

DOCKETED

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April 28, 2015

California Energy Commission
Docket Office, MS-4
Re: Docket No. 15-IEPR-05
1516 Ninth Street
Sacramento, CA 95814-5512
docket@energy.ca.gov

Re: Southern California Edison Company's Comments on the California Energy Commission Docket No. 15-IEPR-05: Lead Commissioner Workshop on Strategies Related to Data for Improved Decisions in *Existing Buildings Energy Efficiency Draft Action Plan*

Dear Commissioner McAllister:

On April 14, 2015, the California Energy Commission (Energy Commission) held a Lead Commissioner Workshop on Strategies Related to Data for Improved Decisions in the *Existing Buildings Energy Efficiency Draft Action Plan* ("the Workshop") as part of the 2015 Integrated Energy Policy Report ("IEPR") Proceeding. Southern California Edison (SCE) participated in the Workshop and appreciates the opportunity to provide these written comments.

As discussed in SCE's recently submitted comments on the AB 758 Draft Action Plan, SCE generally supports the Energy Commission's efforts to provide a roadmap that dramatically increases energy efficiency in existing buildings. SCE also supports efforts among the Energy Commission, the California Public Utilities Commission (CPUC), and other public and private stakeholder groups to achieve the Action Plan's objectives, and believes that agency and stakeholder coordination is essential to realizing the goals of AB 758 and complying with existing law and policy.

Consistency is particularly important when it comes to accessing electric utility customer data. To avoid confidentiality issues and promote efficiency, SCE recommends that the Energy Commission first look to existing sources of data whenever possible. If the Energy Commission would like access to additional data, assuming access to such data is lawful, SCE requests that the Energy Commission first determine if its desire or need for the data outweighs the cost to utility customers of the utility gathering and delivering such data. Finally, as the Energy Commission knows, the electric utilities are heavily regulated by the CPUC -- a constitutionally created agency that has the jurisdiction to "do all things . . . necessary and convenient to the exercise of [its] power and jurisdiction" -- and have no discretion whatsoever to deviate from or refuse to comply with the CPUC's directives, decisions, orders, resolutions, and approved tariffs. SCE is also required to follow all California statutes governing its conduct. SCE has and will

therefore continue to be steadfast in its commitment to protecting its customers' privacy as a matter of law and policy.

A. The Energy Commission Should Rely on Existing Public Sources of Data

As discussed in the CPUC workshop presentation, "Overview of CPUC's May 2014 Data Decision," SCE and other investor-owned utilities (IOUs) currently provide a great deal of publicly-accessible energy usage data, as required by the Smart Grid Order Instituting Rulemaking (R.) 08-12-009 Phase III Energy Data Center Decision (D.) 14-05-016. This Decision adopted rules to provide access to energy usage and usage-related data while protecting the privacy and personal data of customers.

As part of D.14-05-016, IOUs are now required to publish aggregated energy usage data on an ongoing basis for public consumption. SCE publicly posts and quarterly updates the total monthly sums and averages of customer electricity usage by zip code for each customer class on SCE's website.

In addition, SCE and other Energy Efficiency Program Administrators (EE PAs) are also required to file timely program tracking applications and reports with the CPUC through their EE Statistics Website.¹ SCE currently provides information on a variety of monthly, quarterly, and annual EE reports, which are posted on this website. Information includes: (1) Electricity Savings (GWh), (2) Demand Reductions (MW), (3) Emissions Reductions (tons of CO₂ emissions), (4) Expenditures (Adopted Budget and Total Expenditures in dollars), (5) Cost Effectiveness Ratios (using CPUC Standard Practice Manual tests), as well as specific figures for IOU Portfolios, Programs, Market Sectors, Measures, End Uses and Building Types.

D.14-05-016 also allows for State and Federal Agencies, including the Energy Commission, to access data that is considered Personally Identifying Information (PII), if that information is deemed *necessary* for them to perform their constitutional or statutory duties. The Decision outlines a "Data Request and Release Process" for IOUs, which requires the IOUs to manage an "Energy Data Request Portal" through which IOUs will receive requests, post details of requests, and track the progress on fulfilling those request.²

Access to such data does not mean that the Energy Commission is entitled to make the data public. The Public Records Act, found at Government Code Section 6254(k), establishes that public records subject to privileges established in the California Evidence Code are not required to be disclosed. Evidence Code §1060 shields "trade secrets" from public disclosure. "Trade secrets" include any "information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who could obtain economic value from its disclosure or use; and (2) [i]s the subject of efforts that are reasonable

¹ Energy Efficiency Statistics Website can be accessed at: <http://eestats.cpuc.gov>

² SCE's Energy Data Request Portal was implemented in November 2014, and can be accessed at: www.sce.com/energydatarequest

under the circumstances to maintain its secrecy.” The Section 25322 of the California Public Resources Code governing the confidentiality of information gathered by the Energy Commission follows the same standard. Specifically, if the information is exempt from disclosure under the California Public Records Act, “[t]he commission shall grant the [confidentiality] request.” Customer lists and data are classic trade secret information.

SCE recommends that the Energy Commission first look to data that is publicly available to determine if it is sufficient to allow the Energy Commission to perform its statutory duties. If not, and the Energy Commission requests additional confidential data, it should agree in advance to keep such data confidential as a utility trade secret.

B. The Energy Commission Should Take Customer Costs into Account Before Requesting Data that is not in the Public Domain

As noted in SCE’s AB 327 Comments, SCE agrees with Nancy Skinner’s comments from the April 7th IEPR workshop that making additional non-residential benchmarking data publicly available will likely increase costs for California ratepayers. The Energy Commission should consider a balance between the benefits and costs of this endeavor. AB 758 and the Action Plan do not currently provide additional funding to IOUs for the purposes of developing and sharing performance benchmarking data. As such, incremental data sharing and development costs are likely to fall on utility ratepayers in the form of increased administrative costs in IOU portfolios.

Before creating such costs for SCE’s customers, the Energy Commission should first develop a clear understanding of what purpose the data would serve and whether that data – as opposed to publicly available data -- is absolutely necessary to achieve that objective. For the reasons discussed above, if the data requested is confidential, the Energy Commission should agree in advance to deem the data a utility trade secret and to keep that data confidential from Public Record Act requests.

C. The Energy Commission Should Afford Confidential Treatment to Information the CPUC Deems Confidential

SCE and other IOUs, as a matter of law, must comply with the CPUC’s data privacy rules and all other applicable state and federal laws. As stated above, SCE is committed to protecting the confidentiality of its customers’ data as a matter of law and public policy. Attached is a chart of all of the statutes, tariffs, and CPUC decisions that are relevant to the confidentiality of customer usage data and PII. As the long history of CPUC precedent demonstrates, the CPUC has been unwavering in its commitment to the protection of customer data and PII.

The Action Plan appropriately conveys that data privacy merits serious attention and controls, but does not specify how data will be aggregated or cleansed of private information before it is shared with market participants. SCE recommends that the Energy Commission follow the CPUC’s approach for aggregating data to protect customer privacy.

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In conclusion, SCE appreciates the Energy Commission's consideration of these comments and looks forward to its continuing collaboration with the Energy Commission. Please do not hesitate to contact me at (916) 441-2369 with any questions or concerns you may have. I am available to discuss these matters further at your convenience.

Very truly yours,

/s/ Manuel Alvarez

Manuel Alvarez

LEGAL PROTECTIONS FOR CUSTOMER DATA

Statutes and Constitutional Provisions	
Citation	Description
Cal. Const., Art I, Sec. 1	“Each citizen has the right to privacy.”
Cal. Pub. Util. Code § 8380 (SB 1476)	<p>Requires the utilities to maintain the confidentiality of customers’ “electrical or gas consumption data,” i.e., usage, that is made available as part of an advanced metering infrastructure, and includes the name, account number, or residence of the customer absent customer consent to release it.</p> <p><i>See D.11-07-056 implementing SB 1476.</i></p>
Cal. Pub. Util. Code § 394.4	<p>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:</p> <p>(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.</p>

Cal. Civil Code §§ 1798.81-1798.85	Requiring businesses, including electric utilities, to take reasonable measures to protect PII.
Common law	<p>Common law rights of personal privacy include the right of individuals to sue when: (1) their seclusion or solitude has been intruded upon in an unreasonable and highly offensive manner; and (2) information concerning their private life is disclosed to the public in a highly objectionable manner.</p> <p>Businesses also have a common law right to prevent competitors from engaging in unfair competition by obtaining trade secrets.</p>
Cal. Gov't. Code § 6254(k)	<p>The Public Records Act, found at Government Code Section 6254(k), establishes that public records subject to privileges established in the California Evidence Code are not required to be disclosed.</p> <p>The Section 25322 of the California Public Resources Code governing the confidentiality of</p>
Cal. Evid. Code §1060	Shields “trade secrets” from public disclosure. “Trade secrets” include any “information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who could obtain economic value from its disclosure or use; and (2) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”
Cal. Pub. Resources Code § 25322	If information gathered by the Energy Commission is exempt from disclosure under the California Public Records Act, “[t]he commission shall grant the [confidentiality] request.”

CPUC Decisions	
Decision No. 90-12-121, 39 CPUC 2d 173 (1990)	CPUC policies in “Customer List OII” (I.90-01-033) restricting access by third parties to confidential customer information possessed by utilities unless the customer provides written permission and prohibiting access law enforcement except pursuant to legal process (i.e., warrant or subpoena); directing the IOUs to notify the CPUC in writing ninety days prior to any contemplated change in policies regarding release or use of customer information.
Decision No. 97-05-040, 72 CPUC 2d 441, 485- 487 (1997)	Requiring written authorization by customer to release customer-specific information to third party electric service providers in connection with Direct Access programs
Decision No. 97-10-031 Decision No. 97-12-088 Decision No. 98-03-073 Decision No. 99-07-015 Decision No. 00-07-020 Decision Nos. 01-09-013, -014 and -015	Reaffirming requirement of individual customer permission for release of customer specific data in the following specific scenarios: <ul style="list-style-type: none"> • to electric service providers as part of Direct Access programs; • to utility affiliates; • in connection with utility mergers; • under gas industry restructuring; • among gas industry competitors; • to non-utility contractor third parties in connection with low income energy assistance programs; and • in connection with utility interruptible programs; • in connection with servicing agreements between the utilities and DWR;
Decision No. 00-12-037	Confidentiality of customer information provided as part of interconnection services.
Decision No. 01-07-032	Denial of petition by California Narcotics Officers Association to lift prohibition in D. 90-12-021 on utilities releasing customer specific information to law enforcement agencies without a valid subpoena or warrant or as otherwise required under the law (e.g., P.U. Code Section 588, which permits investigators in child abduction cases to obtain certain utility customer information without legal process).
Decision No. 09-09-047	As part of Customer Energy Efficiency programs, authorizing utilities to obtain electronic or written paper consent by customers for disclosure of customer-specific energy usage in private buildings.
Decision 11-07-056	Adopting privacy protections pursuant to SB 1476 for electric usage information obtained through advanced metering infrastructures.

<p>D.14-05-016</p>	<p>Adopting rules to provide access to energy usage and usage-related data while protecting the privacy and personal data of customers. Requires utilities to publish <u>aggregated</u> energy usage data on an ongoing basis for public consumption. SCE publicly posts and quarterly updates the total monthly sums and averages of customer electricity usage by zip code for each customer class on SCE’s website.</p> <p>Allows for State and Federal Agencies to access PII if that information is deemed <u>necessary</u> for them to perform their constitutional or statutory duties and outlines a “Data Request and Release Process” for IOUs, which requires the IOUs to manage an “Energy Data Request Portal” through which IOUs will receive requests, post details of requests, and track the progress on fulfilling those request.</p> <p>See Government, Public Resources, and Evidence Codes for why the Energy Commission should maintain the information as confidential if obtained.</p>
<p>CPUC-Approved Utility Tariffs</p>	
<p>SCE Rule 9.H Privacy of Customer Information.</p>	<p>We regard Energy Usage Information as a type of Personal Information. Get more details on <u>Personal Information</u>.</p> <p>To help ensure your Energy Usage Information is appropriately managed, SCE complies with applicable privacy and security regulations, company policies, and uses information security technologies to safeguard Energy Usage Information.</p> <p>To preserve a customer’s privacy when receiving and paying electric bills through the Internet, SCE shall not release confidential information, including financial information, to a third party without an electronic signature or voice/written consent from the customer.</p>
<p>SCE Rule 22.C.3 – Access to Customer Data</p>	<p>SCE shall provide customer-specific usage data pursuant to Schedule CCA-INFO. SCE and CCA shall abide by the instructions of a customer as to the entities to whom access to the confidential customer information is provided.</p>
<p>Schedule CCA-INFO:</p>	<p>Customer specific information will be provided to a CCA pursuant to each customer’s written authorization or upon receipt of a signed Community Choice Aggregator Non-</p>

	Disclosure Agreement (Form 14-769) and a signed Community Choice Aggregation Declaration (Form 14-770).
SCE Rule 25 – Protecting the Privacy and Security of Customer Usage Data	“In addition to the protections for customer Usage Information under this Rule, all customer specific information gathered by SCE in the course of providing electric service is maintained as confidential and not disclosed to third parties without prior written customer authorization, unless otherwise required by law, Commission order, or in the event of an emergency or imminent threat of life. Vendors who provide services to SCE or its customers on behalf of and under contract with SCE may access customer confidential information only on an as-needed basis and pursuant to specific contractual obligations to maintain the confidentiality and security of such customer data.”
SCE Internal Policies	
SCE Privacy Energy Usage Policy	<p>“We regard Energy Usage Information as a type of Personal Information. Get more details on <u>Personal Information</u>.</p> <p>To help ensure your Energy Usage Information is appropriately managed, SCE complies with applicable privacy and security regulations, company policies, and uses information security technologies to safeguard Energy Usage Information.</p> <p style="text-align: center;">...</p> <p>“WHEN AND WITH WHOM SCE SHARES ENERGY USAGE INFORMATION</p> <p>We may contract with third parties to help us provide the essential services described above. When necessary to perform the work, we may share your Energy Usage Information with our third-party contractors. In our contracts with the third-party contractors, we will require them to have policies and procedures to protect SCE’s customers’ Energy Usage Information from being disclosed.</p> <p>In addition, we may share your Energy Usage Information with non-governmental third parties when they are providing those same types of services either under a contract with the</p>

CPUC or when the CPUC issues an order that directs us to share your Energy Usage Information with the third party.

SCE only shares your Energy Usage Information with government agencies that are using, collecting, and storing that Energy Usage Information to perform energy efficiency, energy evaluation, or other specified services and have obtained a CPUC Order or Resolution that directs us to disclose your Energy Usage Information.

Finally, we will only disclosure your Energy Usage Information for a purpose unrelated to the essential services discussed above under four specific circumstance: (1) upon receipt of your explicit consent to release information to a third party that you specifically identify, (2) pursuant to legal process such as a warrant or subpoena, (3) in the case of an imminent threat to life or property, or (4) as ordered by the CPUC.

Under all circumstances, we will limit the type and amount of Energy Usage Information that is shared with third parties to that which is reasonably necessary for the third party to accomplish the purpose for which it needs access to your Energy Usage Information.

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AGGREGATION OF YOUR INFORMATION

Periodically, we may aggregate your Energy Usage Information with that of others in various formats so that your Energy Usage Information becomes anonymous and cannot personally identify you. We use the information for various analysis, reporting and program management purposes, including to analyze rates and rate structures, evaluate energy usage demand needs, and determine potential growth within a geographic area. This aggregated information is not considered Personal or Energy Usage Information and may be shared with third parties that we do business with.”