STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on April 19, 2018

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman
James S. Alesi

CASE 17-M-0315 - In the Matter of the Utility Energy Registry.

CASE 16-M-0411 - In the Matter of Distributed System Implementation Plans.

CASE 14-M-0224 - Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs.

ORDER ADOPTING UTILITY ENERGY REGISTRY

(Issued and Effective April 20, 2018)

BY THE COMMISSION:

INTRODUCTION

As the energy industry evolves through New York's Reforming the Energy Vision (REV) initiative to become more distributed, dynamic, and consumer-focused, a foundational element of progress is the creation of a more information-centered power system. In order to enable a multipolar, transaction market for distributed energy resources (DERs), the modernized distribution platform must support the exchange of information between utilities, customers, service providers, and other third parties. Access to system and customer data are key components for more efficient and engaged markets. As the

Commission stated in its REV Track 2 Order,[1] ready access to information regarding customer energy usage is vital to the success of the DER market.

The REV Track 2 Order encouraged the development of the Utility Energy Registry (UER), which is an online platform being developed by the New York State Energy Research and Development Authority (NYSERDA), with the support of the investor-owned gas and electric distribution utilities,[2] to provide streamlined public access to aggregated community-scale utility energy data. The UER is intended to promote and facilitate community-based energy planning and energy use awareness and engagement. As recognized in the Commission's December 14, 2017 CCA Data Order, the UER will also assist the development of Community Choice Aggregation (CCA) programs.[3]

The CCA Data Order explained that while the Commission supported the development of the new UER database platform,

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[1] Case 14-M-0101, Reforming the Energy Vision, Order Adopting a Ratemaking and Utility Revenues Model Policy Framework (issued May 19, 2016) (REV Track 2 Order); see also Case 16-M-0411, In the Matter of Distributed System Implementation Plans, Order on Distributed System Implementation Plan Filings (issued March 9, 2017) (DSIP Order).

[2] As used in this Order, "the utilities" refers to Consolidated Edison Company of New York, Inc. (Con Edison), Orange and Rockland Utilities, Inc. (Orange & Rockland or O&R), Central Hudson Gas & Electric Corporation (Central Hudson or CHGE), National Fuel Gas Distribution Corporation (NFG), The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY), KeySpan Gas East Corporation d/b/a National Grid (KEDLI), and Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), New York State Electric & Gas Corporation (NYSEG), and Rochester Gas and Electric Corporation (RG&E).

[3] Case 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs, Order Establishing Community Choice Data Access Fees (issued December 14, 2017) (CCA Data Order).

application of the Commission's general privacy standard[4] to the UER indicated that much of the aggregated data intended to be used to populate the UER fails to meet that standard. The Commission recognized that populating the UER without any of that data would limit the availability of the UER data for most communities and diminish its usefulness. Therefore, the Commission sought further comment on the appropriate privacy standards before finalizing the UER.

In this Order, the Commission directs full implementation of the UER by NYSERDA and the utilities, with slight modifications to the proposed data sets, and adopts a less restrictive aggregation privacy screen for inclusion of certain data sets in the UER.

BACKGROUND

The UER is an online platform designed to offer streamlined public access to aggregated customer load data for electric and natural gas, segmented by customer type and by municipality. By Notice issued June 12, 2017,[5] comments were

[4] Case 16-M-0411, supra, Order on Distributed System Implementation Plan Filings. The DSIP Order set a 15/15 (also called 15-by-15 standard), which permits a set of aggregated data to be considered sufficiently anonymous for public distribution only if that data includes at least 15 customers, with no customer accounting for more than 15% of the total consumption. However, the Commission recognized in the DSIP Order that the 15/15 standard may be overly conservative. In general, a privacy standard for aggregated energy data establishes the minimum configuration and characteristics of energy accounts that, when aggregated over a geographic area or building, are expected to provide a reasonable expectation of customer privacy by not revealing or permitting determination of individual customer-specific energy use.

[5] Cases 17-M-0315 and 14-M-0224, supra, Notice Initiating Matter and Seeking Comment on Utility Energy Registry (issued June 12, 2017).

sought on the issue of (1) whether the large, investor-owned energy utilities should be directed to populate and regularly update the UER and (2) what data elements should be included in the UER. All commenting parties supported implementation of the UER.[6] Staff convened a working meeting on September 14, 2017 to define aggregation categories and data sets that should be used to populate the UER.

As a starting point, Staff proposed to have the UER populated by municipal tax district (except in New York City, where Con Edison would use zip codes) with utility rate service classes grouped into three buckets (Residential, Small Commercial,[7] and Other[8]). Staff proposed that each rate group be populated semi-annually with kWh (monthly), Installed Capacity (ICAP) tag (Capacity Tag), the total number of customer accounts, along with the number of accounts served by Energy Service Companies (ESCOs) and/or with blocks (i.e., non-CCA-eligible CCA customers), and the number of accounts on a time of use (TOU) rate. Recognizing the difficulty of developing data

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[6] The commenting parties were Central New York Regional Planning & Development Board, Natural Resources Defense Council, Sullivan Alliance for Sustainable Development, Citizens for Local Power, NYS Department of Environmental Conservation, Hudson Valley Regional Council, Institute of Market Transformation, Constellation NewEnergy, Inc. (and Gas Division LLC), New York State Energy Research and Development Authority, Climate Action Associates, Association for Energy Affordability, Inc., New York City and the Joint Utilities.

[7] The Small Commercial grouping comprised those non-residential service classes determined to be eligible for opt-out participation in Community Choice Aggregation programs; generally, these are service classes not billed on a demand basis.

[8] The Other grouping is generally comprised of large commercial/industrial users taking demand service and street lighting.

sets that satisfy all potential users without introducing undue administrative burdens, Staff's proposal was generally accepted by the working group as a viable starting point. In light of the recent Commission order requiring CCAs to guarantee savings for low-income assistance program participants (APPs) that are part of the CCA's program,[9] Staff also proposed to add APP counts to the data sets.

The utilities then applied the 15/15 privacy screen to Staff's proposed UER data sets by municipality for two separate sample months. In general, the results indicated a high failure rate (80-100% of municipalities) for the Other group, a relatively high (35-80%) failure rate for the Small Commercial group, and few failures in the Residential group. The working group agreed that additional analyses should be conducted using hypothetical screens of 6/40 (a screen which considers aggregated usage data sufficiently anonymized if the data set contains at least 6 customers and no one customer represents more than 40 percent of the total load) and 4/50 to further assess the UER data and to explore avenues to balance the benefits of data transparency with privacy protections.[10]

Based on the real-world results related to the development of the UER, by Notice issued December 15, 2017, the Commission sought additional comments regarding the appropriate

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[9] Case 16-M-0015, Petition of Municipal Electric and Gas Alliance, Inc. to Create a Community Choice Aggregation Pilot Program, and Case 14-M-0224, supra, Order Approving Community Choice Aggregation Program and Utility Data Security Agreement with Modifications (issued October 19, 2017).

[10] The 4/50 threshold reflects the Joint Utilities' proposed standard for benchmarking of aggregated customer data for building energy management. The Joint Utilities' benchmarking standard was proposed in response to the Commission's DSIP Order. The failure rates by utility and by rate class group for each of the three different privacy thresholds were summarized in Appendix 2 of the December 15th Notice.

balance between the benefit of making more aggregated data available and the need to maintain consumer privacy. In addition to seeking comment on revising the privacy standard the December 15 Notice sought input on other methods that should be considered including (1) for data sets that do not pass the privacy screen at the most granular level (i.e., municipality), combining the data with that of other municipalities (i.e., county); (2) recalibrating the privacy standard (in general or for certain aggregation groups) to optimize the benefits of making more information available (e.g., improved local energy planning, improved targeting of clean energy products and services) while continuing to maintain adequate privacy protection; and (3) where aggregation group does not pass the privacy screen, allowing the CCA Administrator, and/or the municipalities, to obtain the data from utilities pursuant to a Data Security Agreement.

NOTICE OF PROPOSED RULEMAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on December 27, 2017 [SAPA No. 17-M-0315SP1]. The time for submission of comments pursuant to the Notice expired on February 26, 2018. The comments received are summarized and addressed below.

COMMENTS AND REPLY COMMENTS

Comments were submitted by the Joint Utilities (JUs), Climate Action Associates LLC (CAA)[11] and the City of New York (the City). Reply comments were submitted by the JUs, CAA, the

[11] CAA's comments note that CAA is working for NYSERDA designing and implementing the UER.

City, Municipal Electric and Gas Alliance, Inc. (MEGA), Consumer Power Advocates (CPA).

UER Data Sets

The JUs support the proposed UER groupings for each municipality/zip code: Residential, Small Commercial, and Other. If one of these subgroups fails the Commission's privacy screen, instead of combining it with the same subgroup from a neighboring municipality, the subgroup should be combined with another subgroup in the same municipality. The resulting combined subgroup would then be subject to the privacy screen. If the combined subgroup does not pass the privacy screen, all subgroups would be combined to form a single group for the municipal tax district (or zip code in New York City) and tested against the privacy screen again. If the aggregation total subgroup does not pass the privacy screen, the data would be withheld and that tax district/zip code would be flagged in the UER. This solution would better characterize the data from a geographic perspective, which the JU's state is important for stakeholders, distributed energy resource suppliers (DERs), and municipalities.

The JUs commented that they do not believe combining data sets that fail the privacy screen at the most granular level (municipal tax district level, or zip code level for New York City) with neighboring municipalities or tax districts would provide meaningful energy data that can be useful to municipalities. Combining aggregated data with neighboring municipal tax districts or zip codes would essentially defeat the UER's primary objective "to inform clean energy planning, implementation, and assessment of locally-defined, community-scale clean energy initiatives and to facilitate tracking of clean energy programs" and could result in UER information with little or no value to the municipalities involved.

The JUs agree with Staff's proposal to include the following data in the UER: Total consumption, Capacity Tag, Total number of customers, and CCA eligible customer count. Staff also proposed that utilities provide CCA ineligible customer count for time-of-use customers, CCA ineligible customer count for ESCO served customers or customers with a block, and Assistance Program Participants (APP) customer count. In addition, Attachment 2 to the December 15th Notice notes that stakeholders requested the following data be included in future iterations of the UER: distributed energy resources (DER) load, street lighting consumption, and eligible CCA load. More clarification is needed before the JUs can fully evaluate if some of these data sets are appropriate for the UER or if utility systems even capture the information required to present the desired data sets in a consistent and uniform format. The JUs argue that expanding the UER to include additional data sets beyond the piloted aggregated customer count and electric and gas consumption should be "done strategically and with consideration of how that data will be used. Focus should be given to providing information that can be leveraged to provide statewide benefits."

Due to the differences in how utilities have structured their service classes, the JUs observe that TOU customers are categorized differently across utility service territories. For example, Con Edison's voluntary residential TOU rates are rate options within its residential service class (SC 1) which is eligible for CCA opt-out enrollment. Orange and Rockland's voluntary residential TOU rate is a separate service class (SC 19) and is not eligible for CCA opt-out enrollment according to the CCA Order. Incorporating inconsistent TOU customer information, as it relates to CCA programs, in the UER

could be misleading and cause confusion as third parties attempt to develop CCA programs.

The JUs claim that providing the UER with the number of customers that are currently being served by an energy service Company (ESCO) or that have a retail choice block would not provide additional value to the UER or allow CCA administrators to better gauge a municipality's CCA potential. They believe additional data sets that provide a wide range of public benefits should be explored before more CCA-specific data sets are incorporated into the UER.

Identifying APP customers, the JUs state, raises additional privacy concerns that should be addressed independent of the rules for non-APP customers. The JUs believe further Commission guidance is needed to determine if additional processes or standards are needed to ensure the privacy of a customer's APP status within the UER.

The term "DER load" needs to be more clearly defined before the JUs can comment if the UER is the appropriate place for this data, or if there are existing utility resources that fulfill this need. For example, each of the JUs have developed hosting capacity portals designed to provide third parties with system data such as the amount of distributed generation (DG) installed and DG projects in the utility's interconnection queue. Depending on the definition of "DER load," hosting capacity portals may be a more appropriate place for this information. To avoid confusion and to maintain one official data source, the JUs assert information available through hosting capacity portals should not be duplicated in the UER. If there is information that is appropriate for the UER that would be considered complementary to data available through hosting capacity portals, efforts should be made to coordinate

with all stakeholders involved so that the data is presented in a clear and effective manner.

The JUs note that more clarification is needed to determine what street lighting information is being requested. For instance, it is not clear if both public- and privately-owned street lighting would be included under this category, and how other exterior lighting, such as private or public parking lot lighting, dusk-to-dawn space lighting, or traffic signal/service accounts should be treated. There are also privacy concerns that make creating a street lighting usage category impractical. For example, all public street lights for a municipality may be billed under one account making the information ineligible for the UER. Given the current limitations around providing this data, the JUs recommend including this information in the "Other" subgroup as opposed to separately identifying it as its own category.

Finally, regarding stakeholders' proposal to include CCA load data in the UER, the JUs believe that providing this information is not in line with the UER's underlying function of providing streamlined public access to energy usage data, and that any CCA load data provided to the UER may not be suitable for preliminary CCA analysis and development. Semi-annual updates to the UER may not provide ESCOs with the up-to-date information needed to develop pricing proposals for prospective CCA programs. To obtain accurate aggregated CCA load data, CCA administrators may be required to submit requests directly to the utility consistent with the process established in the CCA Framework Order. In addition, the types of aggregated data needed to develop innovative CCA programs can be highly customized and therefore not available through the UER. Both scenarios would require utilities to respond to specialized data requests because the UER data was not sufficient. Requiring

utilities to develop CCA load data both for the UER and on an ad hoc or customized basis would be duplicative and will impose unnecessary costs that would be passed onto customers.

CAA commented that the UER is designed to accommodate data in "standard" geospatial layers. Therefore, CAA recommends that utilities report data across their full service territories in three layers including zip code, incorporated municipality, and county. More granular layers will have more failures, and less granular layers will have less failures. Reporting to standard layers is preferred over asking utilities to report at one granularity in one place and at another granularity someplace else.

The City comments that based on the purposes for which governmental agencies require utility data, combining data sets at a county level will not give these entities sufficient data granularity for policy making purposes, and thus recommends that this idea be rejected.

In reply comments CAA notes that the "small commercial" grouping is designed to include only CCA-eligible rate classes, and expresses concern that it may be too inconsistent to be valuable for long term planning and could confuse the public. CAA notes an example in which one time of use (TOU) rate class in one utility is CCA-eligible, but an equivalent rate class in another utility was not. Beyond inconsistency, CAA states it may be hard to use small commercial data to analyze energy trends against non-energy commercial demographics because those metrics do not define commercial in the same way.

To meet the UER's objective for long term planning, CAA recommends replacing the Residential (R), Small Commercial (SC), and Other categories with the conventional Residential (R), Commercial (C), and Industrial/Other (I) sectors. These

macroeconomic classifications have long term roots in state and federal utility reporting, and CAA believes utilities will be more likely to report these consistently year over year. To support the CCA market, CAA would also include a grouping equivalent to what staff proposed as "R+SC" but called something like "Potential CCA-eligible load.

CAA believes that DER capacity (e.g., installed capacity by system size bucket) is important for the UER, as are many other energy metrics relevant to local government energy planning. For example, communities may include long term targets for DER capacity in a Comprehensive Plan and, therefore, be required by law to develop zoning rules to permit DERs in accordance with plan goals. Publishing DER capacity aligned geospatially around municipal boundaries, CAA claims, would help communities monitor progress. Additional datasets notwithstanding, CAA emphasizes there is value in moving forward now with limited data sets to learn how the UER process works and to work out kinks. New sets can be added later. The JUs recognized the importance of another metric, DER capacity, but questioned whether it should be included in the UER.

MEGA's reply comments address the methodology for accessing/combining datasets failing the adopted privacy screen. The aggregation methodology would be as follows:

- If 'other' bucket failed, roll into 'small commercial and other' bucket
- If 'small commercial and other' fail, roll into 'total' bucket
- If 'other' bucket passed, and 'small commercial' failed, roll 'small commercial' into 'small commercial and residential' bucket
- If 'other' bucket and 'small commercial' passed but residential failed, roll residential into 'small commercial and residential' bucket

- If 'small commercial and residential' fail, roll into 'total' bucket MEGA encourages the adoption of such an aggregation methodology for all data that fail the privacy screen.

MEGA also seeks to clarify some elements of the UER dataset. As currently proposed it is unclear if the 'APP Count' will be included in the 'CCA Eligible Customer Count.' As APPs could technically be considered a subset of CCA Eligible Customers it is important to clarify where and how they will be counted in the UER dataset. As a group of customers who historically have had less access to the distributed energy resources CCA intends to offer, with the Low-Income Order and efforts to include such customers in community distributed generation projects, municipal energy planners and APPs benefit from their inclusion in the UER.

Regarding the uploading of data into the UER, MEGA suggests the monthly UER data for the previous six months be uploaded every six months on a regular and predictable schedule. For reasons indicated by the JUs, MEGA notes that the currently proposed UER dataset does not provide the level of aggregated data required to price electric or gas supply for a CCA. Depending on the utility, there are customers included in the residential, small commercial or both buckets that are ineligible for opt-out enrollment through a CCA. Actual energy usage for the CCA opt-out eligible customers would be needed to provide pricing for a CCA. Alternatively, percentage of reported residential and small commercial load that is eligible for CCA opt-out treatment would accomplish the same goal.

MEGA agrees with the JUs that inclusion of both 'CCA Eligible Customer Count' and 'CCA Ineligible Customer Count for ESCO Served Customer or Customer with a Block' are somewhat redundant for CCA purposes, however they offer municipalities other value. Participation of customers with an ESCO impacts

both local gross receipts tax and sales tax collection for some municipalities. A simple count of ESCO served residential and small commercial customers provides additional understanding for those who levy these taxes as well as an additional tool to assess the impact of the implementation of new energy programs on such taxes. In addition, some communities have been hit harder than others with the predatory practices of unscrupulous ESCOs.

As municipalities and their partners develop and implement DER, MEGA notes unique and advanced data needs can likely be handled through portals being developed by the utilities in other proceedings. MEGA agrees with the JUs that 'DER load' would need to be more clearly defined before consideration of inclusion in the UER.

Recalibration of Privacy Standard

The JUs recommend simple guidelines to evaluate stakeholder proposals for a 'recalibrated' privacy standard. First, the adopted privacy standard should consist of a two-part test: (1) a customer count threshold; and (2) usage percentage threshold. The two-part test is needed to protect customer privacy when either there are too few customers, or a large customer that may consider its usage information as proprietary is included in the aggregation. Second, though the JUs are not recommending a specific two-part aggregation standard, a customer count of two should not be adopted since it provides no protection of individual customer privacy. Third, the privacy standard adopted should be used consistently for all customer data aggregations with the exception of whole-building data, which the Commission has identified as a unique use case.[12]

[12] The Joint Utilities proposed a 4/50 privacy standard for aggregated whole-building data provided to building owners (or their agents) on June 7, 2017 in the DSIP Proceeding.

CAA commented that it believes the 15/15 privacy standard should be made less strict as it eliminates too much data. The risk UER data poses to individual consumers is low compared to the public benefit of the data. While there is always theoretical risk, it is important to consider that unscreened community-scale energy data has been for years, and continues to be, disclosed with no consequences.

CAA recommends the following: Eliminate the 15/15 standard and adopt a 4/80 or 2/90 standard; or, alternatively, establish a "minimum" customer count threshold of 2 but permit utilities to increase the threshold at its discretion, and/or to redact specific accounts if they disclose when and why they are doing it; and further, allow utilities to modify UER reporting in response to privacy problems brought to their attention by redacting data from specific customers. This will reduce a utility's liability for UER data if they can point consumers to PSC policy that (1) acknowledges that the risk to consumers from UER data reporting was found to be low, and (2) creates a responsive path for utilities to cure privacy issues if they arise; and finally, adopt a position that there is no reason to screen public sector energy data aggregations at all. For example, a UER pilot set called Public Street Lighting fails even a 4/80 screen in most communities because public lighting districts are usually managed in one un-metered account paid by local taxpayers. Since each account would be publicly accessible through the municipality, there is no reason to protect aggregations of this kind of data.

Pointing to its initiatives to promote environmental policies, the City argued that there should be no privacy standard for governmental entities that will use utility usage data to promote public policy goals. In the commercial context, the City agrees that privacy standards and certain limitations

on access are appropriate. However, these concerns do not apply, and consumers do not face the same risks, when data is provided to the City or another governmental entity that uses the data for furthering public policy goals.[13]

The City claims it requires access to energy information for a variety of environmental policy initiatives and goals. However, privacy standards such as those suggested by the JUs in the DSIP proceeding run the significant risk of preventing the City and other governmental entities from obtaining the comprehensive, granular data needed to advance their policy objectives. No privacy standard intended to protect customers should impede the City or any other municipality's ability to promote important public policy goals or to inform the development of further initiatives.

The City also observes that for buildings that fail the privacy screen, only the proposed exception for local benchmarking laws would enable them to access consumption data for their own buildings without the need to obtain the consent of individual tenants. However, in the City's notes there are approximately 900,000 buildings in New York City that are not subject to Local Law 84. Thus, the owners of these 900,000 buildings that fail even the 4/50 standard would be unable to access their buildings' data without first seeking tenant consent, which would pose a formidable administrative burden for building owners.

To meet its ambitious policy goals, the City urges the State to encourage building owners to monitor and improve building energy efficiency. By erecting artificial barriers such as overly restrictive privacy standards, the Commission

[13] The City notes that its concerns about data access are shared by the New York State Energy Research and Development Authority (NYSERDA) and refers to a NYSERDA petition for data access filed December 6, 2017 in Case 14-M-0094.

will negatively impact the ability of building owners to benchmark their data and improve the efficiency of their buildings' energy usage. As a matter of public policy, the Commission should encourage such efforts by making data access easy for building owners, who are the primary entities which make investments or operating decisions that can reduce building energy consumption. Thus, the Commission should grant property owners unrestricted access to granular energy usage data related to their buildings.

In reply comments, the JUs recognize the importance of the availability of certain aggregated energy data that the City needs to meet its energy and environmental policy objectives. Nevertheless, the JUs strongly disagree with the City's assertion that a utility customer's right to privacy is superseded by the public policy needs of governmental entities or that customers would not have privacy concerns with their energy usage data being shared without consent with any governmental entity. The JUs note that the Commission has established a clear, long-standing policy that customer information should not be shared by the utility with third parties – including government authorities – without customer consent. They state that the Commission has carefully limited deviations from its policy by considering exceptions when the particular facts and circumstances of any instance involving third party access to customer data will dictate whether such access is appropriate, and claim the City Comments provide no evidence that the City's development and achievement of policy objectives are being or have been hampered by lack of access to customer-specific energy data.

Acknowledging delay in fulfilling the City's request in 2017 for energy usage data aggregated by zip code, the JUs note that Con Edison did promptly provide usage data aggregated

at the municipal level to provide the City with sufficient information for its ongoing greenhouse gas benchmarking needs, while also complying with the Commission's current privacy standard. The JUs also note that Con Edison later provided the City with more granular data, aggregated at the zip code level, which passes the 15/15 aggregate privacy standard. In light of the City's past support for a UER tool populated with aggregated energy usage information, and given that the City Comments provide no concrete evidence that aggregated data subject to a less conservative privacy screen than the 15/15 standard is insufficient for the City's stated purposes, the City has not presented sufficient justification to deviate from the long-standing Commission policy protecting the confidentiality of customer information.

CPA does not endorse a particular privacy threshold, but agrees with the JU's proposal that the privacy standard should be a two-part test. CPA agrees that disclosure of unaggregated data to the City and NYSERDA, the only two such entities to request it so far, is appropriate, subject to appropriate confidentiality agreements to protect the data from disclosure under Freedom of Information laws. This does not necessarily imply that any governmental entity should have such unfettered access. Instead, CPA urges the Commission to specifically enumerate which governmental entities should receive access following an appropriate petition and comment process.

In opposing the City's proposal to provide unrestricted access to whole-building data, CPA states that to the extent a landlord seeks tenant usage data that does not meet a privacy standard to comply with benchmarking or other requirements, it is reasonable to require the landlord to obtain specific consent. CPA is opposed to providing customer-specific

usage data, or aggregated data that fails the applicable privacy standard to any non-governmental entity, whether it be a building owner, or a consultant or agent of an otherwise eligible party. CPA also objects to any governmental entity providing sensitive data to non-employees, such as contractors or consultants. CPA members view this data as incredibly sensitive and are skeptical that adequately protective agreements can or will be crafted. For that reason, CPA believes customer-specific data or aggregated data that fails to pass the data privacy standard, should not be disclosed to non-governmental third parties without customer consent. While this may inconvenience such parties, customers' expectations of data privacy must take precedence.

In reply comments MEGA supports a privacy standard that makes aggregated data accessible to serve basic municipal energy planning, implementation and tracking. MEGA does not specifically advocate for either alternative proposed privacy standard, 6/40 or 4/50.

In reply comments the City expresses a preference for 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 that municipalities and other similarly situated government entities should not be subject to a privacy standard when seeking energy data for public policy purposes. The City also opposes CAA's proposal to give utilities discretion in applying privacy standards and claims the Commission is the only entity that should decide whether and how privacy standards are applied or modified.

Other Means of Making Data Available

The JUs commented that the third privacy method listed in the Notice suggests that certain third parties could obtain data that is otherwise excluded from the UER for privacy reasons by signing a Data Security Agreement (DSA) with the relevant utility. The JUs oppose allowing third parties access to data failing the applicable privacy screen, even if the third party is willing to sign a DSA, and claim that a data set failing a Commission-approved aggregated data standard should not be disclosed without explicit customer consent. This position, the JUs assert, is consistent with the Commission's CCA Framework Order with defined rules that require aggregated data to pass a privacy screen before it is made available to a CCA Administrator or municipality. The JUs also note that the Commission stated that "[t]he aggregated data provided by the utility is required to be sufficiently anonymized, pursuant to the CCA Framework Order, so that no information could identify any individual customer or its energy usage." Similarly, the DSIP Order stated that the Commission's aggregated data standard applies to CCAs, reinforcing the policy that if aggregated data fails to meet the Commission's privacy standard, the data should not be disclosed, even to a CCA administrator who has signed a DSA. Therefore, the JUs assert that allowing third parties to access data that fails to meet the applicable standard is inconsistent with established Commission policy and should not be permitted.

CAA is uncertain of the value of using DSAs, noting that municipalities (or CCA Administrators acting on their behalf) request community-aggregate data for public purpose. Presumably, that data would be disclosed in local energy plans or disclosed to the energy market to secure supply contracts. Since the data would need to be disclosed to be valuable, CAA

questions whether use cases exist that justify providing limited-access to anyone. It is preferable to design CCA metrics for the UER specifically to ensure they pass privacy screens in virtually all cases.

The City commented that in addition to recalibrating the privacy standard the UER should be structured to create password protected accounts with differing levels (tiers) of data access, including access to data by governmental entities (and building owners for just their buildings) without privacy standards subject to Data Security Agreements. While the tiered approach is the City's preferred solution, obtaining the data directly from the utilities subject to a Data Security Agreement would be better than receiving only the limited information that would be available under the Proposed Privacy Standard.

The JUs replied to the City's proposal to have the UER established with tiered access including access to password protected accounts with confidential data. According to the JUs, under the City's proposal the UER would hold millions of account-specific customer records that could be accessed, filtered, and categorized at will by a variety of third parties. The JUs claim this recommendation, to essentially have all the utilities populate customer-specific energy usage information into the UER, is far afield of what the City has already stated it supports – an online portal for aggregated data. Moreover, assuming arguendo that the City's recommendation can be viewed as an approach to providing aggregated, community-level planning data, the JUs argue it is unrealistic, would be time and resource-intensive to implement, and is contrary to the primary objective of the UER, which the Commission described as "an online platform designed to offer streamlined public access to aggregated customer load data for electric and natural gas, segmented by customer type and by municipality. For these

reasons, the City's recommendation to change course on development of the UER should be dismissed.

The JUs also replied that the Notice seeks comments on appropriate privacy standards for data aggregations that cover broad geographic areas (e.g., municipal or zip code-level data), and specifically states that the Commission is seeking input in response to the State's experience in developing a UER tool to house community-level energy data. The Notice does not address issues related to the Jus' provision of aggregated whole-building data, which the Commission indicated in the DSIP Order is a unique use case for which a "less restrictive standard" should apply. There remain open a number of issues related to building-level aggregations in the DSIP Proceeding, and the Commission has not yet acted on the JUs' proposal for a separate 4/50 privacy standard for whole-building aggregated data. It is therefore unclear why the City chose to include issues related to aggregated whole-building data in the context of community-level aggregations.

The JUs also note that the City Comments on building data seem to erroneously conflate the JUs' ability to provide community-level data with the provision of aggregated whole-building data. The JUs agree that aggregating customers into groups based on simple, standardized factors such as zip code or municipal tax identification code is a manageable exercise, and well worth pursuing in light of the State's REV initiative and local energy planning efforts. However, creating aggregated whole-building data sets is much more complex because, among other things, it requires that utilities first coordinate closely with each municipality in their service territory to confirm building information (e.g., block and lot numbers), and then update customer information systems to associate this information with individual customer accounts (to the extent a

utility does not already maintain and periodically review this information). It is, therefore, unreasonable to assume that all of the JUs would be able to standardize and then provide to one or more third parties building usage data for all buildings in New York State without incurring substantial "administrative burdens."

Beyond the issues of scope and feasibility, the JUs disagree with the City's position that "building owners and their agents who will use the data for benchmarking and energy efficiency purposes should not be subject to a privacy standard." The JUs find it troubling that the City would presume that potential threats to tenants' privacy vanish if a building owner or landlord simply promises to use whole-building information for a narrow set of purposes related to public policy goals. This is of particular concern in the parts of the State where advanced metering infrastructure (AMI) technology is being implemented, because granular usage information can be used to ascertain a person's presence in a dwelling. The JUs highlight that the Commission is "keenly aware of the 'risk of souring public perception regarding the management of sensitive customer data – even if a breach of security or improper use of the information does not occur." Allowing landlords to obtain building usage information for two or fewer tenants without the tenants' consent is precisely the type of situation where the Commission, utilities, and third parties run the risk of losing customers' trust. Further, it is reasonable to expect a landlord to be able to work with a small number of tenants in order to obtain access to their private information. The JUs therefore agree with the Commission's policy that it is imperative that all third parties respect "customers' reasonable expectations of privacy, security and control over access to…energy-usage data," and encourage the Commission to reject

the City's proposal that tenants' right to privacy be waived in the interest of building benchmarking and energy efficiency goals.

In reply comments, CAA and MEGA urge the Commission to establish an annual or biennial process for refining the UER.

DISCUSSION

Making community-based energy consumption data more readily available for local planning, market research and CCA development will help to foster increased awareness of energy consumption patterns and promote actions to adopt more efficient and cleaner energy use patterns and strategies. The Commission supports the development of the UER and approves its implementation.

The Commission first addresses the privacy standards that will be applied to the UER. In balancing the benefits of making more anonymized, aggregated energy data available while maintaining customer privacy, the Commission will not modify the existing 15/15 standard as applied to the Residential grouping in light of the low failure rates (roughly 4-7% of trialed tax districts) for the Residential grouping. If the application of the 15/15 standard becomes a barrier to data availability, the Commission is open to revisiting this standard. The Commission adopts a 6/40 standard for the Small Commercial and Other groupings. This standard will reduce the rate of failures significantly (to roughly 10% for Small Commercial, although the

failure rates for Other remain high) while still offering a large enough aggregation to avoid revealing individual usage.[14]

The Commission declines to adopt the City's request for unrestricted access to energy data. The UER will make significant amounts of data available and the City has not sufficiently justified the need for further access at this time, particularly considering the privacy concerns at issue. The Commission also declines to adopt proposals for less restrictive standards, absent a better demonstration of need and the sufficiency of the consumer protection offered by those standards. The proposal to afford the utilities the discretion to modify the threshold is also not adopted, as the balancing of the value of the data and the need for customer protections is a role for the Commission, rather than individual businesses. Finally, issues concerning whole-building data were not the focus of this notice and comment process and will be addressed in a separate Commission order.

The Commission next addresses the particulars of the UER datasets. The UER datasets proposed in the Notice attempt to strike a balance between producing useful information to a variety of potential data users (local government planners, CCA developers and researchers), while avoiding introducing undue administrative burdens. With these dual goals in mind, the Commission finds that the proposed UER datasets are a viable starting point for the initiation of the UER, subject to modifications.

[14] A 2014 Pacific Northwest National Laboratory study of commercial buildings found that the greatest improvements in privacy protection take place as aggregation thresholds increase from two to six meters. Commercial Building Tenant Energy Usage Data Aggregation and Privacy (October 2014), prepared for the U.S. Department of Energy (PNNL-23786).

In terms of geospatial layers, the utilities should be prepared to report data across their service territories in three layers, including zip code, incorporated municipality, and county. The UER will only collect and display zip code level data for New York City, and for the rest of the State will focus on reporting incorporated municipality level data. While it is not clear that county-level data will commonly be used, it is useful to accommodate data in standard geospatial layers so that the data in the UER can be combined into county layers if that proves to be a useful display.

The rate class groupings of Residential, Small Commercial, and Other as described in Appendix B are designed to enable local planners to see the entire energy picture, while also enabling local planners and CCA developers, as well as energy efficiency and DER market participants, to gain insights into energy efficiency and clean energy opportunities in the mass market. While the Other grouping accounts for a significant portion of overall energy load for electricity load for Con Edison, O&R, NYSEG and RG&E, most of that load consists of demand service to large, sophisticated commercial/industrial users. The utility service classes in this grouping do not readily differentiate commercial from industrial users. That group also experiences high failure rates even under the less restrictive 6/40 privacy standard adopted herein. Thus, breaking down the Other category into its component parts, as proposed in reply comments, would serve no clear end and is vulnerable to increased failure rates. For these reasons, the proposed groupings are adopted without modification.

In addition to reporting total load for each rate grouping, the December 15, 2017 Notice proposed having the following customer count data be reported to the UER for Residential and Small Commercial groups: total customer count,

CCA eligible customer count, count of customers served by an ESCO or with a block on their account, count of TOU customers, and APP count. For the Other grouping, total customer count would be reported to the UER.

To clarify and simplify the account datasets, the Commission will direct the following items be reported to the UER for the Residential and Small Commercial grouping: total customer count and count of customers ineligible for CCA (including customers served by ESCOs, customers with a block on their account, and customers ineligible for any other reason, e.g., TOU customers not eligible for CCA). We will not require reporting of APP counts as this information is sensitive and specific to the particular CCA programs that may be developed. CCA administrators can obtain information concerning APP counts directly from utilities in connection with specific CCA programs. APPs will be included in the total customer count and will not be presumed to be ineligible for CCA.

The Commission does not adopt the proposal to report CCA-eligible load to the UER. The total load and the number of customer accounts eligible for CCA will be available to help gauge the potential for productive CCA development. Specific CCA load data can be obtained directly from utilities as described in the CCA Framework Order and CCA Data Order.[15]

The Commission declines to adopt the proposals to have DER data reported to the UER at this time. DER data, in the form of initial hosting capacity and interconnection queue data, are already available through DPS and electric utilities' websites. Future revisions to the existing hosting capacity maps, providing more granular and accurate DER data is expected as part of the DSIP proceeding. DER reporting has not been sufficiently refined in the context of the UER.

[15] Case 14-M-0224, supra, CCA Framework Order and CCA Data Order.

In terms of aggregation methodology in the event datasets at each geospatial layer do not pass the privacy screen, the Commission adopts the aggregation methodology proposed by MEGA, as follows:

- If 'other' bucket fails, it will be rolled into 'small commercial and other' bucket;
- If 'small commercial and other' bucket fails, it will be rolled into 'total' bucket;
- If 'other' bucket passes and 'small commercial' bucket fails, 'small commercial' bucket will be rolled into 'small commercial and residential' bucket;
- If 'other' bucket and 'small commercial' bucket passes but 'residential' bucket fails, 'residential' bucket will be rolled into 'small commercial and residential' bucket;
- If 'small commercial and residential' bucket fails, it will be rolled into 'total' bucket.

Finally, the Commission agrees that the UER as approved here is a starting point. Data reporting issues will evolve and the reporting parameters for the UER may need to be refined. The Commission expects Department Staff and NYSERDA to convene a stakeholder input process during the first year of operation and file a report the following year with the Commission on the progress of the UER's operations, including the demand for and uses and benefits of the UER data, as well as the need for possible refinements.

CONCLUSION

The Utility Energy Registry (UER) is adopted as a vehicle for providing streamlined access to anonymized aggregated community-level energy data and the utilities are directed to upload the datasets described in this Order and Appendices A and B to this Order semi-annually to the UER for

publication subject to the privacy screens adopted in this Order. The initial upload will be provided to the UER 30 days after the end of June 2018 and will comprise the two 2016 semi-annual periods, the two 2017 semi-annual periods, and January – June 2018. Each succeeding semi-annual period will be reported 30 after the period.

The Commission orders:

1. Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, National Fuel Gas Distribution Corporation, The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation are directed to upload the datasets described in this Order and Appendix A to this Order every 6 months (January to June and July to December) within 30 days of the close of each semi-annual period to the Utility Energy Registry for publication subject to the privacy screens adopted in this Order.

2. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

3. These proceedings are continued.

By the Commission,

(SIGNED) KATHLEEN H. BURGESS
Secretary

APPENDIX A

UER GROUPINGS AND DATASETS

Each of the Joint Utilities must report to the New York State Energy Research Development Authority (NYSERDA) consistent with the UER Order the following anonymized and aggregated data for each zip code (New York City only), incorporated municipality, and county for service classes grouped into three UER groupings: Residential, Small Commercial and Other, consistent with Appendix B, subject to aggregation standards of 15/15 for Residential, and 6/40 for Small Commercial and Other. The Joint Utilities will upload the following data every 6 months (January to June and July to December) within 30 days of the close of each semi-annual period:

- Total Load
- ICAP Tag (Residential and Small Commercial)
- Customer Counts
    - For Other group total customer count (billing accounts) at end of reporting period.
    - For Residential and Small Commercial groups: 1) total number of accounts, and 2) number of accounts ineligible for CCA.

Each reporting utility shall identify the Service Classes that comprise each UER grouping.

ELECTRIC

	Central Hudson	Con Edison	O&R	National Grid	NYSEG	RG&E
Service Class						
Residential						
	SC1 Res	SC1 Res & Relig	SC1 Res SC19 TOD	SC1 Res & Farm SC1C TOU *	SC1 Res SC 8 (day/night)* SC12 (TOU)*	SC1 Res SC4 TOU *
Small Commercial						
	SC2 Gen	SC2 Gen - Small SC8 Multi Dw -Redistrib. SC12 Multi Dw -Space Heating SC13 Bulk, Housing	SC2 Gen, Sec. or Primary	SC2 Small Gen	SC6 Gen. SC9 (day/night)*	SC2 Gen. Small
Comm'l, Ind'l & Other						
	All other classes	All other classes	All other classes	All other classes	All other classes	All other classes

* Not listed as eligible for CCA (Case 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs, Order Authorizing Framework for Community Choice Aggregation Opt-Out Program (issued April 21, 2016)).

GAS

	Central Hudson	Con Edison	O&R	National Grid	NYSEG	RG&E	NFG	KEDNY	KEDLI
Service Class									
Residential									
	SC1 - Res	SC1 Res & Religious	SC1 - Res & Space Heating	SC1 - Res	SC1 - Res	SC1 -Gen Service	SC1 – Res	SC1A-Res Non-Heat SC1B-Res Heat	SC1 – Res
Small Comm'l									
	SC2 - Commercial & Industrial Rate	SC2 - General Firm Sales Service SC3 - Res. & Religious-Heating Firm Sales Service	SC2 - Gen Service Secondary & Primary	SC2 - Small Gen Service	SC2 Gen Service		SC3 – Gen Service	SC2 – Gen Service SC3 – Heating and/or Water Heating Svc. (Multi-Fam. Bldg.)	SC2 – Non Res SC3 - Multi-Dwelling Unit
Comm'l, Ind'l & Other									
	All other classes	All other classes	All other classes	All other classes	All other classes	All other classes	All other classes	All other classes	All other classes