

**M e m o r a n d u m**

**Date:** June 2, 2010

**To:** The Commission  
(Meeting of June 3, 2010)

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

**Subject:** **SB 1476 (Padilla) – Public utilities: customer privacy:  
advanced metering infrastructure.  
As Amended: April 20, 2010**

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION:** SUPPORT IF AMENDED

**SUMMARY OF BILL:**

SB 1476 imposes certain requirements (focused on customer access to “electrical or gas consumption data” and privacy of that data) on any publicly owned utility (POU) or investor owned utility (IOU) using smart meters. Such a utility must comply with the following requirements:

1. Ensure that the customer has at least one option [the default option] to access their consumption data without that customer being forced “to agree to the sharing of [their] personally identifiable information, including ... consumption data, with a third party”.
2. Shall not “partner” with any third party that “facilitates” access to customer consumption data by providing an incentive or discount to the customer for accessing that data.
3. Shall not sell, release or make available customer consumption data to any third party, except in two specified circumstances:
  - a. The customer declines the default option (in #1) and chooses to access their data from a third party.
  - b. The customer expresses prior “written consent for a demand response program.”

4. Use “reasonable” security procedures and practices to protect customer consumption data.

#### **SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:**

The bill may prevent the utility or the California Public Utilities Commission (CPUC) from exercising the option in the future for eliminating or outsourcing the systems involved with accessing consumption data if circumstances indicate it may be a prudent choice in terms of cost, efficiency, or competitiveness.

The bill’s prohibition language on “partnering” will likely make it more difficult for third party demand response providers to get customers interested in demand response.

The bill’s broad language could impact CPUC evaluation, measurement and verification (EM&V) efforts which rely on data collection by consultants retained by CPUC for this purpose.

#### **SUMMARY OF SUGGESTED AMENDMENTS:**

Delete language prohibiting an electric utility from partnering with a third party demand response providers that provide an incentive or discount to a customer that provides access to electric or gas consumption data.

Provide the CPUC with the flexibility to determine the appropriateness of using third party demand response providers to meet customer demands or cost-effective solutions for providing consumer information or conducting necessary EM&V of utility programs.

#### **DIVISION ANALYSIS:**

The bill does not define the term “personally identifiable information,” other than to state that it includes “electric or gas consumption data.” Currently, all three IOUs meet the first requirement by providing their own systems for customers to access their consumption data without the customer having to rely on a third party. However, there may be at least two potential issues with the first requirement.

- a) The bill appears to prevent the utility or CPUC from exercising a possible option in the future for eliminating the utility systems involved with accessing consumption data if circumstances indicate it may be a prudent choice in terms of cost and efficiency. For example, if the vast majority of the customers happen to eventually choose voluntarily to access their data through third party portals (e.g. Google), it may become expensive and inefficient for the utility to maintain the same systems in parallel for a small number of customers.
- b) The bill appears to prevent [subject to interpretation] the utility from ever outsourcing the systems involved with accessing consumption data to a third

party (even if cost, efficiency, or competitiveness considerations suggest such an option as prudent).

The term “partnering” is not defined and the language could adversely affect current practices. Today, there are third party demand response providers that directly enroll customers in demand response programs, often with various incentive mechanisms. These parties usually have contracts with the utility involving compensation by the utility for the aggregate demand response “delivered” by the third party demand response providers through their customers. The bill’s prohibition language on partnering will likely affect such relationships and make it more difficult for these providers to get customers interested in demand response.

The term “personal identifying data” is not defined. The language regarding prohibited and permitted actions by a utility relative to customer consumption data could impact how CPUC collects data from utilities for the purpose of evaluating utility energy efficiency programs. The bill could likely further complicate CPUC measurement and evaluation efforts which are critical to the role of the CPUC as a regulatory agency.

#### **PROGRAM BACKGROUND:**

As required by SB 17 (Padilla, 2009), the CPUC is currently in Phase II of its smart grid OIR to develop smart grid deployment requirements by July 1, 2010. One of the workshops held in March, as well as comments filed by parties, included discussion of customer privacy matters and the “Fair Information Practices” and are under active consideration for adoption in the proceeding. The proceeding is also tasked by SB 17 to adopt smart grid “standards and protocols,” including cybersecurity considerations.

#### **LEGISLATIVE HISTORY:**

SB 837 (Florez, 2010) addresses privacy of customer data associated with smart meters.

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.

#### **STATUS:**

SB 1476 is in the Assembly awaiting policy committee referral.

#### **SUPPORT/OPPOSITION:**

None on file.

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**Date:** June 2, 2010

**BILL LANGUAGE:**

BILL NUMBER: SB 1476 AMENDED  
BILL TEXT

AMENDED IN SENATE APRIL 20, 2010  
AMENDED IN SENATE APRIL 5, 2010

INTRODUCED BY Senator Padilla

FEBRUARY 19, 2010

An act to add Sections 387.7 and 714 to, and to repeal Section 393 of, the Public Utilities Code, relating to public utilities.

## LEGISLATIVE COUNSEL'S DIGEST

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

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined. The existing Public Utilities Act requires every public utility to furnish and maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

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 study, and would require an electrical corporation, gas corporation, or local publicly owned electric utility that utilizes an advanced metering infrastructure that allows a customer to access the customer's *electrical or gas* consumption data , *as defined*, to ensure that the customer has an option to access that data without ~~relinquishing personally identifiable information to a 3rd party. The bill would require an electrical corporation, gas corporation, or local publicly owned electric utility to keep such consumption data securely and not accessible by a 3rd party, except as provided~~ being required to agree to the sharing of his or her personally identifiable information, including electrical or gas consumption data, with a 3rd party. The bill would prohibit a local publicly owned electric utility, electrical corporation, or gas corporation from sharing, selling, disclosing, or otherwise making accessible to any 3rd party a customer's electrical or gas consumption data, except as specified, and would require those utilities to use reasonable security procedures and practices to protect a customer's electrical and gas consumption data from unauthorized access, destruction, use, modification, or disclosure .

(2) Under existing law, a violation of any provision of the Public Utilities Act, or of any of the rules or orders issued under the act, is a crime.

Because the provisions of this bill are within the act, a violation of these provisions would impose a state-mandated local program by creating a new crime.

(3) 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. Section 387.7 is added to the Public Utilities Code, to read:

387.7. (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.*

(b) A local publicly owned electric utility that utilizes an advanced metering infrastructure that allows a customer to access the customer's ~~electric~~ electrical consumption data shall ensure that the customer has an option to access that data without ~~relinquishing~~ personally identifiable information, including electric consumption data, to a third party.

~~(b) - Unless a customer chooses to access the customer's electric consumption data, made available as part of an advanced metering infrastructure, from a third party after being given the option described in subdivision (a), that data shall be securely kept by the local publicly owned electric utility and shall not be accessible by a third party.~~

being required to agree to the sharing of his or her personally identifiable information, including electrical consumption data, with a third party. The local publicly owned electric utility shall not partner with any third party that facilitates access to electrical consumption data that provides an incentive or discount to the customer for accessing their electrical consumption data.

(c) (1) A local publicly owned electric utility shall not share, sell, disclose, or otherwise make accessible to any third party a customer's electrical consumption data, except as provided in paragraph (2).

(2) A local publicly owned electric utility may make a customer's electrical consumption data accessible to a third party in either of the following circumstances:

(A) The customer was given the option, pursuant to subdivision (b), to access electrical consumption data without being required to share personally identifiable information with a third party, the customer has declined that option, and the customer has instead chosen, without revoking that choice, to access his or her electrical consumption data from that third party.

(B) The electrical consumption data is accessed or shared by a third party or local publicly owned electric utility with the customer's prior express written consent for a demand response program that manages the customer's consumption of electricity in response to electrical supply or pricing conditions.

(d) A local publicly owned electric utility shall use reasonable security procedures and practices to protect a customer's electrical consumption data from unauthorized access, destruction, use, modification, or disclosure.

(e) (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.

(2) 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 billing purposes.

SEC. 2. Section 393 of the Public Utilities Code is repealed.

SEC. 3. Section 714 is added to the Public Utilities Code, to read:

714. (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.

(b) An electrical or gas corporation that utilizes an advanced metering infrastructure that allows a customer to access the customer's ~~electric~~ electrical and gas consumption data shall ensure that the customer has an option to access that data without ~~relinquishing personally identifiable information, including electric or gas consumption data, to a third party.~~

~~(b) - Unless a customer chooses to access the customer's electric or gas consumption data, made available as part of an advanced metering infrastructure, from a third party after being given the option described in subdivision (a), that data shall be securely kept by the electric or gas corporation and shall not be accessible by a third party.~~

~~being required to agree to the sharing of his or her personally identifiable information, including electrical or gas consumption data, with a third party. The electrical corporation or gas corporation shall not partner with any third party that facilitates access to electrical or gas consumption data that provides an incentive or discount to the customer for accessing their electrical or gas consumption data.~~

(c) (1) An electrical corporation or gas corporation shall not share, sell, disclose, or otherwise make accessible to any third party a customer's electrical or gas consumption data, except as provided in paragraph (2).

(2) An electrical corporation or gas corporation may make a customer's electrical or gas consumption data accessible to a third party in either of the following circumstances:

(A) The customer was given the option, pursuant to subdivision (b), to access electrical or gas consumption data without being required to share personally identifiable information with a third party, the customer has declined that option, and the customer has instead chosen, without revoking that choice, to access his or her electrical or gas consumption data from that third party.

*(B) The electrical or gas consumption data is accessed or shared by a third party, electrical corporation, or gas corporation with the customer's prior express written consent for a demand response program that manages the customer's consumption of energy in response to supply or pricing conditions.*

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

*(e) (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.*

*(2) 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 billing purposes.*

SEC. 4. 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.