

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,

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⁷ UCAN’s opening comments at 3.

⁸ ID.

