

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

Order Instituting Rulemaking to Consider
Smart Grid Technologies Pursuant to Federal
Legislation and on the Commission's own
Motion to Actively Guide Policy in
California's Development of a Smart Grid
System.

Rulemaking No. 08-12-009

**OPENING COMMENTS OF PACIFIC BELL TELEPHONE COMPANY
D/B/A AT&T CALIFORNIA (U 1001 C) ON THE PROPOSED DECISION
ADOPTING RULES TO PROTECT THE PRIVACY AND SECURITY
OF THE ELECTRICITY USAGE DATA OF THE CUSTOMERS
OF PACIFIC GAS AND ELECTRIC COMPANY, SOUTHERN CALIFORNIA
EDISON COMPANY, AND SAN DIEGO GAS & ELECTRIC COMPANY**

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Pursuant to Article 14 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Pacific Bell Telephone Company (U 1001 C) d/b/a AT&T California ("AT&T") submits these Opening Comments on the *Proposed Decision Adopting Rules to Protect the Privacy and Security of the Electricity Usage Data of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company* mailed May 6, 2011 ("PD").

I. INTRODUCTION

The Smart Grid holds significant potential for improving our environment, increasing energy security, and reducing our energy expenditures. California will realize these benefits in large part through the help of energy management services that will evolve along with the Smart Grid itself. Consumers must have access to innovative solutions to monitor and control their homes' energy consumption. To ensure innovation in energy management services – and the energy savings they will enable – the Commission should move aggressively to foster a vibrant, open, and competitive market for these services. This entails refraining from promulgating cumbersome and granular regulations on the nascent Smart Grid market.

AT&T, of course, recognizes and appreciates the fact that consumer electricity usage data should be protected from improper disclosure. AT&T believes, however, that the regulatory mandates set forth in the PD are unnecessary and premature, and may actually stifle advances by imposing barriers to entry into this emerging market. If that happens, the Commission risks harming its goal of "reducing greenhouse gas emissions, increasing energy efficiency and demand response, expanding the use of renewable energy, and improving reliability."¹ The existing privacy rules governing the use of consumer information provide the certainty and the assurances necessary to allow companies to enter the Smart Grid market and operate as efficiently and effectively as possible while still realizing the policy goals of the Smart Grid.

¹ Order Instituting Rulemaking, p. 2 (Dec. 22, 2008).

Apart from that, the proposed privacy rules rest on uncertain jurisdictional grounds. The PD attempts to impose the regulations upon third parties via electric utility tariffs that would require participants to adhere to the proposed regulations or be excluded from this market by the Commission. This expansion of the Commission's authority over third parties conflicts with SB 1476, which is expressly limited to electrical and gas corporations. Moreover, the extension of jurisdiction over third parties is not "cognate and germane" to the Commission's regulatory mandate. There is, in short, no statutory or legal basis for broadening the Commission's jurisdiction.

Finally, in the event the Commission adopts the regulations despite these policy and jurisdictional issues, AT&T suggests modifications that are designed to avoid errors of law and fact, as well as to make the regulations more efficient.

II. DISCUSSION

A. The Commission's Decision to Adopt Granular Privacy Rules Will Have a Chilling Effect on Innovation.

However well-intentioned, regulation frequently fails to anticipate rapid technological changes and often outlives its useful purpose. Such regulation can and often does become a hindrance to innovation and investment. This is particularly so where, as here, the technology is in its infancy. There is a world of Smart Grid innovation to be realized and many of the most promising and beneficial innovations likely will take place in the area of consumer home energy management. It is therefore critical that the Commission avoid prescriptive regulations that may have the effect of suppressing advances in consumer-facing Smart Grid technologies. While no responsible company would quibble with the proposition that consumers need protection against unwanted and unauthorized use of their energy usage information, the proposed regulations in the PD are the wrong approach. Third-party innovators, many of whom likely will be companies with nationwide operations, will hesitate to participate in this market given the requirement that many of them adhere to a far-reaching California-only regulatory scheme. The better path – one that ensures consumer privacy, while fostering a competitive and innovative environment –

would be for Smart Grid applications to actively engage consumers around the issue of privacy through online tools that allow users to customize their privacy settings to their unique preferences. Many other Internet-based applications now use this mechanism, and it is well suited in the Smart Grid context as well.

Furthermore, as AT&T has commented previously, the Federal Trade Commission already has enforcement authority to ensure that companies live up to their privacy policy commitments.² Indeed, using its federal statutory authority, the FTC has been aggressively pursuing companies that have failed to protect consumer privacy.³ Companies that handle consumer data will already have privacy protections in place to protect against improper disclosure of customer electronic information; and the California Business & Professions Code already requires the prominent display of a company's privacy policy on company websites.⁴ Adding additional, state-specific privacy requirements in light of the FTC nationwide enforcement jurisdiction and companies' own privacy policies is unnecessary, duplicative and likely to slow innovation and market entry.

B. The Commission's Expansion of its Jurisdiction via Utility Tariffs is Improper.

Although the Commission's power to regulate electric and gas companies is clear, its jurisdiction over third parties is less certain. Because of this uncertainty, the PD seeks to "indirectly" regulate third parties through the use of utility tariffs that are designed to impose the same rules and regulations on third parties as those on regulated entities. Third parties who want to have locked HAN-enabled devices communicate with Smart Meters or those that receive electricity usage data directly from utilities, *must* abide by the rules, regulations, and requirements promulgated in the PD. If they do not, "the Commission can find the third party

² Joint Opening Brief of Verizon and Pacific Bell Telephone Co., pp. 3-4 (Nov. 22, 2010).

³ See Prepared Testimony of Federal Trade Commission before Senate Committee on the Judiciary, Subcommittee for Privacy, Technology and the Law, pp. 4-7 (May 10, 2011) (available at <http://www.ftc.gov/os/testimony/110510mobileprivacysenate.pdf>).

⁴ See, e.g., Cal. Bus. & Prof. Code §§ 22575-22579.

ineligible to obtain usage information pertaining to any customer from the utility.”⁵ The issue, therefore, is whether the Commission can expand the scope of its authority over third parties in this manner. An analysis of the Commission’s jurisdictional reach indicates that it cannot.

Before an unregulated entity can come within the scope of the Commission’s jurisdiction, the Commission must have a statutory mandate, or the regulation of the third party must be “cognate and germane” to the Commission’s regulation of public utilities.⁶ Regarding the statutory mandate, the PD appears to rely on the plain language of SB 1476 to justify the use of utility tariffs to bring third parties under its regulatory jurisdiction. The PD states that the statutory language of SB 1476 “leads us to conclude that the Commission has both broad powers and a legislative mandate to develop rules and regulations to protect the usage data of utility customers vis-à-vis the utility, its operational contractors, *and those with whom a utility contracts to provide energy monitoring services to customers.*”⁷ Yet, the statutory language cited by the Commission never mentions mandatory requirements on third parties who contract with utilities to provide energy monitoring services. Indeed, all of the mandatory provisions of SB 1476 apply to “electrical” or “gas” corporations exclusively.

Absent a statutory mandate, therefore, the Commission can only exercise jurisdiction over third parties if the regulation is cognate and germane to its regulation of public utilities. The PD, however, never undertakes that analysis, making any expansion of the Commission’s jurisdiction unsupportable. In any event, an examination of the California courts’ “cognate and germane” jurisprudence would reveal that the PD’s attempted jurisdictional expansion would fail judicial review.⁸

⁵ PD, p. 130 (Conclusion of Law 24).

⁶ *PG&E Corp. v. PUC* (2004), 118 Cal.App.4th 1174, 1201.

⁷ PD, p. 32 (emphasis added).

⁸ As AT&T previously noted, courts have held that the Commission may not use its authority “to regulate every person or entity that does business with public utilities.” *PG&E Corp.*, 118 Cal.App.4th at 1201. Nor may the Commission assert broad “enforcement authority” over third parties “simply because it has the power to approve certain transactions involving public utilities [and the third parties] subject to conditions.” *Id.* On the contrary, the Commission’s actions with respect to third parties must relate directly to the “PUC’s performance of its *regulatory* duties, duties which by constitutional mandate apply only to regulated utilities.” *Id.* at 1200 (emphasis in original). Here, the expansion of jurisdiction is not cognate or germane to the performance of the Commission’s *regulatory* duties.

Given the lack of a specific statutory mandate and the absence of any analysis of whether the regulation of third parties is “cognate and germane” to the Commission’s regulatory power, the imposition of utility tariffs that mandate third parties adopt the proposed regulations, and thus bring them under the Commission’s jurisdiction, is legal error.⁹

One possible way to avoid this jurisdictional problem is for the Commission to preclude regulated utilities from doing business with third parties who have received a certain number of pre-defined and credible complaints from consumers about improper data disclosures, as determined by a neutral third party. Under this proposal, the Commission would not have direct or indirect jurisdiction over third parties. Accordingly, this proposal would avoid jurisdictional uncertainties while providing Smart Grid participants with a market incentive to protect consumer data.

In this regard, AT&T is presently engaged with several other entities in a collaborative effort to establish industry-wide guidelines and meaningful accountability mechanisms for consumer privacy in connection with Smart Grid-enabled consumer energy management services. In light of this effort, and given the jurisdictional issues with the proposed decision, the Commission might consider postponing its third-party regulatory effort until the industry has had the opportunity to propose a formal alternative. We are optimistic that the result of this effort will be a rigorous privacy regime for these services of nationwide applicability, which would avoid the innovation-dampening effects of state-specific privacy regimes.

⁹ Compounding the confusion is the PD’s definition of a “covered entity.” Under the PD, a covered entity is (1) any electrical corporation, or (2) any third party that collects, stores, uses or discloses covered information related to 11 or more customers who obtain this information from an electrical corporation or through the registration of a locked device that transfers information to that third party. PD, p. 43. By including third parties in the definition of “covered entities,” the language implies that the Commission will have direct jurisdiction over certain third parties, even though the PD all but acknowledges that the only way to regulate third parties is through utility tariffs on electrical corporations. To remove this uncertainty, the Commission should eliminate any references to a “third party” in the definition of a “covered entity.”

C. Should the Commission Decide to Adopt Regulations, Several Provisions Should Be Modified to Make Them More Consistent with Other Regulations and Relevant Statutes.

Given the policy and jurisdictional issues discussed above, the Commission should exercise restraint in promulgating regulations at this time. Should the Commission nevertheless decide to adopt the proposed regulations, AT&T suggests the following modifications, which are designed to avoid confusion and bring the regulations into compliance with existing law.

1. The PD's Definition of "Primary Purpose" Will Inhibit Competition and Undermine the Promise of Smart Grid Technology.

"Primary purposes" are defined as information that is used to "implement demand response, energy management, or energy efficiency programs *operated by, or on behalf of and under contract with, an electrical or gas corporation, electrical service provider, or community choice aggregator.*"¹⁰ A secondary purpose is any purpose that is not a primary purpose. By definition, therefore, all Smart Grid participants that are not operating "by, or on behalf of and under contract with" a regulated electrical corporation is engaged in a "secondary purpose," even if the participants are offering energy management services. The distinction is significant because any company engaged in a "secondary purpose" must abide by several onerous notification and disclosure requirements that entities that provide "primary purposes" do not. Thus, there is a built-in incentive in the proposed regulations for parties who want to avoid these notice and disclosure requirements to contract with electric companies. This, in turn, gives electric companies leverage when negotiating contracts and allows them to operate as gatekeepers to this market. As a result, innovative companies may be dissuaded from entering this space.

To avoid this, the Commission should consider amending the definition of "primary

¹⁰ *Id.* at 107 (Finding of Fact 14) (emphasis added).

purpose” to apply more broadly to energy efficiency and management efforts regardless of who implements the program. The definition of a “primary purpose” would be modified in part to read as follows:

implement demand response, energy management, or energy efficiency programs ~~operated by, or on behalf of and under contract with, an electrical or gas corporation, electric service provider, or community choice aggregator.~~

This change would also amplify the PD’s finding that “[c]onsumers may use their usage data as they wish.”¹¹ After all, the Commission’s preeminent concern seems to be preventing entities from using a consumer’s energy usage information for a purpose that the consumer did not initially intend. Consumers who have signed up for energy management services with non-utility providers can safely be presumed to have consented to having their information used to provide the energy management services for which they have contracted with that provider. There is no need for an additional cumbersome approval process that would place an undue burden on the relationship between these consumers and the home energy management service providers which they have retained.

¹¹ *Id.* at 106 (Finding of Fact 8).

2. The PD's Requirement that Covered Entities Repeatedly Inform Customers of their Privacy Rights Will Frustrate the Purpose of the Privacy Rules.

The PD instructs covered entities to (1) inform customers of their privacy rights twice a year; and (2) to “include a link to their notice and privacy policy in all electronic correspondence to customers.”¹² The requirements are superfluous. Covered entities are already required to inform customers of their privacy rights when confirming a new customer account.¹³ Also, California law already requires businesses to “conspicuously post its privacy policy on its Web site.” Cal. Bus. & Prof. Code §§ 22575-22579. In light of this, there is no need to send privacy notices to customers twice a year, or link to them in every email communication. A rule requiring links to the privacy policy in every single email to a customer has the potential to dilute the import of that policy – particularly if, as is likely with home energy management services, regular communications and service notifications are provided by email. Indeed, the PD recognizes the dangers of inundating customers with privacy policies by finding that multiple privacy policies may confuse customers.¹⁴

Accordingly, AT&T recommends that proposed regulation 2(b) read:

(b) When Provided. Covered entities shall provide written or electronic notice when confirming a new customer account ~~and at least twice a year informing customers how they may obtain a copy of the covered entity's privacy policy regarding the collection, storage, use, and disclosure of covered information,~~ and shall provide conspicuous posting of the notice and privacy policy or link to the notice and privacy policy on the home page of their website, ~~and shall include a link to their notice and privacy policy in all electronic correspondence to customers.~~

¹² *Id.* at 48.

¹³ *Id.*

¹⁴ *Id.* at 47.

3. The PD’s Requirement that Covered Entities Provide the “Periods of Time that Covered Information is Retained” Has the Potential to Conflict with Other Provisions.

The privacy notice that covered entities are required to provide to consumers must include the “periods of time that covered information is retained by the covered entity.”¹⁵ The words “periods of time” imply a specific time period should be set forth in a notice – e.g., “six months,” “two years.” Requiring companies to set forth a strict timeline for retention of electric usage data appears to conflict with the proposed data minimization rules that require a covered entity to retain data for as long as is “reasonably necessary.”¹⁶ To avoid confusion, and to bring the notice requirement into conformity with the data minimization rules, this section should be amended to read as follows:

3. PURPOSE SPECIFICATION

The notice required under section 2 shall provide—

(a) an explicit description of—

(1) each category of covered information collected, used, stored or disclosed by the covered entity, and, for each category of covered information, the reasonably specific purposes for which it will be collected, stored, used, or disclosed, and

(2) each category of covered information that is disclosed to third parties, and, for each such category, (i) the purposes for which it is disclosed, and (ii) the number and categories of third parties to which it is disclosed;

(b) *that the covered information will be retained for as long as reasonably necessary to accomplish an agreed-upon purpose.* ~~the periods of time that covered information is retained by the covered entity~~

¹⁵ *Id.* at 53.

¹⁶ *Id.* at 60.

4. The Subpoena Provisions are Unnecessary and in any Event Conflict with CCP § 1985.3.

Under the proposed regulations, covered entities are required to inform customers of any civil subpoena seeking covered information.¹⁷ This requirement seems overly cautious and burdensome. After all, even custodians of information much more sensitive than a consumer's electricity usage data – namely, custodians of medical and financial information – are not required to notify a customer of a subpoena seeking that information. Instead, under section 1985.3(b) of the California Code of Civil Procedure, the burden is on the subpoenaing party – not the entity that received the subpoena – to inform a consumer of the request for personal records. Section 1985.3(b) reads, in relevant part, that: “[p]rior to the date called for in the subpoena *duces tecum* for the production of personal records, the subpoenaing party shall serve or cause to be served on the consumer whose records are being sought a copy of the subpoena” any supporting affidavits, as well as certain other materials. There is simply no need to foist a notification obligation on covered entities that exceeds in scope the requirements of section 1985.3.

Should the Commission, however, decide to maintain this requirement, AT&T requests that there be a carve-out for entities that are identified as “witnesses” under section 1985.3. The modification is necessary to avoid the specter of a conflict between the proposed regulations and Section 1985.3. Again, section 1985.3 requires the subpoenaing party, not the “witness” that receives the subpoena, to notify the customer. AT&T proposes the regulation, if it is to be maintained, to read as follows:

¹⁷ *Id.* at 59.

(c) Disclosure Pursuant to Legal Process.

(1) Except as otherwise provided in this rule or expressly authorized by state or federal law or by order of the Commission, a covered entity shall not disclose covered information except pursuant to a warrant or other court order naming with specificity the customers whose information is sought. Unless otherwise directed by a court, law, or order of the Commission, covered entities shall treat requests for real time access to covered information as wiretaps, requiring approval under the federal or state wiretap law as necessary.

(2) Unless otherwise prohibited by court order, law, or order of the Commission, a covered entity, upon receipt of a subpoena for disclosure of covered information pursuant to legal process, shall, prior to complying, notify the customer in writing and allow the customer 7 days to appear and contest the claim of the person or entity seeking disclosure. *Notwithstanding the foregoing, if the covered entity is a “witness,” as defined by Section 1985.3(a)(1) of the California Code of Civil Procedure, then this requirement shall not apply.*

5. The Requirement that Covered Entities Obtain Written Authorization for Each Secondary Purpose is Burdensome and Inefficient.

The PD requires that covered entities that use or disclose covered information for any secondary purpose must first obtain “express, written authorization for each such purpose.”¹⁸ As AT&T noted previously, these authorization requirements are too prescriptive and unnecessarily burdensome to the consumer.¹⁹ This rigid approach also precludes a system that would allow consumers to set their desired level of privacy protection through online tools, as commonly occurs with other Internet services. A more efficient way of obtaining consumer consent for secondary purposes is to require customers to provide authorization reasonably specific to a general secondary purpose. Such authorization should be written or electronic, since as the Commission points out, “the growing use of electronic transactions are reasonable in

¹⁸ *Id.* at 76.

¹⁹ AT&T Reply Comments, p. 1-2 (Nov. 8, 2010).

light of the increasing importance of electronic transactions throughout the economy.”²⁰ As

such, AT&T recommends modifying the relevant section as follows:

(d) **Secondary Purposes.** No covered entity shall use or disclose covered information for any secondary purpose without obtaining the customer’s prior, express, written *or electronic* authorization ~~for each such purpose.~~ This authorization is not required when information is—

(1) provided pursuant to a legal process as described in 4(c) above;

(2) provided in situations of imminent threat to life or property as described in 4(d) above; or

(3) authorized by the Commission pursuant to its jurisdiction and control.

(e) **Customer Authorization.**

(1) **Authorization.** *Customers must provide written or electronic authorization that is reasonably specific to any secondary purpose(s). Separate authorization by each customer must be obtained for each secondary purpose.*

6. AT&T Supports the PD’s Call for PG&E, SCE, and SDG&E to Collaborate on a Common Interface, but Would Like that Call Broadened.

AT&T applauds the PD’s request that “PG&E, SCE, and SDG&E should collaborate in order to ensure that the pilot studies work towards providing a common interface for the devices of customers and third parties.”²¹ AT&T requests that the Commission take this recommendation one step further and require these utilities to work towards a common interface that tracks industry-wide standard-setting efforts that are not unique to California. To the extent this requires the utilities to cooperate with their smart meter vendors, the PD should clarify that they do so.

²⁰ PD, p. 47.

²¹ *Id.* at 103.

AT&T's Proposed Changes to Findings of Fact and Conclusions of Law

R.08-12-009 – Proposed Decision

Findings of Fact

1. The Department of Homeland Security developed a framework for information systems affecting national security called Fair Information Practice (FIP) principles. The framework includes eight principles: (1) Transparency, (2) Individual Participation, (3) Purpose Specification, (4) Data Minimization, (5) Use Limitation, (6) Data Quality and Integrity, (7) Security, and (8) Accountability and Auditing.
2. ~~The FIP principles are consistent with emerging national privacy and security principles recommended by the Department of Homeland Security.~~
3. The FIP principles offer a practical tool for developing rules to protect the privacy and security of electricity usage data.
4. The principle of data minimization will promote the security of data.
5. Data quality and integrity is critical to the rendering of accurate and reasonable bills.
6. It is reasonable to require PG&E, SCE, and SDG&E to adopt policies applying to themselves and those with whom they contract in the provision of operational services that comply with SB 1476 and the privacy rules adopted in this decision.
7. It is reasonable to exempt from the privacy and security requirements in this decision third parties obtaining information on the usage of ten or less households because failure to do so would complicate situations where a family member or friend takes care of the affairs of a small number of other people.

AT&T's Proposed Changes to Findings of Fact and Conclusions of Law

8. It is reasonable to exempt consumers from privacy and security requirements in this decision that apply to third parties obtaining usage data. Consumers may use their usage data as they wish.

9. ~~It is reasonable to require third parties who receive consumer usage information from the electric corporation via the internet (“back-haul”) or from the Smart Meter through a “locked” HAN-enabled device that transmits usage data to the third party to comply with the privacy and security requirements adopted in this decision.~~

10. It is reasonable to define a customer, for the purposes of these rules, as any entity receiving retail generation, distribution or transmission service from an investor-owned electric utility.

11. It is reasonable to open another phase of this proceeding to determine whether the rules and policies adopted in this decision should also apply to gas corporations, community choice aggregators, electric service providers and electric corporations other than PG&E, SCE, and SDG&E.

12. It is reasonable to define as “covered information” any electrical usage information obtained through the use of the capabilities of Advanced Metering Infrastructure when associated with any information that can reasonably be used to identify a customer, except that covered information does not include usage information from which identifying information has been removed such that a customer cannot reasonably be identified or re-identified.

13. It is reasonable to adopt different rules depending on the purpose for the collection of the usage information.

AT&T's Proposed Changes to Findings of Fact and Conclusions of Law

14. It is reasonable to define as “primary purposes” information that is used to:
 - (1) provide or bill for electrical power,
 - (2) fulfill other operational needs of the electrical system or grid,
 - (3) provide services as required by state or federal law or specifically authorized by an order of the Commission, or
 - (4) implement demand response, energy management, or energy efficiency programs ~~operated by, or on behalf of and under contract with, an electrical or gas corporation, electric service provider, or community choice aggregator.~~
15. It is reasonable to define as a “secondary purpose” any purpose that is not a primary purpose.
16. Electronic transactions are growing in importance throughout the economy.
17. It is reasonable to require covered entities to provide information on their privacy policy when confirming a new customer account or new customer relationship.
18. It is not reasonable to require that a covered entity use a title for the name of the privacy document that is specified by regulation.
19. It is reasonable to require that privacy policies be written so that the policies are “reasonably understandable.”
20. It is reasonable for a covered entity to provide customers with access to prior versions of privacy policies in the event that a customer desires such access.

AT&T's Proposed Changes to Findings of Fact and Conclusions of Law

21. It is reasonable to require covered entities to ensure the transparency of their privacy policies by providing customers with notice that meet the following requirements:

2. TRANSPARENCY (NOTICE)

- (a) **Generally.** Covered entities shall provide customers with meaningful, clear, accurate, specific, and comprehensive notice regarding the collection, storage, use, and disclosure of covered information.
- (b) **When Provided.** Covered entities shall provide written or electronic notice when confirming a new customer account ~~and at least twice a year informing customers how they may obtain a copy of the covered entity's privacy policy regarding the collection, storage, use, and disclosure of covered information,~~ and shall provide conspicuous posting of the notice and privacy policy or link to the notice and privacy policy on the home page of their website, ~~and shall include a link to their notice and privacy policy in all electronic correspondence to customers.~~
- (c) **Form.** The notice shall be labeled to make clear that it is a privacy notice and the notice shall communicate where a consumer may find policies affecting the collection, storage, use and disclosure of energy usage information and shall—
 - (1) be written in easily understandable language, and
 - (2) be no longer than is necessary to convey the requisite information.
- (d) **Content.** The notice and the posted privacy policy shall state clearly—
 - (1) the identity of the covered entity,
 - (2) the effective date of the notice or posted privacy policy,
 - (3) the covered entity's process for altering the notice or posted privacy policy, including how the customer will be informed of any alterations, and where prior versions will be made available to customers, and
 - (4) the title and contact information, including email address, postal address, and telephone number, of an official at the covered entity who can assist the

AT&T's Proposed Changes to Findings of Fact and Conclusions of Law

customer with privacy questions, concerns, or complaints regarding the collection, storage, use, or distribution of covered information.

22. Because of the large and changing number of companies that receive access to information concerning consumers when assisting the utility in its operations, because the Commission can obtain the identities of all companies receiving information for a utility, and because the Commission requires utilities to ensure that companies supporting utilities in utility operations follow the same rules as the utility, it is unreasonable to require the disclosure of the identities of all companies receiving information from the utility.

23. Providing consumers with information on the categories of customers receiving information from a covered entity provides sufficient information to customers to enable them to understand the potential uses of their information.

24. It is reasonable to require utilities to ensure that companies supporting utilities in utility operations follow the same rules as the utility and to ensure that they cannot use information pertaining to a customer for any purpose other than the purpose for which the utility had contracted their services.

25. It is reasonable to adopt further rules pertaining to disclosure of the specific purposes for which the information is collected as follows:

3. PURPOSE SPECIFICATION

The notice required under section 2 shall provide—

(a) an explicit description of—

(1) each category of covered information collected, used, stored or disclosed by the covered entity, and, for each category of covered information, the reasonably specific purposes for which it will be collected, stored, used, or disclosed, and

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- (2) each category of covered information that is disclosed to third parties, and, for each such category, (i) the purposes for which it is disclosed, and (ii) the number and categories of third parties to which it is disclosed;
- (b) that the covered information will be retained for as long as reasonably necessary to accomplish an agreed-upon purpose. ~~the periods of time that covered information is retained by the covered entity;~~
- (c) a description of—
- (1) the means by which customers may view, inquire about, or dispute their covered information, and
- (2) the means, if any, by which customers may limit the collection, use, storage or disclosure of covered information and the consequences to customers if they exercise such limits.
26. It is not reasonable to require the advance notice of a request by an authority for access to data held by a covered entity in all circumstances.
27. It is reasonable to require a report from covered entities on disclosures of covered information made pursuant to legal process when the Commission requests the preparation of such a report.
28. The following rules which provide individuals with access and control of their covered information are reasonable and promote the Fair Information Practice principle of individual participation.

4. INDIVIDUAL PARTICIPATION (ACCESS AND CONTROL)

- (a) **Access.** Covered entities shall provide to customers upon request convenient and secure access to their covered information in an easily readable format that is at a level no less detailed than that at which the covered entity discloses the data to third parties.
- (b) **Control.** Covered entities shall provide customers with convenient mechanisms for—

AT&T's Proposed Changes to Findings of Fact and Conclusions of Law

(1) granting and revoking authorization for secondary uses of covered information,

(2) disputing the accuracy or completeness of covered information that the covered entity is storing or distributing for any primary or secondary purpose, and

(3) requesting corrections or amendments to covered information that the covered entity is collecting, storing, using, or distributing for any primary or secondary purpose.

(c) **Disclosure Pursuant to Legal Process.**

(1) Except as otherwise provided in this rule or expressly authorized by state or federal law or by order of the Commission, a covered entity shall not disclose covered information except pursuant to a warrant or other court order naming with specificity the customers whose information is sought. Unless otherwise directed by a court, law, or order of the Commission, covered entities shall treat requests for real time access to covered information as wiretaps, requiring approval under the federal or state wiretap law as necessary.

(2) Unless otherwise prohibited by court order, law, or order of the Commission, a covered entity, upon receipt of a subpoena for disclosure of covered information pursuant to legal process, shall, prior to complying, notify the customer in writing and allow the customer 7 days to appear and contest the claim of the person or entity seeking disclosure.

Notwithstanding the foregoing, if the covered entity is a "witness" as defined by Section 1985.3(a)(1) of the California Code of Civil Procedure, then this requirement shall not apply.

(3) Nothing in this rule prevents a person or entity seeking covered information from demanding such information from the customer under any applicable legal procedure or authority.

(4) Nothing in this section prohibits a covered entity from disclosing covered information with the consent of the customer, where the consent is express, in written or electronic form, and specific to the purpose and to the person or entity seeking the information.

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(5) Nothing in this rule prevents a covered entity from disclosing, in response to a subpoena, the name, address and other contact information regarding a customer.

(6) Upon request of the Commission, covered entities shall report to the Commission on disclosures of covered information made pursuant to legal process. The Commission may make such reports publicly available without identifying the affected customers, unless making such reports public is prohibited by state or federal law or by order of the Commission.

(d) **Disclosure of Information in Situations of Imminent Threat to Life or Property.** These rules concerning access, control and disclosure do not apply to information provided to emergency responders in situations involving an imminent threat to life or property.

29. Data minimization promotes privacy and security by limiting the amount of personal data collected and the amount that must be secured and protected.
30. It is reasonable to minimize the amount of personal data collected in order to promote the privacy and security of data.
31. Adopting a principle of data minimization will be a new approach in the regulation of electric utilities.
32. The data historically collected by electric utilities and the Commission most commonly concerned costs of providing electric service, the demand for electric service, billing data and company revenues.
33. A principle of data minimization can serve as a guide for the revision and development of other regulations pertaining to the collection and retention of information.
34. There is a tension between a principle of data minimization and the Commission's need for data to exercise effective oversight of utility operations and programs.

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35. It is appropriate to permit the collection of data that is reasonably necessary and for as long as is reasonably necessary.
36. The Commission creates data collection and retention requirements as part of its regulatory program. These requirements carry Commission authorization for the collection and retention of data.
37. It is reasonable to set a time period for the retention of data that is not open-ended.
38. Data minimization is a “best practice” in a strategy to protect and secure the usage data of electric utility customers.
39. It is reasonable to adopt the following rules that apply to covered entities to encourage the protection of the privacy and security of usage data through a strategy of data minimization.

5. DATA MINIMIZATION

(a) **Generally.** Covered entities shall collect, store, use, and disclose only as much covered information as is reasonably necessary or as authorized by the Commission to accomplish a specific primary purpose identified in the notice required under section 2 or for a specific secondary purpose authorized by the customer.

(b) **Data Retention.** Covered entities shall maintain covered information only for as long as reasonably necessary or as authorized by the Commission to accomplish a specific primary purpose identified in the notice required under section 2 or for a specific secondary purpose authorized by the customer.

(c) **Data Disclosure.** Covered entities shall not disclose to any third party more covered information than is reasonably necessary or as authorized by the Commission to carry out on behalf of the covered entity a specific primary purpose identified in the notice required under section 2 or for a specific secondary purpose authorized by the customer.

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40. It is reasonable for an electrical corporation to collect, store and use covered information for primary purposes, as defined above, on the condition that they follow the restrictions found reasonable in Finding of Fact 51.

41. It is reasonable to permit other covered entities to collect, store and use covered information when they have the prior consent of a customer, on the condition that they follow the restrictions found reasonable in Finding of Fact 51.

42. It is reasonable to require covered entities to ensure compliance of contractors with the privacy and security policies adopted herein through the “chain of responsibility” concept, whereby the responsible entity terminates business with contracts who fail to follow the privacy and security policies adopted in this decision.

43. It is reasonable that tariffs that make customer usage information available to authorized third parties contain a provision that enables a residential customer to withdraw authorization at any time.

44. It is not in the public interest for a customer's authorization of the disclosure of information to a third party to automatically expire after two years.

45. It is reasonable to require a covered entity receiving usage information for a non-primary purpose to provide a residential customer with an annual reminder of the prior authorization and an opportunity to opt out.

46. It is reasonable to modify the disclosure rules in order to ensure that the rules do not upset contractual arrangements between non-residential customers and third parties.

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47. It is reasonable to permit non-residential customers to authorize the disclosure to a third party of usage data pursuant to the terms of any commercial contract of finite duration.
48. It is not reasonable to prohibit customers from authorizing the disclosure of usage data for secondary purposes because to do so would unreasonably abridge a customer's control of his usage data.
49. Determining which activities should be "eligible" secondary purposes would be burdensome.
50. Requiring regulatory reviews to determine which secondary purposes would be "eligible" to obtain usage data from customers (when authorized) could have a chilling effect on product and service innovation in California.
51. It is reasonable to adopt the following rules that apply to covered entities to limit the use and disclosure of consumer usage information:

6. USE AND DISCLOSURE LIMITATION

(a) **Generally.** Covered information shall be used solely for the purposes specified by the covered entity in accordance with section 3.

(b) **Primary Purposes.** ~~An electrical corporation~~ Covered entities may collect, store and use covered information for primary purposes without obtaining any additional customer consent. ~~Other covered entities may collect, store and use covered information only with prior customer consent, except as otherwise provided here.~~

(c) **Disclosures to Third Parties.**

(1) **Initial Disclosure by a Covered Entity.** A covered entity may disclose covered information to a third party without customer consent when explicitly ordered to do so by the Commission or for a primary purpose being carried out under contract with and on behalf of the entity disclosing

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the data, provided that the covered entity disclosing the data shall, by contract, require the third party to agree to collect, store, use, and disclose the covered information under policies, practices and notification requirements no less protective than those under which the covered entity itself operates as required under this rule and, if the information is being disclosed for demand response, energy management or energy efficiency purposes, the disclosing entity permits customers to opt out of such disclosure consistent with applicable program terms and conditions, unless otherwise directed by the Commission.

(2) **Subsequent Disclosures.** Any entity that receives covered information derived initially from a covered entity may disclose such covered information to another entity without customer consent for a primary purpose, provided that the entity disclosing the covered information shall, by contract, require the entity receiving the covered information to use the covered information only for such primary purpose and to agree to store, use, and disclose the covered information under policies, practices and notification requirements no less protective than those under which the covered entity from which the covered information was initially derived operates as required by this rule.

(3) **Terminating Disclosures to Entities Failing to Comply With Their Privacy Assurances.** When a covered entity discloses covered information to a third party under this subsection 6(c), it shall specify by contract that it shall be considered a material breach if the third party engages in a pattern or practice of storing, using or disclosing the covered information in violation of the third party's contractual obligations to handle the covered information under policies no less protective than those under which the covered entity from which the covered information was initially derived operates in compliance with this rule. If a covered entity disclosing covered information finds that a third party to which it disclosed covered information is engaged in a pattern or practice of storing, using or disclosing covered information in violation of the third party's contractual obligations related to handling covered information, the disclosing entity shall promptly cease disclosing covered information to such third party.

(d) **Secondary Purposes.** No covered entity shall use or disclose covered information for any secondary purpose without obtaining the customer's prior, express, written or electronic authorization ~~for each such purpose~~. This authorization is not required when information is—

(1) provided pursuant to a legal process as described in 4(c) above;

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(2) provided in situations of imminent threat to life or property as described in 4(d) above; or

(3) authorized by the Commission pursuant to its jurisdiction and control.

(e) Customer Authorization.

(1) **Authorization.** Customers must provide written or electronic authorization that is reasonably specific to any secondary purpose(s). ~~Separate authorization by each customer must be obtained for each secondary purpose.~~

(2) **Revocation.** Customers have the right to revoke, at any time, any previously granted authorization. Non-residential customers shall have the same right to revoke, unless specified otherwise in a contract of finite duration.

(3) **Opportunity to Revoke.** The consent of a residential customer shall continue without expiration, but an entity receiving information pursuant to a residential customer's authorization shall contact the customer, at least annually, to inform the customer of the authorization granted and to provide an opportunity for revocation. The consent of a non-residential customer shall continue in the same way, unless specified otherwise in a contract of finite duration, but an entity receiving information pursuant to a non-residential customer's authorization shall contact the customer, to inform the customer of the authorization granted and to provide an opportunity for revocation either upon the termination of the contract, or annually if there is no contract..

(f) **Parity.** Covered entities shall permit customers to cancel authorization for any secondary purpose of their covered information by the same mechanism initially used to grant authorization.

(g) **Availability of Aggregated Usage Data.** Covered entities shall permit the use of aggregated usage data that is removed of all personally-identifiable information to be used for analysis, reporting or program management provided that the release of that data does not disclose or reveal specific customer information because of the size of the group, rate classification, or nature of the information.

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52. Because the usage data collected by smart meters expands the type and amount of information, it is reasonable to adopt rules to require data quality and integrity.
53. Because covered entities must notify customers of security breaches, there is no need for the covered entities to notify the Commission each time a security breach occurs.
54. Because of the Commission's responsibility to exercise regulatory oversight concerning the security of usage data, it is reasonable to require all covered electrical corporations to provide the Commission with a report on security breaches annually or upon a breach affecting more than 1,000 customers.
55. It is reasonable to adopt the following rules to protect data quality and integrity and to provide for data security:

7. DATA QUALITY AND INTEGRITY

Covered entities shall ensure that covered information they collect, store, use, and disclose is reasonably accurate and complete or otherwise compliant with applicable rules and tariffs regarding the quality of energy usage data.

8. DATA SECURITY

(a) **Generally.** Covered entities shall implement reasonable administrative, technical, and physical safeguards to protect covered information from unauthorized access, destruction, use, modification, or disclosure.

(b) **Notification of Breach.** A covered third party shall notify the covered electrical corporation that is the source of the covered data within one week of the detection of a breach. Upon a breach affecting 1,000 or more customers, whether by a covered electrical corporation or by a covered third party, the covered electrical corporation shall notify the Commission's Executive Director of security breaches of covered information within two weeks of the detection of a breach or within one week of notification by a covered third party of such a breach. Upon request by the Commission, electrical corporations shall notify the Commission's Executive Director of security breaches of covered information. In addition,

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electrical corporations shall file an annual report with the Commission's Executive Director, commencing with the calendar year 2012, that is due within 120 days of the end of the calendar year and notifies the Commission of all security breaches within the calendar year affecting covered information, whether by the covered electrical corporation or by a third party.

56. Under the rules adopted in this decision, no covered entity will obtain access to an individual's consumption data without authorization from the individual except for that information used to meet a primary purpose, as defined in this decision.

57. ~~As a tariff condition for obtaining access to usage data for a non-primary purpose, an entity must agree to comply with the adopted privacy rules.~~

58. Because of the privacy protections adopted in this decision, because a residential customer may withdraw access to his or her consumption data at any time, and because the Commission can find a third party ineligible to receive data either via tariff or by refusing to interconnect a device that automatically transfers usage data to the third party, it is not necessary to create a registration process to certify third parties as eligible to receive usage data.

59. It is not necessary for the Commission to regulate a customer's use of his or her own usage data.

60. It would be burdensome and impractical to regulate a customer's use of his or her own usage data.

61. Electric utilities can provide consumers receiving usage data either over the internet (the back haul) or through the Smart Meter with information explaining the importance of protecting that data.

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62. The following rules to promote the accountability of covered entities for compliance with the requirements adopted in this decision and to permit the auditing of compliance are reasonable:

9. ACCOUNTABILITY AND AUDITING

(a) **Generally.** Covered entities shall be accountable for complying with the requirements herein, and must make available to the Commission upon request or audit—

- (1) the privacy notices that they provide to customers,
- (2) their internal privacy and data security policies,
- (3) the identities of agents, contractors and other third parties to which they disclose covered information, the purposes for which that information is disclosed, indicating for each category of disclosure whether it is for a primary purpose or a secondary purpose, and
- (4) copies of any secondary-use authorization forms by which the covered party secures customer authorization for secondary uses of covered data.

(b) **Customer Complaints.** Covered entities shall provide customers with a process for reasonable access to covered information, for correction of inaccurate covered information, and for addressing customer complaints regarding covered information under these rules.

(c) **Training.** Covered entities shall provide reasonable training to all employees and contractors who use, store or process covered information.

(d) **Audits.** Each electrical corporation shall conduct an independent audit of its data privacy and security practices in conjunction with general rate case proceedings following 2012 and at other times as required by order of the Commission. The audit shall monitor compliance with data privacy and security commitments, and the electrical corporation shall report the findings to the Commission as part of the utility's general rate case filing.

(e) **Reporting Requirements.** On an annual basis, each electrical corporation shall disclose to the Commission as part of an annual report required by Rule 8.b, the following information:

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(1) the number of authorized third parties accessing covered information,

(2) the number of non-compliances with this rule or with contractual provisions required by this rule experienced by the utility, and the number of customers affected by each non-compliance and a detailed description of each noncompliance.

63. The record in this proceeding concerning privacy is substantial.
64. Additional workshops to develop privacy policies at this time are not necessary.
65. Tier 3 advice letter filings, comments and Commission review can lead to adoption of the detailed procedures and forms needed to operationalize the privacy rules adopted in this decision.
66. PG&E and SCE have made substantial progress in making price information available to consumers over the internet.
67. It is reasonable to require PG&E, SCE, and SDG&E to provide approximate price information to customers.
68. PG&E, SCE, and SDG&E should provide actionable pricing data to consumers.
69. It is reasonable to require that PG&E, SCE, and SDG&E offer to customers – at a minimum – bill-to-date, bill forecast, projected month-end tiered rate, a rate calculator, and notifications to ratepayers, if desired, when the customers cross rate tiers.
70. It is reasonable for PG&E, SCE, and SDG&E to provide customers with an “all in” price that the customers pay for electricity.

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71. It is reasonable to require PG&E, SCE, and SDG&E each to file a Tier 3 advice letter within 90 days of the mailing of this decision to bring policies, practices and tariffs into conformity with the rules adopted in Attachment D.

72. It is reasonable to require PG&E, SCE, and SDG&E each to file a Tier 3 advice letter within six months of the mailing of this decision to provide pricing, usage and cost data, as specified herein, to customers via an online service offered by the utility.

73. The provision of price information in real-time or near real-time will be most useful following the deployment of HAN-enabled devices.

74. The provision of price information in real-time or near real-time will be most useful to consumers if the Commission adopts real-time-prices or critical peak pricing tariffs.

75. The complexity of current tariff schedules makes it difficult to determine the real-time or near real-time price charged for electricity.

76. Since the HAN is not yet activated, it is not reasonable to order the provision of price information in real-time or near real-time at this time.

77. SDG&E has provided a customer's usage data to Google for presentation to the consumer when the consumer has authorized this action.

78. It is reasonable to require SCE and PG&E to provide access to a consumer's usage data to an authorized third party at this time.

79. SDG&E obtained Commission approval to provide a customer's usage data to an authorized third party via a Tier 3 advice letter.

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80. It is reasonable to order third-party access to usage data when authorized by the customer.

81. It is reasonable to require PG&E, SCE, and SDG&E to file a Tier 3 advice letter within six months of the mailing of this decision to provide third-party access to usage data consistent with the privacy rules adopted in this decision. It is reasonable to require that the advice letters of PG&E and SCE propose a process to offer third-parties access to customer usage data, when authorized, in a matter consistent with the privacy and security policies contained in Attachment D. It is reasonable to require the advice letter of SDG&E to show that the third-party access to customer usage data that it now provides is done in a manner consistent with the privacy and security policies adopted in Attachment D.

82. It is reasonable to require that PG&E, SCE, and SDG&E each commence a pilot study that offers price information to customers in real-time or near-realtime.

83. The usage data provided by a Smart Meter to a HAN-enabled device is very granular and can provide information that discloses a household's use of appliances and daily habits.

84. Many of the benefits of a Smart Meter arise from establishing a home area network that has access to the granular data produced by the Smart Meters.

85. It is reasonable to order SCE, SDG&E, and PG&E to commence pilot studies within six months of the mailing of this decision that permits HAN enabled devices to be connected directly with the Smart Meters.

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86. It is reasonable to require PG&E, SCE, and SDG&E to coordinate with the California ISO to determine an effective and inexpensive way to make wholesale pricing data available to those California customers who desire this information.

Conclusions of Law

1. SB 1476 (Chapter 497, Statutes of 2010) clarified Commission responsibility and authority to protect the privacy and security of customer usage data arising from Smart Meters.
2. ~~The FIP principles of Transparency, Individual Participation, Purpose Specification, Use Limitation and Data Security can be linked to the provisions of SB 1468 and the Pub. Util. Code as detailed herein.~~
3. ~~The FIP principles are consistent with SB 1476 and other California statutes.~~
4. Using the FIP principles as guides for developing California policies and regulations that aim to protect the privacy and security of customer data is reasonable.
5. ~~SB 1476 provides guidance and authority to the Commission to protect the privacy of energy consumption data in the possession of utilities or in the possession of third parties responsible for system, grid, or operational needs, or energy efficiency programs.~~
6. ~~Tariffs can require compliance with privacy and security provisions as a condition for permitting a HAN-enabled device to communicate directly with a Smart Meter.~~
7. ~~In situations where a HAN-enabled device is “locked” to a third party and automatically forwards customer usage data to that third party and no other, it is consistent with California law and policy to require a condition for access to the Smart Meter that the customer agrees to the data transfer and to the third party’s proposed uses~~

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~~of the data and that the third party demonstrate compliance with Commission requirements for protecting customer data and customer privacy.~~

8. ~~Requiring that third parties protect customer data and privacy as conditions of the tariff that offers third parties, with customer approval, access to customer usage data is consistent with the intent and language of SB 1476.~~

9. Requiring privacy and security protections by third parties acquiring consumption data from a Smart Meter assures equal treatment with those that acquire usage data over the internet from the utility.

10. ~~The use of tariffs to regulate the connection of devices to the Smart Meter is consistent with Commission regulatory practice.~~

11. The Order Instituting Rulemaking that initiated this proceeding set the general scope of this proceeding as that of considering further actions pertaining to electric utilities and the smart grid. It did *not* include gas companies, community choice aggregators, or electric service providers.

12. SB 1476 applies to the customer usage data of electric and gas corporations.

13. Holding covered entities responsible for meeting the following requirements to ensure the transparency of privacy notices and policy is consistent with SB 1476, relevant provisions of the Pub. Util. Code and past Commission policies to protect privacy:

2. TRANSPARENCY (NOTICE)

(a) **Generally.** Covered entities shall provide customers with meaningful, clear, accurate, specific, and comprehensive notice regarding the collection, storage, use, and disclosure of covered information.

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(b) **When Provided.** Covered entities shall provide written or electronic notice when confirming a new customer account ~~and at least twice a year informing customers how they may obtain a copy of the covered entity's privacy policy regarding the collection, storage, use, and disclosure of covered information,~~ and shall provide conspicuous posting of the notice and privacy policy or link to the notice and privacy policy on the home page of their website, ~~and shall include a link to their notice and privacy policy in all electronic correspondence to customers.~~

(c) **Form.** The notice shall be labeled to make clear that it is a privacy notice and the notice shall communicate where a consumer may find policies affecting the collection, storage, use and disclosure of energy usage information and shall—

- (1) be written in easily understandable language, and
- (2) be no longer than is necessary to convey the requisite information.

(d) **Content.** The notice and the posted privacy policy shall state clearly—

- (1) the identity of the covered entity,
- (2) the effective date of the notice or posted privacy policy,
- (3) the covered entity's process for altering the notice or posted privacy policy, including how the customer will be informed of any alterations, and where prior versions will be made available to customers, and
- (4) the title and contact information, including email address, postal address, and telephone number, of an official at the covered entity who can assist the customer with privacy questions, concerns, or complaints regarding the collection, storage, use, or distribution of covered information.

14. The Commission may obtain access to the names of companies receiving data from a utility regulated by the Commission.

15. A utility may impose privacy restrictions on firms with which it contracts.

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16. Holding covered entities responsible for meeting the following requirements pertaining to the disclosure of the purposes for which information is collected, used, stored or disclosed is consistent with SB 1476, relevant provisions of the Pub. Util. Code and past Commission policies to protect privacy:

3. PURPOSE SPECIFICATION

The notice required under section 2 shall provide—

(a) an explicit description of—

- (1) each category of covered information collected, used, stored or disclosed by the covered entity, and, for each category of covered information, the reasonably specific purposes for which it will be collected, stored, used, or disclosed, and
- (2) each category of covered information that is disclosed to third parties, and, for each such category, (i) the purposes for which it is disclosed, and (ii) the number and categories of third parties to which it is disclosed;

(b) that the covered information will be retained for as long as reasonably necessary to accomplish an agreed-upon purpose. ~~the periods of time that covered information is retained by the covered entity;~~

(c) a description of—

- (1) the means by which customers may view, inquire about, or dispute their covered information, and
- (2) the means, if any, by which customers may limit the collection, use, storage or disclosure of covered information and the consequences to customers if they exercise such limits.

17. Rules that provide the individual customer with access to and control over his or her own usage information promote individual participation in the information collection and are consistent with the FIPs and California law.

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18. It is not necessary to require the advance notice of a request by an authority for access to data held by a covered entity in all circumstances.

19. The following rules to provide individuals with access and control of their covered information are consistent with SB 1476 and California law and policies:

4. INDIVIDUAL PARTICIPATION (ACCESS AND CONTROL)

(a) **Access.** Covered entities shall provide to customers upon request convenient and secure access to their covered information in an easily readable format that is at a level no less detailed than that at which the covered entity discloses the data to third parties.

(b) **Control.** Covered entities shall provide customers with convenient mechanisms for—

- (1) granting and revoking authorization for secondary uses of covered information,
- (2) disputing the accuracy or completeness of covered information that the covered entity is storing or distributing for any primary or secondary purpose, and
- (3) requesting corrections or amendments to covered information that the covered entity is collecting, storing, using, or distributing for any primary or secondary purpose.

(c) **Disclosure Pursuant to Legal Process.**

- (1) Except as otherwise provided in this rule or expressly authorized by state or federal law or by order of the Commission, a covered entity shall not disclose covered information except pursuant to a warrant or other court order naming with specificity the customers whose information is sought. Unless otherwise directed by a court, law, or order of the Commission, covered entities shall treat requests for real time access to covered information as wiretaps, requiring approval under the federal or state wiretap law as necessary.
- (2) Unless otherwise prohibited by court order, law, or order of the Commission, a covered entity, upon receipt of a subpoena for

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disclosure of covered information pursuant to legal process, shall, prior to complying, notify the customer in writing and allow the customer 7 days to appear and contest the claim of the person or entity seeking disclosure. Notwithstanding the foregoing, if the covered entity is a "witness" as defined by Section 1985.3(a)(1) of the California Code of Civil Procedure, then this requirement shall not apply.

- (3) Nothing in this rule prevents a person or entity seeking covered information from demanding such information from the customer under any applicable legal procedure or authority.
- (4) Nothing in this section prohibits a covered entity from disclosing covered information with the consent of the customer, where the consent is express, in written or electronic form, and specific to the purpose and to the person or entity seeking the information.
- (5) Nothing in this rule prevents a covered entity from disclosing, in response to a subpoena, the name, address and other contact information regarding a customer.
- (6) Upon request of the Commission, covered entities shall report to the Commission on disclosures of covered information made pursuant to legal process. The Commission may make such reports publicly available without identifying the affected customers, unless making such reports public is prohibited by state or federal law or by order of the Commission.

(d) Disclosure of Information in Situations of Imminent Threat to Life or Property. These rules concerning access, control and disclosure do not apply to information provided to emergency responders in situations involving an imminent threat to life or property.

20. The principle of data minimization adopted here does not change any existing regulations that currently require the retention of data for periods of time nor does it change any reporting requirements.

21. Adopting the principle of data minimization in this decision does not create a new liability that falls upon utilities and other entities that collect usage data.

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22. Since a principle of data minimization is a “best practice” in the protection of the privacy and security of usage data, a principle of data minimization is consistent with SB 1476 and the Pub. Util. Code.

23. The following rules to implement the principle of data minimization are consistent with SB 1476 and the Pub. Util. Code:

5. DATA MINIMIZATION

(a) **Generally.** Covered entities shall collect, store, use, and disclose only as much covered information as is reasonably necessary or as authorized by the Commission to accomplish a specific primary purpose identified in the notice required under section 2 or for a specific secondary purpose authorized by the customer.

(b) **Data Retention.** Covered entities shall maintain covered information only for as long as reasonably necessary or as authorized by the Commission to accomplish a specific primary purpose identified in the notice required under section 2 or for a specific secondary purpose authorized by the customer.

(c) **Data Disclosure.** Covered entities shall not disclose to any third party more covered information than is reasonably necessary or as authorized by the Commission to carry out on behalf of the covered entity a specific primary purpose identified in the notice required under section 2 or for a specific secondary purpose authorized by the customer.

24. ~~If a third party that obtains customer usage information fails to comply with the tariff provision, the Commission can find the third party ineligible to obtain usage information pertaining to any customer from the utility.~~

25. The following limitations on the use and disclosure of customer usage data are consistent with SB 1476 and the Pub. Util. Code:

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6. USE AND DISCLOSURE LIMITATION

(a) **Generally.** Covered information shall be used solely for the purposes specified by the covered entity in accordance with section 3.

(b) **Primary Purposes.** An electrical corporation may collect, store and use covered information for primary purposes without customer consent. Other covered entities may collect, store and use covered information only with prior customer consent, except as otherwise provided here.

(c) **Disclosures to Third Parties.**

- (1) **Initial Disclosure by a Covered Entity.** A covered entity may disclose covered information to a third party without customer consent when explicitly ordered to do so by the Commission or for a primary purpose being carried out under contract with and on behalf of the entity disclosing the data, provided that the covered entity disclosing the data shall, by contract, require the third party to agree to collect, store, use, and disclose the covered information under policies, practices and notification requirements no less protective than those under which the covered entity itself operates as required under this rule and, if the information is being disclosed for demand response, energy management or energy efficiency purposes, the disclosing entity permits customers to opt out of such disclosure consistent with applicable program terms and conditions, unless otherwise directed by the Commission.
- (2) **Subsequent Disclosures.** Any entity that receives covered information derived initially from a covered entity may disclose such covered information to another entity without customer consent for a primary purpose, provided that the entity disclosing the covered information shall, by contract, require the entity receiving the covered information to use the covered information only for such primary purpose and to agree to store, use, and disclose the covered information under policies, practices and notification requirements no less protective than those under which the covered entity from which the covered information was initially derived operates as required by this rule.
- (3) **Terminating Disclosures to Entities Failing to Comply With Their Privacy Assurances.** When a covered entity discloses covered information to a third party under this subsection 6(c), it shall specify by contract that it shall be considered a material breach if the third party engages in a pattern or practice of storing, using or disclosing the covered information in violation of the third party's contractual obligations to

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handle the covered information under policies no less protective than those under which the covered entity from which the covered information was initially derived operates in compliance with this rule. If a covered entity disclosing covered information finds that a third party to which it disclosed covered information is engaged in a pattern or practice of storing, using or disclosing covered information in violation of the third party's contractual obligations related to handling covered information, the disclosing entity shall promptly cease disclosing covered information to such third party.

(d) **Secondary Purposes.** No covered entity shall use or disclose covered information for any secondary purpose without obtaining the customer's prior, express, written or electronic authorization ~~for each such purpose~~. This authorization is not required when information is—

- (1) provided pursuant to a legal process as described in 4(c) above;
- (2) provided in situations of imminent threat to life or property as described in 4(d) above; or
- (3) authorized by the Commission pursuant to its jurisdiction and control.

(e) **Customer Authorization.**

- (1) **Authorization.** Customers must provide written or electronic authorization that is reasonably specific to any secondary purpose(s). ~~Separate authorization by each customer must be obtained for each secondary purpose.~~
- (2) **Revocation.** Customers have the right to revoke, at any time, any previously granted authorization. Non-residential customers shall have the same right to revoke, unless specified otherwise in a contract of finite duration.
- (3) **Opportunity to Revoke.** The consent of a residential customer shall continue without expiration, but an entity receiving information pursuant to a residential customer's authorization shall contact the customer, at least annually, to inform the customer of the authorization granted and to provide an opportunity for revocation. The consent of a non-residential customer shall continue in the same way, unless specified otherwise in a contract of finite duration, but an entity receiving information pursuant to a non-residential

AT&T's Proposed Changes to Findings of Fact and Conclusions of Law

customer's authorization shall contact the customer, to inform the customer of the authorization granted and to provide an opportunity for revocation either upon the termination of the contract, or annually if there is no contract..

- (f) **Parity.** Covered entities shall permit customers to cancel authorization for any secondary purpose of their covered information by the same mechanism initially used to grant authorization.
- (g) **Availability of Aggregated Usage Data.** Covered entities shall permit the use of aggregated usage data that is removed of all personally-identifiable information to be used for analysis, reporting or program management provided that the release of that data does not disclose or reveal specific customer information because of the size of the group, rate classification, or nature of the information.

26. Under current federal and state laws, covered entities must notify customers of security breaches.

27. The following rules to promote the quality and integrity of usage data and to ensure the security of data are consistent with SB 1476 and the Pub. Util. Code:

7. DATA QUALITY AND INTEGRITY

Covered entities shall ensure that covered information they collect, store, use, and disclose is reasonably accurate and complete or otherwise compliant with applicable rules and tariffs regarding the quality of energy usage data.

8. DATA SECURITY

(a) **Generally.** Covered entities shall implement reasonable administrative, technical, and physical safeguards to protect covered information from unauthorized access, destruction, use, modification, or disclosure.

(b) **Notification of Breach.** A covered third party shall notify the covered electrical corporation that is the source of the covered data within one week of the detection of a breach. Upon a breach affecting 1,000 or more customers, whether by a covered electrical corporation or by a covered third party, the covered electrical corporation shall notify the Commission's Executive Director of security breaches of covered information within two weeks of the detection of a breach or within one week of notification by a covered third party of such a breach. Upon

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request by the Commission, electrical corporations shall notify the Commission's Executive Director of security breaches of covered information. In addition, electrical corporations shall file an annual report with the Commission's Executive Director, commencing with the calendar year 2012, that is due within 120 days of the end of the calendar year and notifies the Commission of all security breaches within the calendar year affecting covered information, whether by the covered electrical corporation or by a third party. As a tariff condition, the Commission can require compliance with privacy rules by third parties who obtain usage information from utilities via the internet (also known as "the backhaul").

28. ~~As a tariff condition, the Commission should limit interconnection between the Smart Meter and HAN-enabled devices that automatically forward usage data to a third party to those third parties who comply with the privacy and security rules adopted in this decision.~~

29. The following rules are consistent with SB 1476 and the Pub. Util. Code:

9. ACCOUNTABILITY AND AUDITING

(a) **Generally.** Covered entities shall be accountable for complying with the requirements herein, and must make available to the Commission upon request or audit—

- (1) the privacy notices that they provide to customers,
- (2) their internal privacy and data security policies,
- (3) the identities of agents, contractors and other third parties to which they disclose covered information, the purposes for which that information is disclosed, indicating for each category of disclosure whether it is for a primary purpose or a secondary purpose, and (4) copies of any secondary-use authorization forms by which the covered party secures customer authorization for secondary uses of covered data.

(b) **Customer Complaints.** Covered entities shall provide customers with a process for reasonable access to covered information, for correction of inaccurate covered information, and for addressing customer complaints regarding covered information under these rules.

AT&T's Proposed Changes to Findings of Fact and Conclusions of Law

(c) **Training.** Covered entities shall provide reasonable training to all employees and contractors who use, store or process covered information.

(d) **Audits.** Each electrical corporation shall conduct an independent audit of its data privacy and security practices in conjunction with general rate case proceedings following 2012 and at other times as required by order of the Commission. The audit shall monitor compliance with data privacy and security commitments, and the electrical corporation shall report the findings to the Commission as part of the utility's general rate case filing.

(e) **Reporting Requirements.** On an annual basis, each electrical corporation shall disclose to the Commission as part of an annual report required by Rule 8.b, the following information:

- (1) the number of authorized third parties accessing covered information,
- (2) the number of non-compliances with this rule or with contractual provisions required by this rule experienced by the utility, and the number of customers affected by each non-compliance and a detailed description of each non-compliance.

30. The privacy rules adopted in this decision meet the requirements of SB 1476 and existing statutory and regulatory frameworks that protect the privacy of consumers.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **OPENING COMMENTS OF PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T CALIFORNIA (U 1001 C) ON THE PROPOSED DECISION ADOPTING RULES TO PROTECT THE PRIVACY AND SECURITY OF THE ELECTRICITY USAGE DATA OF THE CUSTOMERS OF PACIFIC GAS AND ELECTRIC COMPANY, SOUTHERN CALIFORNIA EDISON COMPANY, AND SAN DIEGO GAS & ELECTRIC COMPANY** in **R.08-12-009** by electronic mail, U.S. mail, and/or by hand-delivery to the persons on the official Service List.

Executed this 2nd day of June 2011 at San Francisco, California.

AT&T SERVICES, INC.
525 Market Street, 20th Floor
San Francisco, CA 94105

/s/

Thomas J. Selhorst

CALIFORNIA PUBLIC UTILITIES COMMISSION

Service Lists

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