

Decision 12-08-045 August 23, 2012

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)

**DECISION EXTENDING PRIVACY PROTECTIONS TO
CUSTOMERS OF GAS CORPORATIONS AND
COMMUNITY CHOICE AGGREGATORS,
AND TO RESIDENTIAL AND SMALL COMMERCIAL
CUSTOMERS OF ELECTRIC SERVICE PROVIDERS**

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**DECISION EXTENDING PRIVACY PROTECTIONS TO
CUSTOMERS OF GAS CORPORATIONS AND COMMUNITY
CHOICE AGGREGATORS, AND TO RESIDENTIAL AND
SMALL COMMERCIAL CUSTOMERS OF
ELECTRIC SERVICE PROVIDERS**

1. Summary

This decision establishes privacy protections concerning customer usage data for gas customers of Pacific Gas and Electric Company, Southern California Gas Company, and San Diego Gas & Electric Company. The privacy rules in Attachment A of this decision are similar to those established in Attachment D of Decision (D.) 11-07-056 for electric corporations and electric customer data, but contain minor modifications that pertain to gas operations.

Southwest Gas Corporation and Southern California Edison's Santa Catalina Island Gas Utility are exempt from complying with these privacy rules. The rules in Attachment A apply to companies providing customer services using an Advanced Metering Infrastructure (AMI) technology, but Southwest Gas Corporation and Southern California Edison's Santa Catalina Island Gas Utility do not use AMI technology. If either Southwest Gas Corporation or Southern California Edison's Santa Catalina Island Gas Utility files an application to deploy an AMI in the future, in that application, the applicant should address privacy issues and either propose to comply with the rules adopted in Attachment A (with modifications of deadlines) or provide the Commission with facts demonstrating why these rules should not be applied to the applicant.

In addition, this decision extends the privacy protections adopted in D.11-07-056 to the customers of Community Choice Aggregators (CCA) and to the residential and small commercial customers of electric service providers (ESP). The rules that apply are contained in Attachment B.

We find that the extension of the privacy rules to the customers of gas corporations is consistent with Senate Bill 1476, Stats. 2009, ch. 327, which adopted privacy protections for the customers of both electric and gas corporations who receive service using an AMI technology. No party objects to the extension of these privacy protections to the customers of these gas corporations. The decision orders Pacific Gas and Electric Company and San Diego Gas & Electric Company to file complying tariffs within 90 days of the effective date of this decision and orders Southern California Gas Company to file complying tariffs within 90 days of the effective date of this decision or concurrent with the installation of advanced meters (whichever is later).

Extending the privacy protections of D.11-07-056 to the customers of CCAs is also consistent with the authority granted to the Commission in § 366.2(c), which permits the Commission “to ensure compliance with basic consumer protection rules.”¹ The customers of CCAs receive metering, billing, bill collection, and customer service from the underlying investor-owned utility, and it is reasonable that CCAs treat customers’ confidential usage information in the same manner as does the underlying investor-owned utility. We direct existing CCAs to re-file their Implementation Plans with the Commission in conformance with the privacy rules in Attachment B of this decision.²

Finally, we find that extending the privacy protections of D.11-07-056 to the residential and small commercial customers of ESPs is consistent with the authority granted to the Commission in § 394.4, which directs the Commission to adopt rules for ESPs that treat customer information confidentially. We find it

¹ Unless stated otherwise, all statutory references are to the Pub. Util. Code.

² Attachment B contains rules similar to those in Attachment D to D.11-07-056.

reasonable to provide residential and small commercial consumers with the basic level of privacy protections that they would receive from an investor-owned utility.

We order Pacific Gas and Electric, Southern California Edison Company and San Diego Gas & Electric Company to file Advice Letters with conforming utility tariff changes that apply to ESPs receiving detailed usage data concerning customers. These tariff provisions are the means by which an ESP will be subject to the privacy rules. In addition, ESPs serving residential and small commercial customers shall revise their “Notice of Price, Terms, and Conditions” to inform residential and small commercial customers that their privacy is protected pursuant to the rules adopted in Attachment B of this decision.

This decision does not extend these privacy rules, however, to ESPs that serve only large and medium commercial customers and industrial customers (and small commercial and residential customers affiliated therewith); nor does this decision require that ESPs providing service to a full range of customers offer these specific privacy protections to any but their residential and small commercial customers (when unaffiliated with larger customer accounts).

Finally, we decline to initiate consolidating privacy rules into a General Order at this time because of limitations on Commission resources and the relative newness of the privacy rules and their untested nature.

2. Procedural Background

Decision (D.) 11-07-056, which adopted privacy rules to protect the usage data of customers of electric corporations generated by the meters used in the Advanced Metering Infrastructure (AMI), initiated Phase 2 of this proceeding to determine whether and how the privacy protections adopted for the customers of electrical corporations should apply to gas corporations, Community Choice

Aggregators (CCAs) and Electric Service Providers (ESPs).

D.11-07-056 established the scope of this phase in Ordering Paragraph 12, which states:

12. The scope of this rulemaking is amended to consider in Phase 2 how the Rules Regarding Privacy and Security Protections for Energy Usage Data in Attachment D of this decision and other requirements of this decision should apply to gas corporations, community choice aggregators, and electric service providers. We will issue an amended scoping memo, which will set a new deadline for the resolution of this proceeding consistent with § 1701.5.³

On September 1, 2011, an Administrative Law Judge's (ALJ) Ruling set a Prehearing Conference (PHC) for September 16, 2011. The Ruling invited parties to serve PHC statements by September 12, 2011.

On September 12, 2011, the Division of Ratepayer Advocates (DRA), the Alliance for Retail Energy Markets (AReM), Southern California Edison Company (SCE) and Southern California Gas Company (SoCalGas) filed PHC statements.

On September 16, 2011, a PHC took place at the Commission offices in San Francisco to take appearances in the proceeding, to refine the scope of the proceeding, and to develop a procedural timetable for the management of the proceeding.

On October 7, 2012, the assigned Commissioner, President Peevey, issued a Scoping Memo that identified two sets of issues for the proceeding: 1) should the Commission extend privacy rules and requirements adopted in D.11-07-056 as written (or modify the rules) to gas companies, CCAs and ESPs? and 2) which

³ D.11-07-056 at 167.

entities can and/or should be subject to privacy rules adopted by the Commission?

On November 16, 2011, a workshop was held by the Commission to address these issues. During the workshop, several questions were raised by Commission Staff and DRA regarding the security and privacy policies of gas corporations, CCAs and ESPs. Specifically, Commission Staff sought additional information regarding the security of both AMI devices and the Automated Meter Reading (AMR) devices rolled out for the gas companies, as well as the privacy policies of CCAs and ESPs. DRA asked for information from the respondents on what parts of the Privacy Rules adopted in D.11-07-056 were implementable and what parts were not.

On January 11, 2012, an ALJ Ruling sought comments from parties on the central issues before the Commission concerning implementation of the privacy rules and the Commission's jurisdiction over ESPs and CCAs.⁴

Comments to the ruling were filed on February 3, 2012, by AReM, Marin Energy Authority (MEA), the City and County of San Francisco (CCSF), The Utility Reform Network (TURN), Southwest Gas Corporation (Southwest Gas), SoCalGas, Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E).

Reply Comments were filed on February 17, 2012, by CCSF, AReM, MEA, DRA, TURN, SoCalGas, PG&E, SDG&E, and SCE.

3. Issues Before the Commission

The major issue before the Commission is this proceeding is whether to extend the privacy protections adopted for the customers of electric corporations

to gas corporations, CCAs and ESPs that serve residential and small commercial customers. In addition, this decision also addresses jurisdictional issues that pertain to the extension of these rules. The decision also addresses the parties' request that the Commission initiate a proceeding to adopt a General Order on privacy rules.

4. Jurisdiction

A key factor in determining whether the rules *should* apply to the customer usage data held by gas corporations, CCAs, and ESPs is the determination of *whether* the Commission has the statutory authority to extend these rules. Various statutory provisions govern the Commission's authority to adopt policies to protect the energy usage data for the customers of gas corporations, CCAs, and ESPs.

For gas corporations, Senate Bill (SB) 1476⁵ added Chapter 5 to Division 4.1 of the Public Utilities Code, including Section 8380, which adopted privacy protections for the customer data produced by AMI and held by both electrical and *gas corporations*. D.11-07-056 adopted rules to implement the provisions of SB 1476 and thereby protect the privacy and security of *electricity* usage data. In addition, it modified "the scope of the proceeding [R.08-12-009]" which had been limited to *electrical* corporations, and ordered "a separate new phase to consider how the rules and policies adopted in this decision [D.11-07-056] should apply to *gas* corporations."⁶

⁴ Administrative Law Judge's Ruling Seeking Additional Information, January 11, 2012.

⁵ Chapter 327, Statutes of 2009.

⁶ D.11-07-056 at 46.

For CCAs and ESPs, D.11-07-056 also set the scope of this phase of the proceeding to determine “how the rules and policies adopted in this decision [D.11-07-056] should also apply to community choice aggregators and electrical service providers.”⁷

Concerning CCAs, the most relevant portions of the Pub. Util. Code state:

366.2(c) A community choice aggregator establishing electrical load aggregation shall prepare a statement of intent with the implementation plan. Any community choice load aggregation established pursuant to this section shall provide for the following:

...

(4)(D) *Any requirements established by state law or by the commission concerning aggregated service, including those rules adopted by the commission pursuant to Paragraph (3) of subdivision (b) of Section 8341 for the application of the greenhouse gases emission performance standard to community choice aggregators.*

...

(9) Electrical corporations shall continue to provide all metering, billing, collection, and customer service to retail customers that participate in community choice aggregation programs. Bills sent by the electrical corporation to retail customers shall identify the community choice aggregator as providing the electrical energy component of the bill. *The commission shall determine the terms and conditions under which the electrical corporation provides services to community choice aggregators and retail customers.*

...

(17) The community choice aggregator shall register with the commission, which may require additional

⁷ *Id.*

*information to ensure compliance with basic consumer protection rules and other procedural matters.*⁸

A central issue in this proceeding is how to interpret these statutory provisions and thereby determine whether and to what extent this section of the Pub. Util. Code gives the Commission the authority to extend privacy protections over the data provided to CCAs from the utilities and what obligations the CCAs have to protect the privacy of the usage data of their customers.

Concerning ESPs, Section 394.4 states:

Rules that implement the following minimum standards shall be adopted by the commission for electric service providers offering electrical services to residential and small commercial customers and the governing body of a public agency offering electrical services to residential and small commercial customers within its jurisdiction:

(a) Confidentiality: Customer information shall be confidential unless the customer consents in writing. This shall encompass confidentiality of customer specific billing, credit, or usage information. This requirement shall not extend to disclosure of generic information regarding the usage, load shape, or other general characteristics of a group or rate classification, unless the release of that information would reveal customer specific information because of the size of the group, rate classification, or nature of the information.

....

*(h) Additional protections: The commission or the governing body may adopt additional residential and small commercial consumer protection standards that are in the public interest.*⁹

Parties dispute the extent to which this section of the Pub. Util. Code gives the Commission authority to extend privacy protections over customer data

⁸ § 366.2(c)(4)(D), § 366.2(c)(9) and § 366.2(c)(17), emphasis added.

⁹ § 394.4, emphasis added.

provided to ESPs by the utilities and to determine the obligations that ESPs have to protect the privacy of the usage data of their customers. This decision will examine these arguments in the following sections.

In summary, the Commission has clear authority and jurisdiction over the practices of gas corporations to protect confidential consumer usage data. Concerning CCAs and ESPs, statutory provisions address Commission authority and jurisdiction, but parties to this proceeding differ in their interpretation of these statutes and reach different conclusions on the authority that the Commission has to protect the customers of CCAs and ESPs.

5. Should Privacy Rules Apply to Gas Corporations?

There is no dispute about the Commission's statutory authority to extend privacy protections to the usage data of customers of gas corporations using AMI. The provisions of SB 1476 are clear on this matter.

Concerning the question of whether the Commission should extend the privacy rules adopted in D.11-07-056 to gas corporations or modify them in some way, the Commission received comments from PG&E, SDG&E, SoCalGas, Southwest Gas, DRA and TURN.

5.1. Positions of Parties

The three investor-owned utilities (IOUs) with gas corporations, PG&E, SDG&E, and SoCalGas, raised no objections to the extension of the privacy protections adopted in D.11-07-056, but some raised practical issues concerning the timing and method for implementing these privacy protections.

PG&E saw neither legal nor implementation issues in extending the privacy rules to gas corporations. PG&E states:

In response to the threshold question in the ALJ Ruling regarding the compliance of PG&E's natural gas corporation with the Commission's privacy rules adopted in D.11-07-056,

PG&E's natural gas corporation is currently in substantial compliance with the Commission's customer privacy rules because PG&E implements its customer privacy program and controls on a combined gas-and-electric system basis, and because PG&E's gas tariffs contain customer privacy protections that are substantially the same as its electric tariffs (See PG&E Gas Rule 9.M).¹⁰

Thus, PG&E identifies no legal or practical obstacles in extending the privacy rules adopted in D.11-07-056 to its gas operations.

SDG&E supports the adoption of rules, but makes queries about the timing for implementing the new rules. SDG&E states:

SDG&E supports the intent of D.11-07-056 and believes the basic principles and rules adopted for electrical corporations in Attachment D of D.11-07-056 (to protect the privacy and security of the electrical consumption data of customers collected from Smart Meters) should also apply to gas corporations. SDG&E does not, however, believe all the regulations as adopted in the Findings and Orders of D.11-07-056 are applicable to gas corporations; and therefore, the Commission should set forth specific gas provisions and implementation timelines to be applied to the gas corporations in this phase of the proceeding.¹¹

On the other hand, when asked what changes "should be made to the Privacy Rules as they apply to your company or organization...", SDG&E answered "None."¹²

SoCalGas articulates a different position arising from the status of its advanced meter deployment. SoCalGas states:

¹⁰ *Id.* at 1.

¹¹ SDG&E Comments at 3.

¹² *Id.* at 4.

SoCalGas has no objections to the application of Attachment D of D.11-07-056 to the utility... In general, SoCalGas supports the intent of D.11-07-056 and agrees that its provisions should be equally applied to SoCalGas except for the following proposed modifications as discussed below.¹³

The first modification suggested by SoCalGas has to do with timing. SoCalGas notes that:

... requiring SoCalGas specific tariffs to be filed within 6 months of the date of D.11-07-056 is not warranted at this time as SoCaGas is still in the project development stage of its Advanced Meter project. SoCalGas will not begin deployment of its Advanced Meters until first quarter 2013. Therefore, SoCalGas would request that this provision in D.11-07-056 above be amended as it applies to SoCalGas consistent with SoCalGas' Advanced Meter deployment, which is expected to begin in the first quarter of 2013.¹⁴

In addition, SoCalGas states that the directive in D.11-07-056 that IOUs should "work with the [California Independent System Operator (CAISO)] to develop methodology to make wholesale prices available to customers" is not applicable to gas corporations. Furthermore, SoCalGas argues that requiring SoCalGas "to provide third parties' access to customer usage data via the utility's backhaul when authorized by customers should be delayed"¹⁵ because SoCalGas has not even begun to deploy its advanced meter project. SoCalGas also notes that it is already required to provide customers with access to wholesale and retail price data by D.10-04-027, and thus it is unnecessary to subject it to the similar requirements in D.11-07-056. Additionally, SoCalGas argues that since its

¹³ SoCalGas Comments at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 3.

proposed advanced meter program lacks a Home Area Network (HAN) function, “SoCalGas does not believe it is necessary or prudent at this time to require SoCalGas to develop a ... HAN Implementation Plan”¹⁶ On the other hand, concerning the issue of the privacy rules in Attachment D, SoCalGas has no objection to these rules, but asks for pragmatic modifications to reflect SoCalGas’s deployment schedule. Specifically, SoCalGas asks:

In consideration of SoCalGas’ Advanced Meter deployment schedule, SoCalGas should be instructed to file a Tier 2 Advice Letter within 90 days to confirm its corporate policies are aligned with Attachment D, but the requirements that IOUs submit annual privacy reports and conduct independent audits should be amended for SoCalGas so that these steps are not required until March 2014 at which time the Advanced Meter project will have been deployed for a reasonable period of time.¹⁷

Southwest Gas, which lacks an advanced metering program, states:

Southwest Gas believes that D.11-07-056 and Attachment D are not applicable to Southwest Gas. The system utilized by Southwest Gas is an Automatic Meter Reading system which, by definition, is not governed by Public Utilities Code § 8380 or contemplated to be governed by D.11-07-056 and Attachment D. Further, an application of the requirements of D.11-07-056 and Attachment D to Southwest Gas’ AMR system would be costly and of questionable benefit. Put simply, Southwest Gas’ AMR system does not have the capabilities to generate the data that is subject to protection under D.11-07-056 and Attachment D. Southwest Gas currently maintains policies and procedures to protect personal identifiable information that is in the possession of Southwest Gas. However, personal identifiable information is

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 5.

not transmitted over Southwest Gas' AMR system and, as such, D.11-07-056 and Attachment D does not apply.¹⁸

TURN argues simply that "The privacy rules should apply to gas companies."¹⁹ DRA argues that the Commission should require "all entities adopt the privacy rules for consumer protection purposes."²⁰

5.2. Discussion

The comments of the parties show that it is reasonable and consistent with SB 1476 to extend the privacy protections adopted in Attachment D of D.11-07-056 to SoCalGas, to the gas operations of SDG&E, and to the gas operations of PG&E. Attachment A to this decision consists of the rules in Attachment D of D.11-07-056 revised to reflect their applicability to these gas corporations.

Because neither Southwest Gas nor SCE's Santa Catalina Island Gas Utility has implemented an AMI, neither is subject to the provisions of SB 1476. In addition, applying the rules of Attachment A of this decision to Southwest Gas and SCE's Santa Catalina Island Gas Utility would be costly and of questionable benefit. Therefore, we do not require Southwest Gas or SCE's Santa Catalina Island Gas Utility to comply with these privacy rules now.

The issues raised by SoCalGas concerning the timing of advice letter filings and the applicability of certain reporting provisions of D.11-07-056 are well taken.

¹⁸ Southwest Gas Comments at 3-4.

¹⁹ TURN Comments at 2.

²⁰ DRA Reply Comments at 10.

Concerning the requirement to file tariffs making price, usage and cost information available to customers online, we note that a timeline for providing customers access to usage information was set for SoCalGas in D.10-04-027²¹ and there is no basis for changing it in this proceeding. In addition, the provisions of D.11-07-056 that require working with the CAISO to develop a wholesale price methodology only apply to electricity prices. There is no reason for gas corporations to work with the electric grid operator to develop a pricing methodology. Similarly, it is not reasonable to require third party access to a customer's usage data via the utility's backhaul at this time for SoCalGas because D.10-04-027 already has established requirements for SoCalGas to provide third parties with this access. Similarly, there is no need for a "real time price study" since the benefits to customers are not readily apparent at this time. Finally, since the advanced meter program authorized for SoCalGas in D.10-04-027 does not include HAN functionality, it is not necessary or prudent to require a Smart Meter HAN Implementation Plan for SoCalGas.

In addition, in consideration of SoCalGas's advanced meter deployment schedule, it is reasonable that we instruct SoCalGas to submit a Tier 2 Advice Letter within 90 days of the adoption of this decision or concurrent with its installation of advanced meters (whichever is later) to confirm that its corporate policies are aligned with Attachment A to this decision. Commission staff will hold a workshop with SoCalGas and others to ensure a commonality of approach.

²¹ D.10-04-027 requires access to gas usage and price data by customers and authorized third parties concurrently with meter installation. D.10-04-027 at 43-44.

In light of SoCalGas's schedule for deploying advanced meters, the annual privacy reports and the results of independent audits need not be submitted until March 2014. This due date will permit SoCalGas's advanced meter project to have been deployed for a reasonable period of time in SoCalGas's service territory. Subsequent privacy audits will be due in March of the year in which the company's General Rate Case is being considered.

The request of SDG&E to clarify the data access requirements from D.11-07-056 is also warranted. As this applies to PG&E and SDG&E, gas usage and gas cost data shall be made available to customers in a manner similar to electricity usage information. Specifically, PG&E and SDG&E should make gas usage and cost information available to customers via the utility webpages, to the extent they are not already doing so. We note that third party access to customer electricity data via the utility backhaul network is currently an open proceeding before the Commission.²² PG&E and SDG&E should anticipate that the Commission will consider third party access to gas consumption and other gas data at some time in the future. SoCalGas should develop the capabilities to provide information to its customers as directed in D.10-04-027.²³

The other requirements from D.11-07-056, such as developing a HAN roll-out schedule, working with the CAISO on a wholesale pricing pilot, providing customers with wholesale prices in real-time, are not applicable to gas operations, or to those of SoCalGas.

Concerning Southwest Gas and SCE's Santa Catalina Island Gas Utility, no interest is served in holding either subject to the privacy rules adopted in

²² See Application.12-03-002 *et al.*

²³ See Ordering Paragraph 3, D.10-04-027 at 51.

Attachment A because Southwest Gas and SCE's Santa Catalina Island Gas Utility have not deployed an advanced metering system that generates granular usage data. Southwest Gas's current meter reading system does not transmit personally identifiable information. It is, however, reasonable to require that if Southwest Gas or SCE's Santa Catalina Island Gas Utility deploys an advanced metering system, it should conform to the privacy rules adopted in this proceeding. More specifically, if Southwest Gas or SCE's Santa Catalina Island Gas Utility files an application for an AMI at some time in the future, that application should address privacy issues and either propose to comply with the rules in Attachment A or provide the Commission with facts demonstrating why such rules should not be applied to Southwest Gas or SCE's Santa Catalina Island Gas Utility.²⁴

Furthermore, in reviewing Attachment D of D.11-07-056, we note that some of the terms proceed with the assumption that the privacy rules apply only to electric corporations and electric consumption data. To ensure clarity, we have edited the rules to pertain to gas corporations, and the revised rules are attached as Attachment A.

In summary, we conclude that the privacy rules adopted in Attachment A should apply to the gas operations of PG&E, SDG&E, and SoCalGas, but not to Southwest Gas or SCE's Santa Catalina Island Gas Utility. PG&E, and SDG&E shall file conforming tariffs within 90 days of the effective date of this decision. SoCalGas shall file conforming tariffs either within 90 days of the effective date of

²⁴ At that time, Southwest Gas should also propose providing customer usage information and third party data access provisions in a manner similar to the other gas companies.

this decision or concurrent with its deployment of advanced meters, whichever is later. We note that the implementation timeline for many features of the advanced meter installation of SoCalGas was set in D.10-04-027, and we adopt no timetable in conflict with that schedule. For PG&E, SDG&E, and SCE, who were participants in the Phase I privacy proceeding, there is no need to adopt additional deadlines for reporting or audit requirements. To ensure a common approach to drafting complying gas and electric tariffs, we direct PG&E, SDG&E and SCE to join SoCalGas in workshops that staff will hold to discuss these issues.

6. Should the Commission Extend Privacy Protections to the Customers of Community Choice Aggregators?

Concerning the questions of whether the Commission has authority to extend the privacy rules adopted in D.11-07-056 to CCAs or whether it should extend or modify them in some way, the Commission received comments from MEA, CCSF, DRA, PG&E, SCE and SDG&E.

6.1. Positions of Parties

MEA, which is a CCA, argues that the Commission does not have authority to impose requirements on CCAs to protect the consumption data of electric customers and, if the Commission did have authority, there is still no reason to impose any requirements on a CCA. Specifically, MEA argues that § 366.2(c)(4) “has nothing whatsoever to do with customer information, smart grid operations or any of the relevant issues at play in this proceeding.”²⁵ MEA argues further that:

²⁵ MEA Comments at 3.

The cited language is simply on its face not relevant to data security and privacy. Rather, it specifically relates to matters that are to be contained in a CCA's statement of intent and its implementation plan. In MEA's case, its initial implementation plan was certified by the Commission on February 2, 2010 and its revised implementation plan incorporating additional members to the CCA was certified by the Commission on January 3, 2012.²⁶

MEA also argues that the Commission has limited jurisdiction over CCAs. MEA contends that the Commission's regulatory authority is limited to "the interaction between the CCA and the IOU as a regulated entity."²⁷ MEA argues further that:

The imposition by the Commission of the IOU data and privacy requirement set forth in D.11-07-056 on CCAs would far overreach the jurisdiction of the Commission with regards to both facets set forth above. As noted above, there is no legislative mandate that allows for additional data privacy rules to be imposed on CCAs, beyond the existing requirements described herein.²⁸

MEA also contends that CCAs are subject to "other specific privacy rules."²⁹ MEA cites Government Code Section 6254.16, which "exempts utility information, including usage data, from disclosure under the Public Records Act, except under specific circumstances."³⁰ MEA concludes that "customer data is

²⁶ *Id.*

²⁷ *Id.* at 5.

²⁸ *Id.*

²⁹ *Id.* at 6.

³⁰ *Id.*

protected by contract through the CCA Non-Disclosure Agreement ..., and the policies determined by MEA's governing body, its Board of Directors."³¹

Concerning accessibility of data, MEA argues that "PG&E should be responsible for the real-time accessibility of that data for both its bundled service customers and its distribution customers that take generation service from MEA."³²

CCSF, also a CCA, takes a different approach. CCSF argues that "[o]nly the non-disclosure aspects of the Privacy Rules are relevant to CCAs."³³ CCSF recommends that the "Commission should not require CCAs to comply with any of the other aspects of the Privacy Rules."³⁴ In particular, CCSF argues that § 366.2(c)(4) "merely says a CCA must provide a statement of intent to the Commission. ... This language cannot be read to mean that the Commission can impose any kind of requirement on CCAs."³⁵

On the other hand, CCSF states that "[i]n order to protect this customer data, the City recommends that the Commission treat CCA's as third parties that receive smart meter data from IOUs and similarly restrict a CCA's use of that data as it does with electrical corporations and other third parties."³⁶ In developing this point, CCSF argues further:

There should be two significant exceptions to such a rule, however: (i) the rule should not restrict a CCA's use of its

³¹ *Id.*

³² *Id.* at 8.

³³ CCSF Comments at 1.

³⁴ *Id.* at 2.

³⁵ *Id.*

³⁶ *Id.* at 3.

customer's smart meter data to interact and communicate with that customer; and (ii) the rule should not prevent a CCA from sharing customer data with its suppliers to allow the CCA to provide effective service to its customers, provided the suppliers similarly agree to treat customer information confidentially.³⁷

Finally, concerning information provided to customers, CCSF argues that "[t]he Commission does not have jurisdiction to impose these rules on CCAs."³⁸ CCSF states "it is the IOUs serving these customers, rather than CCAs, that provide metering service to CCA customers ... It is reasonable, therefore, for the provisions of the Privacy Rules that concern what data is provided to the customers to apply only to the IOUs"³⁹

In Reply Comments, DRA opposes the arguments of MEA and CCSF, and argues that the Commission has full authority to set privacy policy concerning CCA services. Specifically, DRA cites § 366.2(c)(9), which states that "The Commission shall determine the terms and conditions under which the electrical corporation provides services to community choice aggregators and retail customers."⁴⁰ DRA also points out that § 366.2(c)(17) notes that the Commission "may require additional information to ensure compliance with basic consumer protection rules and other procedural matters."⁴¹ DRA concludes that "jurisdiction over CCAs [is] well established."⁴²

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ DRA Reply Comments at 9, citing § 366.2(c)(9).

⁴¹ *Id.* at 9, citing § 366.2(c)(17).

⁴² *Id.* at 9.

Concerning the issue of what rules should apply to CCAs, DRA states that it “agrees with CCSF that CCAs should not be required to comply with other aspects of the Privacy Rules, in particular, those that require IOUs to make smart meter and other data available to customers.”⁴³

In reply comments, PG&E states:

PG&E already has customer confidentiality provisions in the existing ... CCA tariffs, along with executed NDAs where appropriate, and PG&E recommends that those tariffs be updated on a limited basis to include some of the key parts of the Fair Information Practice Principles, including notice to customers, purpose specification and information security requirements comparable to those in the Phase 1 Privacy Rules, and then the ... CCAs could comply with those requirements directly as part of their [Direct Access] and CCA programs or on a self-certification or independent verification basis, without the need for further interaction with the utilities sharing the customer information. For governmental entities that participate as CCAs, the State of California already has a FIPPs-like model for state governmental agencies to use in protecting customer privacy, under the Information Practices Act of 1977, California Civil Code Sections 1798, et seq. The provisions of the state Information Practices Act, which only apply to State agencies, could be used as a model for CCA information practices as well.⁴⁴

PG&E recommends that the Commission hold a “workshop or facilitate a conference call among the interested parties so that consensus language for ... CCA tariffs and/or Privacy Rules could be discussed...”⁴⁵

⁴³ *Id.* at 9-10.

⁴⁴ PG&E Reply Comments at 4.

⁴⁵ *Id.*

In reply comments, SCE concurs that the Commission has broad authority to protect data acquired by CCAs from utilities. In addition, SCE argues that § 366.2 gave the Commission authority as part of the registration process to regulate “CCAs for consumer protection purposes.”⁴⁶

SDG&E raises an issue related to CCAs, noting that:

... electrical corporations receive requests for sensitive customer-specific data by prospective CCAs who have not yet formed CCA entities or implemented CCA programs. When such requests for customer-specific data are made during an exploratory phase for the CCA, electric consumers are not yet customers of CCAs.⁴⁷

SDG&E then asks:

... SDG&E herein request [sic] for commission guidance as to: (1) whether Section 8380 requires customer consent prior to disclosure of customer-specific information to a prospective CCA; and (2) whether the commission must compel disclosure of energy consumption data to prospective CCAs without giving customers either notice or an opportunity to consent or decline to release their personal identifiable information (PII).⁴⁸

6.2. Discussion

The Commission has full authority to require CCAs which receive advanced consumption and usage data from PG&E, SCE or SDG&E to comply with privacy rules. Specifically, we find that § 366.2(c)(4) provides the Commission with broad authority to establish rules concerning aggregated service and that § 366.2(c)(17) permits the Commission to “ensure compliance

⁴⁶ SCE Reply Comments at 3.

⁴⁷ SDG&E Reply Comments at 2.

⁴⁸ *Id.* at 2-3.

with basic consumer protection rules....” Since the protection of the usage data generated by AMI is a basic consumer protection, the Commission has full authority to require CCAs to comply with privacy rules contained in Attachment B as part of their registration requirements with the Commission. This approach gives CCAs the full range of rights and responsibilities of a utility as it pertains to this metering data. Therefore, the existing CCAs should revise their Implementation Plans in conformance with the privacy rules adopted in this decision and file them with the Commission.

MEA’s argument that there is no need for the Commission to protect the privacy of customer usage data is not compelling. In particular, we see nothing in Government Code 6254.16 and its requirements that are at odds with the requirements adopted in Attachment D. Moreover, we note that SB 1476 addresses the granular data that advanced meters produce, and to the extent that CCAs have access to the granular data generated by the advanced meters and maintain that data, they should comply with the consumer protections adopted by the Commission. In particular, it is prudent to extend the privacy protections afforded by Attachment D of D.11-07-056 to customers who obtain power from a CCA. As CCSF notes, CCAs may use customer usage data for operational purposes, such as load forecasting, electricity procurement and billing, and this policy provides them with the freedom to use data for these needs. Nevertheless, when the CCA uses this data, ensuring the privacy of customer usage information is a basic consumer protection principle that CCAs should meet.

On this point, it is reassuring that CCSF admits that the non-disclosure aspects of the privacy rules are relevant to CCAs and supports them. CCSF suggests that the Commission treat CCAs “as third parties that receive smart

meter data from IOUs,” but CCSF also requests full rights to use the data in communicating with its customers or its suppliers.

In our view, a policy of granting CCAs full access to customer usage data and holding CCAs responsible for protecting the advanced metering data that they obtain from PG&E, SCE and SDG&E provides the CCAs the same usage rights and responsibilities as a utility. Moreover, in this particular situation, such a policy provides CCAs with all rights to data that it requests.

Concerning the obligation to disclose privacy policies and other information to the customers of CCAs, we do not believe that the obligation to disclose such information should be placed on the underlying IOUs. The customers are the customers of a CCA, not the IOU. Therefore, the CCA should have the obligation to make arrangements to disclose to the customers the policies that the CCA will follow concerning usage data. Although the most efficient way to ensure that these disclosures are made may be by contracting with the utility to provide these related disclosures, we find that the CCA should bear the responsibility to ensure that the adopted disclosure policies are followed.

In regards to the request from the CCAs regarding the requirements in D.11-07-056 to provide customers with on-line access to customer information, electricity bill, usage and price information, and to provide authorized third parties with data access, we find that it is *not* reasonable for CCAs to be required to provide such services to their customers or third parties. Since IOUs maintain the billing and metering services for CCAs, there is no reason to burden CCAs with developing on-line tools for their customers that are otherwise provided by the IOU. In the future, should a CCA decide to provide online services to their customers, the CCA should conform to the requirements of D.11-07-056.

Finally, concerning the clarification requested by SDG&E, we clarify that § 366.2(9) orders electrical corporations to cooperate fully with CCAs, and to provide them with data as defined in § 8380. We note that the Commission has adopted procedures that require a non-disclosure agreement with the prospective CCA.⁴⁹ Since there are existing rules regarding the provisioning of customer usage data to a prospective CCA, there is no need to adopt additional requirements. However, the utility should enter into a non-disclosure agreement with a prospective CCA that maintains the privacy protections adopted by the Commission in D.11-07-056. If the prospective CCA enters into such a non-disclosure agreement, there is no need for the CCA to secure the consent of each customer for release of the customer's data. If the prospective CCA, however, will not enter into such a non-disclosure agreement, then the utility may not provide the data unless directed by the customer.

In any event, we reiterate that the protections adopted by D.11-07-056 do not apply to aggregated data, but only to data that contains personally identifiable information, and therefore we do not require a non-disclosure agreement that contains the protections adopted by D.11-07-056 before the provision of aggregated data.

7. Should the Commission Extend Privacy Protections to the Customers of Electric Service Providers?

Concerning the question of whether the Commission should extend to ESPs the privacy rules adopted in D.11-07-056 or modify them in some way, the

⁴⁹ See for example PG&E Electric Schedule E-CCAINFO Cal. PUC Sheet 25520-E, PG&E Form No 79-1030 Cal. PUC Sheet 23061-E, and PG&E Form No 79-1031 Cal PUC Sheet 30745-E.

Commission received comments from AReM, PG&E, SDG&E, SCE, DRA, and TURN.

7.1. Positions of Parties

AReM argues that although the privacy of data is an important issue, the Commission's privacy rules should not apply to ESPs. AReM proposes both a policy argument and a legal argument supporting its position. Based on policy, AReM argues:

AReM's members acknowledge that their access to Smart Grid information and data carries with it obligations to ensure that their customers' privacy is protected, and that such access is not used for anti-competitive purposes. AReM's members are fully committed to doing so. However, the Commission must remain mindful of the fundamental difference between the services provided by ESPs and those provided by the IOUs – that difference being that customers freely elect service from ESPs on terms and conditions that are freely negotiated, and if there is any element of service offered by ESPs that is not acceptable to the customer, they need not take service from the ESP. Those freely negotiated terms and conditions can and should include provisions relative to privacy protections. But those protections should be freely negotiated and not the subject of Commission mandate.⁵⁰

On legal grounds, AReM argues that § 394.4 provides the Commission with authority to adopt consumer protection measures only “for electric service providers offering electrical services to residential and small commercial customers...”⁵¹ In addition, AReM argues that § 394(f) states that “Nothing in this part authorizes the commission to regulate the rates or terms and conditions of service offered by electrical **service** providers.” AReM concludes:

⁵⁰ AReM Comments at 2-3.

⁵¹ § 394.4(a).

The Commission's statutory authority with regard to privacy rules is indeed limited. Under Section 394.4 it may impose the privacy rules established for applicability to the IOUs on ESPs serving residential and small commercial customers. It does not, however, have the jurisdictional authority to impose privacy and customer data access rules on ESPs that do not serve these customer classes. AReM's responses, therefore, ... reflect the fact that the Commission has no statutory jurisdiction to subject AReM members to specific Privacy Rules with respect to their service to their respective medium and large commercial and industrial customers.⁵²

The position of AReM is opposed by TURN, DRA, PG&E and SCE. In its comments, TURN argues that "privacy rules should apply to ESPs."⁵³ TURN notes that "§ 394.4(h) grants the Commission broad authority to 'adopt additional ... consumer protection standards that are in the public interest.'"⁵⁴ TURN argues further that "[c]onsumers should be able to rely upon a consistent, standard policy regarding privacy and confidentiality no matter who provides the energy services."⁵⁵

In Reply Comments, DRA argues:

Because medium and large commercial customers are in a better position to protect their business interests, including privacy interests, the Commission should be able to exempt ESPs that exclusively serve large and commercial customers. However, what happens when an exempted ESP later decides to serve residential or small commercial customers or if a "medium" commercial business downsizes and becomes a "small" business? In situations like these, the ESP should be

⁵² AReM Comments at 6.

⁵³ TURN Comments at 4.

⁵⁴ *Id.*

⁵⁵ *Id.*

made to comply with the Commission's Privacy Rules. ... The Commission's final decision should ... require all ESPs to conform to the Privacy Rules when serving residential and small customers.⁵⁶

PG&E argues that the Commission has authority to extend privacy protections to ESPs, but states that it "agrees [with AReM] that it may only be necessary for the Commission to adopt privacy rules for residential and small customers..."⁵⁷ PG&E contends that tariffs offer a way to implement these protections, but states:

... it may be beneficial for the Commission to hold an additional short (half day) workshop or facilitated conference call among the interested parties, so that consensus additional language for the DA and CCA tariffs and/or Privacy Rules could be discussed prior to completing the record and moving to the Proposed Decision phase. PG&E would be willing to help facilitate these follow-up discussions among interested parties.⁵⁸

SCE argues that "the Commission's privacy rules should apply to ... ESPs."⁵⁹ SCE notes that "D.11-07-056 found that it [the Commission] has authority under § 8380 to protect the data when it is in the possession of third parties accessing it from the IOUs."⁶⁰ SCE also notes that in the registration process, § 366.2 permits the Commission to "require additional information to ensure compliance *with basic consumer protection rules* and other procedural

⁵⁶ DRA Reply Comments at 3.

⁵⁷ PG&E Reply Comments at 2.

⁵⁸ PG&E Reply Comments at 4.

⁵⁹ SCE Reply Comments at 3.

⁶⁰ *Id.*

matters.”⁶¹ Finally, SCE argues that failure by the Commission to protect AMI data would “cause customer confusion.”⁶²

7.2. Discussion

There is no controversy concerning the Commission’s authority to adopt consumer protection measures for the residential and small commercial customers of ESPs. The clearest source of this authority is § 394.4, which states:

394.4. Rules that implement the following minimum standards shall be adopted by the commission for electric service providers offering electrical services to residential and small commercial customers and the governing body of a public agency offering electrical services to residential and small commercial customers within its jurisdiction:
(a) Confidentiality: Customer information shall be confidential unless the customer consents in writing. This shall encompass confidentiality of customer specific billing, credit, or usage information.⁶³

Thus, it is clear that the Commission can require compliance with the privacy protection rules contained in Attachment D of D.11-07-056 as a condition for accepting the registration of an ESP that plans to offer services to residential and small commercial customers.

Concerning whether to apply these privacy rules to ESPs, we find convincing the arguments of TURN and DRA that residential and small commercial customers should face consistent privacy policies concerning the data generated by the AMIs of PG&E, SCE, and SDG&E. The data is generated and collected by PG&E, SCE, and SDG&E, and the residential and small commercial

⁶¹ *Id.*, emphasis in original.

⁶² *Id.* at 7.

⁶³ § 394.4

customers should have the same basic protections whether they receive service from the IOU or from an ESP with access to that data.

For those ESPs that serve only medium and large commercial customers and industrial customers, the Commission agrees with AReM that there is no need to extend privacy protections to these sophisticated customers. DRA's observation that such customers are in a "better position to protect their business interests, including privacy interests" is compelling. Absent legislative direction, this decision sees no public interest in applying these regulations to ESPs serving these customers.

Therefore, we direct PG&E, SCE and SDG&E to file appropriate changes to their existing rules and tariffs to include language consistent with Attachment B. In order to ensure that these privacy protections extend to the residential and small commercial customers of ESPs who obtain data from AMI, we rule that Attachment B is a condition of service and an ESP, as part of their Application and registration process, must certify adherence to the privacy rules. Additionally, we direct that the ESP "Notice of Price, Terms and Condition of Service," pursuant to Section 394.5,⁶⁴ be revised in accordance with Attachment B. To be clear, these privacy requirements only apply to those ESPs that serve small commercial and residential customers, but do not apply to ESPs that serve medium and large commercial and industrial customers or to small commercial and residential customers affiliated therewith. In order to facilitate this effort, we adopt PG&E's recommendation that the Commission hold workshops for modifying the tariff rules for ESPs. We believe that holding such workshops can be helpful, but we do not see the need to hold these workshops

⁶⁴ See D.98-03-072, Appendix C, as modified by D.99-05-034.

prior to the adoption of privacy rules in this decision. Instead, we direct the Commission's staff to schedule workshops to assist the parties in proposing modified tariffs for ESPs that incorporate the privacy policies adopted in this decision.⁶⁵

8. Should the Commission Adopt a General Order to Address Privacy Issues?

In this proceeding, several parties recommended that the Commission consolidate its privacy protections into a new General Order.

8.1. Positions of Parties

PG&E recommends that "the Commission consolidate and streamline its customer privacy rules into a single General Order applicable to all regulated entities subject to direct or indirect Commission jurisdiction..."⁶⁶ PG&E argues:

To accomplish this streamlining and consolidation of the Commission's rules, PG&E recommends that the Commission consider modifying D.11-07-056 to extend the rules to all utilities and other entities regulated by the Commission. In addition, the Commission should consider requiring third parties which provide goods and services to utilities or which obtain access to private customer information from utilities, to meet clear and consistent information security standards up-front, as a prerequisite to accessing private customer information. These specific information security standards could include, for example, a requirement that third parties provided independent verification to the Commission that their information security programs and controls meet

⁶⁵ The workshop directed in this decision should also be used to address any inconsistencies between the utilities in implementing Attachment D of D.11-07-056.

⁶⁶ PG&E Comments at 1.

recognized national and international standards and “industry best practices” such as ISO 27001.⁶⁷

DRA supports the proposal to have a General Order to promote administrative efficiency and customer convenience. DRA argues:

It would be much easier for consumers to locate the Privacy Rules in a General Order than through a Commission decision, which may be amended in subsequent decisions. In D.11-07-056, the Commission required each IOU to file Tier 2 Advice Letters to identify whatever changes are necessary to conform its corporate policies concerning customer usage data to the Privacy Rules. Following review of those filing, it became apparent that the IOUs interpreted and constructed their policies inconsistently. As a result, DRA protested and the Energy Division subsequently suspended the Advice Letters. DRA submits that establishing a General Order, which would be dedicated to the application of the Privacy Rules in a consistent manner among the various entities relevant to customer energy usage data management, would alleviate most incongruities and provide a normalized Privacy Rules policy. At this point, DRA does not propose specific language with respect to General Order instituting the Privacy Rules. DRA recommends that the three IOUs jointly prepare a preliminary draft of a General Order, with a subsequent review and comment by all parties. DRA anticipates the construction of a General Order would rely heavily on the current Privacy Rules with leave to adapt to future amendments as needed.⁶⁸

SoCalGas endorses “uniformity of privacy rules” across electric and gas utilities, but did not endorse the call of a General Order.⁶⁹

MEA argues against adopting a General Order, stating that:

⁶⁷ *Id.* at 2.

⁶⁸ DRA Reply Comments at 9-10, footnotes omitted.

⁶⁹ SoCalGas Reply Comments at 1-2.

By grouping together these disparate entities, PG&E fails to acknowledge that these entities are subject to distinctly different levels of regulatory oversight by the Commission. This blurs the distinction between the historic comprehensive Commission regulation that exists with regard to electrical and gas corporations and the far lighter regulatory oversight accorded to other load-serving entities, such as CCAs and energy service providers.⁷⁰

8.2. Discussion

We decline to initiate a process leading to a General Order at this time. Although the recommendation of PG&E for a General Order is a helpful proposal, we do not believe that it is reasonable to adopt an order at this time. We note that the privacy rules adopted for the data generated by the AMI are new. Administratively, it makes sense for the Commission to learn about the strengths and weaknesses of these rules before consolidating them into a General Order. After the rules have been in place for a time, a reconsideration and consolidation of the rules into a General Order would make more sense.

In addition, in this era of limited State resources, initiating such a proceeding poses challenges. Although consolidating these rules into one General Order may streamline and consolidate Commission privacy protections, the entities to which these rules apply have sufficient familiarity with Commission decisions to find these requirements. Thus, we do not believe that the failure to compile these rules into a single General Order at this time will have an adverse impact on customer protections. Over time, as more firms and individuals provide services that raise privacy issues, the consolidation of the rules into a General Order may make it easier for parties to find the

⁷⁰ MEA Reply Comments at 2.

requirements. We trust that the Commission will revisit this proposal in the future.

9. Categorization and Need for Hearing

The Commission preliminarily categorized this rulemaking as quasi-legislative and preliminarily determined that hearings were not necessary. The Phase II Scoping Memo of October 7, 2012 affirmed that this phase of the proceeding would be quasi-legislative and that no hearings would be necessary. No party disputed either of these determinations for this phase of the proceeding.

10. Comments on Proposed Decision

The proposed decision of Commissioner Peevey in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on August 13, 2012, by PG&E, SDG&E, SCE, DRA, AReM, CCSF and MEA. Reply comments were filed on August 21, 2012 by PG&E, SCE, MEA, TURN, DRA and SDG&E, AReM and SoCalGas.

PG&E requests clarifications concerning the timing of privacy audits and clarification that "proposal for electric customer usage data may be approved [in A.12-03-002 et al.] without waiting for expansion to include gas usage data."⁷¹ In Reply Comments on the PD, SoCalGas asks for similar clarifications.⁷² In

⁷¹ *Opening Comments of Pacific Gas and Electric Company (U 39 E) on Proposed Decision Extending Privacy Protections to Customers of Gas Corporations and Community Choice Aggregators, and to Residential and Small Business Customers of Electric Service Providers (PG&E Comments on PD)*, August 13, 2012, at 2,

⁷² *Reply Comments of Southern California Gas Company on Proposed Decision*, August 21, 2012, at 1-2.

response, this decision now clarifies the timing of privacy audits and the linkage of privacy audits to General Rate Cases. In addition, the decision now makes clear that any action that modifies the scope of A.12-03-002 et al. to consider the disclosure of gas usage data will be addressed in that proceeding, not here, nor will that proceeding wait for expansion to include issues related to gas usage data.

SDG&E, who joins PG&E in requesting clarifications pertaining to privacy audits,⁷³ also identifies errors in Attachment B and asks for revisions to reflect their applicability to Community Choice Aggregators and Electrical Service Providers when providing service to residential and small commercial customers.⁷⁴ We have made revisions to Attachment B to correct these errors.⁷⁵

SCE argues that the privacy protections should apply to large commercial and industrial customers of ESPs as a matter of principle and SCE supports the consistent treatment of all customers, whether they received service from an electrical corporation or from an ESP.⁷⁶ In addition, SCE seeks clarification that

⁷³ *Opening Comments of San Diego Gas & Electric Company (U 902 M) Concerning Proposed Decision (SDG&E Comments on PD)*, August 13, 2012, at 1.

⁷⁴ *Id.* at 2.

⁷⁵ *In Reply Comments of Marin Energy Authority on Proposed Decision Extending Privacy Protections to Customers of Gas Corporations and Community Choice Aggregators, and to Residential and Small Business Customers of Electric Service Providers (MEA Reply Comments on the PD)*, August 21, 2012, MEA argues that the changes proposed by SDG&E to Attachment B “do not appropriately address the privacy rules for CCAs” (at 3), but does not propose changes. We have, however, revised Attachment B in light of MEA’s caution.

⁷⁶ *Southern California Edison Company’s (U 388-E) Opening Comments on the Proposed Decision Extending Privacy Protections to Customers of Gas Corporations, Community Choice Aggregators, and to Residential and Small Business Customers of Electric Service Providers (SCE Comments on PD)*, August 13, 2012, at 2-6.

privacy rules do not apply to SCE's Santa Catalina Island gas utility because it does not use AMI technology⁷⁷ and requests the correction of certain typographical errors.⁷⁸ In response, the decision declines to extend privacy regulations to ESPs serving large commercial and industrial customers. These sophisticated consumers can take steps to protect their consumption data or choose service from an electrical corporation subject to the provisions of SB 1476. In addition, the decision clarifies that the privacy rules do not apply to SCE's Santa Catalina Gas Utility because it does not use AMI technology. Furthermore, the decision corrects other typographical errors identified by SCE.

AReM requests that the Commission determine that the Commission's jurisdiction "does not extend to ESPs serving larger customers."⁷⁹ In addition, AReM seeks other clarifications and argues that "residential and small commercial customer accounts that are incidentally affiliated with medium and large commercial or industrial customer accounts do not need the same protections afforded to unaffiliated residential and small commercial load."⁸⁰ In Reply Comments on the PD, AReM requests that the decision clarify that the requirement to revise the "Notice of Price, Terms and Conditions of service" applies only to "ESPs serving residential and small commercial customers."⁸¹

⁷⁷ *Id.* at 6-7.

⁷⁸ *Id.* at 8.

⁷⁹ *Comments of the Alliance for Retail Energy Markets on Proposed Decision Extending Privacy Protections* (AReM Comments on PD), August 13, 2012, at 2.

⁸⁰ *Id.* at 4-5. In *Reply Comments of The Utility Reform Network on Proposed Decision of President Peevey*, August 21, 2012 at 1-2, TURN opposes this position.

⁸¹ *Reply of the Alliance for Retail Energy Markets to Comment on Proposed Decision Extending Privacy Protections*, August 21, 2012, at 4.

In response to AReM's arguments, we decline to reach a decision determining the extent of the Commission's jurisdiction at this time, particularly since we do not seek to exercise such jurisdiction pertaining to ESPs serving large commercial and industrial customers at this time. Concerning the other clarifications requested by AReM, this decision has considered and addressed each request.⁸² In particular, this decision removes references to "small business customers" and uses the Commission's preferred term of "small commercial customers" and defers to other proceedings for an exact definition of this term. The decision also makes clear the requirement to revise the "Notice of Price, Terms and Conditions of service" applies only to ESPs serving residential and small commercial customers. Finally, the decision does not apply the privacy protections to residential and small commercial customers affiliated with medium and large commercial or industrial customer accounts because we see no need for such protections at this time. DRA argues that the proposed decision "errs in failing to explain Commission's rationale" in declining to exert jurisdiction over ESPs serving large and medium customers.⁸³ DRA also argues that "implementation of the privacy decision proved unsuccessful"⁸⁴ and asks the Commission to set deadlines for Staff to hold workshops. DRA also renews its request for the adoption of a General Order pertaining to privacy rules. In

⁸² DRA's discussion in *Reply Comments of the Division of Ratepayer Advocates on the Proposed Decision of President Michael R. Peevey* (DRA Reply Comments on PD), August 21, 2012, at 2-3 of the issue of "condition of service" and "condition of registration" that was raised by AReM makes clear that the change requested by AReM is not warranted.

⁸³ *Comments of the Division of Ratepayer Advocates on the Proposed Decision of President Michael Peevey* (DRA Comments on PD), August 13, 2012, at 2.

⁸⁴ *Id.* at 4

response, we note that DRA itself, as cited above, provided the policy reason for not regulating ESP service pertaining to large customers – such regulation is not needed. Concerning the processing of advice letters, we believe that Commission Staff are best positioned to make determinations on this matter and will not constrain their discretion in this decision. Concerning the issue of initiating a proceeding to draft a General Order, DRA mischaracterizes this decision. This decision does not reject a general order pertaining to privacy rules. The decision simply declines to initiate such a proceeding at this time because of resource constraints.

CCSF makes three major points in its Opening Comments on the PD. First, CCSF argues that the decision “correctly finds that CCAs should not be required to develop on-line tools or secure the consent of each customer for release of the customer’s data.”⁸⁵ Second, CCSF argues that the Commission “cannot rely on Section 366.2 to apply the privacy rules to CCAs.”⁸⁶ Specifically, CCSF argues that the privacy rules “are arguably more complicated than the ‘basic consumer protections’ referred to in Section 366.2(c)(17).” Third, CCSF argues that “the city and other CCAs need more than 30 days to file revised implementation plans.”⁸⁷ In response to CCSF, we find that although the privacy rules may be complicated, protecting the privacy of customer usage information is a basic consumer protection. Concerning the need for additional time for CCAs to file

⁸⁵ *Comments of the City and County of San Francisco on the Proposed Decision Extending Privacy Protections to Customers of Gas Corporations and Community Choice Aggregators (CCSF Comments on PD)*, August 13, 2012, at 2.

⁸⁶ *Id.*

⁸⁷ *Id.* at 3.

revised implementation plans, CCSF's arguments are persuasive. We have revised the decision to provide 90 days for the filing of revised plans.

MEA, like CCSF, supports the PD's conclusion that the data access rules do not apply to CCAs.⁸⁸ MEA, like CCSF, objects to the PD's assertions of jurisdiction over privacy matters.⁸⁹ MEA argues that the proposed rules "are clearly tailored to Electrical Corporations"⁹⁰ and points out errors in Attachment B. MEA also argues that "revisions to the CCA implementation plan is [sic] unwarranted" and that the "30-day period to revise is insufficient."⁹¹ In response, we have modified the decision to make clear why we conclude that our jurisdictional responsibility to protect the privacy of the data generated by AMI is clear. In addition, we have revised Attachment B to clarify its applicability to CCAs and ESPs and we have revised the decision to permit a 90-day period to revise implementation plans. We have not, however, altered our analysis of the Commission's authority to protect the privacy of customers of CCAs.⁹²

⁸⁸ *Comments of Marin Energy Authority of Proposed Decision Extending Privacy Protections to Customers of Gas Corporations and Community Choice Aggregators, and to Residential and Small Business Customers of Electric Service Providers* (MEA Comments on PD), August 13, 2012, at 2.

⁸⁹ *Id.*

⁹⁰ *Id.* at 9.

⁹¹ *Id.* at 10.

⁹² PG&E, in *Reply Comments of Pacific Gas and Electric Company on Proposed Decision Extending Privacy Protections to Customers of Gas Corporations and Community Choice Aggregators, and to Residential and Small Business Customers of Electric Service Providers* (PG&E Reply Comments on the PD) August 21, 2012, provides a detailed legal rebuttal to MEA supporting the legal reasoning in this decision at 2-3.

11. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Timothy J. Sullivan is the assigned ALJ in this proceeding.

Findings of Fact

1. No party to this proceeding raised any objections to the extension of the privacy rules adopted in D.11-07-056 to gas corporations with AMI.

2. Neither Southwest Gas nor SCE's Santa Catalina Island Gas Utility has plans to implement an AMI for its gas distribution.

3. Southwest Gas's meter reading system does not transmit personally identifiable data.

4. Section 8380 of the Pub. Util. Code adopted privacy protections for customer data produced by AMI and held by both electrical and gas corporations.

5. Section 366.2(c) of the Pub. Util. Code grants the Commission authority to determine the terms and conditions under which electrical corporations provide services to CCAs and retail customers and permits the Commission to require additional information to ensure compliance with basic consumer protections rules and other procedural matters.

6. Section 394.4 of the Pub. Util. Code orders the Commission to adopt minimum standards concerning the confidentiality of customer information that apply to ESPs serving residential and small commercial customers.

7. Section 366.2(9) of the Pub. Util. Code orders electrical corporations to cooperate fully with CCAs and to provide them with data as defined in Section 8380.

8. PG&E and SDG&E have substantially deployed AMI for gas operations.

9. SoCalGas is currently in the process of deploying an AMI.

10. Gas corporations do not interact with the CAISO on pricing and do not, as a rule, have experience with the wholesale pricing of electricity.

11. The AMI systems deployed by gas corporations do not support a HAN.

12. The information on usage generated by AMI is more granular than that produced by traditional metering systems.

13. Providing CCAs with full access to AMI data while holding them subject to the privacy protections in Attachment D of D.11-07-056 provides CCAs with the full range of rights and responsibilities of a utility as it pertains to AMI data.

14. The Commission has adopted procedures that require the execution of a non-disclosure agreement between a utility and a prospective CCA.

15. A timeline for providing customers of SoCalGas with access to usage data was adopted in D.10-04-027.

16. The Commission, the public, PG&E, SCE, and SDG&E have little experience with the privacy rules adopted in D.11-07-056.

Conclusions of Law

1. Extending the privacy rules adopted in D.11-07-056 and revised in Attachment A of this decision to gas corporations is consistent with the provisions of Section 8380 of the Public Utilities Code.

2. Since Southwest Gas and SCE's Santa Catalina Island Gas Utility have no plans to implement an AMI for its gas distribution system and since Southwest Gas's automatic meter reading system does not transmit personally identifiable data, it is not reasonable to require Southwest Gas or SCE's Santa Catalina Island Gas Utility to implement the privacy rules adopted in Attachment A to this decision at this time.

3. It is reasonable to require that if Southwest Gas or SCE's Santa Catalina Island Gas Utility files an application for AMI at some time in the future, that

application should address the privacy issues and either propose to comply with the rules in Attachment A to this decision or provide the Commission with facts and/or law demonstrating why such rules should not be applied to Southwest Gas or SCE's Santa Catalina Island Gas Utility.

4. Since gas corporations do not interact with the CAISO on pricing and do not, as a rule, have experience with the wholesale pricing of electricity, it would be unreasonable to require that gas corporations work with the CAISO to develop a wholesale price methodology concerning electricity prices.

5. Since PG&E and SDG&E have substantially deployed AMI for gas operations, it is reasonable to require PG&E and SDG&E to file tariffs that conform to the privacy rules adopted in this decision within 90 days of the adoption of this decision.

6. Since SoCalGas is currently in the process of deploying an AMI, it is reasonable to require SoCalGas to file tariffs conforming to the privacy rules adopted in this decision either concurrently with meter installation or within 90 days of the adoption of this decision, whichever is later.

7. Since SoCalGas is still deploying its AMI, it is not reasonable to require it to submit annual privacy reports and conduct independent audits until March 2014, at which time the AMI will have been deployed for a reasonable period of time in SoCalGas's service territory.

8. Since the AMI systems deployed by gas corporations do not support a HAN, the requirements in D.11-07-056 pertaining to a HAN roll-out schedule are not relevant for gas corporations.

9. Since PG&E and SDG&E have substantially deployed an AMI for gas operations, it is reasonable to require PG&E and SDG&E to submit annual

privacy reports and conduct independent audits according to the timetable adopted in D.11-07-056, commencing with the year 2012.

10. It is reasonable for gas corporations to provide customers with access to gas usage and gas cost data via utility webpages.

11. It is reasonable to require that gas corporations provide information regarding billing determinants, such as price, to the extent available, to consumers and to third parties authorized by a consumer.

12. Since PG&E and SDG&E were participants in Phase I of this proceeding, there is no need to adopt additional deadlines for their gas operations.

13. It is reasonable to extend protections concerning usage information generated by AMI to the customers of CCAs and to the residential and small commercial customers of ESPs.

14. It is reasonable to require the electric corporations to join SoCalGas in workshops that Commission staff will hold in order to ensure a common approach to the drafting of tariff provisions that comply with the privacy rules adopted in D.11-07-056 and herein.

15. If a CCA elects to provide on-line access to customer information, it is reasonable to require the CCA to conform to the requirements of D.11-07-056 pertaining to access and the protection of data contained in Attachment D.

16. Since the Pub. Util. Code seeks both to provide CCAs with access to customer data and to protect the privacy of a customer's data, it is reasonable to require that the non-disclosure agreement executed between a prospective CCA and a utility contain the consumer protections concerning disclosure and use in Attachment D of D.11-07-056.

17. It is reasonable to require that residential and small commercial customers face consistent privacy policies pertaining to the data generated by the AMIs of PG&E, SCE, SDG&E and SoCalGas.

18. It is reasonable to provide the same basic privacy protections to residential and small commercial customers whether they receive service from an IOU or from an ESP that has access to the AMI data.

19. It is not necessary or in the public interest at this time to extend privacy protections to the customers of ESPs who are not residential or small commercial customers.

20. It is reasonable to require PG&E, SCE, and SDG&E to file changes to their rules pertaining to services to ESPs serving residential and small commercial customers to extend the privacy protections adopted in Attachment B to ESPs that obtain data from AMI.

21. It is reasonable to require that ESPs who serve residential and small commercial customers to revise their "Notice of Price, Terms and Conditions of Service" in accordance with the privacy protections of Attachment B. The revised notice should ensure that the privacy protections apply to residential and small commercial customers.

22. It is reasonable for the Commission to hold workshops pertaining to the modification of tariff rules for ESPs.

23. Section 8380 of the Pub. Util. Code makes privacy protections for the usage data generated by AMI a basic consumer protection that both electrical and gas corporations must provide.

24. Since Section 8380 of the Pub. Util. Code makes privacy protections for the usage data generated by AMI a basic consumer protection that both electrical and gas corporations must provide, and since Section 366.2(c) provides the

Commission with broad authority to establish rules and ensure compliance with basic consumer protection rules, it is consistent with the law to extend the privacy protections in Attachment B to the customers of CCAs.

25. Since Section 8380 of the Pub. Util. Code makes privacy protections for the usage data generated by AMI a basic consumer protection that both electrical and gas corporations must provide, and since Section 394.4 orders the Commission to adopt minimum standards concerning the confidentiality of customer information that apply to ESPs serving residential and small commercial customers, it is consistent with the law to extend the privacy protections in Attachment B to the residential and small commercial customers of ESPs.

26. Since Southwest Gas does not have an AMI, the requirements in Section 8380 of the Pub. Util. Code do not apply to its operations.

27. Since there are no obstacles that would prevent the extension of the privacy rules, and since such an extension is consistent with the provisions of Section 8380 of the Pub. Util. Code, it is reasonable to extend the privacy rules adopted in D.11-07-056 (and contained in Attachment A herein) to gas corporations.

28. Consistent with Section 394.4 of the Pub. Util. Code, the Commission should implement standards to provide for the confidential treatment of the information of residential and small commercial customers of ESPs.

29. It is consistent with Section 366.2 (9) of the Public Utilities Code to require that the non-disclosure agreement between the prospective or current CCA and the utility contain the consumer protections pertaining to data use and disclosure adopted in Attachment B. The transfer of this billing information, however, does not require the approval of individual customers.

30. Since the rules protecting the privacy of the usage data generated by AMI are basic consumer protection rules, it is reasonable and consistent with § 366.2(c)(17) that the Commission ensure compliance with these rules.

31. Since there is little experience with the privacy rules at this time, it is reasonable to defer creating a General Order at this time.

O R D E R

IT IS ORDERED that:

1. The gas operations of Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Gas Company must comply with the privacy rules contained in Attachment A to this decision.

2. Pacific Gas and Electric Company and San Diego Gas & Electric Company shall file a Tier 2 Advice Letter with tariffs that conform to the privacy rules adopted in this decision within 90 days of the effective date of this decision.

3. Pacific Gas and Electric Company and San Diego Gas & Electric Company shall submit to the Director of the Energy Division annual privacy reports and conduct independent audits of privacy policies concerning gas corporations commencing with calendar year 2012. The first report will be due no later than 120 days after the end of the calendar year. Subsequent privacy audits will be due in March of the year in which the company's General Rate Case is being considered.

4. Southern California Gas Company shall file a Tier 2 Advice Letter either within 90 days of the effective date of this decision or concurrent with meter installation (whichever is later), in accordance with the rules contained in Attachment A to this decision.

5. Southern California Gas Company must submit annual privacy reports to the Director of Energy Division and conduct independent audits of privacy policies commencing with March 2014. Subsequent privacy audits will be due in March of the year in which the company's General Rate Case is being considered.

6. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company and Southern California Gas Company shall participate in workshops that Commission staff will hold to ensure a common approach to the drafting of tariff provisions that comply with the privacy rules in Attachment A and as adopted in Decision 11-07-056.

7. If Southwest Gas Corporation or Southern California Edison's Santa Catalina Island Gas Utility files an application to deploy an advanced metering infrastructure in the future, the applicant should address privacy issues and either propose to comply with the rules adopted in Attachment A (with modifications of deadlines) or provide the Commission with facts demonstrating why these rules should not be applied.

8. Community Choice Aggregators shall comply with the privacy rules contained in Attachment B of this decision.

9. Any non-disclosure agreement between a utility with an advanced metering infrastructure and a prospective or current Community Choice Aggregator must contain the consumer protections concerning subsequent disclosure and use that are in Attachment B to this decision.

10. Within 90 days of the effective date of this decision, existing Community Choice Aggregators must file with the Commission revised Implementation Plans to conform with the privacy rules in Attachment B of this decision.

11. If a Community Choice Aggregator elects to provide on-line access to customer information, the Community Choice Aggregator must comply with the data security measures contained in Decision 11-07-056.

12. Electric Services Providers, when providing service to residential or small commercial customers, shall comply with the privacy rules contained in Attachment B to this decision.

13. Within 120 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company must submit a Tier 2 advice letter with changes to their rules pertaining to services to Electric Service Providers. The advice letter shall extend the privacy rules adopted in Attachment B to Electric Service Providers serving residential and small commercial customers that are unaffiliated with larger customer accounts and who obtain advanced metering infrastructure data from the investor-owned utility. The utilities shall incorporate the definition of “small commercial customer” as determined in Rulemaking 07-05-025.

14. Within 120 days of the effective date of this decision, Electric Service Providers serving residential and small commercial customers in accordance with Pub. Util. Code Section 394.5 shall revise the “Notice of Price, Terms and Conditions of Service” to comply with the privacy protections of Attachment B in this decision to inform residential and small commercial customers that their privacy is protected pursuant to the rules adopted.

This order is effective today.

Dated August 23, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

I reserve the right to file a concurrence.

/s/ TIMOTHY ALAN SIMON
Commissioner

R.08-12-009 COM/MP1/acr

ATTACHMENT A

ATTACHMENT A:
Rules Regarding Privacy and Security Protections for Energy Usage Data

1. DEFINITIONS

(a) **Covered Entity.** A “covered entity” is (1) any gas corporation,¹ or any third party that provides services to an gas corporation under contract, (2) any third party who accesses, collects, stores, uses or discloses covered information pursuant to an order of the Commission, unless specifically exempted, who obtains this information from an gas corporation, or (3) any third party, when authorized by the customer, that accesses, collects, stores, uses, or discloses covered information relating to 11 or more customers who obtains this information from an gas corporation.²

(b) **Covered Information.** “Covered information” is any 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 an individual, family, household, residence, or non-residential customer, except that covered information does not include usage information from which identifying information has been removed such that an individual, family, household or residence, or non-residential customers cannot reasonably be identified or re-identified. Covered information, however, does not include information provided to the Commission pursuant to its oversight responsibilities.

¹ At this time “any gas corporation” includes only PG&E, SoCalGas, and SDG&E.

² The Commission and its agents, including but not limited to contractors and consultants, are not “covered entities” subject to these rules because the Commission and its agents are subject to separate statutory provisions pertaining to data.

(c) **Primary Purposes.** The “primary purposes” for the collection, storage, use or disclosure of covered information are to –

- (1) provide or bill for gas,
- (2) provide for system, grid, or operational needs,
- (3) provide services as required by state or federal law or as specifically authorized by an order of the Commission, or
- (4) plan, implement, or evaluate demand response, energy management, or energy efficiency programs under contract with a gas corporation, under contract with the Commission, or as part of a Commission authorized program conducted by a governmental entity under the supervision of the Commission.

(d) **Secondary Purpose.** “Secondary purpose” means any purpose that is not a primary purpose.

2. TRANSPARENCY (NOTICE)

(a) **Generally.** Covered entities shall provide customers with meaningful, clear, accurate, specific, and comprehensive notice regarding the accessing, collection, storage, use, and disclosure of covered information. Provided, however, that covered entities using covered data solely for a primary purpose on behalf of and under contract with utilities are not required to provide notice separate from that provided by the utility.

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

(c) **Form.** The notice shall be labeled Notice of Accessing, Collecting, Storing, Using and Disclosing 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.

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,
- (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 categories of third parties to which it is disclosed, and
- (3) the identities of those third parties to whom data is disclosed for secondary purposes, and the secondary purposes for which the information is disclosed;

(b) the approximate period of time that covered information

will be 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.

4. INDIVIDUAL PARTICIPATION (ACCESS AND CONTROL)

(a) **Access.** Covered entities shall provide to customers upon request convenient and secure access to their covered information –

- (1) 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.
- (2) The Commission shall, by subsequent rule, prescribe what is a reasonable time for responding to customer requests for access.

(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 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.
- (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 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) On an annual basis, covered entities shall report to the Commission the number of demands received for disclosure of customer data pursuant to legal process or pursuant to situations of imminent threat to life or property and the number of customers whose records were disclosed. Upon request of the Commission, covered entities shall report additional information to the Commission on such disclosures. 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. Emergency disclosures, however, remain subject to reporting rule 4(c)(6).

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.

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 gas corporation, a third party acting under contract with the Commission to provide energy efficiency or energy efficiency evaluation services authorized pursuant to an order or resolution of the Commission, or a governmental entity providing energy efficiency or energy efficiency evaluation services pursuant to an order or resolution of the Commission may access, 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 Gas Corporation.** An gas corporation may disclose covered information without customer consent to a third party acting under contract with the Commission for the purpose of providing services authorized pursuant to an order or resolution of the Commission or to a governmental entity for the purpose of providing energy efficiency or energy efficiency evaluation services pursuant to an order or resolution of the Commission. An gas corporation may disclose covered information to a third party without customer consent

- a. when explicitly ordered to do so by the Commission; or
- b. for a primary purpose being carried out under contract with and on behalf of the gas corporation disclosing the data;

provided that the covered entity disclosing the data shall, by contract, require the third party to agree to access, 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, 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, unless otherwise directed by the Commission.

(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, unless otherwise ordered by the Commission, that it shall be considered a material breach if the third party engages in a pattern or practice of accessing, 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 for a primary purpose being carried out under contract with and on behalf of the entity disclosing the data finds that a third party contractor to which it disclosed covered information is engaged in a pattern or practice of accessing, 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.
- If a covered entity disclosing covered information to a Commission-authorized or customer-authorized third party receives a customer complaint about the third party's misuse of data or other violation of the privacy rules, the disclosing entity shall, upon customer request or at the Commission's direction, promptly cease disclosing that customer's information to such third party. The disclosing entity shall notify the Commission of any such complaints or suspected violations.

(4) Nothing in this section shall be construed to impose any

liability on an gas corporation relating to disclosures of information by a third party when i) the Commission orders the provision of covered data to a third party; or ii) a customer authorizes or discloses covered data to a third party entity that is unaffiliated with and has no other business relationship with the gas corporation. After a secure transfer, the gas corporation shall not be responsible for the security of the covered data or its use or misuse by such third party. This limitation on liability does not apply when a utility has acted recklessly.

(d) **Secondary Purposes.** No covered entity shall use or disclose covered information for any secondary purpose without obtaining the customer's prior, express, written authorization for each type of secondary 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.** Separate authorization by each customer must be obtained for all disclosures of covered information except as otherwise provided for herein.
- (2) **Revocation.** Customers have the right to revoke, at any time, any previously granted authorization.
- (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, 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.

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 gas 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 gas corporation or by a covered third party, the covered gas 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, gas corporations shall notify the Commission's Executive Director of security breaches of covered information.

- (c) **Annual Report of Breaches.** In addition, gas 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 gas corporation or by a third party.

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 categories of agents, contractors and other third parties to which they disclose covered information for a primary purpose, the identities of agents, contractors and other third parties to which they disclose covered information for a secondary purpose, the purposes for which all such information is disclosed, indicating for each category of disclosure whether it is for a primary purpose or a secondary purpose. (A covered entity shall retain and make available to the Commission upon request information concerning who has received covered information from the covered entity.), 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 gas 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 gas 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 gas 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.

(END OF ATTACHMENT A)

ATTACHMENT B

ATTACHMENT B:

**Rules Regarding Privacy and Security Protections for Energy Usage Data
Applicable to Community Choice Aggregators or Electrical Service Providers
(when providing service to residential or small commercial customers)**

1. DEFINITIONS

(a) **Covered Entity.** A “covered entity” is (1) any Community Choice Aggregator or Electrical Service Provider (when providing service to residential or small commercial customers), or any third party that provides services to a Community Choice Aggregator or Electrical Service Provider (when providing service to residential or small commercial customers) under contract, (2) any third party who accesses, collects, stores, uses or discloses covered information pursuant to an order of the Commission, unless specifically exempted, who obtains this information from an electrical corporation, a Community Choice Aggregator or an Electrical Service Provider (when providing service to residential or small commercial customers) or (3) any third party, when authorized by the customer, that accesses, collects, stores, uses, or discloses covered information relating to 11 or more customers who obtains this information from an electrical corporation, a Community Choice Aggregator or an Electrical Service Provider (when providing service to residential or small commercial customers).¹

(b) **Covered Information.** “Covered information” is any 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 an individual, family, household, residence, or non-residential customer, except that covered information does not include usage information

¹ The Commission and its agents, including but not limited to contractors and consultants, are not “covered entities” subject to these rules because the Commission and its agents are subject to separate statutory provisions pertaining to data.

from which identifying information has been removed such that an individual, family, household or residence, or non-residential customer cannot reasonably be identified or re-identified. Covered information, however, does not include information provided to the Commission pursuant to its oversight responsibilities.

(c) **Primary Purposes.** The “primary purposes” for the collection, storage, use or disclosure of covered information are to –

- (1) provide or bill for electrical power or gas,
- (2) provide for system, grid, or operational needs,
- (3) provide services as required by state or federal law or as specifically authorized by an order of the Commission, or
- (4) plan, implement, or evaluate demand response, energy management, or energy efficiency programs under contract with a Community Choice Aggregator or an Electrical Service Provider (when providing service to residential or small commercial customers), under contract with the Commission, or as part of a Commission authorized program conducted by a governmental entity under the supervision of the Commission.

(e) **Secondary Purpose.** “Secondary purpose” means any purpose that is not a primary purpose.

2. TRANSPARENCY (NOTICE)

(a) **Generally.** Covered entities shall provide customers with meaningful, clear, accurate, specific, and comprehensive notice regarding the accessing, collection, storage, use, and disclosure of covered information. Provided, however, that covered entities using covered data solely for a primary purpose on behalf of and under contract with utilities are not required to provide notice separate from that provided by the utility.

(b) **When Provided.** Covered entities shall provide written notice when confirming a new customer account and at least once a year shall inform customers how they may obtain a copy of the covered entity’s notice regarding the accessing, collection, storage, use, and disclosure of covered information, and shall

provide a conspicuous link to the notice on the home page of their website, and shall include a link to their notice in all electronic correspondence to customers.

(c) **Form.** The notice shall be labeled Notice of Accessing, Collecting, Storing, Using and Disclosing 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.

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,
 - (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 categories of third parties to which it is disclosed, and

- (3) the identities of those third parties to whom data is disclosed for secondary purposes, and the secondary purposes for which the information is disclosed;
- (b) the approximate period of time that covered information will be 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.

4. INDIVIDUAL PARTICIPATION (ACCESS AND CONTROL)

(a) **Access.** Covered entities shall provide to customers upon request convenient and secure access to their covered information –

- (1) 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.
- (2) The Commission shall, by subsequent rule, prescribe what is a reasonable time for responding to customer requests for access.

(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 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.
- (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 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) On an annual basis, covered entities shall report to the Commission the number of demands received for disclosure of customer data pursuant to legal process or pursuant to situations of imminent threat to life or property and the number of customers whose records were disclosed. Upon request of the Commission, covered entities shall report additional information to the Commission on such disclosures. 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. Emergency disclosures, however, remain subject to reporting rule 4(c)(6).

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.

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. A Community Choice Aggregator, an Electrical Service Provider (when providing service to residential

or small commercial customers), a third party acting under contract with the Commission to provide energy efficiency or energy efficiency evaluation services authorized pursuant to an order or resolution of the Commission, or a governmental entity providing energy efficiency or energy efficiency evaluation services pursuant to an order or resolution of the Commission may access, 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 Community Choice Aggregator or an Electrical Service Provider (when providing service to residential or small commercial customers). A

Community Choice Aggregator or an Electrical Service Provider (when providing service to residential or small commercial customers) may disclose covered information without customer consent to a third party acting under contract with the Commission for the purpose of providing services authorized pursuant to an order or resolution of the Commission or to a governmental entity for the purpose of providing energy efficiency or energy efficiency evaluation services pursuant to an order or resolution of the Commission. A Community Choice Aggregator or an Electrical Service Provider (when providing service to residential or small commercial customers) may disclose covered information to a third party without customer consent

- a. when explicitly ordered to do so by the Commission; or
- b. for a primary purpose being carried out under contract with and on behalf of the Community Choice Aggregator or Electrical Service Provider (when providing service to residential or small commercial customers) disclosing the data; provided that the covered entity disclosing the data shall, by contract, require the third party to agree to access, 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, 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, unless otherwise directed by the Commission.
- (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, unless otherwise ordered by the Commission, that it shall be considered a material breach if the third party engages in a pattern or practice of accessing, 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 for a primary purpose being carried out under contract with and on behalf of the entity disclosing the data finds that a third party contractor to which it disclosed covered information is engaged in a pattern or practice of accessing, 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.

- If a covered entity disclosing covered information to a Commission-authorized or customer-authorized third party receives a customer complaint about the third party's misuse of data or other violation of the privacy rules, the disclosing entity shall, upon customer request or at the Commission's direction, promptly cease disclosing that customer's information to such third party. The disclosing entity shall notify the Commission of any such complaints or suspected violations.

- (4) Nothing in this section shall be construed to impose any liability on a Community Choice Aggregator or an Electrical Service Provider (when providing service to residential or small commercial customers) relating to disclosures of information by a third party when i) the Commission orders the provision of covered data to a third party; or ii) a customer authorizes or discloses covered data to a third party entity that is unaffiliated with and has no other business relationship with the Community Choice Aggregator or the Electrical Service Provider (when providing service to residential or small commercial customers). After a secure transfer, the Community Choice Aggregator or the Electrical Service Provider (when providing service to residential or small commercial customers) shall not be responsible for the security of the covered data or its use or misuse by such third party. This limitation on liability does not apply when a utility has acted recklessly.

(d) **Secondary Purposes.** No covered entity shall use or disclose covered information for any secondary purpose without obtaining the customer's prior, express, written authorization for each type of secondary 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.** Separate authorization by each customer must be obtained for all disclosures of covered information except as otherwise provided for herein.
- (2) **Revocation.** Customers have the right to revoke, at any time, any previously granted authorization.
- (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, 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.

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 Community Choice Aggregator or Electrical Service Provider (when providing service to residential or small commercial customers) 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 Community Choice Aggregator or Electrical Service Provider (when providing service to residential or small commercial customers) or by a covered third party, the covered Community Choice Aggregator or Electrical Service Provider (when providing service to residential or small commercial customers) 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, Community Choice Aggregators or Electrical Service Providers (when providing service to residential or small commercial customers) shall notify the Commission's Executive Director of security breaches of covered information.
- (c) **Annual Report of Breaches.** In addition, Community Choice Aggregators or Electrical Service Providers (when providing service to residential or small commercial customers) 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 Community Choice

Aggregator or Electrical Service Provider (when providing service to residential or small commercial customers) or by a third party.

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 categories of agents, contractors and other third parties to which they disclose covered information for a primary purpose, the identities of agents, contractors and other third parties to which they disclose covered information for a secondary purpose, the purposes for which all such information is disclosed, indicating for each category of disclosure whether it is for a primary purpose or a secondary purpose. (A covered entity shall retain and make available to the Commission upon request information concerning who has received covered information from the covered entity.), 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 Community Choice Aggregator or Electrical Service Provider (when providing service to residential or small commercial customers) shall conduct an independent audit of its data privacy and security practices in conjunction every three

years 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 Community Choice Aggregator or Electrical Service Provider (when providing service to residential or small commercial customers) shall report the findings to the Commission.

(e) **Reporting Requirements.** On an annual basis, each Community Choice Aggregator or Electrical Service Provider (when providing service to residential or small commercial customers) 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.

(END OF ATTACHMENT B)

**Concurrence of Commissioner Timothy Alan Simon on Item 47
Decision 12-08-045 Extending Privacy Protections to
Customers of Gas Corporations and Community Choice Aggregators,
and to Residential and Small Business Customers
of Electric Service Providers**

This Decision (D.) 12-08-045 establishes Advanced Metering Infrastructure (AMI) technology privacy protections for gas customers of Pacific Gas and Electric Company, Southern California Gas Company, and San Diego Gas & Electric Company, similar to those adopted in D.11-07-056 for their electric customers. The Decision also extends privacy protections to the customers of Community Choice Aggregators (CCA) and to the residential and small commercial customers of electric service providers (ESP). These adopted rules are consistent with Senate Bill (SB) 1476 (Padilla, Stats. 2009, ch. 327), as well as California Public Utilities Code § 366.2(c) and § 394.4.¹ Finally, for purposes of this concurrence, D.12-08-045 declines to consolidate the privacy rules into a General Order, in part because of the relative infancy and untested status of the rules. I support this cautious approach to regulating the use of customer data but also have concerns on the potential chilling effects.

“Smart” wired and wireless information technologies are important conservation and market-shaping tools for critical policy objectives including, but not limited to, energy efficiency, demand response, load shifting, renewables and dispatched back-up generation, as well as, stronger protections against outages due to cyber attack or system errors. My concern is that we do not limit access to customer data to the extent that we bar existing or potential market participants who could create better energy products and services based on that analysis of this customer data. It is important to strike a balance. Otherwise, we will find the market largely dominated by a few energy providers and not our envisioned robust, competitive, and liquid market place.

Unprecedented collection of highly granular energy usage data—just short of 3000 data points per month from a smart meter collecting data every quarter-hour—allows anyone with access to that data to observe variations in consumption that can reveal household activities such as whether homes are occupied, which appliances and devices are being used, whether an alarm system is activated, as well as work schedules and traveling patterns. Our challenge is to balance having enough granular data to make it useful for innovation, while protecting individual privacy and public safety. Giving customers’ confidence that their data is secure encourages acceptance of new technologies.

¹ SB 1476 prohibits electrical and gas corporations from disclosing customer usage data to third parties, except as authorized, and prevents subject utilities, CCAs and ESPs from offering incentives or discounts for allowing access to that data. I commend Senator Padilla for striking a balanced approach to data privacy and competitive markets.

The growth of human behavioral economics, as a method of developing competitive applications, has an amazing future potential in the energy markets. We have seen an early glimpse in advance metering infrastructure and demand response but clearly not to the extent that we could with more competitive access to usage data. Recently in the European Union I experienced direct smart phone marketing leveraging location data improving purchasing power with vendors offering sales at certain slower demand times. This same ingenuity will benefit energy consumers as there data and time of use pricing is aggregated to forecast with other factors energy market demand and capacity. I know from my experience as a banking and securities attorney that in the financial services sector market access to consumer data is executed in omnibus or aggregated forms. These applications can result in more market competition and consumer choice; while protecting the names and other sensitive data points the customers may prefer remain private.

Excessive protection of customer data typically benefits the industry incumbents who possess the data. Our Orwellian fears of Big Brother are relics of the past. Privacy was something we experienced long before we used the various new electronic communications technologies, like credit card payments and airline reservation systems, which establish our locations and reveal our lifestyles. To expect energy markets to be insulated from this reality is anticompetitive.

Similarly, applications and devices to help consumers manage and understand the environmental impacts of their energy use are also ripe for innovation. Bright young companies are aiming to provide not only smart grid software services for utility operations, but smart meter data services using individual customer data. Additionally, new methods for two-way communication between the utility or third party and the customer--home area network (HAN) devices that communicate over the Internet through a web portal or through the utility's advanced metering infrastructure (AMI) network will help customers monitor their usage and alert them to grid shortages. New ways of connecting smart devices directly to the grid through Internet or AMI networks allow customers to analyze their usage by appliance category as well as time of use, and to control them both manually and automatically. New social media applications could allow individuals to compete with online friends to save energy and lower carbon emissions. Companies are already developing online and mobile applications for businesses and consumers that can use "Green Button" data to help consumers choose the most economical rate plan, deliver customized energy-efficiency tips, provide tools to size and finance rooftop solar panels, or conduct virtual energy audits.² These new market

² The Obama Administration's Green Button initiative, launched in January, aims to foster innovation in online energy management tools through their "Green Button" initiative. Utilities and electricity suppliers will allow customers to download their own household or building energy-use data in a secure, user-friendly format with a click of an online "Green Button." Participating utilities have agreed to base their Green Buttons on a common technical standard, which will allow software developers and other entrepreneurs to leverage enough users to support the

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entrants will not want to rely on smart meter data provided by utility back offices but will want access the data directly from the customer.

In conclusion, our rules recognize that consumer protection means giving customers control over their data and also allowing them to share it if they choose. D12-08-045 strikes the proper balance between protecting customers' right to privacy and not giving incumbents a competitive advantage. I concur with this Decision as an important step to striking the balance between privacy rights and the need for access to relevant energy data. I also encourage this Commission to look closely at best practices that protect sensitive data while promoting innovative energy products and services that ultimately will benefit consumers with choice.

Dated August 31, 2012, San Francisco, California

/s/ TIMOTHY ALAN SIMON
Timothy Alan Simon
Commissioner

creation of new applications that can help consumers. According to a March 2012 White House press release, companies who are developing applications using the Green Button standard include Belkin, Efficiency 2.0, EnergySavvy, FirstFuel, Honest Buildings, Lucid, Plotwatt, Schneider-Electric, Simple Energy, and Sunrun. Companies who have deployed or who support deployment of Green Buttons include Aclara, Tendril, PG&E, SDG&E, SoCal Edison, Oncor, Itron, OPower, Oracle, and Silver Spring Networks.