

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 18, 2010

To: The Commission
(Meeting of May 20, 2010)

From: Edward Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

**Subject: SB 837 (Florez) – Utility service: disconnection: smart meters: privacy.
As Amended: April 27, 2010**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE UNLESS AMENDED

SUMMARY OF BILL:

This bill addresses two issues: 1) privacy rights regarding customer usage data, and 2) smart meter testing and technology standards as part of smart grid deployment plans.

The bill expands the definition of protected personal information to include energy usage data collected by a meter and prohibits an electric or gas IOU from releasing that data to any third party without the customer's express written consent (defined to include digital signatures as well). The bill imposes certain requirements on utilities related to protecting privacy of customer data.

The bill amends Public Utilities Code section 8360, which currently requires the California Public Utilities Commission (CPUC) to create "smart grid deployment plan requirements", smart meter testing standards (including security audits) and technology standards for smart meter compatibility with other smart technologies and utilities' data collection and billing system. It also requires the CPUC to ensure that meter technology "works properly in a field test."

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

- **Customer Privacy Issues.**

- The bill codifies several privacy and notification requirements in statute, extending CPUC's oversight responsibility beyond current practices.
- The bill's reporting requirements for utilities appear quite burdensome and are likely to add significant administrative costs that will be ultimately passed onto ratepayers.

Smart Meter Testing and Technology Standards

- The bill modifies SB 17's (Padilla/2009) directive to CPUC to determine requirements for smart grid deployment plan. The changes are redundant given that the CPUC is already conducting a proceeding at this time to determine smart meter testing requirements.
- The prescribed requirements to include a smart meter security audit and make the results public, along with disclosure of specific encryption methods used, may increase vulnerability of the system by publishing confidential data.
- The directive to CPUC to validate meter technology via field test is, depending on its interpretation, either obsolete or extremely problematic in terms of CPUC's traditional role and regulatory oversight as practiced to date.

SUMMARY OF SUGGESTED AMENDMENTS:

The Commission recommends reducing the utilities' reporting requirements in SEC. 6 of the bill relating to personal records to reduce the potential cost burden.

DIVISION ANALYSIS (Energy Division):

- **Customer Privacy Issues**

- Increased Oversight:
 - The bill adds PU Code 2750 and 2751, which requires utilities to protect the privacy of customer records, including usage data from meters. Existing CPUC policy already prohibits the disclosure of electricity usage data of customers to unauthorized third parties. The bill codifies CPUC rules and adds specific customer notification requirements to customers. The bill directs the utilities to adopt "a statement of privacy and security principles" (generally referred to as Fair Information Practices in the industry), file it with CPUC, and disclose it publicly. While we would regard the principles as reasonable, one advantage of adopting these principles via a CPUC

- proceeding, instead of codifying them in statute, is that it may be much easier to modify these principles in the future as technology evolves or new issues emerge.
- The bill amends Section 1798.3 of the Civil Code (Information Practices Act of 1977) to add utility usage to "information" considered private - this applies to information maintained by an agency. We are not sure what the ramifications of this may be.
 - Reporting Requirements:
 - The bill amends Section 1985.3 of the Code of Civil Procedure to add records, maintained by electrical/gas corporations, POU's and locally owned utilities to the definition of "personal records." If a judge orders production of such data, the utilities would need to inform the customer unless the court orders otherwise. This may be a requirement that ultimately results in more costs to ratepayers generally.
 - The bill amends Section 1326.1 of the Penal Code - customer notification by the holder of information if given a warrant. This will also impose costs.
 - The bill adds PU Code 589, which addresses reporting requirement by the utilities to the Office of Information and Privacy Protection, State and Consumer Services Agency. Under the new section utilities will need to report specified information on the number of requests they received for protected customer information, including requests under warrants and subpoenas.
 - CPUC staff does not see the necessity for the reporting requirement and the requirements will most likely add extra burden on utilities where the costs will be passed through to the ratepayers.
 - **Smart Meter Testing and Technology Standards**
 - The bill amends Public Utilities Code section 8360 and directs the CPUC to incorporate specified testing and technology standards into the smart grid deployment requirements currently under development. This has the potential to overlap or conflict with requirements already under consideration in R.08.-12-009.
 - The bill's directive to the CPUC to "ensure that each meter technology has been field tested" appears obsolete in that each of the three IOUs have already completed such field tests as part of their procurement process and are currently in full-scale deployment of smart meters in their service territories. If this requirement is to be interpreted as new field tests to be done *by* CPUC, this would potentially have a large impact on CPUC's staffing and the nature of its oversight role as practiced to date. The CPUC does not normally conduct such testing directly.

PROGRAM BACKGROUND:

Per the existing requirements established by SB 17(Padilla), the CPUC is currently in the midst of Phase II of its smart grid OIR to develop smart grid deployment requirements by July 1, 2010. The proceeding is also tasked to adopt smart grid “standards and protocols”, including cybersecurity considerations.

LEGISLATIVE HISTORY:

SB 17 (Padilla, Chapter 327, Statutes of 2009) requires the commission, by July 1, 2010, in consultation with the State Energy Resources Conservation and Development Commission, the Independent System Operator, and other key stakeholders, to determine the requirements for a smart grid deployment plan.

The legislature is currently considering SB 1476 (Padilla), which also addresses privacy of meter data and has been analyzed by Energy Division separately.

STATUS:

This bill is currently on the Senate Appropriations Committee Suspense File.

SUPPORT/OPPOSITION:

Support: American Civil Liberties Union
Consumer Action
Consumer Federal of California
Privacy Rights Clearinghouse
Sacramento Municipal Utility District (if amended)
The Utility Reform Network (TURN)

Opposition: Pacific Gas & Electric Company (unless amended)
Sempra Energy (unless amended)

STAFF CONTACTS:

Alicia Priego, Deputy Director-OGA (916) 322-8858 arp@cpuc.ca.gov

Date: May 18, 2010

BILL LANGUAGE:

BILL NUMBER: SB 837 AMENDED
BILL TEXT

AMENDED IN SENATE MAY 12, 2010
AMENDED IN SENATE APRIL 27, 2010
AMENDED IN SENATE APRIL 15, 2010
AMENDED IN SENATE MARCH 25, 2010

INTRODUCED BY Senator Florez

JANUARY 5, 2010

An act to *add Title 3.6 (commencing with Section 1883) to Part 4 of Division 3 of the Civil Code, to amend Section 1985.3 of the Code of Civil Procedure, to amend Section 1326.1 of the Penal Code, and to add Sections 589, 779.3, 2750, and 2751, and 8364.5 to, to add the heading of Chapter 4.5 (commencing with Section 2750) to Part 2 of Division 1 of, and to repeal the heading of Chapter 4.5 (commencing with Section 2771) of Part 2 of Division 1 of, the Public Utilities Code, relating to utility service.*

LEGISLATIVE COUNSEL'S DIGEST

SB 837, as amended, Florez. Utility service: disconnection: smart meters: privacy.

(1) The federal Energy Independence and Security Act of 2007 states that it is the policy of the United States to maintain a reliable and secure electricity structure that achieves certain objectives that characterize a smart grid. Existing federal law requires each state regulatory authority, with respect to each electric utility for which it has ratemaking authority, and each nonregulated electric utility, to consider certain standards and to determine whether or not it is appropriate to implement those standards to carry out the purposes of the Public Utility Regulatory Policies Act. The existing standards include time-based metering and communications, consideration of smart grid investments, and providing purchases with smart grid information, as specified.

Under existing law, the Public Utilities Commission (CPUC) has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined. Existing law requires the CPUC, by July 1, 2010, and in consultation with the State Energy Resources Conservation and Development Commission, the Independent System Operator, and other key stakeholders, to determine the requirements for a smart grid deployment plan consistent with certain policies set forth in state and federal law. Existing law requires that the smart grid improve overall efficiency, reliability, and cost-effectiveness of electrical system operations, planning, and maintenance. Existing law requires each electrical corporation, by July 1, 2011, to develop and submit a smart grid deployment plan to the commission for approval.

This bill would require the CPUC to ensure that each smart grid

deployment plan authorized by the CPUC after January 1, 2012, include testing and technology standards, as specified, and ensure that each metering technology works properly in a field test in a real home setting.

(2) Existing law prescribes the circumstances under which telephone and telegraph corporations may release information regarding residential subscribers without their written consent. Existing law relative to restructuring of the electrical industry requires the commission to implement minimum standards relative to maintaining the confidentiality of residential and small commercial customer information by electric service providers.

This bill would prohibit an electrical corporation or gas corporation from sharing, selling, disclosing, or otherwise making accessible to any third party, without first obtaining the customer's express written consent, any personally identifiable information concerning a customer and, upon written request, to inform the customer of the identity of each person or corporation to whom the information has been released. The bill would make a violation of these requirements grounds for a civil suit by the aggrieved customer against the utility and its employees responsible for the violation. The bill would require each electrical corporation and gas corporation to adopt a statement of privacy and security principles for the personally identifiable information of its customers and to file that statement with the CPUC, to post the statement on the utility's Internet Web site, to make the statement available to a customer, upon request, at no charge, and to disseminate the statement to customers. The bill would require that an electrical corporation or gas corporation ensure that any person, other than the customer or utility, including a contractor, equipment supplier, or software supplier of the utility, that is permitted to have access to customer information, is aware of the utility's statement of privacy and security principles and agrees, pursuant to contract, to act in a manner that is compatible with the statement of privacy and security principles.

(3) This bill would require each electrical corporation and gas corporation, on or before March 1, 2012, and each March 1 thereafter, to report to the Office of Privacy Protection, certain information relative to requests for customer's utility records pursuant to federal warrants, state warrants, grand jury subpoenas, civil subpoenas, and administrative subpoenas. The bill would require that the reports be made available to the public via the Internet.

(4) This bill would prohibit individual electrical end-use customer information, as defined, in the custody of a 3rd-party demand response service provider, as defined, from being provided to any other person or corporation by the service provider unless the customer expressly authorizes, in writing, that the information may be released to that person or corporation and that person or corporation acknowledges, in writing, that the information is confidential and may not be shared, disclosed, made accessible, or utilized by any other person or corporation without the express written consent of the customer. The bill would require each 3rd-party demand response service provider to adopt a statement of privacy and security principles for the data to which it has access as a result of providing demand response services and a work plan to implement those principles.

(5) Existing law authorizes the CPUC to fix the rates and charges

for every public utility, and requires that those rates and charges be just and reasonable. Existing law requires certain notice be given before an electrical, gas, heat, or water corporation may terminate residential service for nonpayment of a delinquent account and prohibits termination of service for nonpayment in certain circumstances.

This bill would require the CPUC to evaluate the impact of advanced metering infrastructure technology on the frequency of energy utility disconnections, adopt policies to minimize any adverse impacts, and consider requiring electrical corporations and gas corporations to evaluate their customer communication policies relative to disconnections of service and share unsuccessful and successful practices in their creation of best practices. It would also require the commission to require each electrical corporation and gas corporation to adopt a mechanism to permit confidential reporting of system vulnerabilities.

~~—(4)~~

(6) Existing law relative to civil discovery requires that a subpoena duces tecum for personal records pertaining to a consumer be served upon the consumer along with a specified affidavit. Personal records are defined for this purpose to include the records of a telephone corporation.

This bill would expand the definition of personal records to include records of an electrical corporation, gas corporation, or local publicly owned electric utility.

~~—(5)~~

(7) Existing law provides that a judge may order the production of utility records, as defined, only if certain conditions are met. Existing law does not preclude the holder of the utility records from notifying a customer of the receipt of the order for production unless a court orders otherwise.

This bill would instead require a holder of utility records to notify a customer of the receipt of the order for production unless a court orders otherwise.

~~—(6)~~

(8) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because certain of the bill's provisions would be within the act and because the bill would require action by the commission to implement certain of its requirements, a violation of these provisions would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) Information concerning a utility customer's energy

usage should be treated as confidential by electrical corporations and gas corporations, and the Legislature finds and declares that this right of privacy needs further protection in light of the detailed information on household energy usage that will be available to electrical corporations and gas corporations after the statewide deployment of smart meter technology. If electrical corporations begin to provide other services over wholly owned medium, including broadband over powerline service, privacy protections need to apply to these services.

(b) It is the intent of the Legislature that the protections added by Section 2750 of the Public Utilities Code are in addition to those protections afforded customers pursuant to Section 394.4 of the Public Utilities Code.

(c) It is the further intent of the Legislature to enact additional protections to preserve the confidentiality of household energy usage information and prevent its access and use by third parties that provide equipment or software associated with deployment and operation of the smart grid. A customer has a reasonable expectation of privacy with respect to their occupancy, movement, habits, or any other activity in their home that otherwise would not be visible from outside. Smart appliance systems for the home should protect a customer's reasonable expectation of privacy in his or her activities and preferences, and the customer's right to control the use of energy usage data collected from in-home smart appliances, in-home sensors, or smart meters, should be protected by limiting a utility's and other business processor's use of the energy usage data, and limiting access and use by government and private parties.

(d) Detailed and real-time consumption data held by, or accessible to, electrical corporations, gas corporations, or third parties should be available to law enforcement only with a warrant or in those circumstances when a warrant is unnecessary to conduct a search of a residence.

SEC. 2. Title 3.6 (commencing with Section 1883)
is added to Part 4 of Division 3 of the Civil Code
, to read:

TITLE 3.6. Confidentiality of Utility Usage Information

1883. (a) For purposes of this title, "third-party demand response service provider" means a person or corporation that is not an electrical corporation who collects customer energy usage data or collects that data and provides equipment, software, or services that enable end-use electrical customers to reduce their electricity usage in a given time period, or shift that usage to another time period, in response to a price signal, a financial incentive, an environmental condition, or a reliability signal.

(b) For purposes of this title, an authorization, acknowledgment, or consent is "written" or "in writing" if made by an "electronic record" that includes a "digital signature" as those terms are defined in Section 1633.

1883.1. (a) Individual electrical end-use customer information shall remain confidential. For purposes of this section, "individual electrical end-use customer information" includes both of the following:

(1) Electrical usage information about an individual, family,

household, or residence.

(2) Billing and credit information about an individual, family, household, or residence.

(b) (1) Individual electrical end-use customer information in the custody of a third-party demand response service provider shall not be shared, disclosed, or otherwise made accessible to any other person or corporation by a third-party demand response service provider unless the customer expressly authorizes, in writing, the release of that information to that person or corporation and that person or corporation acknowledges, in writing, that the information is confidential and shall not be shared, disclosed, made accessible, or utilized by any other person or corporation without the express written consent of the customer. Individual electrical end-use customer information shall not be sold under any circumstances.

(2) A written authorization by an electrical end-use customer for the release of confidential information shall automatically terminate three years from the date of the written authorization, and any renewal shall be in writing.

(3) A third-party demand response service provider shall not offer or provide any incentive, discount, or other inducement with a monetary value to a customer to obtain the customer's authorization to release information pursuant to this subdivision.

(c) (1) (A) Each third-party demand response service provider, before providing demand response service on customer residences, shall adopt a statement of privacy and security principles.

(B) The statement of privacy and security principles shall incorporate each of the following principles of the Fair Information Practice Principles adopted by the Federal Trade Commission:

- (i) Notice/Awareness.
- (ii) Choice/Consent.
- (iii) Access/Participation.
- (iv) Integrity/Security.
- (v) Enforcement/Redress.

(C) The statement of privacy and security principles shall additionally incorporate the principle that maintenance of information shall be minimized. The third-party demand response service provider shall collect or retain only that individual customer information that is directly relevant and necessary to accomplish a purpose specified in the statement of privacy and security principles. Individual customer information shall only be retained for as long as necessary to fulfill the specified purpose.

(2) After adopting privacy and security principles and before commencing to provide demand response service to customer residences, the third-party demand response service provider shall adopt a work plan for implementation of the statement of principles. Information in the work plan that might be detrimental to the security of the demand response technology utilized by the third-party demand response service provider shall be handled in a manner that preserves the confidentiality of the information.

(3) Upon adoption of the statement of privacy and security principles, and subsequent adoption of the work plan, the third-party demand response service provider shall make the statement of principles available on the third-party demand response service provider's Internet Web site or supply it to customers in writing or as an electronic record, as defined in Section 1633. Information that might be detrimental to the security of the demand response

technology utilized by the third-party demand response service provider shall be omitted from the information made available on the Internet Web site or directly supplied to customers. The third-party demand response service provider shall provide a mechanism for customers to make inquiries about, or comment upon, the statement of principles and work plan.

(4) A third-party demand response service provider shall ensure that any person, other than the customer, including a contractor, equipment supplier, or software supplier of the third-party demand response service provider, is aware of the third-party demand response service provider's statement of privacy and security principles and agrees to act in a manner that is compatible with the statement of privacy and security principles.

(5) A third-party demand response service provider shall promptly investigate and take corrective action to prevent any violation of the work plan by any employee of the third-party demand response service provider or any person or corporation that is permitted to have access to the demand response technology utilized by the third-party demand response service provider.

(d) This section does not limit the ability of the electrical end-use customer to directly and voluntarily provide confidential information to any person or corporation.

~~SEC. 2.~~ SEC. 3. Section 1985.3 of the Code of Civil Procedure is amended to read:

1985.3. (a) For purposes of this section, the following definitions apply:

(1) "Personal records" means the original, any copy of books, documents, other writings, or electronic data pertaining to a consumer and which are maintained by any "witness" that is a physician, dentist, ophthalmologist, optometrist, chiropractor, physical therapist, acupuncturist, podiatrist, veterinarian, veterinary hospital, veterinary clinic, pharmacist, pharmacy, hospital, medical center, clinic, radiology or MRI center, clinical or diagnostic laboratory, state or national bank, state or federal association (as defined in Section 5102 of the Financial Code), state or federal credit union, trust company, anyone authorized by this state to make or arrange loans that are secured by real property, security brokerage firm, insurance company, title insurance company, underwritten title company, escrow agent licensed pursuant to Division 6 (commencing with Section 17000) of the Financial Code or exempt from licensure pursuant to Section 17006 of the Financial Code, attorney, accountant, institution of the Farm Credit System, as specified in Section 2002 of Title 12 of the United States Code, an electrical corporation, gas corporation, or telephone corporation that is a public utility, as defined in Section 216 of the Public Utilities Code, or a local publicly owned electric utility, as defined in Section 224.3 of the Public Utilities Code, or psychotherapist, as defined in Section 1010 of the Evidence Code, or a private or public preschool, elementary school, secondary school, or postsecondary school as described in Section 76244 of the Education Code.

(2) "Consumer" means any individual, partnership of five or fewer persons, association, or trust which has transacted business with, or has used the services of, the witness or for whom the witness has acted as agent or fiduciary.

(3) "Subpoenaing party" means the person or persons causing a

subpoena duces tecum to be issued or served in connection with any civil action or proceeding pursuant to this code, but shall not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(4) "Deposition officer" means a person who meets the qualifications specified in Section 2020.420.

(b) Prior to the date called for in the subpoena duces tecum for the production of personal records, the subpoenaing party shall serve or cause to be served on the consumer whose records are being sought a copy of the subpoena duces tecum, of the affidavit supporting the issuance of the subpoena, if any, and of the notice described in subdivision (e), and proof of service as indicated in paragraph (1) of subdivision (c). This service shall be made as follows:

(1) To the consumer personally, or at his or her last known address, or in accordance with Chapter 5 (commencing with Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his or her attorney of record. If the consumer is a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor or with whom the minor resides or by whom the minor is employed, and on the minor if the minor is at least 12 years of age.

(2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

(3) At least five days prior to service upon the custodian of the records, plus the additional time provided by Section 1013 if service is by mail.

(c) Prior to the production of the records, the subpoenaing party shall do either of the following:

(1) Serve or cause to be served upon the witness a proof of personal service or of service by mail attesting to compliance with subdivision (b).

(2) Furnish the witness a written authorization to release the records signed by the consumer or by his or her attorney of record. The witness may presume that any attorney purporting to sign the authorization on behalf of the consumer acted with the consent of the consumer, and that any objection to release of records is waived.

(d) A subpoena duces tecum for the production of personal records shall be served in sufficient time to allow the witness a reasonable time, as provided in Section 2020.410, to locate and produce the records or copies thereof.

(e) Every copy of the subpoena duces tecum and affidavit, if any, served on a consumer or his or her attorney in accordance with subdivision (b) shall be accompanied by a notice, in a typeface designed to call attention to the notice, indicating that (1) records about the consumer are being sought from the witness named on the subpoena; (2) if the consumer objects to the witness furnishing the records to the party seeking the records, the consumer must file papers with the court or serve a written objection as provided in subdivision (g) prior to the date specified for production on the

subpoena; and (3) if the party who is seeking the records will not agree in writing to cancel or limit the subpoena, an attorney should be consulted about the consumer's interest in protecting his or her rights of privacy. If a notice of taking of deposition is also served, that other notice may be set forth in a single document with the notice required by this subdivision.

(f) A subpoena duces tecum for personal records maintained by a telephone corporation that is a public utility, as defined in Section 216 of the Public Utilities Code, shall not be valid or effective unless it includes a consent to release, signed by the consumer whose records are requested, as required by Section 2891 of the Public Utilities Code.

(g) Any consumer whose personal records are sought by a subpoena duces tecum and who is a party to the civil action in which this subpoena duces tecum is served may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness and deposition officer at least five days prior to production. The failure to provide notice to the deposition officer shall not invalidate the motion to quash or modify the subpoena duces tecum but may be raised by the deposition officer as an affirmative defense in any action for liability for improper release of records.

Any other consumer or nonparty whose personal records are sought by a subpoena duces tecum may, prior to the date of production, serve on the subpoenaing party, the witness, and the deposition officer, a written objection that cites the specific grounds on which production of the personal records should be prohibited.

A witness or deposition officer shall not be required to produce personal records after receipt of notice that the motion has been brought by a consumer, or after receipt of a written objection from a nonparty consumer, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and consumers affected.

The party requesting a consumer's personal records may bring a motion under Section 1987.1 to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the party requesting the personal records and the consumer or the consumer's attorney.

(h) Upon good cause shown and provided that the rights of witnesses and consumers are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(i) This section shall not be construed to apply to any subpoena duces tecum that does not request the records of any particular consumer or consumers and that requires a custodian of records to delete all information that would in any way identify any consumer whose records are to be produced.

(j) This section shall not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200), of the Labor Code.

(k) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the personal records sought by a subpoena duces tecum.

(1) If the subpoenaing party is the consumer, and the consumer is the only subject of the subpoenaed records, notice to the consumer, and delivery of the other documents specified in subdivision (b) to the consumer, is not required under this section.

~~SEC. 3.~~ SEC. 4. Section 1326.1 of the Penal Code is amended to read:

1326.1. (a) An order for the production of utility records in whatever form and however stored shall be issued by a judge only upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11. The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation. The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner. The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the holder of the utility records.

(b) As used in subdivision (a), "utility records" include, but are not limited to, subscriber information, telephone or pager number information, toll call records, call detail records, automated message accounting records, billing statements, payment records, and applications for service in the custody of companies engaged in the business of providing telephone, pager, electric, gas, propane, water, or other like services. "Utility records" do not include the installation of, or the data collected from the installation of pen registers or trap-tracers, nor the contents of a wire or electronic communication.

(c) The holder of the utility records shall notify a customer of the receipt of the order for production of records unless a court orders the holder of the utility records to withhold notification to the customer upon a finding that this notice would impede the investigation. Where a court has made an order to withhold notification to the customer under this subdivision, the order shall include a statement of the facts as to why providing notice would impede the investigation and the peace officer or law enforcement agency who obtained the utility records shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

(d) A holder of utility records, or an officer, employee, or agent thereof, shall not be liable to any person for (1) disclosing information in response to an order pursuant to this section, or (2) complying with an order under this section not to disclose to the customer, the order or the dissemination of information pursuant to the order.

(e) This section shall not preclude the holder of the utility records from voluntarily disclosing information or providing records

to law enforcement upon request.

(f) Utility records released pursuant to this section shall be used only for the purpose of criminal investigations and prosecutions.

~~SEC. 4.~~ SEC. 5. Section 589 is added to the Public Utilities Code, to read:

589. (a) On or before March 1, 2012, and each March 1 thereafter, each electrical corporation and gas corporation shall report all of the following to the Office of Privacy Protection created pursuant to Section 11549.5 of the Government Code:

(1) The number of federal warrants, state warrants, grand jury subpoenas, civil subpoenas, and administrative subpoenas received by the utility during the prior calendar year for information pertaining to a California consumer of the utility's services.

(2) The number and types of actions taken by the utility in response to each category of information request listed in paragraph (1).

(3) The number of customers whose utility records were produced in response to each category of information request listed in paragraph (1).

(4) The type of information disclosed about the utility's customers in response to each category of information request listed in paragraph (1).

(5) The total amount of money received by the utility to respond to each category of information request in paragraph (1).

(b) Information need not be disclosed pursuant to subdivision (a) where prohibited by some other law. If the utility does not disclose information pursuant to this subdivision, it shall include a statement in the report as to the basis for the withholding of that information.

(c) On or before June 1, 2012, and each June 1 thereafter, each public utility shall make the report prepared pursuant to subdivision (a) available on the utility's Internet Web site and shall provide an electronic version of the report to the Office of Privacy Protection.

(d) On or before July 1, 2012, and each July 1 thereafter, the Office of Privacy Protection shall make a copy of each utility report furnished to the office pursuant to this section available on the office's Internet Web site in a manner that will allow the public to conduct online searches for information contained in the reports.

SEC. 6. Section 779.3 is added to the Public Utilities Code, to read:

779.3. The Legislature finds and declares that, due to the importance of having electrical service to one's residence, the issue of utility service disconnections requires careful scrutiny by the commission. The commission shall evaluate the impact of advanced metering infrastructure technology on the frequency of energy utility disconnections and adopt policies to minimize any adverse impacts. The commission shall also consider requiring electrical corporations and gas corporations to evaluate their customer communication policies relative to disconnections of service and share unsuccessful and successful practices in their creation of best practices.

~~SEC. 5.~~ SEC. 7. Section 2750 is added to the Public Utilities Code, to read:

2750. (a) An electrical corporation or gas corporation shall not share, sell, disclose, or otherwise make accessible to any third

party, without first obtaining the customer's express written consent, any personally identifiable information concerning a customer including, but not limited to, the following:

(1) The customer's personal billing or credit information, or electrical or gas usage data.

(2) The customer's credit or other personal financial information, except when the corporation is ordered by the commission to provide this information.

(3) The services that the customer purchases, enrolls in, or subscribes to, from the utility or from independent services that use the electrical or gas consumption data to provide a related service to the customer.

(4) Demographic information about individual customers, or aggregate information from which individual identities and characteristics have not been removed.

(b) A customer who gives his or her written consent for the release of one or more of the categories of personally identifiable information in subdivision (a) shall be informed by the electrical corporation or gas corporation of the identity of each person or corporation to whom the information has been released, upon written request.

(c) (1) A customer who, pursuant to subdivision (b), has given written consent for the release of one or more of the categories of personally identifiable information in subdivision (a), may rescind this consent upon submission of a written notice to the electrical corporation or gas corporation.

(2) An electrical corporation or gas corporation shall cease to make available any personal information about the customer, within 30 days following receipt of notice pursuant to paragraph (1).

(3) If a customer voluntarily terminates service with an electrical corporation or gas corporation, any prior consent for the release of personally identifiable information shall also terminate.

(d) This section does not apply to any of the following:

(1) General information regarding the usage, load shape, or other characteristics of a group or rate classification, unless the release of that information would reveal customer specific information because of the size of the group, rate classification, or nature of the information.

(2) Information provided under supervision of the commission to a collection agency by the electrical corporation or gas corporation exclusively for the collection of unpaid debts.

(3) Information provided to an emergency service agency responding to a 911 telephone call or any other call communicating an imminent threat to life or property.

(4) Information provided to a law enforcement agency in response to lawful process.

(5) Information that is required by the commission pursuant to its jurisdiction and control over electrical corporations and gas corporations.

(6) Information required to be provided by the electrical corporation or gas corporation pursuant to rules and orders of the commission or the Federal Energy Regulatory Commission.

(7) The name and address of the customers of an electrical corporation or gas corporation who are enrolled in the California Alternative Rates for Energy or CARE program provided by that utility

for the sole purpose of low-income ratepayer assistance outreach efforts.

(8) Information provided in response to a request pursuant to subdivision (a) of Section 530.8 of the Penal Code.

(e) An electrical corporation or gas corporation shall not offer or provide any incentive, discount, or other inducement with a monetary value, to a customer to obtain the customer's authorization to release information pursuant to this section.

(f) For purposes of this section, an authorization, acknowledgment, or consent is written or in writing if made by an "electronic record" that includes a "digital signature," as those terms are defined in Section 1633 of the Civil Code.

(g) *Each electrical corporation and gas corporation shall adopt a mechanism for members of the public to anonymously report system vulnerabilities.*

~~—(g)—~~

(h) Each violation of this section is grounds for a civil suit by the aggrieved customer against the electrical corporation or gas corporation and its employees responsible for the violation.

~~—SEC. 6.—~~ SEC. 8. Section 2751 is added to the Public Utilities Code, to read:

2751. (a) On or before July 1, 2011, each electrical corporation and gas corporation shall adopt a statement of privacy and security principles for the personally identifiable information of its customers which shall be filed with the commission, posted on the utility's Internet Web site, made available to a customer upon request at no charge, and disseminated to customers. The statement of privacy and security principles shall provide customers with meaningful, clear, and full notice regarding the collection, use, dissemination, and maintenance of the personally identifiable information of its customers.

(b) The statement of privacy and security principles shall incorporate each of the following principles of the Fair Information Practice Principles adopted by the Federal Trade Commission:

- (1) Notice/Awareness.
- (2) Choice/Consent.
- (3) Access/Participation.
- (4) Integrity/Security.
- (5) Enforcement/Redress.

(c) An electrical corporation or gas corporation shall ensure that any person, other than the customer or corporation, including a contractor, equipment supplier, or software supplier of the utility, that is permitted to have access to customer information pursuant to Section 2750, is aware of the utility's statement of privacy and security principles and agrees, pursuant to contract, to act in a manner that is compatible with the statement of privacy and security principles.

~~—SEC. 7.—~~ SEC. 9. The heading of Chapter 4.5 (commencing with Section 2750) is added to Part 2 of Division 1 of the Public Utilities Code, to read:

CHAPTER 4.5. ELECTRICAL CORPORATIONS AND GAS CORPORATIONS

~~—SEC. 8.—~~ SEC. 10. The heading of Chapter 4.5 (commencing with Section 2771) of Part 2 of Division 1 of

the Public Utilities Code is repealed.

~~SEC. 9.~~ SEC. 11. Section 8364.5 is added to the Public Utilities Code, to read:

8364.5. (a) The commission shall ensure that each smart grid deployment plan authorized by the commission after January 1, 2012, includes testing and technology standards.

(b) Testing standards shall include all of the following:

(1) A requirement that the smart metering technology have a comprehensive security audit. The security auditing plan and the results of the security audit shall be made publicly available upon approval by the commission.

(2) A requirement that the manufacturer disclose whether it created a cryptographic protocol for data encryption and specify the protocol used.

(3) A requirement that the manufacturer submit security audit results as part of a direct access meter project self-certification program.

(c) Technology standards shall do both of the following:

(1) Ensure that the particular smart metering technology is compatible with other smart technologies.

(2) Ensure that the particular smart metering technology is compatible with the electrical corporation's energy usage data collection and billing system.

(d) The commission shall ensure that each metering technology works properly in a field test in a real home setting.

~~SEC. 10.~~ SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.