

Consumer Power Advocates

Columbia University Medical Center
Fordham University
Memorial Sloan Kettering Cancer Center
NYU Langone Medical Center

Mount Sinai Health System
New York Presbyterian Hospital
New York University

March 9, 2018

VIA ELECTRONIC FILING

Honorable Kathleen H. Burgess
Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

RE: Case 17-M-0315 – In the Matter of the Utility Energy Registry.
Case 16-M-0411 - In the Matter of Distributed System Implementation Plans.
Case 14-M-0224 - Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs.

Dear Secretary Burgess,

Consumer Power Advocates (CPA) is a coalition of not-for-profit commercial health care and educational customers in the Consolidated Edison service territory that advocates on behalf of consumer interests before the Commission, NYISO and elsewhere. CPA's members have an active interest in customer data access issues, and CPA has submitted comments to the Commission on multiple occasions regarding whether and under what conditions customer data should be disclosed by utilities to third parties.

CPA hereby submits its responsive comments in response to the *Notice Requesting Comments on Privacy Standards for Aggregated Data*, Issued December 15, 2017 ("the Notice,") as amended with respect to comment deadlines in the *Notice Extending Deadline for Submission of Reply Comments*, Issued March 1, 2018.

In its *Order on Distributed System Implementation Plan Filings*, issued on March 6, 2017, the Commission adopted a 15-by-15 privacy standard for general use by utilities to appropriately maintain the confidentiality of customer energy usage data. Under the 15-by-15 standard, aggregated customer usage data is considered sufficiently anonymous to share

publicly if (1) the aggregated group contains at least 15 individual accounts and (2) no one account represents more than 15 percent of the total load. However, based on practical experience gleaned during the development of the Utility Energy Registry (UER), further input is being solicited to assess the balance between making more aggregated data available and protecting customer privacy.

The Commission describes the UER as an “on-line platform designed to offer streamlined public access to aggregated customer load data for electric and natural gas, segmented by customer type and by municipality.¹”

In the Notice, the Commission seeks additional input regarding the appropriate balance between the benefit of making more aggregated data available and the need to maintain consumer privacy. Specifically, the Commission solicited input regarding the following

- (1) for data sets that do not pass the privacy screen at the most granular level (i.e., municipality) should the data sets be combined with other municipalities (i.e., county);
- (2) should the privacy standard be recalibrated (in general or for certain aggregation groups) to optimize the benefits of making more information available (e.g., improved local energy planning, improved targeting of clean energy products and services) while continuing to maintain adequate privacy protection;
- (3) where aggregation group does not pass the privacy screen, should the CCA Administrator, and/or municipalities, be allowed to obtain the data from utilities pursuant to a Data Security Agreement.

In this reply CPA addresses only those comments concerning item (2). We take no position regarding items (1) and (3).

CPA Supports a Two-Part Privacy Standard with a Customer Count Greater than Two

With respect to item 2, the Joint Utilities state the following:

First, the adopted privacy standard should consist of a two-part test: (1) a customer count threshold; and (2) usage percentage threshold. The two-part test is needed to protect customer privacy when either there are too few customers, or a large customer that may consider its usage

¹ / Notice at 1.

information as proprietary is included in the aggregation. Second, though the Joint Utilities are not recommending a specific two-part aggregation standard, a customer count of two should not be adopted since it provides no protection of individual customer privacy. Third, the privacy standard adopted should be used consistently for all customer data aggregations with the exception of whole-building data, which the Commission has identified as a unique use case. It should be noted that the Joint Utilities proposed a 4/50 privacy standard for aggregated whole- building data provided to building owners (or their agents) on June 7, 2017 in the DSIP Proceeding.²

CPA agrees with the JU's first and second points for the same reasons articulated by the utilities. Furthermore, although, like the JU, CPA is not here endorsing a particular privacy standard, we note that, also like the JU, CPA has also endorsed the 4/50 standard in the context of whole building data³. The 4/50 standard may also be appropriate in this broader context, but CPA reserves the right to comment further as specific standards are given further consideration.

It appears that Climate Action Associates may support the adoption of a minimum customer count threshold of 2⁴. As noted above by the JU, such a minimum fails to provide adequate privacy protection. For that reason, CPA opposes such a standard.

Data That Fails to Meet the Privacy Standard Should Not Be Disclosed to Third-Parties

The City of New York (“the City”) proposes that “there should be no privacy standard for governmental entities that will use utility usage data to progress public policy goals.”⁵ CPA agrees in principle but we are concerned that “governmental entities” is too broad a category. We agree that disclosure of unaggregated data to the City and NYSERDA, the only two such entities to request it so far, is appropriate, subject to appropriate confidentiality agreements to protect the data from disclosure under Freedom of Information laws. This does not necessarily imply that *any* governmental entity should have such unfettered access. Instead, the Commission should specifically enumerate which specific governmental entities should receive

² / Case 17-M-0315 – In the Matter of the Utility Energy Registry, *Joint Utilities Comments on Privacy Standards for Aggregated Data* at 5.

³ / Case 16-M-0411 - In the Matter of Distributed System Implementation Plan (“DSIP Proceeding”) - *Comments of Consumer Power Advocates on Privacy Standards* at 2.

⁴ / Case 17-M-0315 – In the Matter of the Utility Energy Registry, *Comments of Climate Action Associates* at 2. CPA also opposes CAA's proposal that utilities be given discretion regarding privacy standards “in response to privacy problems.”

⁵ / Case 17-M-0315 – In the Matter of the Utility Energy Registry, *Comments of the City of New York* at 2.

access following an appropriate petition and comment process⁶.

Beyond appropriate governmental entities, however, the City goes on to suggest that building owners and agents should be similarly exempted from any privacy standard:

To meet its ambitious policy goals, the State should encourage building owners to monitor and improve building energy efficiency. By erecting artificial barriers such as overly restrictive privacy standards, the Commission will negatively impact the ability of building owners to benchmark their data and improve the efficiency of their buildings' energy usage. As a matter of public policy, the Commission should encourage such efforts by making data access easy for building owners, who are the primary entities which make investments or operating decisions that can reduce building energy consumption. Thus, the Commission should grant property owners unrestricted access to granular energy usage data related to their buildings.⁷

This suggestion, at least as it regards building owners, is inconsistent with the direction being pursued in the DSIP Proceeding, where the Commission is currently considering a 4/50 privacy standard for aggregated whole-building data. To the extent that a landlord has a legitimate need for tenant usage data that does not meet a 4/50 privacy standard to comply with benchmarking or other requirements, CPA does not believe that it is unreasonable to require the landlord to obtain specific consent.

CPA is opposed to providing customer-specific usage data, or aggregated data that fails the applicable privacy standard to any non-governmental entity, whether it be a building owner, or a consultant or agent of an otherwise eligible party.

CPA objects to any governmental entity providing sensitive data to non-employees, such as contractors or consultants. While governmental parties have appropriately stated that disclosure to consultants or agents would occur only subject to a protective agreement, CPA members view this data as incredibly sensitive. We are skeptical that adequately protective agreements can or will be crafted.

Many agents, contractors and consultants are in a position to directly and inappropriately benefit from access to such data. As CPA stated recently with respect to a request by NYSERDA for similar data, “no matter how strong the non-disclosure agreement may be, once seen, such data cannot be unseen and once the “grey matter is contaminated” it

⁶ / We further note that the UER may not be the most appropriate, efficient or inexpensive manner in which to provide governmental entities with access to data from millions of customers.

⁷ / Id at 8.

often cannot be sterilized again.⁸ “ For that reason believes that customer-specific data or aggregated data that fails to pass the data privacy standard, should not be disclosed to non-governmental third parties without specific consent from the relevant customer. While this may inconvenience such parties, perhaps greatly, customers’ expectations of data privacy must take precedence.

Respectfully Submitted,

/s/

Aaron Breidenbaugh
Director of Regulatory Affairs

cc: Active Parties

⁸ / Case 14-M-0094, Proceeding on Motion of the Commission to Consider a Clean Energy Fund – Petition of NYSERDA Regarding Data and Legacy Reporting *CPA Comments on NYSERDA Data Petition* at 3.