting of a privacy and third party access policies of California businesses, including California energy utilities

8. **California Civil Code Section 1633.1 et seq.** – Authorizing the use of electronic transactions/signatures to satisfy laws requiring records to be in writing.

Regulations

California Public Utilities Commission General Order 66-C – Public access to information and records of California Public Utilities Commission; restrictions on public access to information furnished to CPUC on confidential basis

http://162.15.7.24/PUBLISHED/GENERAL_ORDER/644.htm

CPUC Decisions

1. **Decision No. 90-12-121, 39 CPUC 2d 173 (1990)** – CPUC policies in "Customer List OII" (I.90-01-033) restricting access by third parties to confidential customer information possessed by utilities unless the customer provides written permission and prohibiting access law enforcement except pursuant to legal process (i.e., warrant or subpoena); directing the IOUs to notify the CPUC in writing ninety days prior to any contemplated change in policies regarding release or use of customer information.

2. **Decision No. 97-05-040, 72 CPUC 2d 441, 485- 487 (1997)** – Requiring written authorization by customer to release customer-specific information to third party electric service providers in connection with Direct Access programs

http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/5530.htm

3. **Decision No. 97-10-031, 76 CPUC 2d 29 (1997)** – Reaffirming requirement of individual customer permission for release of customer specific data to electric service providers as part of Direct Access programs

4. **Decision No. 97-12-088, 77 CPUC 2d 422 (1997), and D.06-12-029** – Adopting affiliate transaction rules, including prohibiting the disclosure of customer information to affiliates or non-affiliates without prior affirmative customer written consent (Affiliate Rule IV.A.)

http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/63087.PDF

http://docs.cpuc.ca.gov/published/Graphics/63089.PDF

5. **Decision No. 98-03-073, 79 CPUC 2d 343 (1998)** – Reaffirming restrictions on disclosure of customer information without customer consent, in connection with a utility merger

6. **Decision No. 99-07-015, 1 CPUC 3d 465 (1999)** – Applying customer consent requirement to disclosure of customer specific information under gas industry restructuring

7. **Decision No. 99-09-002, 2 CPUC 3d 233, 238 (1999)** – Reaffirming customer consent requirement in disclosure of customer specific information among gas industry competitors

8. **Decision No. 00-07-020, 7 CPUC 3d 380, 422- 425** – In connection with low income energy assistance programs, reaffirming prior CPUC decisions distinguishing between access of utility contractors to customer specific information (where no express customer

consent is required as long as third party is a contractor of the utility whose use of the information is limited to an approved utility program and subject to confidentiality and non-disclosure requirements) and access of third parties to such information (where customer consent is required.)

http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/906.htm

9. **Decision No. 00-12-037** – Confidentiality of customer information provided as part of interconnection services

http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/4117.htm

10. **Decision No. 01-04-006** – Reaffirming general rule that customer consent is required for release of customer specific information to other customers, in connection with utility interruptible programs

http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/6143.htm

11. **Decision No. 01-07-032** – Denial of petition by California Narcotics Officers Association to lift prohibition in D. 90-12-021 on utilities releasing customer specific information to law enforcement agencies without a valid subpoena or warrant or as otherwise required under the law (e.g., P.U. Code Section 588, which permits investigators in child abduction cases to obtain certain utility customer information without legal process).

http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/8411.htm

12. **Decision Nos. 01-09-013, -014 and -015** – Applying customer confidentiality protections to servicing agreements between utilities and the California Department of Water Resources relating to DWR power procurement on behalf of utility customers

http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/9605.htm

http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/9572.htm

http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/9580.htm

13. **Decision No. 09-09-047** – As part of Customer Energy Efficiency programs, authorizing utilities to obtain electronic or written paper consent by customers for disclosure of customer-specific energy usage in private buildings.

http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/107829.PDF

Public Utility Tariffs and Protocols

1. **PG&E Electric Rule 9.M, Gas Rule 9.M, SCE Rule 9.H –**

ELECTRIC RULE 9.M. PRIVACY OF CUSTOMER INFORMATION To preserve customer privacy, PG&E will not release confidential information, including financial information, to a third party without the customer's electronic signature or the written consent.

GAS RULE 9.M. PRIVACY OF CUSTOMER INFORMATION
PG&E may release confidential information to a third party without obtaining the customer's electronic signature or written consent when required by regulatory, legislative or court order. In such instances, PG&E shall make a reasonable effort to inform the customer of the information to be released, the date the information will be released, and the duration of the release, except in circumstances in which notification to the customer by PG&E is prohibited by law or otherwise inconsistent with applicable laws and regulations.

SCE Rule 9.H. Privacy of Customer Information.
To preserve a customer's privacy when receiving and paying electric bills through the Internet, SCE shall not release confidential information, including financial information, to a third party without an electronic signature or voice/written consent from the customer.

2. **PG&E Electric Rule 22.C.3, SCE Rule 22.C.3** – Requiring written authorization from customer for release of customer-specific usage data to third parties in connection with Direct Access programs**. SCE's Rule 22.C.3 is substantially similar to PG&E's Rule 22.C.3.**

ELECTRIC RULE 22.C.3. Access to Customer Usage Data

PG&E will provide customer-specific usage data to parties specified by the customer, subject to the following provisions:

a. Except as provided in Section E, the inquiring party must have written authorization from the customer to release such information to the inquiring party only. At the customer's request, this authorization may also indicate if customer information may be released to other parties as specified by the customer.

b. Subject to customer authorization, PG&E will provide a maximum of the most recent twelve (12) months of customer usage data or the amount of data for that specific service account in a format approved by the CPUC. Customer information will be released to the customer or its authorized agent up to two (2) times per year per service account at no cost to the requesting party. Thereafter, PG&E will have the ability to assess a processing charge only if approved by the CPUC.

c. As a one-time requirement at the initiation of Direct Access, PG&E will make available a database containing a twelve (12) month history of customer specific usage information with geographic and SIC information, but with customer identities removed. PG&E will have the ability to assess a charge only if approved by the CPUC.

d. By electing to take Direct Access service from an ESP, the customer consents to the release to the ESP metering information required for billing, settlement and other functions required for the ESP to meet its requirements and twelve (12) months of historical usage data.

3. **SCE Rule 23.C.3.a and Schedule CCA-INFO (**PG&E's Rule 23 and Schedule CCA-INFO tariffs are substantially similar to SCE's Rule 23 and Schedule CCA-INFO.)

SCE Rule 23.C.3.a -- Access to Customer Data
SCE shall provide customer-specific usage data pursuant to Schedule CCA-INFO. SCE and CCA shall abide by the instructions of a customer as to the entities to whom access to the confidential customer information is provided.

Schedule CCA-INFO:
Customer specific information will be provided to a CCA pursuant to each customer's written authorization or upon receipt of a signed Community Choice Aggregator Non-Disclosure Agreement (Form 14-769) and a signed Community Choice Aggregation Declaration (Form 14-770).

4. **PG&E Customer Information Privacy Policy**

http://www.pge.com/about/company/privacy/customer/

SCE Privacy Policy

http://www.sce.com/PrivacyPolicy/

5. **PG&E Website Privacy Policy**

http://www.pge.com/about/company/privacy/website/

6. **PG&E Website Terms of Use**

http://www.pge.com/about/company/disclosure/

7. **PG&E Utility Standard Practice 23** – Attached to this Appendix.

8. **SCE Notice of Release of Customer Information to Affiliates**

http://www.sce.com/AboutSCE/Regulatory/affiliatenotices/noticeofrelease

(END OF ATTACHMENT B)

ATTACHMENT C

ATTACHMENT C:

APPENDIX A-2 of Center for Democracy and Technology's Reply Comments of November 12, 2010, Revised Privacy Policies and Procedures Recommended by CDT

1. **D**

(a) **Entity.** A "covered entity" is (1) any electric service provider, electrical corporation, gas ~~corporationorcommunitychoiceaggregator,or(2)anythirdpartythatcollects,~~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) **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) **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) **Purpose.** "Secondary purpose" means any purpose that is not a primary purpose.

2. **T(NOTICE)**

(a) Covered entities shall provide customers with meaningful, clear, accurate, specific, and comprehensive notice regarding the collection, storage, use, and disclosure of covered information.

(b) **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) 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) The notice shall state clearly—

(1) the identity of the covered entity, (2) the effective date of the notice,

(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. **PSPECIFICATION** The notice required under section 2 shall provide— (a)

an explicit description of—

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;

(a) (a) 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. **IPARTICIPATION (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) Covered entities shall provide customers with convenient mechanisms for—

(1) granting and revoking authorization for secondary uses of covered information,

(2) (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) **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. **DMINIMIZATION**

(a) ~~(1)~~ **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) ~~(2)~~ **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) ~~(3)~~ **Data Disclosure.** Covered entities shall not disclose to any third party more covered information than is reasonably necessary or as authorized by the Commission to carry out on behalf of the

covered entity a specific primary purpose identified in the notice required under section 2 or for a specific secondary purpose authorized by the customer.

6. **UAND 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 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) **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.**

(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.

(a) (a) 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. **DQUALITY 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. **DSECURITY**

(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. **AAND 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,

(2) their internal privacy and data security policies,

(3) the identities of agents, contractors and other third parties to which they disclose covered information, the purposes for which that information is disclosed, indicating for each category of disclosure whether it is for a primary purpose or a secondary purpose, and

(4) copies of any secondary-use authorization forms by which the covered party secures customer authorization for secondary uses of covered data.

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

(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 periodicallyasrequiredbytheCommissiontomonitorcompliancewithitsdataprivacyandperiodically 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,

(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.

(END OF ATTACHMENT C)

ATTACHMENT D

Attachment D:

Rules Regarding Privacy and Security Protections for Energy Usage Data

1. **DEFINITIONS**

(a) (a) **Covered Entity**. A "covered entity" is (1) any electrical corporation1.,[1] or (2) any third party thatwhowho accesses, collects, stores, uses or discloses covered information pursuant to an order of the Commission, unless specifically exempted, who obtains this information from an electrical corporation, or (3) any third party, when authorized by the customer, that accesses, collects, stores, uses, or discloses covered information relating to 11 or more customers who obtains this information from an electrical corporation or through the registration of a locked device that transfers information to that third party.[2]

(b) For purposes of this rule, a "customer" is any entity receiving retail generation, distribution or transmission service from an electrical corporation.

(b) (b) (c) **Covered Information**. "Covered information" is any usage information obtained through the use of the capabilities of Advanced Metering Infrastructure when associated with any information that can reasonably be used to identify aanan individual, family, household, residence, or non-residential customer, except that covered information does not include usage information from which identifying information has been removed such that aanan individual, family, household or residence, or non- residential customer cannot reasonably be identified or re- identified. Covered information, however, does not

[1] At this time "any electrical corporation" includes only PG&E, SCE, and SDG&E. Phase 2 of this proceeding will determine how rules should apply to gas corporations and to PacifiCorp, the Sierra Pacific Power, Bear Valley Electric Service and Mountain Utilities.

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gas corporations and to PacifiCorp, the Sierra Pacific Power, Bear Valley Electric Service and Mountain Utilities

R.08-12-009 COM/MP1/tcgidentified. Covered information, however, does not include

information provided to the Commission pursuant to its oversight responsibilities.

[2] The Commission and its agents, including but not limited to contractors and consultants, are not "covered entities" subject to these rules because the Commission and its agents are subject to separate statutory provisions pertaining to data. In addition, these rules do not apply at this time to gas corporations, other electrical corporations, community choice aggregators, or electric service providers. Phase 2 of this proceeding will make that determination.

(c) (d) **Primary Purposes**. The "primary purposes" for the collection, storage, use or disclosure of covered information are to—

(1) (1) provide or bill for electrical power or gas,

(2) (2) fulfill other provide for system, grid, or operational needs of the electrical system or grid,,

(3) provide services as required by state or federal

(3) provide services as required by state or federal law or as specifically authorized by an order of the Commission, or

(4) (4) plan, implement, or evaluate demand response, energy management, or energy efficiency programs operated by, or on behalf of and under contract with, an electrical corporation or as part of a Commission authorized program.

(e) **Secondary Purpose**. "Secondary purpose" means any purpose that is not a primary purpose.

2. **TRANSPARENCY (NOTICE)**

(a) (a) **Generally**. Covered entities shall provide customers with meaningful, clear, accurate, specific, and comprehensive notice regarding the accessing, collection, storage, use, and disclosure of covered information. Provided, however, that covered entities using data solely for a primary purpose on behalf of and under contract with utilities are not required to provide notice separate from that provided by the utility.

(b) (b) **When Provided**. Covered entities shall provide written or electronic notice when confirming a new customer account and at least twiceonceonce a year informingshallshall inform customers how they may obtain a copy of the covered entity's privacy policynoticenotice regarding the accessing, collection, storage, use, and disclosure of covered information, and shall provide a conspicuous posting of the notice and privacy policy or link to the notice and privacy policy on the home page of their website, and shall include a link to their notice and privacy policy in all electronic

correspondence to customers.

~~(c)~~ **Form**. The notice shall be labeled ~~to make clearthat it is a privacy notice and the notice shall communicate where a consumer may find policies affecting the collection.~~Notice of Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information and shall—

~~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.

(c) **Content.** The notice and the posted privacy policy shall state clearly—

(1) the identity of the covered entity,

(2) the effective date of the notice or posted privacy policy,

(3) the covered entity's process for altering the notice or posted privacy policy, 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) ~~(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 categories of third parties to which it is disclosed, and

~~and (ii) the number and categories of third parties to which it is disclosed, and~~

(3) the identities of those third parties to whom data is disclosed for secondary purposes, and the secondary purposes for which the information is disclosed;

(a) (a) the periodsapproximateapproximate period of time that covered information iswillwill be retained by the covered entity;

(a) they (b) me a description of—

(1) covered in dormationichandustomers may

the means by which customers may view, inquire about, or dispute their covered information, and

(2) (1) (0the 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) (a) **Access**. Covered entities shall provide to customers upon request convenient and secure access to their covered information—

(1) (1) (a) **Access**. Covered entities shall provide to customers upon request convenient and secure access to their covered information 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) 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

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**.

~~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~~

(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) ~~(1) Unless~~ otherwise prohibited by court order, law, or order of the Commission, a covered entity, upon receipt of a subpoena 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) ~~(2)~~ 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) ~~(3)~~ Nothing in this section prohibits a covered entity from disclosing covered information with the consent of the customer, where the consent ~~is express, in written or electronic form, and specific~~ to the purpose and to the person or entity seeking the information.

(5) ~~(4)~~ 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.

(5) On an annual basis, covered entities shall report to the Commission the number of demands received for disclosure of customer data pursuant to legal process or pursuant to situations of imminent threat to life or property and the number of customers whose records were disclosed. Upon request of the Commission, covered entities shall report additional information to the Commission on such disclosures. The Commission may 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.

(6) Upon request of the Commission, covered entities shall reportinformation of covered information made pursuant to legal process

(d) **Disclosure of Information in Situations of Imminent Threat to Life or Property.** These rules concerning access, control and disclosure do not apply to information provided to emergency responders in situations involving an imminent threat to life or property. Emergency disclosures, however, remain subject to reporting rule 4(c)(6).

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.

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) (a) **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) (b) **Data Disclosure**. Covered entities shall not disclose to any third party more covered information than is reasonably necessary or as authorized by the Commission to carry out on behalf of the covered entity a specific primary purpose identified in the notice required under section 2 or for a specific secondary purpose authorized by the customer.

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.

accordance with section 3.

(b) (b) **Primary Purposes**. An electrical corporation mayoror any third party authorized pursuant to an order or resolution of the Commission may access, 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) **Disclosure by a Covered Entity**. A covered entity may disclose covered information to a third party without customer consent

a. when explicitly ordered to do so by the Commission; or

Commission; or

b.

b. for a primary purpose being carried out under contract with and on behalf of the entity disclosing the data;

(1) **Disclosure by a Covered Entity**. A covered entity may disclose covered information to a third party without customer consent when explicitly ordered to do so by the Commission or 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 access, 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, unless otherwise directed by the Commission.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 consistent with applicable program terms and conditions, unless otherwise directed by the Commission.

(2) **Disclosures**. Any entity that receives covered information derived initially from a covered entity 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 covered entity from which the covered information was initially derived operates as required by this rule, unless otherwise directed by the Commission.

(3) (3) **Disclosures to Entities Failing to Comply With Their Privacy Assurances**. When a covered entity discloses covered information to a third party under this subsection 6(c), it shall specify by contract, unless otherwise ordered by the Commission, that it shall be considered a material breach if the third party engages in a pattern or practice of accessing, storing, using or

disclosing the covered information in violation of the third party's contractual obligations to handle the covered information under policies no less protective than those under which the covered entity from which the covered information was initially derived operates in compliance with this rule. If a covered entity disclosing covered information finds that a third party to which it disclosed covered information is engaged in a pattern or practice of storing, using or disclosing covered information in violation of the third party's contractual obligations related to handling covered information, the disclosing

the covered information was initially derived

operates in compliance with this rule.

- If a covered entity disclosing covered information for a primary purpose being carried out under contract with and on behalf of the entity disclosing the data finds that a third party contractor to which it disclosed covered information is engaged in a pattern or practice of accessing, storing, using or disclosing covered information in violation of the third party's contractual obligations related to handling covered information, the disclosing entity shall promptly cease disclosing covered information to such third party.
- If a covered entity disclosing covered information to a Commission-authorized or customer-authorized third party receives a customer complaint about the third party's misuse of data or other violation of the privacy rules, the disclosing entity shall, with customer consent or at the Commission's direction,

  promptly cease disclosing that customer's information to such third party. The disclosing entity shall notify the Commission of any such complaints or suspected violations.

entity shall promptly cease disclosing covered information to such third party.

(4) Nothing in this section shall be construed to

(4) Nothing in this section shall be construed to impose any liability on an electrical corporation relating to disclosures of information by a third party when i) the Commission orders the provision

of covered data to a third party; or ii) a customer authorizes or discloses covered data to a third party entity that is unaffiliated with and has no other business relationship with the electrical corporation. After a secure transfer, the electrical corporation shall not be responsible for the security of the covered data or its use or misuse by such third party. This limitation on liability does not apply when a utility has acted recklessly.

(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 type of secondary purpose. This authorization is not required when information is—

(1) provided pursuant to a legal process as described in 4(c) above;

4(c) above;

(2) provided in situations of imminent threat to life or property as described in 4(d) above; or

(3) authorized by the Commission pursuant to its jurisdiction and control.

(d) **Customer Authorization**.

(1) (1) . Separate authorization by each customer must be obtained for each secondary purposeallall disclosures of covered information except as otherwise provided for herein.

(2) (2) . Customers have the right to revoke, at any time, any previously granted authorization. . Non-residential customers shall have the same right to revoke, unless specified otherwise in a contract of finite duration.

(3) **to Revoke**. The consent of a residential customer shall continue without expiration, but an entity receiving information pursuant to a residential customer's authorization shall contact the customer, at least annually, to inform the customer of the authorization granted and to provide an opportunity for revocation. The consent of a non-residential customer shall continue in the same way, but an entity receiving information pursuant to a non-residential customer's authorization shall contact the customer, to inform the customer of the

authorization granted and to provide an opportunity for revocation either upon the termination of the contract, or annually if there

(3) **to Revoke**. The co[illegible] of a r[illegible] customer shall continue [illegible] a[illegible] p[illegible] u[illegible] f[illegible] revoca[illegible] customer shall continue in the sam[illegible] way, unless specified oth[illegible] rwise in a [illegible] ential [illegible]

[illegible]

is no contract..

(e) ~~(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.

(f)**Availability of Aggregated Usage Data**. Covered entities shall permit the use of aggregated usage data that is removed of all personally-identifiable information to be used for analysis, reporting or program management provided that the release of that data does not disclose or reveal specific customer information because of the size of the group, rate classification, or nature of the information.

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**. A covered third party shall notify the covered electrical corporation that is the source of the covered data within one week of the detection of a breach.~~

(b) ~~(b) **Notification of Breach**. A covered third party~~ shall notify the covered electrical corporation that is the source of the covered data within one week of the detection of a breach. Upon a breach affecting 1,000 or more customers, whether by a covered electrical corporation or by a covered third party, the covered electrical corporation shall notify the Commission's Executive Director of security breaches of covered information within two weeks

of the detection of a breach or within one week of notification by a covered third party of such a breach. third party of such a breach. Upon request by the Commission, electrical corporations shall notify the Commission's Executive Director of security breaches of covered information.

(c) Upon request by the Commission, electrical corporations shall notify the Commission's Executive Director of security breaches of covered information.**Annual Report of Breaches.** In addition, electrical corporations shall file an annual report with the Commission's Executive Director, commencing with the calendar year 2012, that is due within third party of such a breach. Upon request by the Commission, electrical corporations shall notify the Commission's Executive Director of security breaches of covered information.(c) **Annual Report of Breaches.** In addition, electrical corporations shall file an annual report with the Commission's Executive Director, commencing with the calendar year 2012, that is due within 120 days of the end of the calendar year and notifies the Commission of all security breaches within the calendar year affecting covered information, whether by the covered electrical corporation or by a third party.

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) (3) the categories of agents, contractors and other third (3) parties to which they disclose covered information for a primary purpose, the identities of agents, contractors and other third parties to which they disclose covered information for a secondary purpose, the purposes for which thatallall such

information is disclosed, indicating for each category of disclosure whether it is for a primary purpose or a secondary purpose. (A covered entity ~~shall retain and make available to the Commission upon request information concerning who has~~

shall retain and make available to the Commission upon request information concerning who has received covered information from the covered entity.), and

(4) ~~(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 electrical corporation shall conduct an independent audit of its data privacy and security practices in conjunction with general rate case proceedings following 2012 and at other times as required by order of the Commission. The audit shall monitor compliance with data privacy and security commitments, and the electrical corporation shall report the findings to the Commission as part of the utility's general rate case filing.

~~Commission. The audit s d monitor compliance with data privacy and security commitments, and the electrical corporation shall report findings to the Commission as part of the utility's general rate case filing.~~

(e) **Reporting Requirements**. On an annual basis, each electrical corporation shall disclose to the Commission as part of an annual report required by Rule 8.b, the following information:

(1) ~~(1) the~~ number of authorized third parties accessing covered information,

(2) ~~(2) the~~ number of non-compliances with this rule or with contractual provisions required by this

rule experienced by the utility, and the number of customers affected by each non-compliance and a detailed description of each non-compliance.

(END OF ATTACHMENT D)

ATTACHMENT E

********** **SERVICE LIST**
********** **Last Updated on 06-MAY-2011 by: AMT R0812009**
PHASE2 ENERGY SERVICE

********** **PARTIES** **********

********** **STATE EMPLOYEE** **********

********* **INFORMATION ONLY** **********

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Moved from	
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Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Statistics:	
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