



414 Nicollet Mall
Minneapolis, MN 55401

October 11, 2013

Tammy L. Pust
Chief Judge
Office of Administrative Hearings
600 North Robert Street
St. Paul, MN 55101

– Via Electronic Mail –

RE: CEUD WORKGROUP FOLLOW-UP
PRIVACY POLICIES OF ENERGY UTILITIES
DOCKET NO. E,G999/CI-12-1344

Dear ALJ Pust:

At the first Workgroup meeting on September 20, 2013, Xcel Energy provided an overview of its internal processes related to the release of Customer Energy Usage Data (CEUD). We provide a written summary of those oral comments as Attachment A to this letter.

Additionally, you had asked for input from participants on a set of definitions to be used for purposes of the workgroup's discussions. There was a suggestion that the workgroup consider the glossary of terms included with the Department of Energy's 2010 report *Data Access and Privacy Issues Related to Smart Grid Technologies* as a starting point. While we believe that the DOE's report provides an excellent summary of many issues involved with providing access to Customer Energy Usage Data (CEUD), there have been other developments in this space since the date of that report. For this reason, we suggest the Workgroup consider use of a different set of definitions for purposes of its discussions.

We propose the Workgroup consider using either, or a combination of, the definitions recently adopted by the Michigan Public Service Commission and the definitions we previously proposed in Docket No. E,G002/M-12-188. We believe these definitions provide a strong basis for the workgroup's discussions, because they are already tailored for use in a regulated utility construct, and for the reasons we describe further in this letter, would give the Workgroup an efficient starting place for its data use and access discussions. We note that we understand that the use of these

definitions by the Workgroup does not imply any adoption or recommendation by you or any other participant in the workgroup to the Minnesota Public Utilities Commission regarding their appropriateness outside the workgroup, or on an ongoing basis.

Although this Workgroup is focused on CEUD, we believe it is essential to define all types of customer data to ensure there is no misunderstanding about what is either within or outside the scope of a request for customer data collected and maintained by Minnesota's energy utilities. In particular, we believe that separately defining "Personal Data," "Account Data," and "Customer Data" will be useful for the workgroup's discussions of data use and access, because it clarifies the distinction between different types of uniquely-identifiable information based on *risk*. We also believe defining other related terms, such as "Contracted Agent" and "Third Party," is essential to the dialogue regarding potentially different requirements for the proper release of customer information, including CEUD.

There are some minor differences between the definitions we proposed in Docket 12-188 and those adopted most recently by the Michigan Commission in a model privacy tariff provided as guidance to Michigan electric and natural gas utilities for the creation of their own specific tariffs.¹ However, we believe either could serve as a reasonable foundation and/or working draft for the CEUD workgroup. We provide a comparison of these definitions as Attachment B to this letter. While we do not advocate using the definitions of "Customer Data" and "Personal Data" adopted in Colorado, and shown on Attachment B, we include them as a comparison, as our participation and the outcome of that proceeding was largely the basis of the definitions we proposed in Docket 12-188. We also provide as Attachment C, the June 28, 2013 Michigan Commission Order containing the definitions (and other elements and requirements) associated with their model customer data privacy policy.

Personal Data is, in general, uniquely-identifiable information that may be used to access the customer's financial account or presents a high risk of identity theft (e.g., social security number, state-issued identification number, and financial account number). The risks associated with this type of information are recognized in Minn. Stat. § 325E.61, which requires companies who maintain similar information to provide notice in the event of a data breach.² Because of the risks associated with identity theft, we note that we restrict access to this type of information through our policies, allowing access only under very limited circumstances, such as:

¹ See *In the matter, on the Commission's own motion, to review issues concerning customer information and data privacy related to advanced metering infrastructure deployment*, Case No. U-17102, Order (June 28, 2013) (separately defining "Customer Account Information," "Customer Usage Data" and "Personal Data").

² Social security number, driver's license number or Minnesota identification card number, or account number or credit or debit card number in combination with any required security code, access code or password that would permit access to an individual's financial account.

- By an employee with a documented business need (e.g. an employee in our billing or credit departments);
- To a Contracted Agent of the utility with a business need (e.g. a vendor supporting our billing system); or
- As required by law (e.g. the fulfillment of warrants, subpoenas, court orders, etc.). Outside of such a requirement, we believe that the customer, not the utility, is the best source for such information and third party access should be obtained directly from them.

In contrast, *Account Data* consists of other uniquely-identifiable information that presents a lower risk profile, such as customer contact information, payment history, and amount billed. We treat this type of information as confidential, but unlike Personal Data, we will release it to third parties with customer consent. We treat Account Data different from Personal Data, because it has a different risk profile from an identity theft perspective, and also because this type of data is commonly requested by itself, and in combination with CEUD, as an identifier. For example, energy assistance agencies must obtain some account information from utilities for purposes of determining payment assistance eligibility. This information typically consists of the name on the account, the payment history, and the amount past due. The release of this type of data is a necessary component of assisting utility customers in obtaining aid.³

We note that we believe that the inclusion of some Account Data with CEUD is also necessary to either identify the specific customer or to provide related details about the customer's account to make the requested CEUD actionable for a third party. However, we do not believe that it is appropriate to use data elements we have defined as Personal Data for these same purposes, due to their sensitivity and elevated risk profile.

Finally, *Customer Data* is generally, CEUD collected from the natural gas or electric meter, and information about the customer's participation in a regulated utility program, such as Demand Side Management (DSM). Because both CEUD and the customer's participation in regulated programs can provide insight into customer

³ The Colorado Commission's (CPUC) privacy regulations for electric customers did not make a distinction between this type of account information and other unique customer information, but rather, included some forms of personal identifiers in its definition of energy consumption data. The result caused significant confusion post-implementation of the rules as to who could gain access to certain information and the required methods of access. Ultimately, this situation required the CPUC to issue an Order varying its Rules, so that low income assistance agencies could obtain the data needed for eligibility determinations and to ensure the payment of assistance was not delayed. When proposing our definitions of "Personal Data", "Account Data" and "Customer Data" in Docket 12-188, we were leveraging our experience in Colorado with rule implementation and further tailored the definitions from that proceeding to avoid unintended consequences. The Michigan Commission took a similar approach in its recently-concluded proceeding.

behaviors, we believe that it is appropriate to group these types of data elements together.

We believe that the distinction that we, and subsequently, the Michigan Commission have made between different elements of uniquely-identifiable information in our proposed definitions of Personal Data, Account Data, and Customer Data will allow for an easier discussion of data access issues by the workgroup. We anticipate that much of the workgroup's discussion will focus on access to CEUD and to those uniquely-identifiable data elements necessary to make CEUD actionable. We expect that for the majority of the workgroup's discussion, Third Party access to customer's 'Personal Data' is not contemplated, and by segregating out these data elements, we can focus the discussion on lower risk unique identifiers. We are also happy to discuss our reasoning further at the next workgroup meeting on October 18, 2013.

We also draw your attention and that of other Workgroup members to some additional resources that may be helpful to our ongoing dialog:

- SEE Action's *A Utility Regulator's Guide to Data Access for Commercial Building Energy Performance Benchmarking*, May 2013, available at http://www1.eere.energy.gov/seeaction/pdfs/commercialbuildings_data_access_guide.pdf.
- The Future of Privacy Forum's *Smart Grid Guidelines*, available at http://www.futureofprivacy.org/issues/smart-grid/fpf_smart_grid_guidelines/.
- TRUSTe's *Program Guidelines* for their smart grid privacy seal, TRUSTed Smart Grid, available at <http://www.truste.com/privacy-program-requirements/TRUSTed-smart-grid/>.

Please feel free to contact us with any questions.

Sincerely,

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Encl

c: Workgroup Participants and Observers (email)

Xcel Energy Data Access Summary

A. Customer-Specific Data

Xcel Energy releases customer-specific data in limited circumstances:

- As **required by law** (*e.g.* subpoenas, warrants, court orders, or at the request of government agencies with jurisdiction).
- To **Contracted Agents** who assist us with the provision of regulated service (*e.g.* bill print, DSM, remote meter reading) if they also agree to a contract that contains our data privacy and security terms.
- To the **Customer** of record through specific programs (*e.g.* MyAccount, Green Button, Infowise) or through a verbal request made to our call center.
- To **Third Parties authorized by the Customer** of record.
 - Consent must be documented and verified using a form that provides sufficient information for informed consent. Instructions and a model form are available from our website: http://www.xcelenergy.com/My_Account/Understand_Bill/Bill_Details/Energy_Consumption_Data_Access). Consent forms are also available directly from our web privacy policy: <http://www.xcelenergy.com/staticfiles/xe/Admin/Xcel%20Online%20Privacy%20Policy.pdf>.
 - No contractual requirements between Xcel Energy and the Customer's authorized third party.
 - Certain data types are excluded for release to third parties. We will not release the Customer's social security number or financial account number. We believe that the Customer is the more appropriate source for that information.

B. Aggregated CEUD Reports

Xcel Energy will release aggregated CEUD subject to certain restrictions:

- Xcel Energy only aggregates energy usage and program participation data.
- Data aggregation must pass the 15/15 standard (*e.g.* the data set includes at least 15 customers, and no one customer represents 15 percent or more of the energy consumption total).

Currently, Xcel Energy provides aggregated data at the state, county or city level.

Xcel Energy has received requests at more granular levels (*e.g.* neighborhood, census block, building). Because our billing system is not designed to identify customers by these types of identifiers, we cannot quickly and accurately produce aggregated data reports at these more granular levels. We are exploring options that we hope would make this functionality available.

1. *Granularity of CEUD Data*

Xcel Energy has a diverse meter population capable of many different levels of measurement (*e.g.* monthly, hourly, less than 15 minutes, etc.). While we have meters that are capable of reading customer energy usage at very granular levels, the most common interval collected and utilized for our business is monthly.

Most requests for access to Customer's CEUD are fulfilled utilizing monthly meter reads. Some Customers in our Commercial classes have special equipment that collects more frequent meter reads and shares them with third party service providers.

2. *De-Identified Data*

Xcel Energy receives requests for CEUD or program participation information by address with the customer's name removed. Because of the public availability of homeowner and tax payer information, we do not believe that such a request is sufficiently anonymous.

A limited exception has historically been offered for realtors and potential purchasers of property. When requested, we have provided an annual average consumption amount for a property address. However, this practice is being scrutinized internally and may not continue.

Comparison of Data Privacy Definitions

Xcel Energy Proposal in Docket No. E,G002/M-12-188 and Michigan Customer Data Privacy Proceeding (Colorado Customer Data Privacy Rules provided as reference)

Data Type	Proposed by Xcel Energy in Docket No. E,G002/M-12-188 <i>(Proposed to apply to all customer information associated with the provision of natural gas and electric service)</i>	Comparable Michigan Model Language Case No. U-17102 <i>(Applicable to all customer information associated with the provision of natural gas and electric service)</i>	Comparable Colorado Rule from 4CCR 723 <i>(Only applicable to (1) electric utilities; and (2) "Customer Data.")</i>
Account Data or Customer Account Information	Individually-identifiable information that is not Personal Data or Customer Data. Account Data includes customer contact information, payment history, and amount billed, but does not include Company proprietary information such as Premise Number or Meter Number.	Individually identifiable information including customer address, contact information, payment history, account number, and amount billed. Customer Account Information also includes information received by the Company from the customer for purposes of participating in regulated utility programs, including bill payment assistance, shutoff protection, renewable energy, demand-side management, load management, or energy efficiency.	N/A – <i>Note:</i> NSP added the definition of Account Data to further clarify the different categories of information provided by customers and the differing uses and / or treatment
Aggregated Data	Customer Data or Account Data that can be combined as to make it sufficiently anonymous so that any customer-specific information or reasonable approximation thereof cannot be determined from the aggregated data set.	Any Customer Usage Data or Customer Account Information from which all identifying information has been removed so that the individual data or information of a customer cannot be associated with that customer without extraordinary effort. <i>[Providers may opt to include "15/15 rule" here, or other method of data aggregation.]</i>	Reports aggregating customer data, alone or in combination with other data. When read in combination with other provisions, definitions are equivalent. (3001(b))
Contracted Agent or Contractor or Agent	Any entity that the Company has contracted to act on behalf of the Company or assist in the provision of regulated utility services (e.g., an affiliate or vendor).	An entity or person performing a function or service under contract with or on behalf of the Company, including customer service, demand response, energy efficiency programs, payment assistance, payroll services, bill collection, or other functions related to providing electric and natural gas service. <i>[Providers should use the applicable terminology here.]</i>	Any third-party entity that has contracted with a utility in compliance with rule 3029 to assist in the provision of regulated utility services (e.g., an affiliate or vendor). (3001(h))
Customer	N/A	A purchaser of electricity or natural gas that is supplied or distributed by a utility for residential or nonresidential purposes.	N/A
Customer Consent or Informed Customer Consent	Customer consent will be deemed informed and valid when it contains all of the following elements: <ul style="list-style-type: none"> • Explains that customers have an expectation of privacy for their Account Data, Customer Data, and Personal Data; • States the use(s) of the data for which the customer is allowing disclosure; • States the purpose(s) of the data collection; • States the date(s) or frequency of disclosure; • States the description of the data disclosed; • States that the consent for the prospective release of Account Data or Customer Data is valid for three years, or until terminated, whichever is earlier; • States that the customer must notify the Company in writing (electronically or non-electronically) to terminate the consent, and identifying appropriate Company contact information for that termination; • Provides notice to the customer that the Company shall not be responsible for monitoring or taking any steps to ensure that the Third-Party to whom the data is disclosed is maintaining the confidentiality of the data or using the data as intended by the customer; 	In the case where consent is required: (1) the customer is provided with a clear statement of the data or information to be collected and allowable uses of that data or information by the party seeking consent; (2) the frequency of data or information release and the duration of time for which the consent is valid; and (3) process by which the customer may revoke consent. In no case shall silence by the customer ever be construed to mean express or implied consent to a request by the Company, its agents, or contractors. Customer consent may be documented in writing, electronically, or through recording of an oral communication.	(a) A utility shall make available a consent to disclose customer data form, prescribed and supplied by the Commission, to any customer or third-party upon request. The form shall be provided and made available in paper and electronic form for use in obtaining customer consent to disclose customer data. The contents of the consent to disclose customer data form must: (I) Describe the customer’s rights under subparagraph 3027(c)(V); and (II) Provide spaces for the following information regarding the third-party recipient to be populated by that third-party recipient on the consent to disclose customer data form: (A) The name, including trade name if applicable, physical address, mailing address, e-mail address, and telephone number; (B) The name, mailing address, e-mail address, and telephone number of the third-party recipient’s data custodian; (C) The name, mailing address, e-mail address, and telephone number of the third-party recipient’s Colorado agent for service of process; and (D) A statement describing the third-party recipient’s business structure (corporation, limited liability company, partnership, sole proprietorship, etc).

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	<ul style="list-style-type: none"> • Includes sufficient, unique identifying information to permit the Company to verify the consent is being provided by the customer of record; and, • Is signed by the customer of record. <p>The Company may, but is not required to, accept electronic signatures, so long as the electronic signature complies with Chapter 325L of the Minnesota Statutes and Title 15, Chapter 96, Subchapter I of the United States Code.</p>		<p>(i) If the third-party recipient is a corporation: the name of the state in which it is incorporated; the location of its principal office, if any, in Colorado; the names of its directors and officers; and a certificate of good standing issued by the Secretary of State authorizing it to do business in Colorado, certified within six months prior to the submission of the consent to disclose customer data form.</p> <p>(ii) If the third-party recipient is a limited liability company: the name of the state in which it is organized; the complete mailing address and physical address of its principal office; the name of its managers; and a certificate of good standing issued by the Secretary of State authorizing it to do business in Colorado, certified within six months prior to the submission of the consent to disclose customer data form.</p> <p>(iii) If the third-party recipient is a partnership: the names, titles, and addresses of all general and limited partners and a copy of the partnership agreement establishing the partnership and all subsequent amendments.</p> <p>(III) State the uses of the data for which the customer is allowing disclosure;</p> <p>(IV) State the purposes of the data collection;</p> <p>(V) State the date(s) of disclosure;</p> <p>(VI) State the description of the data disclosed;</p> <p>(VII) State that the consent is valid until terminated;</p> <p>(VIII) State that the customer must notify the utility service provider in writing (electronically or non-electronically) to terminate the consent including appropriate utility contact information;</p> <p>(IX) State any additional terms except an inducement for the customer's disclosure;</p> <p>(X) Provide notice to the customer that the utility shall not be responsible for monitoring or taking any steps to ensure that the third-party to whom the data is disclosed is maintaining the confidentiality of the data or using the data as intended by the customer; and</p> <p>(b) A utility may make available an electronic customer consent process for disclosure of customer data to a third-party (e.g. a utility controlled web portal) that authenticates the customer identity. The contents of the electronic consent process must generally follow the format of the model consent to disclose customer data form, be clear, and include the elements to be provided pursuant to paragraph (a) of this rule. Such process may not include an inducement for disclosure by the customer.</p>

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			<p>(c) A utility may make available an in-person consent process for disclosure of customer data to a third party that authenticates the customer identity. A customer of a utility shall complete a Customer Consent Form at an office of the utility and the customer shall provide adequate identification, including but not limited to, a valid picture identification and customer account information.</p> <p>(d) The consent to disclose customer data form may be submitted to the utility through paper or electronic methods. Incomplete or non-compliant consent to disclose customer data forms are not valid and shall be rejected by the utility. (3028; 3030(b))</p>
Customer Data or Customer Usage Data or Consumption Data	Customer-specific data or information that: (1) is collected from the meter and stored by the Company in its systems, or (2) is received by the Company from the customer identifying regulated utility program participation, such as renewable energy, demand-side management, load management, and energy efficiency.	Customer specific gas and electric usage data, including but not limited to ccf, Mcf, therms, dth, kW, kWh, voltage, var, or power factor, and other information that is collected from the electric or gas meter by the Company and stored in its systems. <i>[These are suggested definitions for the different types of customer information the utility might have for some or all customers (e.g., customer usage data, customer account information, and personal data). Providers should adjust these definitions to correspond with their own data organization methods and terminology.]</i>	Customer-specific data or information that: (1) is collected from the electric meter by the utility and stored in its systems (e.g., kWh, kW, voltage, VARs and power factor); (2) is received by the utility from the customer identifying whether they participate in regulated utility programs, such as renewable energy, demand-side management, load management, and energy efficiency; and (3) information other than personal information that is shown on bills issued to customers for metered service furnished. (3001(j)) <i>Note:</i> The third part of the Colorado definition is a clarifying provision due to the CPUC's existing definition of Personal Information.
Personal Data or Personal Information or Personally-Identifiable-Information	Individually-identifiable information relating to a individual, in particular by reference to an identification number such as social security number, state issued identification number, or financial account information. <i>Note:</i> This definition tracks 42 U.S.C. § 1320d-6, and is similar to the definition of Personal Information used by the European Union.	Specific pieces of information collected or known by the Company that merit special protection including the standard types of positive identification information used to establish an account. Personal Data [Personally Identifiable Information] includes, but is not limited to, name and address in conjunction with birth date, telephone number, electronic mail address, Social Security Number, financial account numbers, driver's license number, credit reporting information, bankruptcy or probate information, health information, network, or Internet protocol address. <i>[Providers might also consider using the definitions of "personal identifying information" and "personal information" set forth in MCL 445.63(q) and (r).]</i>	"Personal information" means the following: (I) social security or tax identification number; (II) driver's license number or identification card number; (III) credit card, debit card, other account number used for payment; (IV) any required security code, access code, or password that would permit access to the customer's account; (V) customer's name only in combination with any one or more other enumerated data elements that relate to such customer; and (VI) other individually identifiable information in the regulated entity's possession or control when not publicly or lawfully available to the general public from federal, state or local government records, the North American Industry Classification System (NAICS) information used for the purpose of telephone directory publishing or widely distributed media. (1-1104 (x))

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Primary Purpose	The collection, use, or disclosure of Account Data, Customer Data, or Personal Data in order to: <ul style="list-style-type: none"> • Provide, bill, or collect for regulated electric or natural gas service; • Provide for system, grid, or operational needs; • Provide services as required by state or federal law or as specifically authorized by an order of the Commission, or; • Plan, implement, or evaluate, energy assistance, demand response, energy management, or energy efficiency programs under contract with the Company, under contract with the Commission, or as part of a Commission-authorized program conducted by a governmental entity under the supervision of the Commission, or pursuant to state or federal statutes governing energy assistance or welfare benefits. 	The collection, use, or disclosure of information collected by the company or supplied by the customer in order to: (1) provide, bill, or collect for, regulated electric or natural gas service; (2) provide for system, grid, or operational needs; (3) provide services as required by state or federal law or as specifically authorized by an order of the Commission, or; (4) plan, implement, or evaluate, energy assistance, demand response, energy management, energy efficiency, or renewable energy programs by the Company or under contract with the Company, under contract with the Commission, or as part of a Commission-authorized program conducted by an entity under the supervision of the Commission, or pursuant to state or federal statutes governing energy assistance. <i>[The definition of "primary purpose" is intentionally broad to cover all regulated utility activities including programs under 2008 P.A. 295 and energy assistance programs.]</i>	N/A – <i>Note:</i> Colorado rules do not use the Primary Purpose concept; rather, utility use of Customer Data is limited “to provide regulated utility service in the ordinary course of business.” After California completed its rulemaking, NSP examined the California rules and believed the Primary Purpose concept provided additional clarification as to the appropriate uses of Customer Data.
Secondary Purpose	Any purpose that is not a Primary Purpose.	Any purpose that is not a Primary Purpose.	N/A – <i>Note:</i> NSP incorporated this concept after reviewing the California Rulemaking.
Standard Customer Data/ Information or Standard Usage Information	Customers shall have access to their own Account Data and Customer Data. The amount of data made accessible and the manner in which it will be made accessible shall be consistent with the provision of normal utility service.	The usage data that is made generally available by the electric or gas utility to all similarly situated customers on a regular basis, delivered by the electric or gas utility in a standard format.	As part of basic utility service, a utility shall provide to a customer the customer’s standard customer data, access to the customer’s standard customer data in electronic machine-readable form, in conformity with nationally recognized open standards and best practices, in a manner that ensures adequate protections for the utility’s system security and the continued privacy of the customer data during transmission. Such access shall be provided without additional charge. (3026(d))
Third Party	Any entity other than the customer of record, the Company, or a Contracted Agent, that requests Account Data, Customer Data, or Personal Data from the Company.	A person or entity that has no contractual relationship with the Company to perform services or act on behalf of the Company.	Any entity other than the customer of record, the utility serving such customer, or a contracted agent, that requests authorization from the customer for access to customer data from the utility. (3001(gg))
Utility provision of information regarding its customers	The Company may disclose customer-specific data to a Contracted Agent without obtaining the customer’s consent so long as the disclosure is to further a Primary Purpose and there is a contract in place between the Company and the Contracted Agent that meets the requirements set forth below. Contracts between the Company and its Contracted Agents that provide for the disclosure of Account Data, Customer Data, and/or Personal Data must: <ul style="list-style-type: none"> • Limit the Contracted Agent’s use of Account Data, Customer Data, and/or Personal Data received from the Company to the purpose of the contract. The purpose of the contract shall be limited to advancing a Primary Purpose. • Include a non-disclosure agreement with the Company. 		A utility may disclose customer data to a contracted agent provided that the contract meets the following minimum requirements: <ul style="list-style-type: none"> (I) Implement and maintain reasonable data security procedures and practices appropriate to the private nature of the information to protect the customer data from unauthorized access, destruction, use, modification, or disclosure. These data security procedures and practices shall be equal to or greater than the data privacy and security policies and procedures used by the utility internally to protect customer data; (II) Use customer data solely for the purpose of the contract, and prohibit the use of customer data for a secondary commercial purpose not related to the purpose of the contract without first obtaining the customer’s consent as

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	<ul style="list-style-type: none"> Require the Contracted Agent to implement and maintain reasonable data security procedures and practices appropriate to the private nature of the information received. These data security procedures and practices shall be designed to protect the Account Data, Customer Data, and/or Personal Data from unauthorized access, destruction, use, modification, or disclosure. The data security procedures and practices adopted by the Contracted Agent shall be equal to or greater than the data privacy and security policies and procedures used by the Company to protect Account Data, Customer Data, and/or Personal Data. Require the Contracted Agent to return or destroy any Account Data, Customer Data, and/or Personal Data that is no longer necessary for the purpose for which it was transferred. 		<p>provided for in these rules;</p> <p>(III) Destroy any customer data that is no longer necessary for the purpose for which it was transferred; and</p> <p>(IV) Execute a non-disclosure agreement with the utility. The utility shall maintain records of the disclosure of customer data to contracted agents for a minimum of three years. Such records shall include all contracts with the contracted agent and executed nondisclosure agreements. (3029)</p>
Utility use of information regarding its customers	The Company collects and uses Account Data, Customer Data, and Personal Data for Primary Purposes without first obtaining a customer's explicit consent. The Company shall collect only as much Account Data, Customer Data, and Personal Data as is reasonably necessary to accomplish Primary Purposes. Before collecting or using Account Data, Customer Data, or Personal Data for Secondary Purposes, the Company must first obtain a customer's informed consent. <i>Note:</i> Also see Primary Purpose	See Primary Purpose	A utility is only authorized to use customer data to provide regulated utility service in the ordinary course of business. (3026(a))

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission’s own motion,)	
to review issues concerning customer information)	
and data privacy related to advanced metering)	Case No. U-17102
infrastructure deployment.)	
)	

At the June 28, 2013 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman
Hon. Orjiakor N. Isiogu, Commissioner
Hon. Greg R. White, Commissioner

ORDER

On January 12, 2012, the Commission issued an order opening Case No. U-17000 in response to concerns raised by some individuals and local governments regarding the deployment of Advanced Metering Infrastructure (AMI) by electric utilities in Michigan. In that order, the Commission directed all regulated electric utilities to submit information regarding various issues in AMI deployment including the collection of customer information and data privacy. After the submissions by the utilities, the Commission provided interested persons with an opportunity to comment.

Following the deadline for the submission of comments, the Commission Staff (Staff) was directed to prepare a report for the Commission’s consideration. Specifically, the Staff was asked to summarize the filings from the utilities and interested persons, independently review the literature regarding AMI, and identify any developments in other jurisdictions pertinent to the

investigation. At the end of its report, the Staff was directed to make its recommendations concerning further deployment of AMI.

In its report, the Staff stated, *inter alia*, that customer data privacy is a priority for customers, energy providers, and the Commission. The Staff also observed that data protection standards, practices, and procedures are constantly evolving and are being updated at the national and state levels. The Staff recommended that customer data privacy be addressed through utility tariffs or rulemaking. In an order issued on September 11, 2012 in Case No. U-17000, the Commission discussed the Staff's recommendations and found that the matter of customer data privacy was sufficiently important to merit the creation of this docket for the specific purpose of addressing customer data privacy.

On October 31, 2012, the Commission issued an order in this docket (October 31 order), in which it directed Consumers Energy Company (Consumers) and The Detroit Edison Company (Detroit Edison)¹ to provide comments on a customer privacy framework that the Commission proposed after a review of best practices. In addition, the companies were directed to respond to several questions related to customer data privacy. Comments and responses were received from Detroit Edison, Consumers, The Future of Privacy Forum (FPF), Michigan Energy Providers (MEP),² Technology Network (Tech Net), Tiffany Barron, and Lauren Saad.

¹ Detroit Edison is now DTE Electric Company.

² MEP includes SEMCO Energy Gas Company, and the Michigan Electric and Gas Association, whose members are Alpena Power Company, Aurora Gas Company, Citizens Gas Fuel Company, Indiana Michigan Power Company, Michigan Gas Utilities, Upper Peninsula Power Company, We Energies, Wisconsin Public Service Corporation and Xcel Energy.

Comments

Ms. Barron and Ms. Saad expressed concerns about the volume and sensitivity of information that may become available through AMI implementation. Ms. Barron observed that while detailed customer usage information could prove beneficial for customers wishing to reduce their energy use, the same information could be used to profile customers, thereby targeting them for unwanted marketing and advertising. Ms. Saad was likewise concerned about third-party access to customer usage information and also raised an issue regarding the possible flow of this information to government and law enforcement.

Tech Net commented that an overarching objective of any privacy policy should be to ensure that the policy reasonably balances customer privacy with the customer's ability to easily access and share usage information. Tech Net observed that if rules and policies are not carefully tailored, they could become an impediment to innovation in energy management. Tech Net pointed out that:

A consumer's easy, automated access to his or her energy usage data – and the ability of a consumer to freely and easily share that data with an energy management service provider of his or her choice, whether a third party or utility – is critical to realizing a host of consumer benefits, including improved energy efficiency and lower consumer electricity bills than would otherwise be the case. Notwithstanding the enormous operational benefits and efficiencies enabled by the Smart Grid, one of the lessons learned in recent years is that installation of a smart meter -- without providing simultaneous access for the consumer to his or her usage data and easy-to-use tools to manage energy use -- leaves some consumers in a position where they may question the benefits of smart meters and Smart Grid technologies. The potential value for consumers is enormous: for example, the America Council for an Energy-Efficient Economy's review of 57 studies found that consumer households with access to real time data and new energy management tools achieved household energy savings up to 12%.

Detroit Edison commented that protecting customer information has always been of paramount importance to the company and that customer privacy will continue to be assured in the future. Detroit Edison explained that the company has multiple internal policies related to data

privacy that it requires its employees, affiliates, and contractors to abide by. Consumers similarly commented that it has traditionally collected customer information and personally identifiable information that it maintains securely and uses only for legitimate utility purposes. Tech Net observed that utilities have been collecting and sharing detailed customer usage information under current regulations for over two decades with no significant data breaches by the utilities or their contractors.

Specific comments on the proposed framework for data privacy set forth in the October 31 order are summarized below.

1. The scope of a utility privacy policy should encompass all customer information or data collected and maintained by the utility, the utility's affiliates, or its contractors.

Consumers, Detroit Edison, and MEP expressed agreement with this principle. Detroit Edison cited an internal policy that requires all personal information to be held in strict confidence and permits disclosure only for utility business or operational needs. Tech Net commented that this statement should apply to any usage information supplied by AMI that includes name, account number or address of the customer. Tech Net commented that the privacy policy should not apply to aggregate or anonymized information.

2. The privacy policy should clearly define customer usage data, personally identifiable information, aggregate information, and other customer information collected or maintained by the utility.

Consumers, Detroit Edison, Tech Net, and MEP agreed with this statement. MEP recommended that this principle be expanded to clarify that certain personal information, including Social Security number or financial account numbers, should never be disclosed by a utility to a customer or to a customer's designated third-party, in accordance with MCL 445.63(3)(r). According to MEP, to avoid identity theft, the customer should be the sole source of this type of information. Detroit Edison provided its definition of confidential

information as information “not known to the public or otherwise in the public domain” including Social Security and drivers’ license numbers, financial account information, customer records, and health information.

3. The policy should protect all customer information from unauthorized use or disclosure by the utility, its affiliates, and contractors.

Detroit Edison, Consumers, and MEP agreed with this statement. Detroit Edison provided language from its existing policies that prohibits unauthorized disclosure of customer information by the company, its employees, and affiliates and contractors. Tech Net also agreed with this principle provided that “authorized use” and “unauthorized use” are clearly defined in the privacy policy.

4. The policy should ensure that customer usage data, personally identifiable information, and certain other customer information are only disclosed to third parties with the customer’s written consent.

Consumers and Detroit Edison raised concerns with this statement. Detroit Edison commented that “third parties” should be clearly defined as entities that are not agents or contractors of the company. However, if the definition of “third parties” includes company agents or contractors, then Detroit Edison objected on grounds that the need for customer consent could be a significant barrier to the provision of safe, reliable service. Consumers likewise objected to this principle, commenting that providing a file to a research vendor, delivering information to energy efficiency contractors to facilitate the achievement of mandated energy efficiency goals, or sharing information with government or charitable entities for bill payment assistance are all legitimate utility purposes that should not require customer consent.

MEP generally agreed with this principle, adding that customers should be able to “opt in” to information sharing. Nevertheless, MEP pointed out that there are circumstances where customer consent should not be required including the release of information to contractors to support

services to the customer, where required by law, as part of a merger or asset sale, and in the case of the sale of accounts receivables for collection purposes.

Tech Net commented that this statement should only apply to personally identifiable information and that consent should not be required if information is disclosed for typical utility programs. FPF comments that it has concerns with the “written consent” language in this statement. According to FPF:

Past notice/consent models requiring complex paper forms to signal consent have been inflexible and they ignore the many advantages that modern forms of digital consent can provide. It is possible that the “written consent” contemplated here is actually being broadly construed to include digital consent to a written policy. If that is the case, we think it is important that this [sic] consumers should be able to easily exercise this consent on computers, mobile phones and from smart devices that they may be seeking to activate.

Tech Net similarly recommended that the Commission should assure that evidence of written consent should include electronic verification as provided under the Uniform Electronic Transactions Act, MCL 450.832 *et seq.*

FPF noted that it has initiated a Smart Grid Privacy seal program, a certification that assures that companies requesting access to customer data from utilities, AMI meters, or customers, do so in accordance with FPF privacy guidelines.

5. The policy should specify that customer information may be disclosed without consent in response to a warrant or court order, as required for collection activities, or as necessary to provide essential utility service.

The utilities and other commenters agreed that this is an appropriate exception to the general rule of non-disclosure. Detroit Edison provided language from its privacy policies that permits disclosure pursuant to valid legal processes.

6. Nothing in the privacy policy should preclude a customer from sharing his or her information with a third party that is not affiliated with the utility, and the privacy policy should clarify that the utility is not responsible, in this circumstance, for unauthorized disclosure or use of this information by a third party.

The utilities and other commenters agreed with this principle. Tech Net commented that this is a critical part of the policy framework and recommended that the policy explain how customers can easily access their own information to transmit to a third-party or direct a utility to provide the information to a designated third-party.

7. The privacy policy should not apply to aggregate information, containing general characteristics of a customer group, used for analysis, reporting, or program design purposes.

The commenters generally agreed that privacy policies should not apply to aggregated information where a specific customer cannot be identified. Detroit Edison noted that this particular principle is not currently referenced in its existing policies, thus the company will update its documents accordingly.

MEP commented that aggregated information in general does not raise the same privacy concerns that individual information does. MEP added that the privacy policy should be transparent with respect to the utilities' provision of aggregated data and should contain a commitment to maintain a reasonable level of anonymity. MEP pointed to the "15/15 Rule" adopted by the Colorado Public Utilities Commission (CPUC) as a general standard for assuring sufficient aggregation of customer data.

Tech Net agreed that aggregated information should be exempt from the privacy policy for research, reporting and program design purposes. Tech Net raised a concern that if the definition of aggregated information is too strict, it may impede the use of that information for effective research and design purposes. Tech Net cited a briefing paper published by the California Public

Utilities Commission that discusses the difficulties in accessing aggregated information for research pertaining to energy efficiency and demand response initiatives.

- 8. The privacy policy should be easy to understand and should be provided to a customer when the customer commences utility service, whenever the policy is updated, and one time per calendar year thereafter. The privacy policy should also be readily available on the company's website.**

Consumers, Detroit Edison, and MEP agreed with this principle. As the FPF indicated in its comments, “As the Commission moves forward with the proposed framework on the development of customer privacy policies the FPF urges that notice/consent models that are stuck in the past be avoided and more modern paper-free methods of consent be enabled and encouraged.” The Commission and Staff agree that this concept should apply as well to customer notice about the privacy policy. The Staff therefore included in the model privacy policy the reasonable provision that the company shall supply a written copy of the policy to a customer upon initiation of service and thereafter upon customer request. A current copy of the privacy policy should be prominently displayed on the company's website.

In addition, the Commission directed Consumers and Detroit Edison to provide responses to the following questions:

- 1. Should a utility be authorized to sell any customer information at all? Should it be permitted to do so only with the customer's consent? If so, to what type of entities might information be sold, and how should the Code of Conduct apply in this circumstance?**

Consumers, Detroit Edison, and MEP all indicated that they do not currently sell customer information and do not intend to do so in the future. Consumers and Detroit Edison stated that they believe a utility should be permitted to sell customer information only if customer consent to do so is obtained, and the terms of that consent are consistent with the Code of Conduct. MEP commented that an exception should be made for a merger or asset sale or for the sale of aged

accounts receivables. MEP added that there may be instances where charging a customer for access to his or her own data may be appropriate, such as a circumstance where a customer requests more granular data or information in a non-standard format.

2. Should a privacy policy address customer access to the customer’s information or should that issue be addressed by rules or utility tariffs?

Detroit Edison commented that the privacy policy should address customer access to his or her information. Tech Net recommended that customer privacy be addressed through rules to provide uniformity among providers. Consumers noted that the topic of data privacy is constantly evolving, thus data privacy should be addressed by a regulatory policy that provides a uniform framework for all utilities. Consumers recommends that the Commission’s billing rules and technical standards be updated to include data privacy. However, Consumers cautions that “overly prescriptive” rules or tariffs might not provide sufficient flexibility or may require unrealistic timelines for implementation in a rapidly changing environment. Detroit Edison similarly commented that data privacy could be most efficiently addressed by internal company policies rather than tariffs or rules.

3. How long should various types of customer information be maintained by the utility, if not already specified by Commission rules?

Tech Net recommended that the Commission require utilities to retain customer data for multiple years, to allow customers to identify year-over-year trends in energy usage. Detroit Edison and Consumers commented that the companies already have specific data retention policies in addition to Commission rules governing utility record preservation. MEP agreed that data retention beyond the periods required by the Commission’s rules should be at the utility’s discretion.

4. Should customer usage information or other customer information be provided to contractors providing demand response, load management, or energy efficiency programs (collectively, energy services) without customer consent? If so, should contractual limits be placed on the use or disclosure of the information by the energy services provider(s)?

Tech Net agreed that utilities should be able to share information with contractors providing energy efficiency and demand response programs without customer consent, as long as the contractors agree to the same confidentiality requirements as the utilities. Detroit Edison and Consumers likewise commented that they use contractors to supply various utility services including energy efficiency and demand response. MEP also supported providing information to contractors, without requiring customer consent, in the case of regulated utility programs in general. MEP pointed to energy efficiency programs provided by contractors like Efficiency United as an example of the type of program and contractor where consent for data sharing should not be required. Nevertheless, MEP advocated placing limits on what can be done with customer information by third-party contractors. MEP cited recent rules approved by the CPUC for third-party use of customer information:

1. Implement and maintain reasonable data security procedures and practices appropriate to the private nature of the information to protect the customer data from unauthorized access, destruction, use, modification, or disclosure. These data security procedures and practices shall be equal to or greater than the data privacy and security policies and procedures used by the utility internally to protect customer data;
2. Use customer data solely for the purpose of the contract, and prohibit the use of customer data for a secondary commercial purpose not related to the purpose of the contract without first obtaining the customer's consent as provided for in these rules;
3. Destroy any customer data that is no longer necessary for the purpose for which it was transferred; and
4. Execute a non-disclosure agreement with the utility.

4 Colo. Code Regs. § 723-3-3029(a) (2012).

Discussion

The implementation of Smart Grid and AMI by Michigan electric utilities is expected to result in greater operational efficiencies, enhanced reliability and power quality, increased customer engagement, and opportunities for utility and customer energy and cost savings. At the same time, the granularity and time-sensitivity of energy usage information obtained through AMI raises privacy concerns for customers. Customer privacy issues in the context of AMI cannot be ignored; as the U.S. Department of Energy pointed out:

[Many of the benefits of the Smart Grid could be reduced or delayed and avoidable harms caused unless the Smart Grid adequately respects consumers' reasonable—and often widely differing—expectations of privacy, expectations that could be compromised if detailed household energy consumption data is made too readily available, too inaccessible, or incorrectly anonymized. The Smart Grid is also likely to create a far more interactive relationship between utilities and consumers that will raise new questions about how to ensure that detailed energy data is properly collected, reported, managed, shared and disclosed in ways that are both lawful and adequately transparent to consumers.³

To further clarify the data privacy framework set forth in the October 31 order modified by the discussion here, attached to this order as Exhibit A is a model privacy policy created by the Staff. The Commission finds that Exhibit A is an example of a reasonable privacy policy that balances the interests of the company in providing reliable utility service with the interests of customers in assuring that their information is collected, used, and disclosed appropriately.

In considering how to address the concerns related specifically to AMI and customer usage information, it became apparent to the Commission that Michigan statutes and our current utility regulations do not adequately address customer privacy generally, let alone provide specific

³ DOE Request for Information, 75 Fed. Reg. 26203 (July 12, 2010).

protections for customer usage information.⁴ Indeed, as the National Institute of Standards and Technology and others have observed:

When considering the possible legal impacts to privacy engendered by the Smart Grid, and likewise the influence of laws that directly apply to the Smart Grid, it is important to note that current privacy laws may not explicitly reference the Smart Grid or associated unique Smart Grid data items. Moreover, existing U.S. state-level Smart Grid and electricity delivery regulations may not explicitly reference privacy protections.

* * *

While it is uncertain how privacy laws will apply to Smart Grid data, one thing that is certain is that the Smart Grid brings new challenges and issues with its new types of data⁵.]

As the Commission discussed in the October 31 order, electric and gas utilities now acquire considerably more information from many of their customers as a result of their participation in various utility programs, many of which have only recently become available.⁶ The Commission therefore established the first principle cited above, namely that the privacy policy should encompass all customer information possessed by both gas and electric utilities, not just customer

⁴ While 2004 PA 252, MCL 445.61 *et seq.* (Michigan Identity Theft Protection Act), which applies to utilities, provides some degree of protection for “personal identifying information,” defined as, “a name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person’s financial accounts, including, but not limited to, a person’s name, address, telephone number, driver license or state personal identification card number, social security number, place of employment, employee identification number, employer or taxpayer identification number, government passport number, health insurance identification number, mother’s maiden name, demand deposit account number, savings account number, financial transaction device account number or the person’s account password, any other account password in combination with sufficient information to identify and access the account, automated or electronic signature, biometrics, stock or other security certificate or account number, credit card number, vital record, or medical records or information,” it does not encompass all of the information utilities might have about their customers.

⁵ *Guidelines for Smart Grid Cyber Security: Vol. 2, Privacy and the Smart Grid*, National Institute of Standards and Technology Interagency Report 7628, p. 7 (2010) (footnote omitted).

⁶ In addition to more detailed usage information, providers now have records of customers who have applied for and received rebates for energy optimization investments, customers who have interconnected with the utility distribution system or are net metering, and customers who participate in gas or electric choice, to cite only a few examples.

usage information collected through AMI. As noted above, the providers and other commenters raised no concerns with this principle and it is expressed through comprehensive definitions of different types of customer information in the model privacy policy.

The second (and related) principle, that customer usage data, customer account information, and personal (or personally identifiable) information should be clearly defined by any privacy policy likewise did not generate any disagreement among the commenters. The Commission generally agrees with MEP that certain types of information, including banking or credit card information, health information, and personal identification should never be disclosed by the company to the customer or to third parties authorized by the customer in accordance with MCL 445.63(3)(r). The Staff acknowledged this in the model policy by indicating in the proposed definition of “personal data” that this type of information merits special protection. The Commission notes that an absolute prohibition on the sharing of this information would be inappropriate, in light of the fact that certain energy assistance programs, for example, use personal identification information to identify specific customers and customer accounts.

The third principle, concerning a prohibition on unauthorized disclosure, was also acceptable to the providers and other commenters. The Commission notes that while unauthorized disclosure by the providers does not appear to have ever been a concern, the utilities are now using more agents and contractors to carry out core business functions. In some cases, individual customer information may need to be shared with the contractor or agent. Detroit Edison commented that its agreements with contractors include a non-disclosure provision. The Commission concurs with MEP’s endorsement of the CPUC rules limiting disclosure and notes that the Staff included similar language in the model privacy policy.

The fourth principle, concerning disclosure of customer information to third parties only with written customer consent, raised significant concerns for the providers. Consumers and Detroit Edison point out that customer consent should not be required for collection, use, or disclosure of customer information in the ordinary course of business. Detroit Edison commented that the need for consent could seriously hamper regular business operations.

The Commission agrees that this part of the framework was overbroad and could indeed result in significant problems for normal utility operations if applied as stated in the October 31 order. In crafting its model privacy policy, the Staff evaluated various methods used in other states for addressing the customer consent requirement. The Staff determined that a method which distinguishes information collected, used, or disclosed for primary utility purposes (for which customer consent is not required) and information collected, used or shared for secondary purposes (for which informed customer consent is required) was easy for customers to understand; it provides essential privacy protections for customer information; and it will not hinder providers in their efforts to deliver safe, reliable electric and gas service and implement other regulated programs such as low-income assistance, energy efficiency, demand management, and net metering.⁷

In the event that a provider or contractor wishes to use or disseminate customer information for secondary purposes, a related concern is whether customers should be allowed to opt in to this information disclosure or whether customers should be required to opt out. After an extensive

⁷ See, e.g., *Re Smart Grid Technologies*, California PUC Decision 11-07-056, Docket R 08-12-009, July 28, 2011; 291 PUR4th 412. See also, *In re Petition of Northern States Power Company for Approval of a Customer Data Privacy Tariff*, Docket No. E, G002/M-12-188, Minnesota Public Utilities Commission, filed March 5, 2012, for examples of this approach.

review of material on this issue⁸ the Commission finds no source that recommends an “opt out” rule for information sharing for secondary purposes. As the CDT/EFF contends (and the Commission agrees):

Notice-and-choice regimes are premised on the idea that privacy is best protected by informing customers of how their information is being collected and used and by giving them choices based upon that information. Notice and choice are important and essential values, but they are insufficient by themselves to protect privacy in real-world situations. As recently noted by a Commerce Department official, ‘[t]here are essentially no defenders anymore of the pure notice-and-choice model.’ Customers rarely read privacy notices issued by companies, largely due to the length and complexity of those policies. Even if customers do read privacy policies, most are “essentially unusable as decision-making aids,” either because they are difficult to understand or because the service itself is conditioned upon consent to their contents. This failure reflects the privacy policies themselves, not customer apathy.⁹

This led CDT/EFF to propose that for a third party that receives customer information from the utility for secondary (i.e., non-utility) purposes, disclosure to this third party “should require express, prior, written authorization, and the third party should be subject to data security requirements, limits on secondary uses and onward disclosure without consent, and other limits.”¹⁰

⁸ See, e.g., *Re Smart Grid Technologies*, and *In re Petition of Northern States*, *supra* note 7; *A Model Privacy Policy For Smart Grid Data Version 2.0*, Institute For Energy and the Environment Vermont Law School, available at: <http://www.vermontlaw.edu/Documents/Model%20Smart%20Grid%20Privacy%20Policy%20VLS%20Version%202.pdf>; 4 Colo. Code Regs. § §723-3-3026(a) and 3028 (2012); Wash. Admin. Code §480-100-153; *Guidelines for Smart Grid Cyber Security: Vol. 2, Privacy and the Smart Grid*, *supra* note 5 at 41; Comments of the Center for Democracy & Technology and the Electronic Frontier Foundation (CDT/EFF Comments), pp. 2-3, submitted to the California PUC, available at <https://www.cdt.org/files/pdfs/CDT%20and%20EFF%20DOE%20Comments.pdf>; *Proceeding on Motion of the Commission to Consider Regulatory Policies Regarding Smart Grid Systems and the Modernization of the Electric Grid*, *Smart Grid Policy Statement*, State of New York Public Service Commission, Case 10–E–0285, pp. 64-73 (August 19, 2011); and U.S. Department of Energy, *Data Access and Privacy Issues Related to Smart Grid Technologies*, p. 15 (October 5, 2010).

⁹ CDT/EFF Comments, *id.* at 4 (footnotes omitted).

¹⁰ *Id.* at 3.

The Commission further notes that it has long been the case that the Code of Conduct requires: “Customer specific consumption or billing data shall not be provided to any affiliate or other entity within the corporate structure or alternative electric supplier [AES] without prior written approval of the customer.” *See*, October 29, 2001 order in Case No. U-12134, Exhibit A, Section IV.B (emphasis supplied). While this Code of Conduct provision applies only to customer usage and billing data disclosed to utility affiliates and AESs, the Commission’s determination here merely applies the concept of prior consent to information disclosure (i.e., opt-in) to include a wider range of customer information and more potential recipients of that information.

The Commission therefore finds that informed customer consent should be required before any customer information may be used or disclosed by providers or their affiliates or contractors for secondary purposes. With respect to the means of documenting consent, the Commission agrees with FPF that electronic or recorded documentation of consent is reasonable, and that requiring written consent is unnecessarily cumbersome.

The remaining principles concerning: (1) disclosure of customer information without consent pursuant to a warrant or court order; (2) no limitation on the customer’s ability to disclose information to a third party if the customer so chooses, with the proviso that the provider bears no liability if the third party inappropriately discloses information; (3) the disclosure and use of aggregate information without customer consent; and (4) the requirement that the privacy policy be clearly written and easily available to customers did not raise any particular concerns for the providers and other commenters and were therefore incorporated into the model privacy policy.

With respect to the questions the Commission asked, which have not already been addressed in this discussion, the utilities responded that they do not sell, nor do they intend to sell customer information. The Commission notes that in the interest of transparency, this principle should be

expressed in the provider's privacy policy, with the exception (where applicable) for sale of customer information for credit collection or in the event of an asset sale or transfer.

Insofar as data retention is concerned, the Commission agrees with the providers that current record retention rules are adequate at this time. Finally, given the need to address privacy concerns in Michigan in a timely manner the Commission finds that, within 60 days of the date of this order, Consumers and Detroit Edison should submit tariffs containing their privacy policies that comport with the privacy framework set out in the October 31 order as modified by the discussion here. In addition, the Commission finds that notice and a 30-day comment period should be established for interested parties to comment on the utilities' proposed privacy policies.

The Commission emphasizes that despite the limited statutory and regulatory requirements concerning utility customer privacy, Michigan utilities have always been conscientious about protecting their customers' information, including usage information, from unauthorized access, disclosure, or use. Indeed, the Commission cannot find any instance where there has been a complaint filed concerning an unauthorized release of customer information by Consumers, Detroit Edison, or any other Commission-regulated utility. That said, the Commission recognizes that utility customers are generally unaware of, or do not have access to, internal utility policies and practices, thus, transparency about what a provider's privacy policy actually entails is an essential part of the process of implementing a reasonable and enforceable privacy framework.

Finally, the Commission encourages other regulated utilities to recognize the importance of data and personal information privacy to their customers and consider submitting a tariff concerning customer data privacy in their next rate case filings.

THEREFORE, IT IS ORDERED that:

A. Within 60 days of the date of this order, DTE Gas Company, DTE Electric Company, and Consumers Energy Company shall file in this docket proposed customer data privacy tariffs for gas and electric service.

B. DTE Gas Company, DTE Electric Company, and Consumers Energy Company shall provide notice of an opportunity to comment to their customers through a billing insert or statement on the bill referencing Case No. U-17102. The companies shall also post notice of the opportunity to comment conspicuously on their respective websites.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

John D. Quackenbush, Chairman

By its action of June 28, 2013

Orjiakor N. Isiogu, Commissioner

Mary Jo Kunkle, Executive Secretary

Greg R. White, Commissioner

CUSTOMER DATA PRIVACY

DEFINITIONS

- A. “Aggregated Data” means any Customer Usage Data or Customer Account Information from which all identifying information has been removed so that the individual data or information of a customer cannot be associated with that customer without extraordinary effort.
[Providers may opt to include “15/15 rule” here, or other method of data aggregation.]
- B. “Commission” means the Michigan Public Service Commission.
- C. “Contractor” or “Agent” means an entity or person performing a function or service under contract with or on behalf of the Company, including customer service, demand response, energy efficiency programs, payment assistance, payroll services, bill collection, or other functions related to providing electric and natural gas service. *[Providers should use the applicable terminology here.]*
- D. “Customer” means a purchaser of electricity or natural gas that is supplied or distributed by a utility for residential or nonresidential purposes.
- E. “Customer Account Information” means individually identifiable information including customer address, contact information, payment history, account number, and amount billed. Customer Account Information also includes information received by the Company from the customer for purposes of participating in regulated utility programs, including bill payment assistance, shutoff protection, renewable energy, demand-side management, load management, or energy efficiency.
- F. “Customer Usage Data” [or “Consumption Data”] means customer specific gas and electric usage data, including but not limited to ccf, Mcf, therms, dth, kW, kWh, voltage, var, or power factor, and other information that is collected from the electric or gas meter by the Company and stored in its systems. *[These are suggested definitions for the different types of customer information the utility might have for some or all customers (e.g., customer usage data, customer account information, and personal data). Providers should adjust these definitions to correspond with their own data organization methods and terminology.]*
- G. “Informed Customer Consent” means, in the case where consent is required: (1) the customer is provided with a clear statement of the data or information to be collected and allowable uses of that data or information by the party seeking consent; (2) the frequency of data or information release and the duration of time for which the consent is valid; and (3) process by which the customer may revoke consent. In no case shall silence by the customer ever be construed to mean express or implied consent to a request by the Company, its agents, or contractors. Customer consent may be documented in writing, electronically, or through recording of an oral communication.
- H. “Personal Data” or “Personally Identifiable Information” means specific pieces of information collected or known by the Company that merit special protection including the standard types of positive identification information used to establish an account. Personal Data [Personally Identifiable

Information] includes, but is not limited to, name and address in conjunction with birth date, telephone number, electronic mail address, Social Security Number, financial account numbers, driver’s license number, credit reporting information, bankruptcy or probate information, health information, network, or Internet protocol address.

[Providers might also consider using the definitions of “personal identifying information” and “personal information” set forth in MCL 445.63(q) and (r).]

I. “Primary Purpose” means the collection, use, or disclosure of information collected by the company or supplied by the customer in order to: (1) provide, bill, or collect for, regulated electric or natural gas service; (2) provide for system, grid, or operational needs; (3) provide services as required by state or federal law or as specifically authorized by an order of the Commission, or; (4) plan, implement, or evaluate, energy assistance, demand response, energy management, energy efficiency, or renewable energy programs by the Company or under contract with the Company, under contract with the Commission, or as part of a Commission-authorized program conducted by an entity under the supervision of the Commission, or pursuant to state or federal statutes governing energy assistance.

[The definition of “primary purpose” is intentionally broad to cover all regulated utility activities including programs under 2008 PA 295 and energy assistance programs.]

J. “Secondary Purpose” means any purpose that is not a Primary Purpose.

K. “Standard Usage Information” means the usage data that is made generally available by the electric or gas utility to all similarly situated customers on a regular basis, delivered by the electric or gas utility in a standard format.

L. “Third-party” means a person or entity that has no contractual relationship with the Company to perform services or act on behalf of the Company.

COLLECTION AND USE OF DATA AND INFORMATION

A. The Company collects Customer Account Information, Customer Usage Data, and Personal Data as necessary to accomplish Primary Purposes only.

B. The Company may collect and use Customer Account Information, Customer Usage Data, and Personal Data for Primary Purposes without customer consent.

C. Informed Customer Consent is necessary before collection, use, or disclosure of Customer Account Information, Customer Usage Data, or Personal Data for a Secondary Purpose.

D. The Company will not sell Customer Account Information, Customer Usage Data, or Personal Data, except in connection with sales of certain aged receivables to collection firms for purposes of removing this liability from its accounts *[Include only if applicable.]*

DISCLOSURE WITHOUT CUSTOMER CONSENT

A. The Company will disclose Customer Account Information, Customer Usage Data, or Personal Data when required by law or Commission rules. This includes law enforcement requests supported by warrants or court orders specifically naming the customers whose information is sought, and judicially enforceable subpoenas. The provision of such information will be reasonably limited to the amount authorized by law or reasonably necessary to fulfill a request compelled by law.

B. Informed Customer Consent is not required for the disclosure of customer name and address to a provider of appliance repair services in compliance with MCL 460.10a(9)(a), or to otherwise comply with the Code of Conduct.

C. The Company may disclose Customer Account Information, Customer Usage Data, or Personal Data in the context of a business transition such as an asset sale or merger to the extent permitted by law.

DISCLOSURE TO AGENTS AND CONTRACTORS

A. The Company only shares information in the smallest increment necessary for the Agent or Contractor to provide service to the Company. In some cases, the Company will only provide aggregated data to a Contractor or Agent.

B. Contracts between the Company and its Agents or Contractors specify that all Agents and Contractors are held to the same confidentiality and privacy standards as the Company, its employees, and its operations. These contracts also prohibit Agents or Contractors from using any information supplied by the Company for secondary purposes.

C. The Company requires its Agents and Contractors to implement and maintain reasonable data security procedures and practices appropriate to the private nature of the information received. These data security procedures and practices shall be designed to protect the Customer Account Information, Customer Usage Data, and Personal Data from unauthorized access, destruction, use, modification, or disclosure. The data security procedures and practices adopted by the Contactor or Agent shall meet or exceed the data privacy and security policies and procedures used by the Company to protect Customer Account Information, Customer Usage Data, and Personal Data.

D. The Company requires Agents and Contractors to return or destroy any Customer Account Information, Customer Usage Data, or Personal Data that is no longer necessary for the purpose for which it was transferred.

E. The Company maintains records of the disclosure of customer data to Agents and Contractors in accordance with Company record retention policies and Commission rules. These records include all

contracts with the Agent or Contractor and all executed non-disclosure agreements.

F. A Customer may request that his or her Customer Account Information or Customer Usage Information be released to a third party of the Customer's choice. Once the Company verifies the Customer's request, the Company is not responsible for loss, theft, alteration, or misuse of the data by third parties or customers after the information has been transferred to the customer or the Customer's designated third party. *[Note that this provision does not include the release of Personal Data or Personally Identifiable Information; as the Michigan Energy Providers point out, in the case of disclosure to a third party, the customer should always be the source of this information.]*

CUSTOMER ACCESS TO DATA

A. The Customer has a right to know what Customer Account Information, Customer Usage Data, or Personal Data the Company maintains about the Customer. The Company shall not provide information to a customer that the Company considers proprietary or used for internal Company business. The Company will make a reasonable effort to respond to requests for this information within 30 business days of being contacted by the Customer.

B. Customers have the right to share their own Customer Account Information, Customer Usage Data, or Personal Data with third parties of their choice to obtain services or products provided by those third parties. These services or products may include, but are not limited to, in-home displays, energy audits, or demand response programs. The Company provides a standard and user-friendly process for customers to request that the Company share Customer Usage Data with a third party.

C. Customers have the opportunity to request corrections or amendments to Customer Account Information or Personal Data that the Company collects, stores, uses, or distributes.

D. Fulfilling certain requests for data in accordance with the provisions this tariff is consistent with the provision of normal utility service to our customers. When the data requested is Standard Usage Information, the request will be fulfilled without charge. Some requests for information extend beyond Standard Usage Information. Fulfilling these requests requires special data processing that is not a part of normal utility service and results in expenses that would not otherwise be incurred. Such requests are fulfilled at the discretion of the Company within the parameters of this Data Privacy Tariff. The costs of fulfilling any special requests shall be borne solely by the Customer, and be based on the specifics of the data request and the associated costs of developing, processing, and transmitting the requested data.

CUSTOMER NOTICE OF PRIVACY POLICIES

Notice of the Company's privacy policies is prominently posted on the Company's website. The notice includes a customer service phone number and Internet address where customers may direct additional questions or obtain additional information regarding how to obtain customer data or more information about the Company's privacy policies and procedures. Customers receive a copy of the privacy policy upon initiating

utility service with the company. The Company shall provide a written copy of these privacy policies upon customer request.

LIMITATION OF LIABILITY

The Company and each of its directors, officers, affiliates, and employees that disclose Customer Information, Customer Usage Data, Personal Data or Aggregated Data to customers, Agents, Contractors, or Third-parties as provided in this tariff, shall not be liable or responsible for any claims for loss or damages resulting from such disclosure.