

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 08-12-009

(Filed December 18, 2008)

REPLY COMMENTS OF THE CONSUMER FEDERATION OF CALIFORNIA ON THE PROPOSED DECISION ADOPTING RULES TO PROTECT PRIVACY AND SECURITY OF THE ELECTRICITY USAGE DATA OF THE CUSTOMERS OF PACIFIC GAS AND ELECTRIC COMPANY, SOUTHERN CALIFORNIAN EDISON COMPANY, AND SAN DIEGO GAS AND ELECTRIC COMPANY

I. INTRODUCTION

Pursuant to Rules 14.3 of the Commission's Rules of Practice and Procedure, the Consumer Federation of California ("CFC") submits these reply comments on Commissioner Peevey's Proposed Decision *Adopting Rules to Protect Privacy and Security of the Electricity Usage Data of the Customers of Pacific Gas and Electric, Southern California Edison Company, and San Diego Gas and Electricity* ("PD" or "Proposed Decision"), R. 08-12-009. Opening comments were submitted on June 2, 2011 with reply comments due five days later with one day extension or June 8, 2011.

I. EFFECTIVE PROTECTIONS SHOULD IMPLEMENTED IMMEDIATELY

There seems to be a general sentiment among some parties that encouraging innovation and effective privacy protection are mutually exclusive and therefore cannot co-exist. Presenting this either/or argument is a false dichotomy as it erroneously precludes the possibility of a symbiotic relationship between the two. CFC believes that protecting the public with robust privacy rules is not a competing interest but an integral part of growing Smart Grid technology because public confidence is needed to purchase these goods and services. A lack of the public's trust presents a hurdle to the industry that will be far harder to overcome than any regulation some parties claim will be a barrier. The Center for Democracy and Technology and the Electronic Frontier Foundation ("CDT" and "EFF") mentioned in their opening comments on the PD a recent consumer survey that revealed that a consumer's top concerns when it comes to Smart Grid technologies is privacy and security.¹ This should be all the insight we need to make sure that safeguards are in place now.

In addition, CFC disagrees with the statement made by Future Privacy Forum ("FPF") that Smart Grid "standards [should] develop on a national basis before state specific requirements are imposed, especially for non-utility third parties."² California is a leader when it comes to standards with often federal standards following in California's footsteps. Also, other states have passed legislation to establish standards to govern the use and disclosure of electric utility usage data by electric utilities, customers of electric utilities, and third parties. As a result,

¹ CDT opening comments at 2

² FPF opening comments at 3.

California may not be the only state where companies developing technologies on a national scale will have to comply with state privacy standards.³

II. UNDER CURRENT PROPOSED RULES CONSUMERS BEAR A DISPROPORTIONATE DEGREE OF RESPONSIBILITY AND ACCOUNTABILITY COMPARED TO UTILITIES OR THIRD PARTIES.

In opening comments, CFC stated that the proposed rules should be modified to reflect a balance in responsibility between customers and utilities/third parties. When it comes to consumer authorized access to energy data, consumers are left to regulate themselves with what CDT states “a heightened responsibility [for consumers] to understand the implications of this disclosure.”⁴ Moreover, there is no penalty or enforcement if utilities or third parties violate these privacy rules. CFC supports the Commission’s adoption of requirements that promote customer education, awareness, and empowerment. However, customer empowerment is only one piece of the puzzle when it comes to effective consumer protection. Proper accountability that includes penalties for violations by utilities and third parties is the other piece. The Commission has enacted enforcement provisions against entities, such as §2107.5 or §2112.5, which are enforceable against *any* person or corporation regardless of whether or not they fall traditionally within the Commission’s jurisdiction. The Commission should adopt similar provisions for Smart Grid privacy rules.

³ Oklahoma State House Passes Smart Grid Privacy Bill, by Boris Segalis, found at: <http://www.infolawgroup.com/2011/03/articles/data-privacy-law-or-regulation/oklahoma-state-house-passes-smart-grid-privacy-bill/>. Privacy rules are also currently being developed in other states such as Colorado, New York, Illinois, and Ohio.

⁴ CDT Opening Comments at 3.

III. ADVANCED NOTICE TO CUSTOMERS PURSUANT TO LEGAL PROCESS

CFC believes that a customer’s right to advanced notice before disclosure of customer data pursuant to legal process is consistent with SB1476 and codified in plain language in §8380, contrary to what SCE purports in their opening comments.⁵ Section 8380 b) 1) states that “ [a]n electrical corporation or gas corporation shall not share, disclose, or otherwise make accessible to any third party a customer’s electrical or gas consumption data, except upon consent of the customer.”⁶ In the context of a demand for disclosure pursuant to legal process, a customer should have a right to know about the disclosure and, prior to the utility complying with the demand, given an opportunity to either consent to the disclosure by taking no action, or contest the entity seeking the claim within 7 days. Failure to give a customer notice with an opportunity to contest would be equivalent to sharing a customer’s usage information without their consent in violation of §8380.

In addition, as mentioned in earlier comments, not giving advanced notice with opportunity to contest undermines §394.4 which governs a consumers right to confidentiality and prohibits utility sharing of customer information without consent.

IV. LOCKED VS. UNLOCKED DEVICES

There is general consensus among parties that there is confusion between locked and unlocked devices and this may create problems when trying to enforce privacy rules. CFC

⁵ SCE opening comments at 3.

⁶ Section 8380 (b) (1).

agrees with UCAN’s statement that differentiating between locked and unlocked devices will not ensure complete consumer protection because of “definitional challenges.”⁷ CFC further agrees with UCAN’s statement that because of these definitional challenges, third parties will be able to circumvent the registration process by asserting that their devices are “unlocked.”⁸ CFC believes that this challenge can be remedied if all parties who sought Smart Grid data would fall under the Commission’s jurisdiction.

Dated: June 8, 2011

Respectfully Submitted,

//s//

Nicole A. Blake
1107 9th Street, #625
Sacramento, CA 95814
Phone: (916) 498-9608
Fax: (916) 498-9611
Email: blake@consumercal.org

⁷ UCAN’s opening comments at 3.

⁸ ID.

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CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2011, I served by e-mail all parties on the service list for R.08-12-009 for which an email address was known, true copies of the original of the following document which is attached hereto:

REPLY COMMENTS OF THE CONSUMER FEDERATION OF CALIFORNIA ON THE PROPOSED DECISION ADOPTING RULES TO PROTECT PRIVACY AND SECURITY OF THE ELECTRICITY USAGE DATA OF THE CUSTOMERS OF PACIFIC GAS AND ELECTRIC COMPANY, SOUTHERN CALIFORNIAN EDISON COMPANY, AND SAN DIEGO GAS AND ELECTRIC COMPANY

on all known parties of record in proceeding R.08-12-009 by delivering a copy via email to the current service list or by delivering a copy via U.S. First Class mail to those parties of the current service list with undeliverable email addresses.

Executed on June 8, 2011 in Sacramento, CA.

Respectfully submitted,

_____/s//_____

Nicole A. Blake
1107 9th Street, Ste. 625
Sacramento, CA 95814
Phone: (916) 498-9608
Fax: (916) 498-9611
blake@consumercal.org

SERVICE LIST 08-12-009

douglass@energyattorney.com
kfox@keyesandfox.com
martinhomerc@gmail.com
carlgustin@groundedpower.com
vladimir.oksman@lantiq.com
frader@energyhub.net
jandersen@tiaonline.org
jeffrcam@cisco.com
jhalpert@dlapiper.com
dbrenner@qualcomm.com
julespol@futureofprivacy.org
coney@epic.org
dan.delurey@drsgcoalition.org
michael.sachse@opower.com
cbrooks@tendrillinc.com
SDPatrick@SempraUtilities.com
npedersen@hanmor.com
slins@ci.glendale.ca.us
xbaldwin@ci.burbank.ca.us
kris.vyas@sce.com
ATrial@SempraUtilities.com
lburdick@higgslaw.com
liddell@energyattorney.com
mshames@ucan.org
ctoca@utility-savings.com
bobsmithtl@gmail.com
mtierney-lloyd@enernoc.com
ed@megawattsf.com
mterrell@google.com
farrokh.albuyeh@oati.net
mdjoseph@adamsbroadwell.com
cbreakstone@control4.com
margarita.gutierrez@sfgov.org
rudym.reyes@verizon.com
lms@cpuc.ca.gov
fsmith@sflower.org
tburke@sflower.org
marcel@turn.org
mkurtovich@chevron.com
cjh5@pge.com
david.discher@att.com
nes@a-klaw.com
harold@seakayinc.org
pcasciato@sbcglobal.net
steven@sflower.org

jlynch@eff.org
tien@eff.org
jarmstrong@goodinmacbride.com
mgo@goodinmacbride.com
vidhyaprabakaran@dwt.com
mday@goodinmacbride.com
ssmyers@worldnet.att.net
judith@tothept.com
Service@spurr.org
Mark.Schaeffer@granitekey.com
wbooth@booth-law.com
jody_london_consulting@earthlink.net
lencanty@blackeconomiccouncil.org
jwiedman@keyesandfox.com
gmorris@emf.net
robertginaizda@gmail.com
enriqueg@greenlining.org
aaron.burstein@gmail.com
dkm@ischool.berkeley.edu
jurban@law.berkeley.edu
kerry.hattevik@nrgenergy.com
rquattrini@energyconnectinc.com
michael_w@copper-gate.com
diana@aspectlabs.com
TGlasse@Certichron.com
seboyd@tid.org
dzlotlow@caiso.com
dennis@ddecuir.com
scott.tomashefsky@ncpa.com
jhawley@technet.org
Inavarro@edf.org
Inavarro@edf.org
blake@consumercal.org
Lesla@calcable.org
mcoop@homegridforum.org
clamasbabbini@converge.com
cassandra.sweet@dowjones.com
davidmorse9@gmail.com
dblackburn@caiso.com
ehadley@reupower.com
Erin.Grizard@BloomEnergy.com
gstaples@mendotagroup.net
jLin@strategen.com
jeffstjohn@hotmail.com
jeffrey.lyng@opower.com

janderson@viridityenergy.com
lmanz@viridityenergy.com
mainspan@ecsgrid.com
pwyrrod@silverspringnet.com
ryn@rynhamiltonconsulting.com
stephaniec@greenlining.org
tam.hunt@gmail.com
ttutt@smud.org
mrw@mrwassoc.com
epetrill@epri.com
jon.fortune@energycenter.org
mokeefe@efficiencycouncil.org
michelle.d.grant@dynegy.com
r.raushenbush@comcast.net
sue.mara@rtoadvisors.com
ep@aspectlabs.com
kladko@aspectlabs.com
john.quealy@canaccordadams.com
mark.sigal@canaccordadams.com
barbalex@ctel.net
bandrews@nerac.com
crjohnson@lge.com
smaye@nappartners.com
julien.dumoulin-smith@ubs.com
mpieniazek@drenergyconsulting.com
david.rubin@troutmansanders.com
jennsanf@cisco.com
marybrow@cisco.com
jmccarthy@ctia.org
jay.birnbaum@currentgroup.com
puja@opower.com
bob.rowe@northwestern.com
monica.merino@comed.com
sthiel@us.ibm.com
ann.johnson@verizon.com
ed.may@itron.com
rgifford@wbklaw.com
leilani.johnson@ladwp.com
GHealy@SempraUtilities.com
jcorralejo@lbcgla.org
dschneider@lumesource.com
lmitchell@hanmor.com
david@nemtzwow.com
klatt@energyattorney.com
ckuennen@ci.glendale.us
mark.s.martinez@sce.com
case.admin@sce.com
janet.combs@sce.com
michael.backstrom@sce.com

nquan@gswater.com
j.miles.cox@sbcglobal.net
esther.northrup@cox.com
KFoley@SempraUtilities.com
mike@ucan.org
kмкиener@cox.net
dadams@viridityenergy.com
djsulliv@qualcomm.com
HRasool@SempraUtilities.com
TCahill@SempraUtilities.com
sephra.ninow@energycenter.org
CManson@SempraUtilities.com
DNiehaus@SempraUtilities.com
CentralFiles@SempraUtilities.com
afreifeld@viridityenergy.com
jerry@enernex.com
eric.wright@bves.com
traceydrabant@bves.com
peter.pearson@bves.com
dkolk@compenergy.com
ek@a-klaw.com
rboland@e-radioinc.com
juan.otero@trilliantinc.com
ali.ipakchi@oati.com
stalbott@control4.com
faramarz@ieee.org
norman.furuta@navy.mil
kgrenfell@nrdc.org
nsuetake@turn.org
bfinkelstein@turn.org
mandywallace@gmail.com
mcarboy@signalhill.com
agnes.ng@att.com
regrelcpuccases@pge.com
C4MU@pge.com
dpb5@pge.com
DNG6@pge.com
filings@a-klaw.com
mpa@a-klaw.com
michelle.choo@att.com
ramiz.rafeedie@att.com
rcounihan@enernoc.com
sls@a-klaw.com
Stephanie.Holland@ATT.com
stephen.j.callahan@us.ibm.com
tmfry@nexant.com
info@tobiaslo.com
achavez@ecotality.com
BKallo@rwbaird.com

bcragg@goodinmacbride.com
bdille@jmpsecurities.com
jscancarelli@crowell.com
jas@cpdb.com
joshdavidson@dwt.com
nml@cpdb.com
salleyoo@dwt.com
SDHilton@stoel.com
dwtcpudockets@dwt.com
suzannetoller@dwt.com
dhuard@manatt.com
janewhang@dwt.com
Diane.Fellman@nrgenergy.com
cem@newsdata.com
lisa_weinzimer@platts.com
prp1@pge.com
RobertGnaizda@gmail.com
achuang@epri.com
caryn.lai@bingham.com
chris@emeter.com
ralf1241a@cs.com
john_gutierrez@cable.comcast.com
mike.ahmadi@Granitekey.com
Rachelle.Chong@cable.comcast.com
uzma@crve.org
sean.beatty@mirant.com
lewis3000us@gmail.com
Douglas.Garrett@cox.com
rstuart@brightsourceenergy.com
nellie.tong@us.kema.com
Valerie.Richardson@us.kema.com
cpudockets@keyesandfox.com
dmarcus2@sbcglobal.net
rschmidt@bartlewells.com
samuelk@greenlining.org
jskromer@gmail.com
jurban@law.berkeley.edu
kco@kingstoncole.com
philm@scdenergy.com
j_peterson@ourhomespaces.com
joe.weiss@realtimeacs.com
michaelboyd@sbcglobal.net
bmcc@mccarthy.com
sberlin@mccarthy.com
mary.tucker@sanjoseca.gov
tomk@mid.org
joyw@mid.org
brbarkovich@earthlink.net
gayatri@jbsenergy.com

dgrandy@caonsitegen.com
e-recipient@caiso.com
aivancovich@caiso.com
hsanders@caiso.com
jgoodin@caiso.com
wamer@kirkwood.com
brian.theaker@nrgenergy.com
cmkehrrein@ems-ca.com
tpomales@arb.ca.gov
danielle@ceert.org
dave@ppallc.com
jfine@edf.org
jmcfarland@treasurer.ca.gov
shears@ceert.org
kellie.smith@sen.ca.gov
lkelly@energy.state.ca.us
ro@calcable.org
steven@lipmanconsulting.com
pkulkarn@energy.state.ca.us
abb@eslawfirm.com
bsb@eslawfirm.com
cbk@eslawfirm.com
glw@eslawfirm.com
lmh@eslawfirm.com
jparks@smud.org
ljimene@smud.org
vzavatt@smud.org
vwood@smud.org
dan.mooy@ventyx.com
kmills@cfbf.com
roger147@aol.com
jellis@resero.com
cpuc@liberty-energy.com
michael.jung@silverspringnet.com
sas@a-klaw.com
wmc@a-klaw.com
bschuman@pacific-crest.com
sharon.noell@pgn.com
TRH@cpuc.ca.gov
ahl@cpuc.ca.gov
ag2@cpuc.ca.gov
am1@cpuc.ca.gov
crv@cpuc.ca.gov
cde@cpuc.ca.gov
df1@cpuc.ca.gov
dbp@cpuc.ca.gov
fxg@cpuc.ca.gov
gtd@cpuc.ca.gov
jw2@cpuc.ca.gov

jdr@cpuc.ca.gov
jmh@cpuc.ca.gov
kar@cpuc.ca.gov
ltt@cpuc.ca.gov
lbs@cpuc.ca.gov
lau@cpuc.ca.gov
zaf@cpuc.ca.gov
mjd@cpuc.ca.gov
mzx@cpuc.ca.gov
mbp@cpuc.ca.gov
mc3@cpuc.ca.gov
wtr@cpuc.ca.gov
rhh@cpuc.ca.gov
srt@cpuc.ca.gov
scr@cpuc.ca.gov
tjs@cpuc.ca.gov
vjb@cpuc.ca.gov
wmp@cpuc.ca.gov
dietrichlaw2@earthlink.net
BLee@energy.state.ca.us
ab2@cpuc.ca.gov
Andrew.Luszcz@GlacialEnergy.com
Jessica.Evans@GlacialEnergy.com
carl.boyd@DirectEnergy.com
rick_noger@praxair.com
Victor.Gonzalez@Constellation.com
ASantiago@LibertyPowerCorp.com
JCasadont@BlueStarEnergy.com
mkelly@ppco.com
tphillips@tigernaturalgas.com
JArmenta@calpine.com
john_zimmerman@eott.com
Andrea.Morrison@DirectEnergy.com
kb@enercalusa.com
info@EnercalUSA.com
TRDill@WesternHubs.com

larry.vickrey@conocophillips.com
jweessies@equilon.com
macollins@chevron.com
Don.Stoneberger@apses.com
don.soderberg@swgas.com
tdillard@sppc.com
SNewsom@SempraUtilities.com
gregory.kosier@constellation.com
Energy@3PhasesRenewables.com
IGoodman@CommerceEnergy.com
lwalexander@crimsonpl.com
pssed@adelphia.net
akbar.jazayeri@sce.com
rkmoore@gswater.com
rkmoore@scwater.com
Andrea.Morrison@DirectEnergy.com
GBass@NobleSolutions.com
DWelch@SempraSolutions.com
marcie.milner@shell.com
TDarton@PilotPowerGroup.com
kderemer@semprautilities.com
LSchavrien@SempraUtilities.com
richard.mayer@nrgenergy.com
BKC7@pge.com
kfugere@gmssr.com
Patrick.VanBeek@CommercialEnergy.net
Mike@alpinenaturalgas.com
Ralf1241a@cs.com
dweisz@marinenergyauthority.org
westgas@aol.com
DHall@wickland.com
bmarshall@psrec.coop
peter.eichler@libertywater.com
R.Daniel.GRS@nwnatural.com
cathie.allen@pacificorp.com
jason.dubchak@niskags.com