



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

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Order Instituting Rulemaking Concerning  
Energy Efficiency Rolling Portfolios, Policies,  
Programs, Evaluation, and Related Issues.

Rulemaking 13-11-005  
(Filed November 14, 2013)

**RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 M) TO  
MOTION OF COUNTY OF VENTURA REGARDING DATA ACCESS**

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Pursuant to Rule 11.1 of the California Public Utilities Commission (“Commission” or “CPUC”) Rules of Practice and Procedure, Pacific Gas and Electric Company (“PG&E”) hereby responds to the Motion of the County of Ventura (“Motion”) for the Tri-County Regional Energy Network (“3C-REN”) requesting that PG&E, Southern California Edison Company (“SCE”), and Southern California Gas Company (“SoCalGas”) be ordered to provide confidential, private customer data to 3C-REN and its program contractors and subcontractors.

**I. BACKGROUND AND SUMMARY OF PG&E’S POSITION**

PG&E appreciates the benefits energy efficiency (“EE”) programs can provide to California’s electric and gas systems and to customers. Simultaneously, PG&E recognizes the critical importance of customer privacy and both statutory and regulatory law in place to protect customers’ privacy rights. We prioritize our obligations to protect the information we hold about customers according to the laws, rules, and tariffs governing the use and disclosure of such data, which contemplate privacy and cyber security protections for customers’ personal information. 3C-REN requests large volumes of customer data<sup>1/</sup> in direct conflict with (1) Commission rules and decisions; (2) statutory law; and (3) the contract currently in place between the IOUs and 3C-REN. PG&E lacks the authorization to provide such data absent either a Commission order or an appropriate contract between 3C-REN and PG&E which allows for the transfer of such data

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<sup>1/</sup> 3C-REN requests voluminous data for the hundreds of thousands of customers in its jurisdiction, including all single-family residential customer site information, meter information, and energy usage information, for all program participants and non-participants.

under reasonable data minimization,<sup>2/</sup> security, and information-protection practices as required by Public Utilities Code Section 8380, Commission decisions, and PG&E Rule 27.

Additionally, PG&E joins the other Investor-Owned Utilities (“IOUs”) in the concern raised in their response to the Motion that there are still open questions about the amount of covered data involved, how that data will be handled and protected among the various parties involved, and the handling of data breaches and any concomitant financial penalties. If PG&E were to disclose confidential customer data in response to 3C-REN’s data request as it currently stands, the disclosure would be contrary to the fundamental “data minimization” principles that the Commission endorsed and promulgated in D.11-07-056, D.14-05-016,<sup>3/</sup> and the IOUs’ tariffs.<sup>4/</sup>

In this response, PG&E joins the other IOUs in a majority of the issues they raise in their response to the Motion. Like the other IOUs, PG&E recommends that the ALJ deny the Motion on the grounds that 3C-REN has not established primary purpose, and thus, the IOUs do not have the authorization to share the data. However, while PG&E agrees with the other IOUs that an order by the Commission to share the data would suffice to establish primary purpose, PG&E is also willing to negotiate an updated program contract, similar to PG&E’s contract with the Bay Area Regional Energy Network (“BayREN”). Such a contract would allow 3C-REN and its subcontractors to obtain access to PG&E customer data essential to run the program without requiring 3C-REN to acquire individual customer prior consent for the data sharing and without violating customer privacy law. PG&E is willing to work closely with 3C-REN and Recurve to update the contract with 3C-REN to allow data sharing<sup>5/</sup> subject to mutually acceptable and

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<sup>2/</sup> Data minimization requires that the disclosure of any confidential customer information to any third party shall be limited to only that which is “reasonably necessary or as authorized by the Commission to carry out . . . a specific primary purpose . . .” Rule 27, Section 5(c); D. 11-07-056 at p. 68-71.

<sup>3/</sup> “We remind the parties that any request should be only for that amount of energy data for a specific purpose.” D. 14-05-015 at p. 91, n. 211.

<sup>4/</sup> Rule 27, Section 5(c).

<sup>5/</sup> The contract currently does not allow for the sharing of confidential customer information.

compliant customer privacy and cybersecurity terms and conditions. If the Motion is granted, however, PG&E recommends that the ALJ order that (1) 3C-REN collaborate with the IOUs to identify a way to implement its Normalized Metered Energy Consumption (“NMEC”) program while minimizing the confidential customer data used to do so and using non-covered, non-confidential information whenever possible; (2) 3C-REN and its contractors, implementers, and aggregators be required to demonstrate reasonable cyber security and privacy protections; and (3) post-collaboration, the parties file a supplement providing further detail about what specific information 3C-REN and the IOUs have agreed will support the program and the steps 3C-REN and Recurve have taken to minimize the confidential data used. Finally, PG&E joins the other IOUs in requesting that 3C-REN cover the not-insubstantial costs of data-sharing if the Motion is granted or a contract between 3C-REN and PG&E is amended.

## **II. DISCUSSION**

### **A. Key Privacy Laws and Rules.**

In 2011, pursuant to Public Utilities Code Section 8380 enacted by the California Legislature in 2010, the Commission updated its customer privacy rules in D.11-07-056, which provides for specific customer control and participation in the collection, use, and disclosure of personal information about them. Under the decision and PG&E’s Electric and Gas Rules 27 (“Rule 27”) implementing the decision, PG&E must prohibit the disclosure of customer energy usage and billing data unless it is for a “primary purpose” or the customer expressly consents. Rule 27 defines “primary purpose” for the disclosure of confidential customer information to include the provision of services specifically authorized by an order of the Commission as well as to plan, implement, or evaluate an EE program under contract with PG&E, or as part of a Commission authorized program conducted by a government entity under the supervision of the Commission.<sup>6/</sup>

Rule 27, Section 6(c) further explains that PG&E may only disclose confidential

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<sup>6/</sup> Rule 27, Section 1(c).

customer information without customer consent to a third party (1) “when explicitly ordered to do so by the Commission;” or (2) “for a primary purpose being carried out under contract with and on behalf of PG&E.” It also states that PG&E may only disclose confidential customer information to a governmental entity for the purpose of providing energy efficiency services “pursuant to an order or resolution of the Commission that specifically directs PG&E to disclose customer-specific usage information or other confidential information.”<sup>7/</sup>

In addition, D. 11-07-056 explicitly supports “data minimization” to “promote[] privacy and security by limiting the amount of personal data collected and the amount that must be secured and protected [thus offering] a practical strategy for protecting sensitive information.”<sup>8/</sup> Rule 27 requires, among other things, the IOUs to “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.”<sup>9/</sup> Failure to take steps to comply with data minimization can increase the risks of cyberattack, theft, and/or negligent sharing of confidential customer data without customer consent.

**B. PG&E, in Agreement with the Other IOUs, Is Not Authorized by the Law Nor Its Tariff to Provide 3C-REN’s Requested Confidential Data.**

As 3C-REN notes in its Motion, the joint IOUs have agreed to provide to 3C-REN all program participant data for which the IOUs have obtained customers’ authorization to provide it. The IOUs lack any such consent for sharing the data of PG&E customers who are not program participants. Sharing any confidential customer data (whether participant or non-participant) without consent or a Commission order would run afoul of state privacy laws and the IOUs’ tariffs. Consequently, none of the Joint IOUs have provided 3C-REN’s program

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<sup>7/</sup> Rule 27, Section 6(c)(1).

<sup>8/</sup> D. 11-07-056, p. 71.

<sup>9/</sup> Rule 27, Section 5(c).

implementer, Recurve, with customer confidential data for which the IOUs lack customer consent.

PG&E joins the other IOUs in submitting that the IOUs do not have authorization to provide the data as requested by 3C-REN without customer consent. The other IOUs state that absent a specific Commission order either approving this NMEC program or authorizing disclosure of the customer data requested, the IOUs do not have authorization to provide such data without customer consent. In other words, 3C-REN has failed to establish “primary purpose.” PG&E agrees.

**C. PG&E Is Willing to Amend the Programs Agreement to Establish Primary Purpose and Allow for Data-Sharing.**

PG&E proposes that Rule 27 allows for primary purpose if 3C-REN and the IOUs were to amend their current contract (“Programs Agreement”) to permit the sharing of confidential customer data,<sup>10/</sup> incorporating obligatory data minimization and security provisions and principles. 3C-REN appears to acknowledge this path forward in its Motion:

This request for utility data from a REN administrator of a NMEC program is not one of first impression. Bay Area Regional Energy Network (BayREN), who also is working with Recurve, has been provided PG&E data for use in the BayREN Business program which is also a NMEC program. *The BayREN implementor worked with PG&E to ensure that all of the data security provisions were in place prior to the release of the data.*<sup>11/</sup>

PG&E appreciates 3C-REN’s reference to PG&E’s BayREN data sharing as a precedent and model for data sharing with 3C-REN and its subcontractors. 3C-REN is correct in citing

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<sup>10/</sup> Currently, the Programs Agreement states that “Except as provided for in Section 15.3 below, no [Joint IOU] shall be required to provide to [3C-REN] any Confidential Customer Information [ ]. . . .” In turn, Section 15.3 provides, “[N]o [Joint IOU] will disclose any Confidential Customer Information to [3C-REN] unless authorized in writing by the customer, except for the following information, which will be made available on an as-needed basis and subject to the confidentiality and non-disclosure provisions of this Programs Agreement.” The two exceptions in Section 15.3 of the Programs Agreement are: confirmation that a purported customer is served by one of the IOUs and receipt of information about a customer’s past participation in an energy efficiency program. There is no exception for customers’ usage information, and thus the Programs Agreement does not authorize the IOUs to release the data requested by 3C-REN.

<sup>11/</sup> 3C-REN Motion, p. 3 (emphasis added).

PG&E’s BayREN contract and customer data sharing agreement as a mutually acceptable and compliant approach to sharing customer data to support an NMEC program without jeopardizing customer privacy and without the need for individual customer prior consent for the data sharing. PG&E worked closely with the Association of Bay Area Governments (“ABAG”) and Recurve in 2020 to update the PG&E-BayREN program agreement to allow data sharing subject to mutually acceptable and compliant customer privacy and cybersecurity terms and conditions. PG&E is willing to work with 3C-REN and its subcontractors so that a similar updated program agreement can provide an efficient and convenient way for 3C-REN and its subcontractors to obtain access to PG&E customer data to carry out their NMEC program, while also complying with law and protecting PG&E’s customers’ privacy interests.

**D. If the Motion Is Granted, PG&E Agrees with the Other IOUs that Data Minimization and Cost Recovery Must Be Addressed.**

PG&E joins the other IOUs in emphasizing that data minimization and cost recovery must be addressed if the IOUs must share confidential customer information with 3C-REN, whether by Commission order or by contract. PG&E recommends that the ALJs order that (1) 3C-REN collaborate with the IOUs to identify a way to implement its NMEC program while minimizing the confidential customer data used to do so and using non-covered, non-confidential information whenever possible; (2) 3C-REN and its contractors, implementers, and aggregators be required to demonstrate reasonable cyber security and privacy protections; and (3) post-collaboration, the parties file a supplement providing further detail about what specific information 3C-REN and the IOUs have agreed will support the program,<sup>12/</sup> and the steps 3C-REN and Recurve have taken to minimize the confidential data used.

Over several conversations and emails dating back to January 2022, the IOUs have discussed with 3C-REN and its program implementer, Recurve, the data they are requesting and

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<sup>12/</sup> PG&E points to data minimization best practices developed for its own NMEC programs as one example parties could work from, subject to defining a standard data set across all three utilities with the assistance of 3C-REN. This is in addition to examples of other current NMEC programs such as BayREN.

how this data will be controlled among 3C-REN, County of Ventura, Recurve and any subcontractors and/or aggregators involved in the program. PG&E seeks to continue collaboration with all parties to ensure that the data provided (if primary purpose is established) can both comply with data minimization principles as well as how and to what extent the data will be shared with 3C-REN's subcontractors and/or aggregators while also supporting 3C-REN's NMEC program. Without this collaboration, customers are potentially left at risk of data losses and breaches. For instance, Recurve has requested confidential energy usage data of approximately 450,000 customers that are not participating in the energy efficiency program and has not sufficiently justified why aggregated, anonymized data that can be provided pursuant to the Joint IOUs' tariffs would not suffice for comparison group purposes, *i.e.*, to serve their needs while concurrently protecting customers' data, consistent with the CPUC's prior decisions.

Further, PG&E joins the other IOUs in emphasizing the need to consider the cost and responsibility for costs of data sharing and disclosure. As the other IOUs noted in their response, as more non-IOU EE program administrators (including RENs) and other government entities request more data, the costs of data-gathering and sharing will only increase and are not accurately reflected in prior Commission decisions allocating funds. Furthermore, if these costs remain in IOUs' EE budgets, the true cost of implementing programs that require significant data sharing will not be reflected in the appropriate EE program and program portfolio budgets, nor will the programs' true cost-effectiveness be captured. If the Motion is granted or PG&E enters into an amended contract with 3C-REN, PG&E respectfully requests that the Commission order that 3C-REN incorporate into its program budget all costs associated with data sharing to reflect that this effort is in support of their program.<sup>13/</sup> Absent that, PG&E respectfully requests that the Commission provide guidance as to how the Joint IOUs should fund these costs, as well as the appropriate accounting and cost-effectiveness mechanisms,

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<sup>13/</sup> This may require an amendment to 3C-REN's EE budget to incorporate the costs associated with data sharing.



given that the costs support REN and CCA programs rather than programs in the IOUs' own EE portfolios.

### **III. CONCLUSION**

In summary, PG&E respectfully requests that the Motion is denied. In the event that the Motion is granted, PG&E requests that the ALJ order that (1) 3C-REN collaborate with the IOUs to identify a way to implement its NMEC program while minimizing the confidential customer data used to do so and using non-covered, non-confidential information whenever possible; (2) 3C-REN and its contractors, implementers, and aggregators be required to demonstrate reasonable cyber security and privacy protections; and (3) post-collaboration, the parties file a supplement providing further detail about what specific information 3C-REN and the IOUs have agreed will support the program, and the steps 3C-REN and Recurve have taken to minimize the confidential data used. Finally, PG&E joins the other IOUs in requesting that 3C-REN cover the costs of data-sharing if the Motion is granted or a contract between 3C-REN and PG&E is amended.

Respectfully Submitted,

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