

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

In the Matter of the Utility Energy Registry

Case 17-M-0315

**In the Matter of Distributed System Implementation
Plans**

Case 16-M-0411

**Proceeding on Motion of the Commission in Regard to
Reforming the Energy Vision**

Case 14-M-0101

**REPLY COMMENTS OF THE CITY OF NEW YORK
ON THE NOTICE REQUESTING COMMENTS ON
PRIVACY STANDARDS FOR AGGREGATED DATA**

Dated March 9, 2018

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PRELIMINARY STATEMENT

The City of New York (“City”) respectfully submits these reply comments to respond to a proposal by the Climate Action Associates (“CAA”) to give the utilities discretion in applying privacy standards and in determining access to customer load data. For the reasons set forth herein and in its initial comments in this matter, the City urges the New York State Public Service Commission (“Commission”) to reject CAA’s proposal. In the event the Commission does adopt privacy standards – whether those proposed by the utilities, CAA, or otherwise – the Commission should not apply such standards to the City or other municipality seeking energy usage data for public policy purposes.

BACKGROUND

On December 15, 2017, the Commission issued a Notice¹ requesting further input on the appropriate balance between the benefits of making available energy consumption data and the need to maintain customer privacy when populating the Utility Energy Registry (“UER”). The

¹ Cases 17-M-0315, *et al.*, In the Matter of the Utility Energy Registry, Notice Requesting Comments on Privacy Standards for Aggregated Data (issued December 15, 2017) (“Notice”).

Notice provided opportunities for the submission of initial and reply comments. The Commission's stated goal in soliciting these comments was to improve the usefulness of the data to UER users, such as municipalities, energy service providers, community based organizations, and individuals.²

On February 26, 2018, the City, CAA, and the Joint Utilities submitted initial comments in response to the Notice. In accordance with the Notice, and the extended deadline for reply comments set by the Secretary,³ the City submits these comments to reply to the arguments and proposals advanced by CAA.

REPLY COMMENTS

POINT I

THE UTILITIES SHOULD NOT BE GIVEN DISCRETION IN APPLYING ANY DATA PRIVACY STANDARD

CAA recommended that, if the Commission chooses not to adopt a 15/15, 4/80, or 2/90 data privacy standard, it should instead

establish a 'minimum' customer count threshold of 2 but permit utilities to increase the threshold at its [sic]discretion, and/or to redact specific accounts if they disclose when and why they are doing it [and] allow utilities to modify UER reporting *in response* to privacy problems brought to their attention by redacting data from specific customers.⁴ [emphasis in original]

The purpose of the Commission is to regulate gas and electric corporations in a manner that best serves the public interest. The Commission sets rules and procedures regarding the

² *Id.*

³ Case 17-M-0315, *supra*, Notice Extending Deadline for Submission of Reply Comments (issued March 1, 2018).

⁴ Case 17-M-0315, *supra*, Climate Action Associates LLC Comments (filed February 26, 2018).

provision of utility services, and the Commission decides disputes regarding such matters. Accordingly, the Commission is the only entity that should set any privacy standards, and it is the only entity that should decide whether and how they are applied or modified. Giving the utilities discretion over such matters could lead to unequal, discriminatory, untimely, and/or incomplete access. Moreover, this would prevent an entity requesting utility data from knowing what information it may receive, if any.

As stated in the Notice, the purpose of this effort is to improve the usefulness of customer data for UER users, and access to this data is an important determinant of usefulness. Presently, the control of this data by the utilities has, in part, led to this and other efforts by the Commission to compel the utilities to make data available to consumers and third parties. In the event that the extent of data dissemination is left to the utilities' discretion, there is potential that the utilities may withhold data based on factors unrelated to the State's interest in protecting customer privacy, including competitive motivations. Most troubling would be if the utilities provided greater access and information to affiliates than third parties. All of these actions would violate Public Service Law §65(3), which prohibits any electric or gas corporation from "mak[ing] or grant[ing] any undue or unreasonable preference or advantage to any person, corporation or locality [...] or subject any particular person, corporation or locality [...] to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Access to granular utility usage data is critical to meeting the State's Clean Energy Standard goals, advancing the Commission's Reforming the Energy Vision initiative, supporting innovation and options for consumers, and achieving the City's energy and environmental

policies.⁵ A matter as important as data access and associated privacy considerations must be decided and overseen entirely and solely by the Commission acting in the best interest of the public and not left to the discretion of competitive entities like utilities.

For these reasons, the City respectfully submits that the Commission reject CAA's proposal and decline to give the utilities discretion over setting or applying data privacy standards.

POINT II

THE COMMISSION SHOULD NOT APPLY ANY DATA PRIVACY STANDARD TO MUNICIPALITIES SEEKING DATA FOR POLICY MAKING PURPOSES

CAA also recommended that the Commission abandon the 15/15 data privacy standard in favor of either a 2/90 or 4/80 privacy standard. The City prefers using a less restrictive standard, such as 2/90 or 4/80, to the 15/15, as a less restrictive standard will provide significantly more access to data without exposing customers to undue risk. Notwithstanding this support, the City maintains the position it has articulated in its prior comments on the utilities' Distributed System Implementation Plans and in the multiple data access-related proceedings that municipalities and other similarly situated government entities should not be subject to a privacy standard when they seek energy data for public policy purposes.

⁵ See Case 17-M-0315, *supra*, Initial Comments of the City of New York on the Notice Requesting Comments on Privacy Standards for Aggregated Data (filed February 26, 2018).

CONCLUSION

Access to customer data requires a careful balancing between the need for such data to inform policies, programs, and individual energy decisions, and the need to protect customer privacy. At the same time, there is a need for ensuring fairness and appropriate abilities to obtain data. Giving the utilities discretion over data access has too much potential to disrupt or alter that balance and result in inequitable, unfair, and potentially discriminatory outcomes. Moreover, doing so would be an improper delegation of a Commission responsibility.

For the foregoing reasons, the City respectfully recommends that the Commission reject CAA’s proposal to give the utilities discretion over applying data privacy standards, and that it decline to apply any data privacy standard to the City or other government agencies seeking data for public policy purposes.

Respectfully submitted,

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