

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 17, 2019

COMMISSIONERS PRESENT:

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

CASE 14-M-0094 - Proceeding on Motion of the Commission to
Consider a Clean Energy Fund.

CASE 10-M-0457 - In the Matter of the System Benefits Charge IV.

CASE 05-M-0090 - In the Matter of System Benefits Charge III.

ORDER REGARDING NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT
AUTHORITY DATA ACCESS AND LEGACY REPORTING

(Issued and Effective January 17, 2019)

BY THE COMMISSION:

INTRODUCTION

Pursuant to Public Authorities Law (PAL), State Energy Law, the State Energy Plan, and Public Service Commission (Commission) orders, the New York State Energy Research and Development Authority (NYSERDA) supports the development and deployment of clean energy resources in New York State, including through the Clean Energy Fund (CEF). On December 6, 2017, NYSEDA filed a Petition (the Petition) requesting that the Commission establish a process for NYSEDA to receive access to customer utility data for customers who have not participated in a NYSEDA program (non-participants) in order to fulfill the responsibilities placed on it by statutes and regulations. NYSEDA also requested relief from certain reporting

requirements related to System Benefits Charge (SBC) III and SBC IV programs, based on the completion of those programs.

In this Order, the Commission grants, with modifications, NYSERDA's request for access to non-participant customer utility data for the specified purposes related to the evaluation and measurement of clean energy programs and analysis related to NYSERDA's responsibilities as established in PAL and the State Energy Plan. To facilitate this access, the Commission directs NYSERDA and the Joint Utilities¹ (JUs) to develop and execute a Memorandum of Understanding governing these data exchanges. In addition, the Commission grants NYSERDA's requests regarding legacy reporting requirements.

BACKGROUND

The 2015 State Energy Plan (SEP) established a target of a 600 trillion British Thermal Units (BTU) reduction in statewide energy use by 2030 through energy efficiency, a statewide goal for 50% of the State's electricity requirements to be generated from renewable sources, and a 40% reduction in energy-sector greenhouse gas (GHG) emissions from 1990 levels.² The SEP also provides that the State will work to merge private sector markets, public funds, and energy consumers to create a dynamic clean energy economy throughout the State to enable

¹ The Joint Utilities are Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric 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, National Fuel Gas Distribution Corporation (NFG), New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation.

² The 2015 New York State Energy Plan, issued June 25, 2015, can be found at <http://energyplan.ny.gov/Plans/2014.aspx>.

distributed energy resource (DER) markets and enhance customer participation. The SEP states that the Reforming the Energy Vision (REV) initiative, paired with market-enabling CEF activities, will enable the State to achieve its overarching goals of a cleaner, more resilient, and more affordable energy grid for New York ratepayers.

Based on Commission direction and consistent with its responsibilities under the SEP, as well as the PAL and State Energy Law, NYSEDA proposed the CEF in 2014.³ In January 2016, the Commission established the CEF, consisting of four portfolios to be implemented by NYSEDA: Market Development; Innovation and Research; Green Bank; and NY-SUN.⁴ The portfolios of the CEF are designed to implement market-based clean energy initiatives and to support achievement of the SEP goals.

In the CEF Order, the Commission directed Department of Public Service Staff (Staff), in consultation with the Clean Energy Advisory Council (CEAC), to conduct a review of the existing evaluation guidelines and reissue revised evaluation, measurement, and verification (EM&V) activities guidance.⁵ In response to that directive, a document entitled "CE-05: Evaluation, Measurement and Verification Guidance" (Guidance) was reissued November 1, 2016.⁶ The Guidance provides guidelines for access to utility-held customer data, securing customer

³ Case 14-M-0094, Proceeding on Motion of the Commission to Consider a Clean Energy Fund, NYSEDA Clean Energy Fund Proposal (filed September 23, 2014. See also NYSEDA CEF Information Supplement (filed June 25, 2015); Order Commencing Proceeding (issued May 8, 2014)

⁴ Case 14-M-0094, supra, Order Authorizing the Clean Energy Framework (issued January 21, 2016) (CEF Order).

⁵ CEF Order at 54.

⁶ Case 15-M-0252, In the Matter of Utility Energy Efficiency Programs, CE-05: Evaluation, Measurement and Verification Guidance (issued November 1, 2016).

consent, and maintaining confidentiality of customer data, to be followed by all program administrators and their contractors in conducting EM&V activities. Appendix C of the Guidance includes a section specifically related to use of non-participant usage data to more fully understand a program's strengths and weaknesses and to analyze market conditions and trends. In part, the Guidance states:

"To facilitate quality EM&V, and ensure that EM&V activities are implemented in a cost effective manner, the exchange of personally identifiable information for non-participants between a utility and its evaluation contractor (or a utility and NYSERDA, along with NYSERDA's evaluation contractors) will be permissible provided the use of the data is consistent with the objectives and requirements of the program administrator's EM&V plan and Staff has reviewed and approved the use of non-participant data in compliance with this Guidance. Moreover, the exchange shall be in compliance with the terms articulated in the Data Confidentiality Agreement section, described above.

To the extent practical, the information shall be redacted by the customer's utility to remove customer-identifying data and to only provide consumption information identified by generalized category such as service class, customer type (e.g., single family) or location (e.g., Manhattan). In instances when, after the redacting process, a customer might still be identifiable (e.g., the customer is the single large industrial customer in a small service territory), the utility should seek customer consent for inclusion of the information in the EM&V process through a signed customer consent form; exclude the information from the EM&V process; or aggregate the customer with other large customers to shield any individual customers' identity."⁷

⁷ Available at [http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/255ea3546df802b585257e38005460f9/\\$FILE/CE-05-EMV%20Guidance%20Final%20%2011-1-2016.pdf](http://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/255ea3546df802b585257e38005460f9/$FILE/CE-05-EMV%20Guidance%20Final%20%2011-1-2016.pdf)

This applies to both utilities and NYSERDA where they seek to utilize confidential customer data for the purposes of evaluation. The Guidance specifies that non-participant data, including personally identifiable customer information, may be provided to NYSERDA and its evaluation contractors under certain conditions. Those conditions include: (1) NYSERDA or its evaluators must demonstrate to the utility providing the data that the information is necessary to complete the evaluation activity articulated in the EM&V workplan; (2) the request for data must be specific about what data is being requested and identify how the data will be used within the evaluation; and, (3) the evaluation contractor, or NYSERDA, must demonstrate that the information sought is the least amount necessary, both in terms of number of customers impacted and level of detail requested. Further, the Guidance specifies that if a customer, whose personally identifiable information has been provided to an evaluation contractor without prior written consent, indicates that he or she is unwilling to participate in EM&V activities, or otherwise wishes not to be contacted, the evaluation contractor must report the request to the utility, and, if appropriate, NYSERDA. As specified under the Guidance, the utility will compile and maintain a "do not contact" list and refrain from including any customers on that list in response to future EM&V-related data requests.

THE PETITION

In the Petition, NYSERDA requests that the Commission establish a structured process to facilitate NYSERDA access to utility data regarding customers who have not participated in a NYSERDA program (referred to as non-participant data), including data that reflects actual energy usage by end-users and building stock, data required to assess the State's clean energy

potential, and data elements necessary for sampling customers.⁸ NYSERDA explains that such data is necessary to fulfill its implementation of the CEF as well as other statutory and regulatory responsibilities related to clean energy policy development and program assessment. NYSERDA states that access to customer energy use patterns is essential for assessing achievement of the CEF goals set forth by the Commission, as achievement of those goals relies on use and evaluation of market-based strategies for clean energy deployment at scale.

NYSERDA states that PAL §1854 authorizes NYSERDA to "accumulate and disseminate information related to the development and use of new energy technologies and energy conservation technologies," as well as "to conduct, sponsor, assist, and foster studies and surveys, and publish the results thereof." Further, PAL §1854 directs NYSERDA to "act as a central repository and clearinghouse for information on all energy and energy resource related matters."

NYSERDA further states that it has additional responsibilities related to the State Energy Planning Board (SEPB). On this point NYSERDA explains that the Legislature established the SEPB to consolidate and maximize the State's success in improving the reliability, efficiency, cost, and environmental impact of the State's energy markets and infrastructure and designated NYSERDA's President as Chair of the SEPB.⁹

The Petition requests that the Commission establish a structured process by which NYSERDA can request the data from the relevant utility, with each request detailing the data requested, the need for the requested data, the expected use of

⁸ NYSERDA already has access to data related to program participants.

⁹ New York State Energy Law §6-102.

the data, and the program function for which the data is needed. NYSERDA recommends that the structured process include provisions for utility review of, and response to, the requests, as well as a Department of Public Staff (Staff) issue resolution process for specific circumstances where a utility objects to the request and Staff engagement may be necessary to reach resolution.

NYSERDA acknowledges the importance of vigilance regarding protection of data that it may receive and requests that the Commission determine the appropriate data protection protocols for transfers of data from the utilities. NYSERDA states that it has established a Data Governance Program to protect data assets and address privacy concerns. NYSERDA explains that this program supplements the statewide New York State Information Classification Policy established by the New York State Office of Information Technology Services¹⁰ and NYSERDA policies require that all data elements and assets must be classified, secured, and treated according to the confidentiality and data protection rules established by the Data Governance Programs. NYSERDA also explains how sensitive data is protected from disclosure in response to New York State Freedom of Information Law (FOIL) based on applicable FOIL exceptions.

In addition, NYSERDA requests relief from certain legacy reporting requirements for the SBC III and SBC IV program portfolios. NYSERDA explains that the SBC III and SBC IV active program periods expired on December 31, 2011, and February 28,

¹⁰ Information classification is an on-going risk management process that helps identify critical information assets - data, records, files - so that appropriate information security controls can be applied to protect them. The policy can be found at: <https://its.ny.gov/information-classification-resources>.

2016, respectively, and therefore continued spending results only from the fulfillment of remaining funding commitments made as of those dates. NYSERDA recommends that SBC III annual reporting requirements cease and be replaced by a single final report on the aggregated financials and acquired benefits once all committed SBC III funds are spent, which was expected to occur during 2018. With regard to SBC IV reporting requirements, NYSERDA requests that they be reduced from semi-annual to annual frequency, which should continue until programmatic activity has ceased such that a single close-out report is deemed to be sufficient by Staff. NYSERDA states that, due to the winding down of the SBC III and IV programs, the degree of change in each reporting cycle is currently very small and will be nonexistent once the programs are fully complete, such that the value of more frequent reports is outweighed by the administrative effort required to prepare and submit the reports.

NOTICE OF PROPOSED RULE MAKING

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. 14-M-0094SP9]. The time for submission of comments pursuant to the Notice expired on February 26, 2018. The comments received are addressed below.

SUMMARY OF COMMENTS

Comments were received from the JUs, NFG, Consumer Power Advocates (CPA), and the City of New York (NYC). Reply comments were received from the JUs. All comments received relate to NYSERDA's request for access to non-participants customer utility data. No comments were received related to

NYSERDA's request for modification to current reporting requirements of SBC III and SBC IV legacy programs.

The JUs argue that the Petition is overly broad and does not provide sufficient detail regarding what specific types of data NYSERDA is seeking and the purpose of the information. The JUs claim that NYSERDA's request for customer-specific data without express customer consent is inconsistent with long-standing Commission policy protecting the confidentiality of customer information and evaluating disclosure exceptions. Therefore, the JUs state that NYSERDA's request for the establishment of a process for data requests that would eliminate Commission review should not be approved.

In addition, the JUs express concern that NYSERDA proposes to share this data with third-party contractors but does not identify the security and confidentiality measures that it will impose on them. The JUs state that, as an alternative to the Petition's proposal, they support further discussions with NYSERDA, Staff, and interested stakeholders to evaluate the specific datasets that are needed, and to determine whether specific types of data used for specific purposes could be subject to a more streamlined process.

The JUs further request that, if the Petition is granted, the Commission set detailed guidelines and restrictions related to eligible uses of data and necessary privacy protections, including specifically defining eligible uses of data, requiring that data be aggregated and anonymized wherever possible, and requiring appropriate data governance protocols. The JUs recommend that, as a condition of having access to the data it seeks, NYSERDA be required to: (1) inform customers when it obtains their data and describe how such data will be employed; (2) affirm that it will comply with all applicable Commission requirements governing the protection of the data;

(3) allow customers to contact NYSERDA to opt out of having their information shared; and, (4) commit to no longer requesting information from customers that contact NYSERDA to opt-out.

Moreover, the JUs express concerns relating to the potential frequency of requests from NYSERDA and explain that fulfilling such requests would carry an administrative burden. The JUs also request that the Commission require NYSERDA and its contractors to carry cybersecurity insurance and requests that the Commission provide assurance that the JUs will be held harmless from costs and damages related to the disclosure of customer data to other parties resulting from actions by NYSERDA or its contractors.

NFG provided supplemental comments stating that the Petition is overly broad and lacks transparency. NFG seeks further detail regarding: (1) the immediate urgency; (2) the specific data fields sought by NYSERDA; (3) the intended use of specific data fields; and (4) why Electronic Data Interchange (EDI) and/or soon to be available data from the Utility Energy Registry (UER) cannot be used to meet some, or all of NYSERDA's data needs. NFG also expresses concerns regarding potential administrative burdens related to fulfilling NYSERDA's data requests, stating that data requests may be costly to process. NFG proposes that the Commission allow utilities to recover costs incurred via the CEF surcharge mechanism, which already exists in utility tariffs.

CPA is supportive of NYSERDA's need for data, but also states that without greater specificity, CPA cannot determine whether the overall regime sought by NYSERDA is reasonable and likely to protect customers' reasonable expectations that their commercially sensitive individual usage information will be sufficiently protected. CPA's comments state that obtaining

individual consent, even if possible, would represent an unreasonable burden and inefficient use of NYSERDA resources. CPA recommends that the Commission support the need for concrete processes under which utilities would provide customer data, and that Staff, in conjunction with NYSERDA, utilities, and other stakeholders work collaboratively to develop those processes. CPA is concerned about NYSERDA providing commercially sensitive data to non-employees, such as contractors or consultants, indicating that it views such data as sensitive and believes many NYSERDA contractors and consultants are in a position to directly and inappropriately benefit from access to such data, even with non-disclosure agreements in-place.

NYC explains that the State and NYC share many public policy goals, including reducing greenhouse gas emissions, relying to a greater extent on renewable resources, expanding the role of energy efficiency, and ensuring that the cost of electricity is not unduly burdensome on any customer. It notes that NYC and other governmental entities use customer energy data for municipal planning purposes, as it is crucial to understand energy usage on a building, neighborhood, and community level. NYC states that while this information was once easily attainable by governments, the City has found it increasingly difficult to obtain granular data from the utilities. NYC states it would be unreasonable to provide access to some governmental entities but not others and therefore suggests the Commission should grant governmental entities, such as NYSERDA and NYC, unrestricted access to customer usage and other utility data that they may need to satisfy their official governmental responsibilities and advance the public interest.

In reply comments, the JUs acknowledge the importance of certain aggregated energy data that the City needs to meet

its energy and environmental policy objectives. However, the JUs strongly disagree with the City's assertion that governmental entities should be treated differently from other third parties that seek access to customer information. The JUs maintain that a utility customer's right to privacy is not superseded by the public policy needs of governmental entities and that customers would likely have the same privacy concerns with their energy usage data being shared, without consent, with any governmental entity.

LEGAL AUTHORITY

The Commission has the responsibility and the authority under the Public Service Law (PSL) to ensure that utilities carry out "their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources." PSL §5(2); see also PSL §66(3). Pursuant to the State Energy Law, including §§ 3-103 and 6-104, the Commission is required to consider actions to effectuate State energy policy and the New York State Energy Plan. In fulfilling the mandates of the PSL and the Energy Law, the Commission has directed the development and implementation of a number of programs to increase the deployment of energy efficiency resources in New York, including the Energy Efficiency Portfolio Standard (EEPS), the CEF, and the Energy Efficiency Transition Implementation Plans. The activities directed and authorized in this Order will continue and build upon the progress made through those programs.

DISCUSSION

NYSERDA's Access to Customer Data

NYSERDA, as a State entity, has the statutory responsibility to, and has historically been responsible for, the collection, analysis, and distribution of energy resource and use data in New York State, as well as fostering the development of new clean energy technologies.¹¹ These statutory responsibilities require, among other things, organizing, conducting, and producing statewide evaluations related to ratepayer-sponsored energy efficiency and renewable energy programs.

The CEF, as well as other NYSERDA activities, supports achievement of the State's objectives to deploy clean and renewable energy programs, technologies, and resources more broadly. These programs focus on forward-looking approaches designed to spur market activity while investing in and developing new business models and technologies. Advanced measurement and verification processes are necessary to evaluate the impacts of NYSERDA's market-enabling activities and to compare progress across geographic regions of the state and different categories of ratepayers. These evaluations enable the State and utilities to assess program performance and update program offerings to maximize cost effectiveness while maintaining geographic and ratepayer equity.

NYSERDA has requested access to non-anonymized customer utility data for non-participants to perform functions included in the PAL and State Energy Law and to meet regulatory mandates created by the Commission. While it is generally appropriate for NYSERDA to have access to data needed for these purposes, NYSERDA's request for expedited access to any customer

¹¹ See, e.g., PAL §1854; Energy Law §6-102.

utility data that will serve these purposes is overly broad and must be narrowed to specific use cases for consideration, as commenters suggest. NYSERDA specifically discusses two primary use cases: (1) assessing performance and effectiveness of clean energy programs and policies, including through potential, baseline, and market-characterization studies as well as other EM&V activities; and, (2) implementation of NYSERDA's CEF portfolios.

With regard to the first use case, NYSERDA has a unique role and specific responsibilities detailed in State statute to conduct such studies and activities. While NYSERDA's statutory responsibilities have not changed to any large degree in recent years, the complexity and scale of the State's energy policy goals and requisite analysis needed to support it have. Most notably, this has occurred through the shift from resource acquisition programs to the market-enabling programs embodied in the CEF. That said, the use of customer data for the assessment of program and policy goals is neither new nor uncommon, as illustrated by the discussion above regarding the provisions in Guidance Document CE:05 Evaluation, Measurement and Verification Guidance. As access to this data is necessary for NYSERDA to perform its functions and is otherwise consistent with past practice and Commission policy, the Commission grants NYSERDA's request for a process to access non-participant data for assessing performance and effectiveness of clean energy programs and policies, including through potential, baseline, and market-characterization studies as well as other EM&V activities. The specific data accessibility and transfer process is discussed further below.

With regard to the second use case, the Commission denies NYSERDA's request at this time that the process also allow general access to non-participant data for implementation

of NYSERDA's CEF portfolios because the request is overly broad and lacks sufficient detail.¹² A broad range of potential uses of non-participant data could support CEF implementation; while some, such as EM&V activities, are consistent with Commission policy, others may not be. For example, provision of non-participant data to third parties to individually identify and target customers to participate in particular programs could reduce costs of CEF implementation but would be inconsistent with Commission precedent regarding use of utility data for third-party solicitations. To the extent that NYSERDA believes that access to data for purposes other than studies and EM&V activities is important to successful implementation of the CEF, it should present those purposes for consideration in the new data proceeding to be initiated pursuant to the December 2018 Energy Efficiency Order, for collaborative discussion followed by Commission consideration.¹³

NFG questions whether a new process is necessary given the current availability of customer data through EDI and the UER. Neither of these data sources meets all of the needs NYSERDA describes, as EDI is intended to provide access to data only where the requestor has received consent from the customer in advance and the UER only contains aggregated customer data. That said, NYSERDA should use these and other currently available sources to the extent possible to avoid unnecessary requests for non-anonymized data.

¹² Of course, some studies and other EM&V activities conducted with data accessed under the first use case will support CEF implementation; on this point NYSERDA's request is denied to the extent that it requests data for implementation purposes other than studies and EM&V.

¹³ Case 18-M-0084, In the Matter of a Comprehensive Energy Efficiency Initiative, Order Adopting Accelerated Energy Efficiency Targets (issued December 13, 2018).

Process to Request Non-Participant Customer Utility Data

As the Petition requests, a process will be established through which NYSERDA may request non-participant customer usage data from the utilities in order to provide clear and consistent requirements, timeframes, and roles. Therefore, the following process shall be used to govern requests for all non-participant customer utility data and the provision of such information:

- (1) NYSERDA shall send the data request to the relevant utility or utilities and concurrently file the data request in Matter No. 19-00087, In the Matter of NYSERDA Data Requests. The request shall detail the need for the data, including the specific data fields required, time period for the request, and whether the request is expected to be repeated and if so how frequently; the planned retention and use of that data; and justification as to why no currently available data is a viable alternative.
- (2) The receiving utility or utilities shall respond to NYSERDA within 10 days and concurrently file its response in Matter No. 19-00087. The response shall either identify the anticipated date by which the requested data will be provided or, if the utility believes the request is not consistent with this Order, detail the utility's objection and explain in what way the request is not in compliance with the requirements set forth herein.
- (3) Where the utility does not object, it will then provide the data to NYSERDA thorough any method mutually agreeable to NYSERDA and the utility; no further filing is necessary.
- (4) Where the utility has objected, Staff shall review NYSERDA's request and the utility's objection and make a

determination in response to the objection, which may include approving the request, rejecting it, or approving it with modifications. The determination will be provided to NYSERDA and the utility or utilities and filed in Matter No. 19-00087. If the determination approves the request or approves it with modifications, the utility shall provide the data as described in the determination.

Staff shall update CE-05: EM&V Guidance to reflect this process as well as the other determinations made in this Order.

Data Protection

The protection of customer data from public or other inappropriate disclosure is of paramount importance. Therefore, it is important for any entity receiving customer data from a utility, including utility contractors, NYSERDA, and NYSERDA contractors, to have sufficient data protection systems and policies in place. This includes provisions for encrypted transfer and storage of customer data and for other appropriate technical protections, as well as provisions ensuring data is kept private and only used for appropriate purposes. The Petition details NYSERDA's current systems and policies, some of which are the result of past engagement with the utilities. The comments filed by the JUs do not identify any insufficiency in these data protection systems and policies or any valid reasons why NYSERDA, or its contractors, should be treated differently than the contractors working directly for the utilities. The Commission notes that the provisions related to FOIL described in the Petition are appropriate and sufficient to ensure that no sensitive data is inappropriately disclosed in response to a FOIL request.

The Commission agrees with NYSERDA that its access to non-participant customer utility data should be covered by a standard Memorandum of Understanding (MOU) applicable across requests and across utility territories, to avoid inconsistent policies or requirements. The Joint Utilities shall file a Proposed MOU in Matter 19-00087 within 30 days of the issuance of this Order. NYSERDA should then review the proposed MOU and accept it or enter into discussions with the Joint Utilities regarding any desired changes. Within 60 days of the issuance of this Order, the Joint Utilities and NYSERDA shall file a Final MOU or, if the Joint Utilities and NYSERDA are unable to come to a complete agreement on appropriate terms, the Joint Utilities and NYSERDA shall each file a Proposed Final MOU. In that case, Staff shall make a determination regarding the terms of the Final MOU.

The MOU should contain the terms needed to govern the transfer of data to NYSERDA, and its contractors, and the maintenance of data by NYSERDA and its contractors and should apply to both participant and non-participant usage data. The MOU should be based on the terms contained within the existing agreements which have been executed between NYSERDA and the utilities; any substantive changes or departures from past agreements should be based on a specific justification. The Final MOU shall be filed in Matter No. 19-00087 and shall be valid for a three-year period. At the end of the three-year period, NYSERDA and the utilities, in collaboration with Staff, shall review the MOU, make any necessary adjustments, and execute the MOU, as revised if needed. Should NYSERDA and the utilities mutually agree to any revisions within the three-year period, they may file a revised document in Matter No. 19-00087.

Comments filed by CPA express concern that datasets acquired by NYSERDA's contractors may use non-participant data

for competitive benefit or other inappropriate purposes. It is the responsibility of NYSERDA to ensure that any third-party access to customer data be solely for the purpose described in the request and that the third party takes necessary steps to preclude the use of data for any other purpose. NYSERDA's data governance protocols and non-disclosure agreements must ensure protection of non-participant datasets received from the utilities held by NYSERDA or its contractors and must ensure that the data requested is not used for the financial gain of any third-party, including appropriate remedies for any breach.

Administrative Burden and Costs to Provide Data

The JUs express concerns that NYSERDA requests for data could create administrative burdens, particularly if they are frequent or repetitive. Placing restrictions on NYSERDA as to the amount or frequency of data it may request could hinder the effectiveness of the underlying analyses. Therefore, NYSERDA is directed to exercise proper planning to maximize the use of the requested data and to be judicious in its requests, as well as to use already available data wherever possible. Matter No. 19-00087 has been established to allow for a transparent way to track and monitor NYSERDA's dataset requests and build a record. Staff is directed to monitor NYSERDA's requests and the utilities' response times and identify whether any modifications to this process are needed.

The utilities have requested cost recovery for costs incurred to provide data to NYSERDA. Utilities currently provide participant data to NYSERDA without charging NYSERDA on a per request basis. The Commission does not see any distinction between existing data requests and those anticipated in this Order that would warrant a change in this practice. The utilities should account for and recover costs incurred due to data requests under this Order through the same method they use

for those existing data requests. Any utility that believes that this would not result in appropriate cost recovery may request alternate treatment, such as deferral, through the appropriate process. Should a utility find a specific data request to be overly administratively burdensome, the utility may object to the request on that basis in its response to the request. Staff will review the request and objection and make a determination following the process described above.

Non-NYSERDA Government Entity Data Access

NYC argues that, similar to NYSERDA, the Commission should grant governmental entities, such as NYC, unrestricted access to customer usage and other utility data that they may need to satisfy their official governmental responsibilities and advance the public interest. As discussed above, this sort of broad, non-specific request is inconsistent with Commission precedent. The Commission's December 2018 Order Adopting Accelerated Energy Efficiency Targets directed the initiation of a "comprehensive proceeding to assess the strategic use of customer energy usage data."¹⁴ NYC and other interested governmental entities are invited to participate in that proceeding to present potential specific customer data use cases for Commission consideration.

Relief from Reporting

In December 2017, the Commission issued the EEPS Closeout Order, which discussed, among other things, continued reporting requirements for NYSERDA and the JUs related to expired EEPS programs.¹⁵ To date, the Commission has not amended

¹⁴ Case 18-M-0084, In the Matter of a Comprehensive Energy Efficiency Initiative, Order Adopting Accelerated Energy Efficiency Targets (issued December 13, 2018).

¹⁵ Case 07-M-0548, Proceeding on the Motion of the Commission Regarding an Energy Efficiency Portfolio Standard, Order

reporting requirements for SBC III and SBC IV, which have both ended. As both programs have ended, reporting on those programs has required only infrequent modifications as NYSERDA continues to monitor certain projects initiated before the programs ended that are still receiving payments based on project progress and performance. The Commission agrees with NYSERDA that reporting frequency for the SBC III and SBC IV portfolios should be adjusted in proportion to the level of activity now occurring. Therefore, NYSERDA's proposal to file a single SBC III final close-out report and reduce SBC IV reporting from semi-annually to annually is approved. The SBC III report shall be filed by June 30, 2019 and shall reflect the status of the program as of the end of 2018; to the extent that any disbursements occur after that point, NYSERDA shall file an amended final report when all disbursements are fully complete. The annual SBC IV report shall be filed on August 15 of each year. Once disbursements in SBC IV are complete, a final SBC IV close-out report may be filed, after which no further annual reports are required.

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 (collectively, the Joint Utilities) shall file a

Authorizing the Conclusion of the Energy Efficiency Portfolio Standard (issued November 17, 2017) (EEPS Closeout Order).

proposed Memorandum of Understanding (MOU) in Matter No. 19-00087 within 30 days of the issuance of this Order.

2. New York State Energy Research and Development Authority (NYSERDA) and the Joint Utilities shall file a Final MOU in Matter 19-00087 or, if the Joint Utilities and NYSERDA are unable to come to a complete agreement on appropriate terms, the Joint Utilities and NYSERDA shall each file a Proposed Final MOU in Matter 19-00087 within 60 days of the issuance of this Order.

3. Consistent with the discussion in the body of this Order, a Final MOU shall be entered into by NYSERDA and the Joint Utilities and filed in Matter 19-00087. The Final MOU may be updated consistent with the discussion in the body of this Order.

4. NYSERDA and the utilities shall follow the process described in the body of this Order with respect to requests by NYSERDA for utility data related to customers not participating in NYSERDA programs.

5. Department of Public Service Staff shall update CE-05: Evaluation, Measurement and Verification Guidance consistent with the discussion in the body of this Order.

6. Reporting requirements regarding the System Benefits Charge (SBC) III and SBC IV programs are amended to require a final report regarding SBC III filed by June 30, 2019, an amended final report when all disbursements are fully complete, and annual reports regarding SBC IV filed August 15 of each year followed by a final report regarding SBC IV once disbursements are fully complete.

7. 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

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the extension, and must be filed at least one day prior to the affected deadline.

8. Case 14-M-0094 is continued. Cases 10-M-0457 and 05-M-0090 shall be closed upon compliance with Ordering Clause No. 6.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary