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

CASE 14-M-0101 - Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision.

ORDER ADOPTING WHOLE BUILDING ENERGY DATA AGGREGATION STANDARD

(Issued and Effective April 20, 2018)

BY THE COMMISSION:

INTRODUCTION

A foundational component of New York's Reforming the Energy Vision (REV) initiative is opening up access to data that was previously only available to utilities. Putting information into the hands of customers and developers will support the development of a distributed, responsive energy system. Access to system and customer data are also key to the development and operation of efficient markets. Furthermore, putting data into the hands of customers and developers enables individuals to make informed investment decisions based on their specific needs, goals, and values. However, in offering access to new categories of customer data, the Commission must ensure that appropriate privacy standards are in place such that individual usage data is protected.

Aggregated whole-building energy data can increase the ability of building owners to understand the energy characteristics and potential of their buildings. Such data enables benchmarking and can help building owners make development and investment decisions. Some local governments have required that owners of large buildings conduct such benchmarking. The March 9, 2017 Order on Distributed System Implementation Plan Filings (DSIP Order) recognized the value of providing aggregated whole-building energy data to building owners but also recognized the need for a privacy standard to reasonably protect tenants' energy usage information. While the DSIP Order adopted a 15/15 (also called 15-by-15) privacy standard for general use[1] by the utilities in determining whether aggregated data was sufficiently anonymized, the Commission recognized that applying the 15/15 standard to whole-building energy data would unreasonably limit its availability. The Commission also noted that protocols other than aggregation standards, such as requirements that access be limited to building owners/agents and that non-disclosure agreements be entered into, could provide additional protection in this context. Therefore, the Commission directed the Joint Utilities

[1] Under the 15/15 standard, aggregated customer usage data is considered sufficiently anonymous to share publicly if (1) the aggregated group contains at least 15 individual accounts, and (2) no one account represents more than 15% of the total load. 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.

(JUs)[2] to work with the Department Staff and stakeholders to consider data privacy standards used in other jurisdictions and determine an appropriate customer privacy standard for aggregated whole-building data to be supplied to building owners or their authorized agents statewide.

On June 7, 2017, based on the stakeholder engagement, Department of Public Service Staff (Staff) guidance, and review of benchmarking efforts in other jurisdictions, the JUs proposed a 4/50 privacy[3] standard for whole-building aggregated data supplied to building owners or their authorized agents, in conjunction with specific terms and conditions for requesting, receiving, maintaining, and using the data. The JUs also propose exceptions to the 4/50 standard such that it would not serve as a barrier to compliance with local laws and ordinances.

In this Order, the Commission adopts the 4/50 standard for requests by building owners to obtain aggregated energy consumption data for their buildings and directs the JUs to file final terms and conditions for data access for Staff approval.

BACKGROUND

Energy benchmarking of commercial and multi-family buildings is the practice of comparing building energy use over time relative to other similar buildings, and is an established

[2] Consolidated Edison Company of New York, Inc. (Con Edison), Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation.

[3] Under a 4/50 standard, aggregated customer usage data is considered sufficiently anonymous to share publicly if (1) the aggregated group contains at least 4 individual accounts, and (2) no one account represents more than 50% of the total load. Where a set of data fails to pass the 4/50 standard, the building owner may only receive the data with tenant consent.

and growing trend in the energy efficiency sector. Energy benchmarking is often an initial step in encouraging building owners to embrace energy conservation and can help target buildings with the highest energy efficiency potential by identifying those properties that are performing below a portfolio average or "benchmark." Much progress has been and continues to be made to streamline the process of gathering and transferring necessary information to effectively carry out building benchmarking. The process can be complicated by inconsistent analysis processes, restrictive policies surrounding building owner access to aggregate tenant data, and cumbersome methods to request and upload energy data to common benchmarking tools. Several steps can be taken to advance effective and efficient energy benchmarking.

First, the industry has established a common analysis standard through the U.S. Environmental Protection Agencies' (EPA) ENERGY STAR Portfolio Manager software tool. Second, government policies can be developed to promote voluntary adoption of building benchmarking and several governments such as New York City have adopted mandatory benchmarking laws that require buildings be benchmarked and that the results be disclosed to the public. Third, some utilities are streamlining and automating the process of requesting and obtaining aggregated building consumption data and transferring that data directly to the ENERGY STAR Portfolio Manager. Fourth, aggregation methods are being established to streamline sharing by ensuring that energy data has an adequate level of privacy protections.

The ENERGY STAR Portfolio Manager has become the tool of choice for organizations to benchmark their energy (and

water) performance.[4] The ENERGY STAR Portfolio Manager tool allows building owners to create a secure on-line account for properties, gather standardized basic property information (i.e., size, year built, uses) and energy consumption information which facilitates an owner's ability to measure and track the energy and water use and greenhouse gas emissions of buildings. The Portfolio Manager calculates a variety of metrics, including Energy Use Intensity (EUI) and ENERGY STAR score. EUI addresses a building's energy use as a function of its size or other characteristics and is expressed as energy per square foot per year. The ENERGY STAR score allows owners to quickly understand how a building is performing. A score of 50 represents median energy performance, while a score of 75 or better indicates the building is a top performer.[5] Buildings are compared to other buildings that have the same primary use based on a periodic national survey.

Mandatory benchmarking under New York City's Local Law 84 takes the Portfolio Manager's EUI and ENERGY STAR scores and makes them public for each building relative to other similar building types/functions in NYC.

During eight annual benchmarking cycles in New York City, Con Edison has opted to automate and streamline its provision of building data. For example, accounts have been mapped to "block and lot" rather than "building" level, which Con Edison explains has improved the accuracy of aggregated energy data by better matching all of the service addresses to the appropriate block and lot. Con Edison has also refined its

[4] See, The Benefits of Benchmarking Building Performance, Zachary Hart, Institute for Market Transformation (December 2015).

[5] A score of 75 or more generally qualifies for Energy Star certification as energy-efficient.

process for building owners and their agents to obtain and track letters of authorization. Con Edison has developed a web application for submitting and tracking customer requests for consumption data and recently implemented a new process to automatically transfer aggregated consumption data into the Portfolio Manager system which further streamlines the process for building owners. National Grid has also implemented process improvements and committed in its last KEDNY/KEDLI rate case to initiate automatic upload of gas consumption to Portfolio Manager in 2018.

JOINT UTILITY PROPOSAL

The JUs explain that, prior to submitting the proposal, they conducted a stakeholder engagement process focused on the need to balance the value of data sharing with protections for customer privacy. They note that several stakeholders stressed the importance of benchmarking building energy usage to state and municipal clean energy goals and emphasized the need to make access simple and to reduce obstacles to accessing aggregated whole-building data. These stakeholders proposed a relaxed standard and no requirement for individual customer consent. They also recommended an exception for buildings subject to local laws or ordinances that require benchmarking; some of these stakeholders also recommended the exemption extend to participation in voluntary municipal energy efficiency programs. Other stakeholders indicated a strong preference for a privacy standard that includes a consumption threshold in addition to a minimum number of accounts and emphasized the importance of well-defined terms and conditions to protect against unauthorized use or disclosure of information.

The JUs also reviewed standards adopted in other jurisdictions. It appears that few states have established whole-building benchmarking standards.[6]

The JUs' 4/50 standard is proposed to apply to commercial, residential, and multi-family buildings and would allow building owners, operators and authorized agents to seek access to whole-building energy data without individual tenant authorization. Consistent with the implementation of the existing 15/15 standard, the JUs propose an exception to the 4/50 standard for data requests necessary to comply with local laws or ordinances. Noting that the approval of benchmarking programs by local elected officials provides a reasonable proxy for customer consent, the JUs do not propose to extend the exception to voluntary programs. The JUs also propose access terms and conditions to ensure that data provided under the 4/50 privacy standard is appropriately protected. Examples of proposed terms and conditions include: proof of ownership/authorization; non-disclosure agreement; and a

[6] Based on a Department Staff review of state and local data access policies authored by the American Council for an Energy-Efficient Economy (ACEEE), it appears that the Colorado and California commissions may be the only utility commissions that have adopted a privacy standard for whole-building data. Colorado adopted a 4/50 standard subject to restrictions on use. California appears to have adopted a standard of at least three accounts for non-residential and at least five accounts for residential. The District of Columbia adopted a benchmarking law that requires publicly owned buildings over 10,000 square feet and all commercial and multi-family buildings over 50,000 square feet to report monthly consumption data. A handful of local governments such as New York City have required building owners to report energy information (i.e., energy use intensity) for relatively large commercial buildings. Building benchmarking and data access policies are constantly evolving.

potential fee. The terms and conditions are based on terms adopted by the Colorado Public Utilities Commission.

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 August 23, 2017 [SAPA No. 16-M-0411SP4]. The time for submission of comments pursuant to the Notice expired on October 9, 2017. The comments received are summarized and addressed below.

COMMENTS ON THE PROPOSAL

Comments on the JUs proposal were filed by five parties: City of New York (NYC), Consumer Power Advocates (CPA), Institute for Market Transformation (IMT), National Resources Defense Council (NRDC), Urban Green Council, and Northeast Energy Efficiency Partnerships (NEEP). In general, CPA and NEEP support the JUs proposal, while the other commenters encourage more relaxed standards as a result of greater emphasis on the data sharing aspect of the balancing.

In terms of the benefits of data sharing, all parties agreed that promoting the sharing of energy data with building owners and authorized agents will promote adoption of cost effective alternatives to traditional utility infrastructure investments. The parties also generally agreed that access to data should be simple (i.e., through on-line portals). NRDC and the Urban Green Council prefer the use of an opt-out process where tenant consents are needed.

Regarding privacy protections, NYC argues that there is no need for a privacy standard because the benchmarking process to date has generated no complaints and the prior Con Edison and PSEG practice of providing aggregated building data

for as little as two accounts would be impaired.[7] Moreover, NYC argues that governmental access to data should be permitted for non-commercial purposes.[8] NYC believes that consumers do not face risk when aggregated building data is provided to building owners or to government agencies for energy usage benchmarking in furtherance of energy policy goals. NRDC and the Urban Green Council, as well as IMT, question why the two accounts standard is not adequate to protect privacy. They express concern that many buildings will fail the 4/50 standard and face a more burdensome pathway to obtain critical information for benchmarking their energy use. NRDC and the Urban Green Council also question the need for the separate consumption threshold, rather than a focus solely on the number of tenants, and in the alternative, propose an 80% consumption threshold.

Parties stress that the development of a whole-building privacy standard should be viewed in the broader context of facilitating building benchmarking. While the parties support exempting owners subject to local benchmarking ordinances from the 4/50 standard, NRDC, the Urban Green Council, and NYC urge the Commission to adopt an exemption that includes voluntary benchmarking programs as well as municipal local laws.

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[7] Based on Department Staff inquiries to Con Edison and PSEG, both companies indicated that the reported 2 accounts in NYC standard (as reported by the EPA) is not being used now nor was it ever used as far they could ascertain.

[8] NYC notes that there are over 900,000 buildings in New York City that are less than 25,000 square feet and they are not subject to the benchmarking requirements of Local Law 84. NYC believes the Commission should reject the proposed 4/50 standard and allow building owners to voluntarily participate in the City's benchmarking program.

In response to a December 15, 2017 Notice issued in Case 17-M-0315, In the Matter of Utility Energy Registry, NYC urges the State to encourage building owners to monitor and improve building energy efficiency. By erecting artificial barriers such as overly restrictive privacy standards, NYC argues, the Commission 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, NYC states, the Commission should encourage such efforts by making data access easy for building owners, who are the primary entities that make investments or operating decisions that can reduce building energy consumption. Thus, NYC claims, the Commission should grant property owners unrestricted access to granular energy usage data related to their buildings.

In a reply to those comments, the JUs state that they recognize the importance of the availability of certain aggregated energy data that NYC needs to meet its energy and environmental policy objectives. Nevertheless, the JUs strongly disagree with NYC's assertion that a utility customer's right to privacy is necessarily surpassed by the public policy needs of governmental entities or that customers should not have privacy concerns with their energy usage data being shared without consent with any governmental entity. The JUs also claim that NYC provides no concrete evidence that aggregated data subject to a privacy screen is insufficient for the NYC's stated purposes and that NYC has not presented sufficient justification to deviate from the long-standing Commission policy of protecting the confidentiality of customer information. CPA also responded to NYC's comments, stating that to the extent a landlord seeks tenant usage data that does not meet a 4/50 privacy standard to comply with benchmarking or other

requirements, it is reasonable to require the landlord to obtain specific consent.

DISCUSSION

Increased energy efficiency and distributed energy resource deployment in multi-unit buildings can play an important role in meeting REV's goals, as well as New York's clean energy goals. It is important to encourage building owners to embrace energy efficiency and distributed energy as viable strategies to save money, improve marketing appeal, and demonstrate strong stewardship of natural resources. Adopting an aggregation standard for whole-building energy consumption is a logical step to reduce barriers to accessing energy data for buildings where energy is consumed by multiple tenants with separate energy meters/accounts.

The proposed 4/50 standard reasonably balances the benefit of permitting the building owner to access consumption data without the burden of seeking individual tenant consent with the need to ensure customer privacy by not revealing individual customer-specific energy use. The Commission also adopts the proposed exemption for data requests to comply with local laws, such as NYC's Local Law 84. The Commission declines to adopt the City's proposal for unrestricted access, as that does not adequately protect end user's privacy interests.

The Commission agrees with the JUs that reasonable access terms and conditions are appropriate to provide an additional layer of privacy protection. The JUs should develop a uniform set of terms and conditions and file them within 60 days of the issuance of this Order for approval by the Staff.

As described above, increased use of energy benchmarking has the potential to create significant benefits for building owners, tenants, and the state. The Commission

will continue to monitor developments in this area in order to identify and resolve barriers to unlocking those benefits.

The Commission orders:

1. The 4/50 whole-building data aggregation standard as proposed by Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation (the Joint Utilities) is adopted consistent with the discussion in this Order.

2. Within 60 days of the issuance of this Order, the Joint Utilities shall file proposed data access terms and conditions for approval by Department of Public Service Staff.

3. 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.

4. This proceeding is continued.

By the Commission,

(SIGNED) KATHLEEN H. BURGESS
Secretary