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May 3, 2019

Via Email

Hon. Kathleen H. Burgess, Secretary to the Commission
New York State Public Service Commission
Empire State Plaza, Agency Building 3
Albany, NY 12223-1350
secretary@dps.ny.gov

RE: 18-M-0376, Response of UtiliSave, L.L.C. to the Commission's February 20, 2019 Notice Soliciting Comments

Hon. Secretary Burgess,

Please find enclosed the Response of UtiliSave to the Commission's Notice Soliciting Comments dated February 20, 2019. The aforementioned notice also cited Case Nos. 18-M-0084, 16-M-0411 and 15-M-0180. While the notice specified an earlier deadline, we ask that the Commission nonetheless consider our comments, for the reasons stated below.

If you have any questions about this letter or have difficulty viewing the enclosed PDF, please contact me.

Respectfully submitted,

_____/s/_____
Michael Steifman, CEO
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Encl.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission
Regarding Cyber Security Protocols and
Protections in the Energy Market Place

Case 18-M-0376

Response of UtiliSave, Inc.

To The Commission's Notice Soliciting Comments

Dated February 20, 2019

UtiliSave, Inc., a leading New York-based firm that optimizes and audits utility bills for clients, hereby submits this Response in the above-referenced Notice Soliciting Comments from the Commission dated February 20, 2019. UtiliSave opposes the February 4, 2019 Joint Utilities Petition for Approval of the Business to Business Process Used to Formulate a Data Security Agreement and for Affirming the Joint Utilities' Authority to Require and Enforce Execution of the Data Security Agreement by Entities Seeking Access to Utility Customer Data or Utility Systems ("Joint Utility Petition").

UtiliSave believes the Joint Utility Petition should be denied for several reasons. The Joint Utilities are requiring distributed energy resource ("DER") suppliers to sign Data Security Agreements ("DSA") as a condition of receiving customer energy information from the utility. While it appears the DSA was primarily intended for energy service companies ("ESCOs"), who use Electronic Data Interchange ("EDI"), the Joint Utilities have sought the unilateral authority to apply the DSA to any entity.

Compliance with the DSA is far from easy. Despite having the customer's permission to access their information and despite having a fairly-negotiated contract with each of our customers regarding the use of their information, the Joint Utilities seek to impose additional requirements that are onerous and unnecessary. For example, the DSA requires cybersecurity breach insurance. This will cost us many thousands of dollars to comply with and is not something our customers have asked for.

It is also worth noting that it serves the Joint Utilities' interests to allow for the relatively easy access to electronic information. Utilities have adopted policies sharply limiting the amount of traditional "hardcopy" documents they maintain on hand. While these measures have saved them significant money, they were justified by a corresponding increase in availability of electronic information. Now, having limited what they can be relied upon to produce in terms of hard copy documents because of the availability of more cost effective electronic means, they are making a thinly veiled attempt to curtail access to the electronic information specifically to entities

like UtiliSave, which serve as a consumer watchdog and have come to fill a crucial role in the Public Service Commission's enforcement actions. It is hard to escape the conclusion that the Joint Utilities' proposal is less about protecting consumer information, and more about protecting the Utilities from those with the technical knowledge and resources to ensure they are held accountable when they cross the line.

In addition, the process by which the DSA was created was coercive and unfair. The Joint Utilities strong-armed many parties into signing by threatening to eliminate their avenues for accessing customer information. Granting the Joint Utilities Petition would erroneously affirm the "reasonableness" and "fairness" of the business-to-business process that was anything but reasonable or fair. UtiliSave strongly objects to the process by which the DSA was "negotiated" and believes the Commission should do its job to determine a fair agreement between third parties and the Joint Utilities rather than deferring the Joint Utilities' unfair process.

Finally, regarding Mission:data Coalition's November 30, 2018 Petition for Declaratory Ruling ("Mission:data Petition"), we support the Mission:data Petition because we believe the Joint Utilities' position conflicts with the Commission's Order Establishing Oversight Framework and Uniform Business Practices for Distributed Energy Resource Suppliers ("DER Oversight Order") from October 19, 2017 in Case No. 15-M-0180. The Uniform Business Practices for Distributed Energy Resource Suppliers ("UBP-DERS") states that "This section does not impose any obligations on DER suppliers that do not request or receive data using EDI [Electronic Data Interchange]".¹ As an organization that wishes to use GBC, we believe the Joint Utilities' imposition of the DSA is at odds with the Commission's order. The Commission should deny the Joint Utilities Petition.

Respectfully submitted,

_____/s/_____
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¹ DER Oversight Order, Section 2C(a) of UBP-DERS at p. 7.