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**DOCKET NO. RU-00000A-14-0014**

Subject: INFORMAL COMMENTS IN THE MATTER OF THE COMMISSION INQUIRY INTO AMENDMENT OF THE COMMISSION'S RULESRELATED TO PUBLIC SERVICE CORPORATIONS' RELEASE OF CUSTOMER INFORMATION INCLUDING AMENDMENT OF THE RULES TO SPECIFICALLY ADDRESS PRIVACY AND CONFIDENTIALITY CONCERS RELATED TO SMART METERS

**WRITTEN COMMENTS OF NATURAL RESOURCES DEFENSE COUNCIL (NRDC) AND INSTITUTE FOR MARKET TRANSFORMATION (IMT)**

On October 23, 2014, the Commission requested informal comment on the revised proposed rules, A.A.C., R14-2-2201 et seq., "Private Customer Information," (the "Proposed Rules"). The Natural Resources Defense Council, a membership-based environmental organization, the Institute for Market Transformation, a non-profit that promotes energy efficiency in buildings, appreciate the opportunity to offer these written comments to the Arizona Corporation Commission (the "Commission").

## I. Summary

We focus our Comments on the specific section of the Proposed Rules related to how utilities may share aggregated information with third parties (Proposed R14-2-2215). The Proposed Rules would establish a blanket requirement that utility usage information must have a minimum of fifteen (15) separate accounts in order to be delivered to any and all third parties. While requiring 15 accounts might be an appropriate safeguard when information is published to the public, the proposed rule is not appropriate or reasonable when the **building owner** is seeking information about the utility usage in the owner's own building. A provision tailored to building owners is needed.

The proposed rule is unnecessarily restrictive – it substantially reduces the ability of building owners to engage in basic energy management in their buildings while adding little to no additional protection of customer privacy.

We encourage the Commission to create a provision in the Proposed Rules tailored to the delivery of information to building owners. We explain our reasoning in our Comments and we propose the Commission allow building owners to obtain whole-building usage summaries so long as the summary aggregates at least three (3) customers, subject to protective terms, such as the owner completing a registration process with the utility, agreeing to non-disclosure terms, and the like. Such a rule is consistent with practices in use in other states, would fully protect customer privacy interests, would enable the building owners to realize substantial private benefits by engaging in better energy management, and would likely deliver substantial public benefits in the form of greater energy efficiency.

## II. Question Presented

*What are the appropriate terms, conditions, and protections that should apply to a building owner's request for summary information about the energy usage in the owner's building in order to reasonably protect customer privacy interests?*

## III. Comments

### 1. The Commission might find value in examining the substantial public and private interests at stake in enabling building owners to obtain whole-building usage information.

Whole-building utility usage information is valuable to building owners. Many building owners use energy information to operate their buildings responsibly, setting and checking system schedules, evaluating repairs, diagnosing operational faults, tuning (and re-tuning) central HVAC equipment, and more.[1] Many experts expect building owners to increasingly use energy usage information in routine operation of their buildings, especially as building systems become more sophisticated.[2] Building owners also use whole-building energy usage data for energy models informing the economic and technical feasibility of improvement projects and to properly size photovoltaic or hot water systems to their buildings.

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[1] See Jessica Granderson, Guanjing Lin, Erin Hult, "EMIS: Crash Course," Lawrence Berkeley National Laboratory, December 12, 2013. (located at: //eis.lbl.gov/pubs/emis-crash-course.pdf).

[2] See Report Navigant Research, Building Optimization and Commissioning Services, November, 2012. And see associated press release titled, "Building Commissioning Services Expected to Reach $4.4 billion by 2020." November 1, 2012.

Energy benchmarking is another important use for whole building information and it is increasingly used by building owners. "Energy benchmarking" means comparing the energy use of a specific building against the energy use of a peer set of buildings or a top performer.[3] In its most simple form, the average electricity use in a building for a month is compared to the average electricity use in a group of other buildings for the same period. Many cities and states now require many building owners to obtain and report related energy scores (such as an Energy Star score).[4] Buildings that were benchmarked consistently over a three-year period reduced energy use by an average of 2.4 percent per-year.[5]

In buildings that are master metered, the owner typically is able to obtain energy usage information directly, as the utility account holder. The owner can also install meters and submeters to track energy usage of specific floors or machines. But many buildings are configured with separately metered spaces for tenants. Under the Proposed Rules, building owners with fewer than 15 separately metered spaces would be barred from obtaining basic information on the energy usage in their own buildings (or face substantial transactions costs obtaining it).

Enabling building owners to obtain whole building usage information directly provides private benefits by enabling the building owner to engage in energy management and public benefits from enabling greater energy efficiency.[6] Likewise, imposing barriers and costs for owners to obtain whole-building usage information directly limits the private and public benefits.

**2. The Commission's should consider the terms and conditions needed to reasonably protect customer privacy interests.**

Preventing energy usage information from possible discernment by third parties is an important value, and we concur the Commission and utilities must protect customer privacy interests. Policies and practices to protect customer usage information from risk of disclosure do **not** require zero risk, protection at any cost, or absolute anonymity under every conceivable circumstance. Rather, the policies and practices the Commission establishes for delivery of usage information to various parties should be reasonable in light of the actual risks presented.

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[3] "Benchmark Energy Use." ENERGY STAR. Accessed September 16, 2014. http://www.energystar.gov/buildings/about-us/how-can-we-help-you/benchmark-energy-use.

[4] "Federal, State, and Local Governments Leveraging Energy Star." January 2013. Accessed September 16, 2014. www.energystar.gov/ia/business/government/State_Local_Govts_Leveraging_ES.pdf.

[5] "Learn about Benchmarking." ENERGY STAR. Accessed September 16, 2014. http://www.energystar.gov/buildings/about-us/how-can-we-help-you/benchmark-energy-use/benchmarking.

[6] In these Comments we refer to the building owner generically. In many cases, the owner may designate a service priovider or a building manager to obtain and use the usage information as its agent.

This is the standard the Commission has applied in other situations, notably in the Proposed Rules related to utility contracted agents. Consider the proposed rules (at R14-2-205) that would permit utilities to share detailed, private customer information with contracted agents:

> **R14-2-2205. Disclosure to Agents or Contractors for a Primary Purpose.**
>
> C. The Utility shall require its Agents and Contractors to implement and maintain ***reasonable*** data security procedures and practices designed to protect the Private Customer Information from unauthorized access, destruction, use, modification, or disclosure. (emphasis added)

Allowing utilities to share detailed customer information with contractors carries risks of improper disclosure and mis-use of customer information. In fact, many privacy experts assert that sharing information with contractors presents a major privacy risk, because negligent and "rogue" employees within organizations and contractors are a frequent source of meaningful data breaches.[7]

Even with these risks the Commission is right to permit utilities to share customer information with contracted agents subject to reasonable terms. It reflects the sensible policy decision that the risks are manageable, and residual risks are outweighed by the benefits. Risks to customer confidentiality can be mitigated – not reduced to zero – through measures such as contractor commitments of confidentiality, careful practices, and utility quality assurance practices. Moreover, utilities and their agents have a good history of protecting customer information.

The Commission should approach the question of delivering usage information to building owners in a similar fashion.

The Commission should not require that whole-building information delivered to a property owner must be fully anonymized under any circumstances, with zero (or close to zero) risk that the owner could potentially "unravel" or disaggregate the summed total kwh to discern the monthly usage of a particular customer. Rather, the standards for property owners to obtain whole building usage information should be set in light of the actual risks, the ability to mitigate risk with processes and procedures, and balanced against the value of energy efficiency achieved through the owner's ability to use the information.

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[7] For a full description of the risks presented by employees and contractors with access to sensitive data, see, e.g., Traitors in Our Midst: The Risks of Employee, Contractors and Third Parties in the Age of the Internet of Things and Why Security in Depth Remains Critical to Risk Management, Ron Raether, Esq., CIPP/US Scot Ganow, Esq., CIPP/US, Published at Net Diligence. Aftermath of a Data Breach Study, Ponemon Institute Research Report, for Experian® Data Breach Resolution, January 2012. Do you know your privacy Risks?, PWC January, 2013. Published at www.pwc.com/en_US/us/power-and-utilities/publications/assets/pwc-privacy-risks-data-protection-landscape.pdf.

3. **To the extent a building owner were to seek to discern the utility usage of a specific tenant, the owner could do that with manual access to the meters in the building and with access to the tenant's space in the building. Obtaining whole building usage information through a utility report does not appear to increase that risk.**

Building owners have direct access to the utility meters serving their buildings to take manual readings and could access the tenant spaces in their buildings directly.

We are not aware of any evidence or reports that utility delivery of whole-building usage information to building owners in fact provides building owners with information they could not otherwise obtain. Rather, the added value of utility delivery is to assure data integrity, accuracy, reduced transactions costs, and energy management functions that rely on regular automated data transfers.

Allowing owners to obtain whole-building information through a written, on the record request to a utility does not create new risks for customers.

4. **The Commission may find value in the processes implemented in other states to deliver whole-building information to building owners while also protecting customer privacy.**

The table below shows the policies we understand are currently implemented by the named utilities for building owner requests for whole-building usage information:

| Utility Company and State | Minimum Account Aggregation |
|---|---|
| Avista (Washington) [8] | 2 |
| Consolidated Edison (New York) [9] | 2 |
| Seattle City Light (Washington) [10] | 2 |
| Clark Public Utilities (Washington) | 2 |
| Commonwealth Edison (Illinois) [11] | 4 |
| National Grid (Massachusetts) [12] | 3 |
| NSTAR (Massachusetts) [13] | 3 |
| Austin Energy (Texas) [14] | 4 |

[8] Interview with Leona Doege, Avista Utilities, March 13, 2013.
[9] "Aggregated Consumption Data, FAQs", Consolidated Edison, www.coned.com/energyefficiency/PDF/FAQ-Aggregated-Consumption.pdf.
[10] "Seattle City Light Portfolio Manager Automated Benchmarking Consumption Request Form," City of Seattle, http://www.seattle.gov/environment/benchmarking.htm
[11] Presentation by Kevin Bricknell. "Energy Usage Data System." Energy Efficient Buildings Hub Regional Data Management Working Group Meeting, October 25, 2012.
[12] http://www.cityofboston.gov/images_documents/Draft%20User%20Guide%205%2028%202014_tcm3-42713.pdf
[13] http://www.cityofboston.gov/images_documents/Draft%20User%20Guide%205%2028%202014_tcm3-42713.pdf

| | |
|---|---|
| Puget Sound Energy (Washington) [15] | 5 |
| Pepco (District of Columbia) [16] | 5 |

Some commenters have suggested the California PUC has applied a "15/15" concept for delivery of whole-building usage information to building owners.[17] The CPUC did not make such a decision. The CPUC used that high level of aggregation for delivery of customer information to marketing entities known as Community Choice Aggregators in a decision from the 1990s, which can be read to apply to disclosure of information to generic third-parties or the public. The utilities have relied on this decision in the absence of PUC authority on the matter for all requests from non-customers.[18] The CPUC held a lengthy proceeding to determine requirements for property owner access to whole building usage information, and the history of the "15/15" standard was clearly described. The CPUC expressly deferred making any decision on the matter and referred the question to the California Energy Commission to identify the appropriate requirements that should apply to property owner requests.

**5. The Commission should propose in the Proposed Rules to authorize utilities to deliver aggregated whole-building usage information to property owners so long as there are at least three (3) separate accounts so long as no included account makes up more than 50% of total energy use, subject to additional protective conditions.**

A total usage amount summing-up usage of at least three separate accounts reasonably protects the anonymity of customers – the total does not identify specific usage of any account holder. See Attachment A for an example of such a whole building disclosure.

To further protect the interests of included customers, the Commission could establish reasonable terms and conditions that would apply to building owners who request whole-building usage reports, such as:

- Verifying the requesting party as property owner. This process could include using tax ID numbers or parcel numbers or other information.

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[14] Interview with Stuart Reilly, Austin Energy, December 4, 2012.
[15] Presentation by Chris Thompson. "Energy Data and Benchmarking." Energy Efficient Buildings Hub Regional Data Management Working Group Meeting, October 25, 2012.
[16] Building Electricity Consumption Data Request Form, Pepco, located here: www.pepco.com/business/services/consumptionrequestform
[17] Public Service Company of Colorado, Initial Comments, filed June 16, 2014.
[18] Footnote 38 states: "8 SCE's proposed Rule 25 relies on the "15/15 Rule" which was adopted in the context of availability of data for Direct Access; SCE has made no showing as to why a standard used in the context of retail choice should be a requirement in making aggregated data available to third parties that will use the data "for analysis, reporting or program management...." CPUC Resolution E-4535. September, 27, 2012. p4. http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M028/K609/28609033.PDF.

- Property owner agreeing to only utilize whole building energy usage data for energy management, benchmarking, and identifying energy efficiency projects.
- Property owner agreeing to not attempt to determine an individual tenant's energy use from the whole building energy use data.
- Property owner agreeing not to disclose the whole building energy use data except for the purposes of building benchmarking, identifying energy efficiency projects, energy management, and complying with laws or ordinances.
- Delivering notice to customers in buildings with owners that have registered to obtain whole building usage information.

For buildings with one or two customer accounts, and for buildings in which one customer's usage makes up 50% or more of the total, a property owner would be subject to the rules that would require the owner to obtain individual customer permission.

To be clear, we are not proposing this revised standard for the purpose of delivering aggregated information to other third-parties or members of the public.

**6. We encourage the Commission to also consider, for the Proposed Rules, the *process* utilities follow to deliver usage information to building owners. A reasonable, simple process is as important as the "right" to obtain the information.**

If utilities require owners to proceed through difficult barriers, such as submitting monthly paperwork with wet signatures, long wait times, faxed-in forms, and repeated submissions, the "right" to access information will have little practical value to the owners.

One option for the Commission is to request stakeholders (including building owners, service providers, and utilities) to work together to identify a workable process. If the commission wishes to establish a process in any decision, we encourage the Commission to include the following key features:

- An initial registration process for property owners that will enable a property owner to thereafter obtain regular access to a whole-building usage summary in a routine and systematic manner.
- The registration process should be reasonable and designed to reduce risks.
- Use of electronic documents to reduce file management functions for all parties, for utilities that have significant commercial floor space or multifamily properties.
- The Commission should authorize utilities to establish processes that rely on the property owner's use of a standard lease or contract to obtain customer permission for whole building usage information or individual customer information.

- Uploading whole building energy usage information into Portfolio Manager should be an automated, simple process.
- Utilities making use of industry standard form and formatting conventions, such as Green Button and Green Button Connect.

**7. We support a "Safe Harbor" for Utilities complying with the established processes (at R-14-2-2217)**

Any such safe harbor should protect the utility against claims related to "downstream" behavior of any person who improperly shares information after it is properly delivered by the utility.

**8. Utilities could further support the ability of building owners to engage in modern energy management practices by implementing systems that automatically upload whole building energy use data into ENERGY STAR Portfolio Manager.**

The Commission should consider urge public utilities to make the process of uploading whole building energy use into ENERGY STAR Portfolio Manager easy and simple. EPA's ENERGY STAR Portfolio Manager Web Services (also referred to as "data exchange" or "automated benchmarking") allows customers to easily access energy consumption data online in the form of historical and monthly automatic uploads from the utility. This helps customers track their energy usage and reduces the amount of time required to collect energy consumption data. Eleven utilities currently participate in ENERGY STAR Portfolio Manager Web Services.[19] Portfolio Manager Web Services makes it easier for individual customers and property owners to collect energy use data from the utility which promotes benchmarking and energy management. Utilities can accomplish this by making use of industry standard conventions and protocols such as Green Button and Green Button Connect.

We thank the Commission for this opportunity to provide comments.

Respectfully submitted,

/s/ Philip Henderson

[19] Pacific Gas & Electric Company, Seattle City Light, San Diego Gas and Electric, Puget Sound Energy, Southern California Edison, Southern California Gas, Sacramento Municipal Utility District, Commonwealth Edison, Avista Utilities, Salt River Project, Clark Public Utilities

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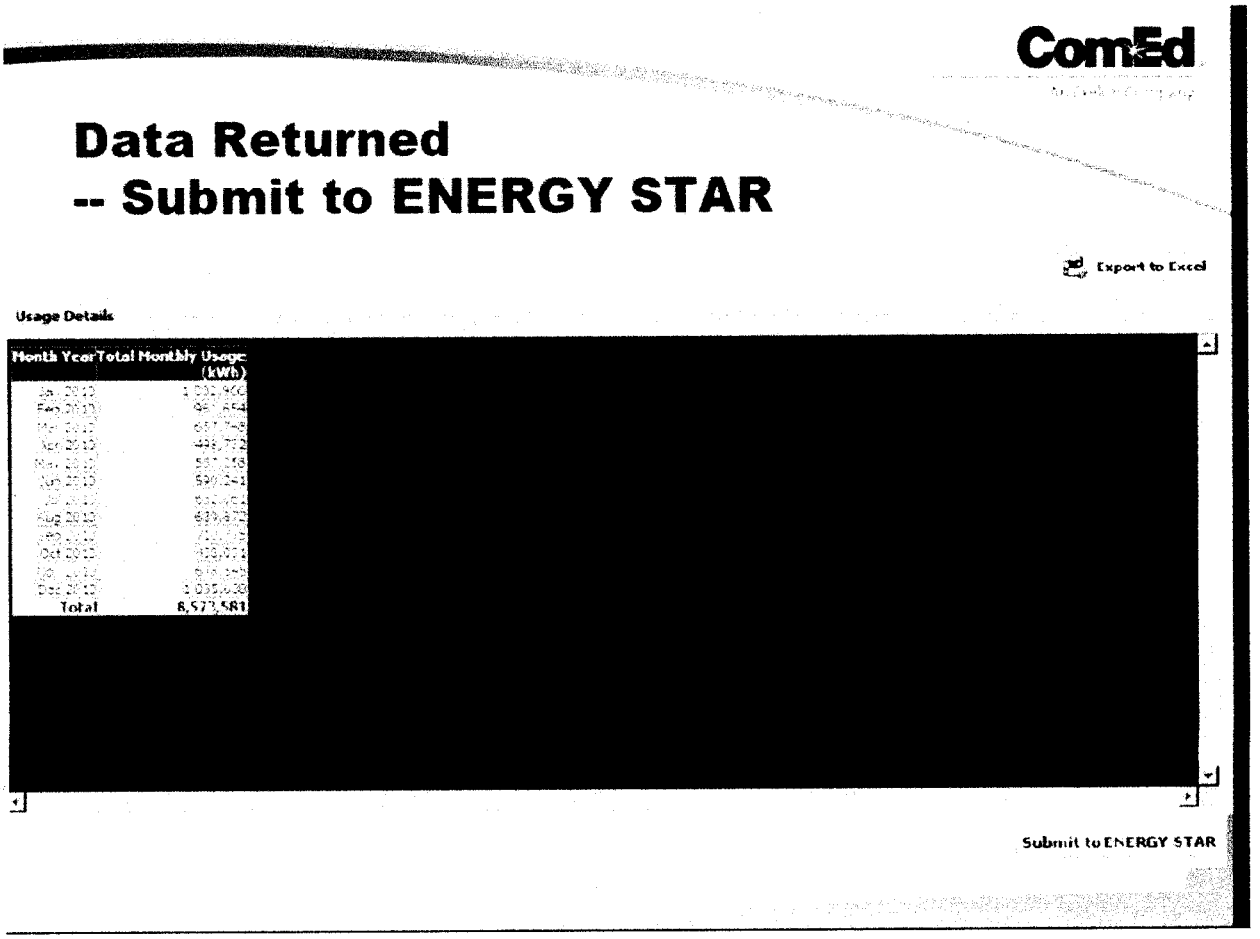
ATTACHMENT A




**The screen shot above is taken from a report delivered to the Dept. of Energy, 2012.**

**It is found on the U.S. Department of Energy's website located at:** http://EEB Regional Data Management Meeting, 2012 http://www.slideshare.net/CliffMajersik/com-ed-eebhubdatameeting2012