

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

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In the Matter of the Commission)	Docket No. E999/CI-12-1334
Inquiry Into Privacy Policies of Rate-Regulated)	
Energy Utilities)	

**INITIAL COMMENTS OF THE MISSION:DATA COALITION, INC.
ON THE SECOND WORKGROUP REPORT ON PRIVACY POLICIES
September 16th, 2016**

The Mission:data Coalition, Inc. (“Mission:data”),¹ a national coalition of technology companies delivering data-enabled energy management services and solutions, represents 40 companies with approximately \$1.0 billion per year in sales. Mission:data and its members advance “data access” policies at public utility commissions across the country. Empowering customers with secure access to their own energy usage and cost information – including the ability to easily share that information with third parties of their choice – will give consumers access to advanced tools that cost-effectively reduce energy consumption and save money. The ubiquity of smart phones among U.S. adults is one example of the remarkable computing power now available to consumers who expect digital services – including sharing personal information in order to use the “app” of their choice – to be easy to use and immediately available. Mission:data members are leaders in distributed energy resources (“DERs”), particularly energy efficiency, demand response and rooftop solar, and some examples of software-driven energy management services our members offer include:

- “no-touch” virtual energy audits that recommend efficiency measures to homeowners or building owners
- an itemized or disaggregated electric bill, calculated using advanced statistical analysis

¹ Please see www.missiondata.org.

- device-specific recommendations to reduce energy use and save money derived from whole-home or whole-building meter data
- alerts when energy use deviates from norms or when consumers are about to enter a higher rate period

Mission:data focuses on consumer access to their own energy use and cost information in a standardized manner, such as Green Button Connect (“GBC”) and activation of the Home Area Network (“HAN”) in smart meters, wherever they exist. While we understand the importance of making it easy for building owners to comply with benchmarking laws such as Minneapolis’s, Mission:data takes no position on aggregation issues such as appropriate thresholds for anonymization mentioned in the *Recommendations for Action in Minnesota: Second Report of the CEUD Workgroup* dated August 24, 2016 (the “Recommendations”). Thus, our comments below focus only on use cases where individual customer consent is granted.

Q1. Has the Workgroup been able to adequately address all of the issues in Ordering Paragraph 4?² For any issues you believe have not been adequately addressed, do those issues need further review or Commission action?

The Recommendations represent a positive first step toward addressing issues outlined in Ordering Paragraph 4. However, there are numerous important issues left unresolved in the Recommendations. Mission:data identifies shortfalls below that need further review and Commission action.

The Recommendations’ narrow focus on a consent form misses important elements of how customers actually authorize third parties to access information, such as: (i) granting authorization on websites or mobile applications; (ii) what constitutes an electronic signature; and (iii) and how easy or difficult the customer experience should be relative to other industries.

While a consent form and its associated elements of authorization language, required contact

² Order Establishing Procedures for Further Comment and for Working Group, dated June 17, 2013. Docket number E,G-999/CI-12-1344

information, purpose specification, etc. are foundational, they are insufficient. Technological changes and consumer expectations demand that customers have clear electronic pathways to access information collected about them from regulated utilities. Mission:data's experience is that consumers are becoming very comfortable with transacting on their computers and even on their mobile devices like smart phones or tablets. Consumers are also growing to expect simple, one-click ability to pay for a cup of coffee, purchase a book, a song, a plane ticket, or make a deposit in their bank. For these and other commercial applications, the customer experience receives significant attention – typically much more than regulated utilities normally provide. Mission:data notes that improvements in user experience in banking, online retail, health and fitness and other sectors has been satisfied simultaneously with meeting increasing privacy and security goals. Given extremely high consumer expectations for ease of use and the ubiquity of smart phones among U.S. adults, Mission:data believes it is essential that the Commission address not just a consent form but the overall customer experience of authorizing a third party to access their meter data and cost information.

When something as antiquated as a paper form is the only method available for modern consumers to exercise their right to access and share information about themselves held by utilities, that right to access information, which may exist in theory, is severely diminished in practice. Depriving customers of easy-to-use web-based and mobile methods for accessing and sharing their information is arguably a denial of customer rights when the rest of the modern world operates almost exclusively via electronic means. Two recent reports highlight how paper-based or clumsy forms dramatically reduce, and almost eliminate, customers utilization rates of said forms. One found that a California utility's Green Button Connect ("GBC") implementation required 8-13 webpage loads and 25 mouse clicks to authorize a third party, resulting in significantly decreased customer usage, and a difficult customer experience was directly related to significant drop-offs of utilization.³ Another report found that customer enrollment rates in a demand response program accessible via the utility's website were only 3% when the customer had to enter numerous pieces of information on a lengthy consent form and click numerous times on a website, versus 40% enrollment rates when the process was simplified.⁴ In fact, customer

³ Chai Energy. Presentation to the California PUC working group implementing the "click-through" enrollment process in direct participation demand response per decision D.16-06-008, dated Aug 24, 2016.

⁴ EnergyHub, Inc. Optimizing the demand response program enrollment process. April, 2016. Available at <http://www.energyhub.com/blog/optimizing-demand-response-enrollment>

usability is so important to meeting the State of California's DER penetration goals that its public utility commission recently created a "click-through" working group to develop an automated, streamlined authorization process that minimizes "customer fatigue."⁵ While ease of use can be hard to define, the consequences of poor usability are quite clear: impacts on consumers' exercise of their rights can be an order of magnitude less, inhibiting Minnesota's progress toward DER penetration. Mission:data fears that, while a consent form is an important prerequisite, deliberation about the consent form in isolation will largely be an academic exercise and of no significant use to customers at all if it is not simultaneously accompanied by detailed electronic consent processes that include website and mobile applications. Specifically, Mission:data recommends that the Commission consider the following critical questions:

- What defines an electronic signature?⁶ What information is needed to authenticate a customer if an online "check box" is marked by the customer?
- How many steps on the utility's website does it take a customer to submit the authorization form, and how can the utility minimize the number of steps, such as by pre-populating form fields?
- How quickly does the utility complete each step in the process: authenticate a customer, authorize a data transfer, and complete data fulfillment?
- How can a third party electronically submit an authorization request to a utility? What website or application programming interface ("API") will a utility make available to process these requests?

These questions are central to customer empowerment. They also have important cost implications: an inefficient, paper-based form processed manually by the utility is going to cost ratepayers more than an automated computer system if there is a certain volume of requests. While the provision of CEUD to customers may, generally speaking, entail additional costs to the utility, the Commission should not forget that automation with streamlined electronic processes can also reduce those costs significantly.

⁵ California PUC, decision D.16-06-008 dated June 9, 2016 at p. 2. Available at <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M163/K294/163294060.PDF>

⁶ Is an electronic signature a cursor-drawn image? A marked check-box? A re-typing of the customer's name? The Recommendations discusses "the customer's signature, whether in print or electronic form..." but does not elaborate on what constitutes the electronic signature. Recommendations at p. 22.

Q2. Are there other recommendations or issues raised in the Workgroup which need further review or Commission action?

The issue of jurisdiction over non-utility third parties needs further review, taking into account developments in other states. The CEUD Workgroup covered material in an extensive array of documents, including rulings from other states such as California and Colorado. But, based on the Recommendations' citations and appendices, the Workgroup failed to consider one important decision from California concerning jurisdictional issues. California is an important precedent because to date it is the single largest market – over 11 million electric meters – where third parties have electronic access to customer energy use and cost information with customer consent using Green Button Connect (“GBC”). While allowing for differences in state law between Minnesota and California, Mission:data feels that Minnesota should seek the greatest consistency possible in terms of technical methods of data transfer, the customer consent process, third party eligibility criteria and data transfer termination procedures because greater alignment across states makes it easier for distributed energy resources (“DERs”) in California or other states with GBC (such as Illinois, New York) to take root in Minnesota and vice versa, benefitting both energy consumers and the economies of those states.

California Public Utilities Commission decision D.13-09-025, dated September 25, 2014, decided that, among other things: eligibility criteria of third parties to use GBC should be made consistent amongst all the IOUs; and the Commission, not a utility, has the sole power to revoke a third party's access in case of an alleged breach.⁷ Let us consider the eligibility criteria from D.13-09-025 since these are directly related to the issue of Commission jurisdiction over third parties. In the interest of supporting a wide range of third parties, the Commission adopted a simple, rather than an onerous, set of eligibility criteria. Third parties must:

- (i) demonstrate technical capability to interact with the IOUs' servers;

⁷ Other important points from D.13-09-025 include that GBC should be offered at a price of zero to consumers and the costs of operation included in base rates, and that utilities shall have no liability for a third party's breach, provided that the utility follows the Commission's rules and has not acted “recklessly.” The California PUC's clear limitation on utility liability – an issue raised in the Recommendations – was essential to absolving the utility of responsibility to police the behavior of third parties, a role that neither the utilities, the Commission nor third parties felt was reasonable or practical.

- (ii) provide contact information and a federal tax identification number in order to unify the registration system state-wide;
- (iii) acknowledge receipt of the Commission's privacy policy in D.11-07-056;⁸ and
- (iv) not be present on the Commission's list of banned third parties.

The Commission also adopted a streamlined adjudication procedure in case of a suspected breach of privacy laws or rules. If a utility reasonably suspects a third party of breaching privacy policies, the utility sends a written description of its suspicion and surrounding information to Commission staff, who has 21 days to rule for or against the third party. A finding against the third party means the third party is added to the list of banned of third parties, banishing that entity from accessing customer usage data from regulated utilities across the entire state. Mission:data feels that putting the Commission in charge of fact-finding and adjudication in case of disputes about privacy policies is reasonable, since it would be unwise, counter-productive and impractical for the utilities to take that role. A 21-day period also gives sufficient time for fact-finding while not leaving the issue "in limbo" for an excessive period. California's process in this area is a strong potential solution for Minnesota because regardless of jurisdictional questions the Commission has authority over the utility to simply cut off CEUD transmission to a third party. Eliminating a third party's business prospects entirely across the state is a significant penalty and arguably does not require jurisdictional assertions over third parties in a broader sense because the utility is the holder and transmitter of CEUD. Mission:data believes California's approach represents a viable solution worthy of Commission consideration that was not described in the Recommendations.

The Workgroup considered, and recommended against, utility adoption of the Voluntary Code of Conduct ("VCC"), but apparently did not consider requiring third parties to adopt the VCC. Third parties that receive CEUD or PII electronically from regulated utilities with customer consent must presumably agree to certain terms and conditions of the utility. In California, for instance, the GBC system requires third parties to acknowledge privacy rules as a condition of access. It is possible to imagine a requirement in Minnesota that third parties agree

⁸ Another California decision not referenced in the Recommendations is the California PUC privacy decision, D.11-07-056, dated July 29, 2011.

to be bound by the VCC as a condition of accessing CEUD. If a company then fails to comply with the VCC, it would be subject to an action for misrepresentation under state law or Section 5 of the Federal Trade Commission Act barring unfair or deceptive acts or practices,⁹ further addressing the concerns about the lack of jurisdiction over third parties and the perceived lack of enforcement capability mentioned in the Recommendations.

To be clear, Mission:data does not take a position on whether the VCC should be mandatory for all third parties; we merely think it should be considered by the Commission since the Recommendations appeared to focus only on the case of *utility* adoption of the VCC. Mission:data would concur with the Recommendations that the VCC is imperfect in some respects, such as definitional ambiguities. Nevertheless, if third parties are granted streamlined and electronic access to CEUD and/or PII with customer consent, the VCC might be a useful tool to ensure that customer protections are upheld. The Commission should give this possibility due consideration as the processes and mechanics for CEUD transfer to third parties are further refined.

The Commission should clearly rule on a “safe harbor” for utilities with regard to the form of customer authorization to share CEUD. The Recommendations contemplated a safe harbor for aggregated or anonymized data such that a utility, following prescribed processes and mathematical obfuscation methods, would not face liability in case of a subsequent breach of privacy. While important, Mission:data emphasizes the value of a clearly-defined safe harbor with regard to the *form* of customer authorization so that utilities are not put in an awkward and impractical role of policing third parties that receive an individual customer’s CEUD with consent. As mentioned above, our experience in California is that the clear liability limitation granted to utilities if certain procedures were followed was essential to making the Green Button Connect system viable. While a safe harbor for aggregation thresholds may be important in Minnesota, the Commission must also consider liability limitations for utilities in the context of individual CEUD that is shared with customer permission.

The Commission should expand the definition of CEUD to include cost/bill information. The Workgroup’s September 14, 2014 definition of CEUD covers the *usage* of energy (such as

⁹ See <https://www.ftc.gov/public-statements/1983/10/ftc-policy-statement-deception>

quantities in kilowatt-hours, therms, etc.) as collected by a meter.¹⁰ However, the *cost* of energy used are just as important when it comes to energy efficiency, demand response and rooftop solar. If customer is considering DERs, he or she will want to know the potential impact on monthly bills, not merely energy savings. The line items of bills and bill histories are also extremely useful for customers and their authorized third parties to study electronically and in machine-readable form because of rate or tariff changes, changes in taxes or fixed charges, etc. If customers are granted easy, machine-readable access to their energy consumption in the present docket or a future docket, Mission:data is concerned that consumption is only part of the picture when costs are excluded, and significant opportunity for empowering customers to save money will be ignored. Therefore we urge the Commission to incorporate cost/bill information into its consideration of CEUD.¹¹

The Commission should make all rate plans of regulated utilities publicly-available in a standardized, machine-readable form. Related to cost/bill information are the rate or tariff details that are used to calculate customer bills. Rates are increasingly complex and must be calculated with a computer as fuel surcharges, dynamic pricing and other variables continuously change over time. While the PDFs of Commission-approved rates are available online today, requiring the publication of rates in a standardized, machine-readable format would dramatically improve customers' ability to access and calculate the bill impacts of DERs. The average person could theoretically translate the legal language of approved rates into a calculation of his or her own bill, but it is impractical to do so when software can instantly provide the same service. For software's computational advantages to be leveraged, rates must be published in up-to-date machine-readable form such as XML, consistent with national standards. We note that the National Renewable Energy Laboratory ("NREL") has already begun a pilot program using its nation-wide rate database and we ask that the Commission direct the regulated utilities to participate in NREL's pilot program.

¹⁰ Use and Limitations on Use of Customer Energy Data: Balancing Customer Privacy and Minnesota's Energy Goals. Final report of the CEUD Workgroup, September 15, 2014. Submitted to the Minnesota Public Utilities Commission September 17, 2014 in docket 12-1344, at p. 35.

¹¹ We note that GBC accommodates bill history information and bill line items in its "RetailCustomer.xsd" schema.

Q3. What are parties' recommendations on procedural next steps, and a timeline for any such procedures?

Mission:data believes the Recommendations and the points raised herein should be acted on by the Commission swiftly. We note the Commission began the present docket in 2012, so four years has now elapsed without clear guidelines on how customers can access their own CEUD and share it with third parties of their choice.

Q4. Are there other docket-related issues or concerns the Commission should be aware of?

Finally, Mission:data wishes to raise an issue of prioritization. As the Recommendations outlined, there are many "use cases" for data access involving individual CEUD, aggregated CEUD, benchmarking, academic research, municipal climate action planning, etc. Data access and privacy are understandably wide-ranging topics; indeed, they have already taken many years of the Commission's and working group's time in deliberations. But the Commission should prioritize a clear ruling on customer access to his or her own usage and cost information because we believe it is the customer's right to use the data collected about them for whatever purpose he or she wishes. Continuing to deprive customers of meaningful opportunities to exercise that right because of other complex issues surrounding aggregation thresholds and other use cases would be a mistake. It should be clear to all parties now that privacy concerns related to a customer using *their own* information for *their own* purposes, with customer consent, are much fewer than the case of aggregating meter data *without* customer consent. The Commission should consider bifurcating the topics to rule first on data access with customer consent and second on aggregation issues without customer consent.

Thank you for the opportunity to provide comment.

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Respectfully submitted,

FOR THE MISSION:DATA COALITION, INC.

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