April 7, 2014

Via Email

CPUC Energy Division
Attention: Tariff Unit (EDTariffUnit@cpuc.ca.gov)
505 Van Ness Avenue
San Francisco, CA 94102

RE: **PROTEST OF MISSION:DATA to**:
Pacific Gas & Electric Company (PG&E) Advice Letter 4378-E
Southern California Edison Company (SCE) Advice Letter 3018-E
San Diego Gas & Electric Company (SDG&E) Advice Letter 2586-E
Establishment of the Customer Data Access Program for Release of Customer Interval Usage Data to Third Parties and the Associated Rule 26, Release of Customer Data to Third Parties

Dear CPUC Energy Division Tariff Unit:

On March 18, 2014, the Investor-Owned Utilities (IOUs) submitted Advice Letters (ALs) for the "Establishment of the Customer Data Access Program for Release of Customer Interval Usage Data to Third Parties and the Associated Rule 26, Release of Customer Data to Third Parties" pursuant to Ordering Paragraphs 18 and 19 of Commission Decision (D.) 13-09-025. These advice letters are listed above.

Mission:Data, a coalition of innovation companies in energy efficiency, hereby submits this protest to all three ALs collectively, since both the subject matter and basis for protest is the same for each of the advice letters. This protest is timely submitted pursuant to General Order 96-B, Sections 3.11 and 7.4.

I.
BACKGROUND

By ALs 4378-E (PG&E), 3018-E (SCE), and 2586-E (SDG&E), the IOUs seek to establish their service offering to allow third parties access to the IOUs' customers' interval usage data through their Customer Data Access (CDA) programs. These

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offerings are made pursuant to D.13-09-025 and will be included in PG&E's Rule 25, SCE's Rule 26, and SDG&E's Rule 34.[1]

II.
GROUNDS FOR PROTEST

Pursuant to Rule 7.4.2 of General Order 96-B, an advice letter can be protested on the grounds that it either violates or is not authorized by a Commission order. In this case, the IOUs' ALs violate Commission orders in five (5) different ways: (1) the availability of customer usage data is less than required by the Commission; (2) the right to charge extra fees, as reserved by the IOUs, is inconsistent with Commission orders; (3) customer eligibility to use CDA is not specified by the IOUs, but clarifications on eligibility were ordered by the Commission in D.13-09-025; (4) the IOUs' third party eligibility requirements are inconsistent with Commission orders; and (5) the ALs' disclaimers indicate possible degradations of data quality, without any third party recourse, such that CDA could be effectively useless in meeting its original purpose.

(1) The availability of customer usage data is less than required by the Commission

The Commission, and the parties to A.12-03-002, A.12-03-003 and A.12-03-004, the proceedings which formed the basis of D.13-09-025, were assured by the IOUs that customer usage data would be available (a) first, for the past 13 months of interval usage history and (b) then, on an ongoing basis, each day's interval usage would be available the next day. The parties to A.12-03-002 (*et al*.), and the Commission in D.13-09-025, assumed that such information would have no "expiration date" and would be electronically available for as long as a third party was authorized to receive the data. However, the ALs indicate that, after an initial request pulls 13 months of interval usage, interval data cannot be downloaded after five days has passed. In subsequent requests, the IOUs will provide only five days of historical data, eliminating the possibility of third parties re-downloading data as may be required when the IOU adjusts historic billing data, or when a loss of connectivity or other technical issue necessitates a re-request. This introduces unworkable technical obstacles to third parties, going against the Commission's goals of third-party access with customer consent.

PG&E's tariff on Sheet 2 under Section III (2) reads:

> *Availability of Data: Customer-authorized third parties must retrieve the Customer Data for a given day five days* [sic.] *of it being made available by the data custodian after which time that data may be removed…*

SCE's tariff on Sheet 2, Section C(A) reads:

[1] PG&E AL 4378-E, at p. 1; SCE AL 3018-E, at p. 1; SDG&E AL 2586-E, at p. 1.

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Availability of Data: Customer-authorized third parties must retrieve the Customer Data for a given day within five days of it being made available by the data custodian after which time that data will be removed.

SDG&E's tariff on Sheet 2, Section C(1) reads:

Availability of Data: Customer-authorized third parties must receive or retrieve the Customer Data for a given day within five days of its placement on the server after which time that data will be removed.

The language is subtle but its meaning is critical to the objectives of CDA that underlie D.13-09-025. One interpretation of the "data availability" clauses above is that *any* data requested by a third party will be held in temporary storage that will naturally expire in five days, and that if a third party requests historical data again, it will be provided once again for download in temporary storage with an expiration of five days. In this rather innocuous interpretation, the "expiration" is not the overall data availability itself, but merely the particular files for download in response to each request.

However, another, more likely interpretation is that one day's data will be available only for five days and then deleted. *Once made available, no data through CDA will be available to a third party, period, despite subsequent requests.* Indeed, PG&E's tariff says only "five days [of historical data will be] available by the data custodian after which time that data may be removed."[2] This is problematic for several reasons. First, an IOU may alter historical data due to, say, its own billing validation processes; demand response and energy efficiency firms wishing to settle payments on data received via CDA may be effectively forced to pay the IOUs an indeterminate number of times to get the true, "as-billed" data. Any data more than five days old may be subject to revision, but third parties would never be privy to whether such revisions occur. Second, the ability to view energy usage history only five days in the past is inconsistent with the standard practices of the IOUs' bill-pay websites today, in which customers may repeatedly download copies of their bills going back in time without additional fees. Why should historical interval data be any different from downloading bills?[3]

The IOUs' five (5) day data availability window is arbitrary. There is nothing in the Energy Services Provider Interface (ESPI) standard that limits one's historical data requests to five days of historical data; indeed, the five day period was determined solely by the IOUs. Furthermore, a five day data window was never mentioned in D.13-

[2] PG&E, Sheet 2, Section III(2).

[3] Bandwidth or disk space concerns with regard to interval data should be compared with downloading PDFs of monthly bills. For example, a monthly bill PDF from PG&E was 278 kilobytes; a compressed file with one year of 15-minute interval data was approximately the same, or 303 kilobytes. Thus, downloading a year's worth of monthly bills would use almost 12 times *more* disk storage and bandwidth as the equivalent amount of 15-minute usage data. Currently, monthly bill PDFs can be downloaded repeatedly with no extra fees.

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09-025 or the IOUs' accompanying descriptions of the CDA program. Therefore, it is inconsistent with D.13-09-025 and should be struck.

(2) The right to charge extra fees, as reserved by the IOUs in their tariffs, is inconsistent with Commission orders

All three IOUs stipulate that additional fees may be charged to third parties for certain activities. Mission:Data objects not to fees associated with technical consultations that go beyond basic machine-to-machine connectivity tests, but we do object to fees for "re-transmission of data that third parties failed to retrieve in a timely manner."[4]

As described above, a five-day data window is not only arbitrary but it is also insufficient for many energy management services envisaged by third parties. By charging additional fees, the CDA tariffs violate the Commission's determination that "it is appropriate to offer this service to customers at a price of zero."[5] While it is true that the first data request by a third party will yield at least 13 months of interval data history, re-downloading for verification purposes is a normal and expected practice in machine-to-machine data exchanges of all kinds. Charging additional fees for what is a routine practice (and a practice that is *necessary* because the IOUs *will* revise historic data in the billing validation process) is not authorized by the Commission's order that CDA service should be free.

(3) Customer eligibility to use CDA is not specified by the IOUs, but clarifications on eligibility were ordered by the Commission in D.13-09-025

In the *Joint IOU Report on the Informal All-Party Discussions Regarding the Issues Identified in the Assigned Commissioner's Ruling and Scoping Memo* (July 30th, 2012; the "Joint IOU Report"), it was noted that several parties asked the IOUs when CDA would be available and for which customers. It was stated that "PG&E does not differentiate between customer classes as to when data would be available through its ESPI platform."[6] Furthermore, D.13-09-025 reiterates PG&E's statement, saying "PG&E expected that its usage data would be available to *all customer classes* simultaneously [emphasis added]".[7] An informal conference call held by PG&E with prospective CDA third parties on March 5th, 2013 also stated unambiguously that *all* PG&E customers

[4] PG&E, Sheet 2, Section III(A).
[5] D.13-09-025 page 2.
[6] Joint IOU Report, p.8.
[7] D.13-09-025 p.28.

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would be eligible. However, in its tariff, PG&E states that only customers with active accounts and with "advanced metering" may use the CDA program:

> *This tariff rule governs PG&E and the following parties: (1) PG&E customers with open service accounts and where advanced metering is installed…*[8]

Mission:Data is concerned that, since the tariff does not define "advanced metering," it leaves a gaping definitional hole open to PG&E's unilateral interpretation. Mission:Data member companies could invest in energy management services throughout PG&E's territory only to find that certain customers are actually excluded from CDA due to unknown reasons, severely degrading CDA's original purpose. This unworkable situation would be without remedy to third parties, and this is the reason why the parties to A.12-03-002 specifically asked for clarification from the IOUs.

In concluding its discussion on timing, the Commission wrote in D.13-09-025:

> *The request of parties for more information on the timing of the availability the backhaul service to residential and business customer with demand lower than 200 kW is, however, reasonable. Therefore, this decision will require that the advice letters filed to tariff these services, which are due within 180 days of the adoption of this decision, state the expected date at which the service will be available*.[9]

SCE's AL and tariff state that CDA will be available via a "soft launch" in the fourth quarter of 2014, but SCE is silent on the question of customer eligibility. Previous testimony from SCE indicates that "[v]irtually all commercial customers with demands less than 200 kW will have a SmartConnect meter and, therefore, will have data available through SCE's ESPI platform when it gets deployed."[10] However, SCE's use of the word "virtually" does not exactly instill confidence in third parties, who, as in PG&E's territory, may find themselves dealing with customers who inexplicably are not eligible for CDA.

(4) The IOUs' third party eligibility requirements are inconsistent with Commission orders

The Commission, in D.13-09-025, ruled that any third party is eligible to receive a customer's data if they (a) obtain the requisite permission from the customer, (b) meet technical eligibility requirements, (c) acknowledge receipt of the relevant tariff rule, and

[8] PG&E Sheet 1 Section I ("Applicability").
[9] D.13-09-025 p.30.
[10] *ibid.*, p.29.

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(d) are not otherwise prohibited by the Commission from receiving customer data.[11] However, the IOUs have inexplicably added another requirement without authorization: "Transparency: Third parties shall continue to provide customers with clear notice regarding their accessing, collection, storage, use and disclosure of Customer Data."[12]

Not only is this requirement not part of D.13-09-025, but the creation of vague eligibility standards such as "transparency" and undefined "clear notices" introduces unnecessary uncertainty into the relations between the IOUs and third parties.

Mission:Data members hope that wrongful CDA termination would never occur, and we are reassured by the Commission's determination that "The Commission, not a utility, bears responsibility to remove a third party from the list of those eligible to receive data."[13] However, the discussion of unilateral IOU termination was extensively discussed during the all-party discussions, and Mission:Data members believe it is important to adhere closely to the wording of Commission orders. We note that the Commission's privacy decision and existing state law already address how third parties may use customer energy data, including clear notices about primary and secondary uses of data.

(5) The ALs' disclaimers indicate possible degradations of data quality, without any third party recourse, such that CDA could be effectively useless in meeting its original purpose

The IOUs do not provide any warranties as to CDA being free from errors, complete or accurate. This is problematic for third parties who wish to settle payments based upon the data acquired from CDA. Enabling clean energy or energy efficiency transactions with customer data was indeed one of the original purposes envisioned for CDA, and the IOUs are being compensated through increased rates in order to deliver a system that one would reasonably believe should be accurate. For example, PG&E states:

> *PG&E does not warrant that the CDA platform will be timely, secure, uninterrupted, or error-free, or that defects in the CDA platform, as may exist from time to time, will be corrected. PG&E will not be responsible for errors, omissions, interruptions, deletions, defects or delays in the operation of or transmission of data through the CDA platform, including those due to communication line failures, or computer viruses associated with the operation of PG&E's website or platform.*[14]

[11] D.13-09-025, p.2.
[12] PG&E Sheet 3, Section IV; SCE Sheet 3, Section D(4); SDG&E Sheet 3, Section D(4).
[13] D.13-09-025, p.3.
[14] PG&E, Sheet 5, Section VI (D).

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It is not clear to Mission:Data why the IOUs disclaim accuracy and completeness, and yet also state that the "Reading Quality" flag in the ESPI standard will be used to indicate the quality of meter data provided through the CDA platform.[15] What is the purpose of a "Reading Quality" attribute of usage data when its accuracy is disclaimed anyway? A flag could read "Billing quality" but then its status is contradicted in the tariff "limits of liability" section.[16]

III.
REQUESTED RELIEF

As detailed above, Mission:Data's position is that the IOUs' proposed CDA rules do not comply with D.13-09-025. To that end, Mission:Data asks that the IOUs' proposed rules not be approved until the following changes are made:

1. That historical data availability should be clarified, and that third parties should be able to access historical data more than once, and for a period of more than the previous five days' worth of consumption data.
2. That the IOUs strike their reserved rights to charge additional fees for data access. The IOUs should be able to charge additional fees for technical assistance, but not for energy usage data, because that is the essential purpose of CDA.
3. That customer eligibility be clarified, particularly around who and who does not have a smart meter, and what "virtually all customers" means.
4. That "transparency" be struck from the tariffs as a third party eligibility criterion, because it was not in Commission orders and because other rules and laws exist to meet its apparent purpose.
5. That the tariff's "limits of liability" sections be amended so as to remove disclaimers for accuracy and completeness when the "Reading Quality" flag is "billing-grade."

[15] For example, PG&E, Sheet 2, Section III(B).
[16] Inaccurate data present even more reasons as to why a third party may need to download data multiple times in order to correct the IOUs' mistakes.

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IV.
CONTACT INFORMATION

Per General Order 96-B, Section 3.11, we hereby confirm that this protest is being sent simultaneously to the IOUs and the Energy Division, meeting the requirement that the IOUs should receive copies of such protests within one day of the reviewing Industry Division.

Please direct all correspondence regarding this response to:

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Respectfully submitted,

April 7, 2014

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