

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 18, 2010

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

- CASE 07-M-0548 - Proceeding on Motion of the Commission
Regarding an Energy Efficiency Portfolio
Standard.
- CASE 08-E-1133 - Petition of Niagara Mohawk Power Corporation
for Approval of an Energy Efficiency Portfolio
Standard (EEPS) Utility-Administered Electric
Energy Efficiency Program.
- CASE 08-E-1135 - Petition of Central Hudson Gas & Electric
Corporation for Approval of an Energy
Efficiency Portfolio Standard (EEPS) Utility-
Administered Electric Energy Efficiency
Program.
- CASE 09-G-0363 - Petitions for Approval of Energy Efficiency
Portfolio Standard (EEPS) Gas Energy Efficiency
Programs.

ORDER ON REHEARING GRANTING PETITION FOR REHEARING

(Issued and Effective December 3, 2010)

BY THE COMMISSION:

INTRODUCTION

The Energy Efficiency Portfolio Standard (EEPS)
programs at issue are "behavioral modification" programs to be

administered by OPower¹ for Niagara Mohawk Power Corporation (Niagara Mohawk) and Central Hudson Gas & Electric Corporation (Central Hudson).² The programs encourage participants to reduce their energy consumption through personalized reports that compare their usage with that of similarly situated customers. It is estimated that OPower programs induce customers to reduce their usage by approximately 2%. According to OPower, the design of its program requires access to personally identifiable customer information including names, addresses and individual customer usage data. Also according to OPower, the design of the program does not provide customers an opportunity to grant informed consent prior to the transfer of their personal information from the utility to OPower. After OPower has received the information and notified those program participants who will receive the reports, such participants have the opportunity to "opt-out" from receiving the reports, but their data will already have been transferred to and will continue to be used by OPower. OPower also develops a control group and a "neighbor" comparison group of customers using the personal data provided by the utility. These customers are similarly not given an opportunity to prevent their information from being transferred to and used by OPower.

The Central Hudson and Niagara Mohawk behavioral modification programs were approved by the Commission, but with conditions that are not acceptable to OPower. Accordingly, the programs have not been implemented. The order approving Central

¹ OPower is not affiliated with any regulated utility other than through a contractual relationship.

² On July 9, 2010, New York State Electric and Gas Corporation and Rochester Gas and Electric Corporation filed a petition seeking approval of a Home Energy Reports Demonstration Program also to be administered by OPower. The Commission has not taken any action on that request.

Hudson's program³ required that the company administer the program "in a manner consistent with the requirements for customer consent and confidential treatment of customer usage data that is described in the June [12], 2009 letter from Office of Energy Efficiency and the Environment Director Floyd Barwig to the Evaluation Advisory Group." The guidelines contained in that letter prohibit release of personally identifiable customer data to any third party without prior customer consent. These guidelines are consistent with past practice regarding the privacy of customer data. Central Hudson filed a petition for rehearing seeking reconsideration of the requirement that the program be administered in compliance with the guidelines contained in the June 12, 2009 letter. Central Hudson argues that it is not possible to administer the program in compliance with the guidelines.

The order approving Niagara Mohawk's program did not place any particular restriction or conditions on implementing the program.⁴ However, soon after it began implementing the program, Niagara Mohawk made its own determination that its transfer of customer data to OPower was not consistent with the guidelines contained in the June 12, 2009 letter. Niagara Mohawk requested that OPower return the data and destroy any copies it may have made. According to Niagara Mohawk, OPower has complied with the request. Niagara Mohawk has since petitioned the Commission for a waiver from the energy savings

³ Case 07-M-0548, et al., Energy Efficiency Portfolio Standard (EEPS), Order Approving Three New Energy Efficiency Portfolio Standard (EEPS) Programs and Enhancing Funding and Making Other Modifications for Other EEPS Programs (issued June 24, 2010), p. 11.

⁴ Case 07-M-0548, et al., supra, Order Approving Certain Commercial and Industrial; Residential; and Low-Income Residential Customer Energy Efficiency Programs with Modifications (issued January 4, 2010).

targets associated with the OPower program arguing that it cannot administer the program in compliance with the guidelines.

The OPower programs raise customer privacy concerns that need to be addressed. Long-term success of EEPs programs and achievement of policy goals will require customer acceptance of, and willing participation in the various utility and NYSEDA-administered programs. The ability to foster customer acceptance and participation depends on understanding and respecting customers' reasonable expectations of privacy, security and control over access to personally identifiable information and energy-usage data. In order to develop this understanding, a certain level of access to customer data by the appropriate entities and in compliance with appropriate privacy protections may be necessary. The particular facts and circumstances of any instance involving third party access to customer data will dictate whether such access is appropriate. Moreover, as explained in more detail below, no transfer of customer information to a third party may violate the prohibition against selling or offering to sell lists of customer names found in Public Service Law §65(7).

In this order, we authorize the OPower behavioral programs specifically because: 1) OPower will be performing a rate-payer funded utility function⁵ - inducing customers to use less energy by providing them with specific information about their energy usage and how it compares to that of other similarly situated customers; 2) Central Hudson and Niagara Mohawk have demonstrated a need to provide access to the customer information in order to perform the utility function; 3) we have had an opportunity to review the contract between the

⁵ A "utility function" is an activity that can only be performed by a utility, such as the delivery of energy, as opposed to a non-utility function which does not require a utility to perform the activity, such as supplying energy.

utility and the OPower and believe it offers sufficient privacy safeguards.

BACKGROUND

In separate orders, the Commission approved Niagara Mohawk's Residential Building Practices and Demonstration Program and Central Hudson's Home Energy Reporting Program. Niagara Mohawk's program was approved with a total budget of \$2,598,398 and a target of 150,000 participants. Central Hudson's program was approved with a total budget of \$1,385,000 and a target of 100,000 participants. OPower would administer the programs separately for each utility. Although named differently, the programs are essentially the same.

The programs are described as behavioral modification programs that would employ social motivation to encourage participants to reduce their energy consumption through personalized reports comparing their usage with that of similarly situated customers. Customer eligibility is contingent on: a) paying the System Benefit Charge, b) residing in a 1-4 unit residential dwelling, and c) using a threshold level of electricity and/or gas. Through the customized reports, customers would be informed of the ways their particular energy usage differs from other customers that have comparable housing and demographic characteristics. Potential recipients of the reports would receive a notification that they will be sent the reports and would be automatically included unless they actively choose to opt-out. The program administrator would also provide participating customers with energy saving tips, an energy savings progress tracker and other energy efficiency information designed to be more relevant to a participant's circumstances than a broad outreach program. The program administrator would develop the more individualized

reports by cross-referencing customer information and usage data provided by the utility with other available sources of demographic information. The program administrator, its employees and "approved contractors"⁶ would have access to customer-specific information and usage data on a need-to-know basis. The comparative reports sent to customers would contain aggregated data preventing identification of individual participants included in the comparison group. It is estimated that this type of behavioral modification program can produce energy savings in the range of 1.5%-3% of participating customers' usage.

The program design requires the selection of a control group and a "neighbor" comparison group with housing and demographic characteristics similar to those of the program participants. Customers in these groups would not receive notification that their information is being used in the program.

Prior to Niagara Mohawk retracting its customer data from OPower, the utility had signed an agreement with OPower that prohibited OPower from using any customer information provided by Niagara Mohawk for any purpose other than the administration of the programs or for OPower's internal program evaluation activities. The agreement also prohibits OPower from acquiring any continuing rights to the customer information provided by the utility. Central Hudson indicates that it would enter into a similar agreement. Niagara Mohawk indicates that other National Grid utility affiliates have a working relationship with OPower due to the affiliates' implementation

⁶ The contract does not define the term "approved contractors" but OPower has indicated to Staff that it is intended to mean contractors approved by the relevant utility. They include a data-server facility and a printing firm.

of the same program in Massachusetts, New Hampshire and Rhode Island.

Although the Commission has approved the programs, they are not currently operating because, according to Central Hudson and Niagara Mohawk, the requirement that the utility obtain customer consent prior to releasing personal information and usage is not compatible with the program design. According to Central Hudson's petition, the expected participation levels in a program that requires an affirmative expression of consent to participate (opt-in) are between 3-5%. Central Hudson indicates that a 5% participation rate would equate to approximately 15,000 participants if all of its residential customers were targeted, far short of the utility's 100,000 participant goal. In its petition, Central Hudson requests that the Commission reconsider the requirement of obtaining customer consent prior to releasing the relevant customer information to OPower.

Niagara Mohawk has requested to be relieved of the energy savings requirement associated with its program. Niagara Mohawk has indicated that it contacted OPower in order to devise a work-around to implement the program in a manner that complies with the guidelines contained in the June 12, 2009 letter, but that such efforts were unsuccessful. Niagara Mohawk has also indicated to Staff that it is willing to implement the program if it can do so as originally proposed.

THE COMMISSION'S TREATMENT OF
CUSTOMER DATA IN OTHER CONTEXTS

Telecommunications

Regarding telecommunications, the Commission has addressed privacy issues involving specific circumstances and developed overarching privacy principles. Previously, the Commission has allowed for the unblocking of Caller ID for calls

made to New York City's 311 Municipal Information Call Center.⁷ New York City petitioned the Commission to unblock Caller ID information for calls made to the 311 call center stating that many 311 calls need to be rerouted to 911 based on the emergency nature of the calls. Prior to the Commission's action, 311 operators could reroute calls to 911, but if the caller had blocked Caller ID information, it would be unavailable to the 911 operator making it impossible to determine the caller's location.

The Commission's discussion of the issue commenced with the premise that transmitting Caller ID information necessarily compromises the privacy expectations of callers and noted that it had required companies offering Caller ID to permit customers to block the transmission of their names and numbers. However, the Commission recognized that because many 311 calls were rerouted to 911, there was a countervailing public safety concern. The Commission permitted the unblocking of Caller ID for 311 calls but insisted on adherence to the Automatic Number Identification (ANI) terms and conditions that it had previously approved "to ensure that the Caller ID information that is transmitted to the City will not be misused, consistent with [the Commission's] long-standing policy of protecting privacy." The Commission highlighted that the City planned to conduct an appropriate public education campaign to inform the public that Caller ID is unblocked on 311 calls. The Commission also noted that the City maintained a stringent privacy policy including appropriate oversight and at that time,

⁷ Case 03-C-0171, New York City Petition to Unblock Caller ID for 311 Calls, Order Granting Petition with Conditions (issued April 18, 2003). The 311 Call Center provides consolidated access to non-emergency municipal services and information. Under identical reasoning the Commission has also unblocked Caller ID information for 211.

had received approximately 60 million calls while preserving a stellar record in handling personal identifiable information.

The Commission has also established privacy principles regarding telecommunications.⁸ The principles include the explicit consideration of privacy in developing telecommunications service offerings and the benefits of an open network, customer education, customer choice regarding degrees of privacy protection, informed customer consent and case by case consideration of cost, public policy, economics and technology. Many of these principles are similarly relevant to the sharing of customer energy usage data particularly the need to explicitly consider privacy implications in the approval of EEPS programs.

Retail Access

Uniform Business Practices (UBP) were developed in connection with the development of retail access. Section four of the UBP establishes practices for the release of customer information by utilities to Energy Service Companies (ESCOs). The practices require informed customer authorization for any release of customer information to ESCO's. The practices also require that the ESCO inform its customers of the types of information that will be obtained, to whom it will be given, how long it will be used and how long authorization is valid, which is not permitted to be longer than six months. ESCOs are required to maintain verifiable proof of customer authorization for two years or the length of the sales agreement, whichever is longer. The utility must block access to customer information upon request by the customer and no more than 24 months of usage data can be shared. ESCOs that fail to adhere to the UBP may be declared ineligible to provide services in New York.

⁸ Case 09-C-0075, Privacy Issues in Telecommunications, Statement of Principles in Telecommunications (issued March 2, 1998).

The Commission has also addressed privacy concerns in specific instances. The Commission required a showing that the utilities' methods for providing customers access to their own utility account number would maintain the privacy and security of customer information⁹ and rejected a proposal that would allow ESCOs direct access to customer account numbers even if the customer had provided consent.¹⁰ The Commission rejected the proposal for failure to show a need for direct access and the availability of other means more likely to protect customer information. The Commission also rejected, on privacy grounds, an ESCO's request to be given a list of utility customers taking fixed-price service.¹¹

EEPS Programs

The Commission addressed privacy in approving a NYSERDA-administered sub-metering program. In approving the program, the Commission required that any building owner/contractor who receives incentives to sub-meter a building must a) maintain historical dwelling unit usage data, b) obtain consent of affected residents and c) provide such data to NYSERDA for use by NYSERDA and/or NYSERDA's evaluation contractors.¹²

⁹ Case 98-M-1343, Retail Access Business Rules, Order Concerning Remote Customer Access to Account Information (issued July 19, 2010).

¹⁰ Case 98-M-1343, supra, Order Denying Petition and Making Other Findings (issued November 7, 2006).

¹¹ Case 09-E-0228, RG&E Tariff Filing Regarding Fixed Transition Charges, Order Adopting Terms and Conditions For Non-Bypassable and Variable Commodity Charges (issued September 28, 2009).

¹² Case 08-E-1132, NYSERDA Energy Efficiency Portfolio Standard (EEPS) Programs, Order Approving Electric Energy Efficiency Programs with Modifications (issued June 24, 2009).

OTHER PRIVACY PRINCIPLES PROPOSED OR IN USE

A number of recently published reports have identified privacy guidelines or principles regarding the collection of data through smart grid technologies. Although smart grid technologies may produce customer usage data that is much more detailed and therefore, perhaps more revealing than the customer usage data at issue here, the reports are instructive to our consideration of the OPower programs.¹³ Therefore a brief summary of two recent reports and recent legislation from another state is contained below.

Department of Energy

On October 5, 2010, the Department of Energy (DOE) issued a report entitled "Data Access and Privacy Issues Related to Smart Grid Technologies."¹⁴ The report summarizes the DOE's impressions of the information collected during its proceeding on data privacy and data security issues raised by smart grid technologies and provides a comprehensive summary of the comments received by the DOE in response to a request for information and a roundtable conducted in developing the report.

The report highlights the importance of privacy protection because energy usage information can reveal personal details about consumers' lives and that utility customers rightfully expect that the privacy of this information will be maintained. According to the DOE report, studies conducted by utilities and consumer advocates have consistently shown that privacy issues are extremely important to utility customers. The report also notes the importance of third-party access to

¹³ The Commission has established Case 10-E-0285 to review all aspects of the smart grid, explicitly including privacy issues, some of which are relevant here.

¹⁴ The full report is available at http://www.gc.energy.gov/documents/Broadband_Report_Data_Privacy_10_5.pdf. The report does not appear to have any legally binding effect.

energy usage data based on the expected potential to enable consumers to better manage their energy usage by better understanding it.

The report calls for a balancing of utilities' need to access energy consumption data for operational purposes with the ability for consumers to access their own data and to decide whether to grant access to third parties. The report states that commenters to the DOE proceeding generally agreed that appropriate safeguards include a prohibition on disclosure of consumer data to third parties in the absence of affirmative consumer authorization,¹⁵ and that the authorization should specify the purposes for the authorization to use the data, the term of authorization and the means for cancelling the authorization. The report indicates that the commenters also generally agreed that authorized third parties should be required to protect privacy and security of consumer data and use it only for the purpose specified in the authorization.

The DOE report makes a number of "key findings" relevant to privacy that are summarized below.

1. Consumer education and flexibility in technology and pace of deployment is critical for long-term success of smart grid technologies and programs. Educating consumers about the benefits of technologies and programs is vital to consumer acceptance of them. States and localities will need to be flexible to accommodate the willingness of consumers to accept deployment of such technologies.

2. Many smart grid technologies can generate highly detailed energy consumption data that should be accorded privacy protections because it has potential to be useful and sensitive.

¹⁵ The DOE guidelines do not define "third party," and therefore, it is not clear if they are intended to apply to all third parties or only to those not performing an exclusive utility function pursuant to a contract entered into with the utility.

Therefore, consumers should have rights to protect the privacy of their own energy usage data and control access to it.

3. Utilities should continue to have access to customer usage data for utility-related business purposes.

4. Consumers should be able to access usage data and decide whether third parties are entitled to access such data for purposes other than providing electrical power. Consumer control over third-party access would promote the creation of an open, transparent and competitive marketplace for the use and management of energy-consumption data. There was almost complete consensus on this issue among proceeding participants.

5. All classes of utility customers should be entitled to protect the privacy of their own individual energy usage data.

6. States must carefully consider the conditions under which consumers can authorize third-party access to energy usage data.

Commenters to the proceeding agreed that third-party access to personal energy usage data is one of the most important and difficult issues inherent in deploying and regulating smart grid technologies. Consensus seemed to develop around four principles. First, utilities should not release energy usage data unless a customer has provided affirmative consent to the release through an opt-in process that reflects and records the customer's informed consent. Second, opt-in authorization should include the specific purpose for which the third-party authorization is valid, the term for which the authorization will remain valid and means for withdrawing the authorization. Third, third parties authorized to receive energy usage data should be required to protect the information and to only use the information for the specified purpose. Fourth, states should enact laws or rules that define the

circumstances, conditions and data that utilities could disclose to third parties.

National Institute of Standards and Technology

The National Institute of Standards and Technology (NIST) published "Guidelines for Smart Grid Cyber Security: Vol. 2, Privacy and the Smart Grid" in August 2010.¹⁶ The report includes an assessment of the impact on privacy that smart grid technology may have and a discussion of mitigation factors. The majority of the document deals with issues involving very granular energy usage data that are not relevant to the programs at issue here. The document does not discuss specific recommendations for placing conditions on access to customer usage data. However, it does list three privacy challenges that edify our consideration of OPower and the proper conditions to be placed on its access to customer usage data.

According to the NIST guidelines there are three primary privacy challenges presented by third-party access to smart grid information. First, companies representing themselves as consumer energy management services are what they represent themselves to be. Second, what consumers are told about how their information will be used is true and third, third-party access to energy usage data is being used solely for the purpose set forth in the agreement allowing for access. The document urges utilities and third-party users of energy usage data to follow recognized privacy practices in a consistent and comprehensive fashion to effectively safeguard personal information.

California Public Utilities Code

The State of California recently amended its Public Utilities Code adding Chapter 5 entitled Privacy Protections for

¹⁶ The full document is available at http://csrc.nist.gov/publications/nistir/ir7628/nistir-7628_vol2.pdf.

Energy Consumption Data to Division 4.1.¹⁷ The law prohibits utilities from sharing, disclosing or otherwise providing personally identifiable energy usage data to any third party without the consent of the customer. However, the statute explicitly allows for the utility to disclose energy usage data to a third party for "system, grid, or operational needs, or the implementation of demand response, energy management, or energy efficiency programs, provided that, for contracts entered into after January 1, 2011, the utility has required by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the customer's consent."¹⁸

NOTICE OF PROPOSED RULE MAKING

A notice of Proposed Rulemaking concerning the Commission's consideration of Central Hudson's petition and the possible application of the relief sought in the petition to other EEPS programs was published in the State Register on August 11, 2010 (SAPA 07-M-0548SP26). The minimum time period for the receipt of public comments pursuant to SAPA regarding that notice expired on September 27, 2010. Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (Con Edison/O&R) submitted joint comments which are summarized below.

¹⁷ Cal. Public Utilities Code §8380.

¹⁸ Id.

SUMMARY OF PUBLIC COMMENTS

Con Edison/O&R support Central Hudson's petition for rehearing. They state that the Commission should clarify that the guidelines contained in the June 12, 2009 letter only apply to EEPS program evaluation activities and do not apply to implementation of any utility-administered EEPS programs. Con Edison/O&R also state that the Commission should reconsider whether the guidelines are necessary for program evaluation activities. Con Edison/O&R indicate that application of the guidelines to EEPS programs would hinder program goals because an opt-in requirement would limit customer participation in the programs. Con Edison/O&R argue that if a third-party contractor has signed a non-disclosure agreement, customer consent should not be required prior to sharing personally identifiable information and usage data with that contractor.

Con Edison/O&R state that they are currently implementing various EEPS programs that require substantial customer information be sent from the utilities to third-party implementation contractors. Con Edison/O&R state that Con Edison generally provides its third-party implementation contractor with customer account numbers, service classifications, mailing addresses, billing and usage data, locational information and for businesses, North American Industry Classification System (NAICS) codes and corporate codes. Con Edison indicates that the information is often used by the third-party contractor for marketing or determining program eligibility.

Con Edison/O&R maintain that if prior customer consent is required to share customer information with third-party contractors, it will detract from the ability of EEPS programs to produce cost effective energy savings. Con Edison/O&R state that such a requirement would slow implementation of the

programs and inhibit customer participation. Con Edison/O&R indicate that such a requirement would require the companies to administer some programs themselves, which would increase program costs significantly.

DISCUSSION

Protection of consumer information is a basic tenet of the Public Service Law and our policies. We have carefully examined how consumer privacy (in the form of customer information, such as address and account number, as well as energy usage history) will be protected as part of the implementation of these energy efficiency programs. Because we find that such protections are appropriate, we authorize Niagara Mohawk and Central Hudson to implement the EEPs programs to be administered by OPower under the conditions described below.

Customer privacy has been and continues to be an important consideration in approving any new program or technology. As we have consistently recognized, it is vital to balance the maintenance of privacy protections with the need to conduct core utility functions in a cost-effective and efficient manner that aims to maximize the value of those functions for ratepayers. Here, we authorize the OPower behavioral programs specifically because: 1) OPower will be performing a rate-payer funded utility function - inducing customers to use less energy by providing them with specific information about their energy usage and how it compares to that of other similarly situated customers; 2) Central Hudson and Niagara Mohawk have demonstrated a need to provide access to the customer information in order to perform the utility function; 3) we have had an opportunity to review the contract between the utility and the OPower and believe it offers sufficient privacy safeguards because the agreement prohibits customer information

and usage data from being used for any purpose other than to administer the program and the agreement provides for the indemnification of the utility in the event of a breach or non-compliance of the agreement by the OPower or its representative.

We are mindful 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. As discussed above in regards to our previous treatment of privacy in the telecom sector and the DOE's guidelines, it is important to respect customers' reasonable expectations of privacy and information security. If these expectations are not met, it may impair customer acceptance of other energy efficiency programs, particularly those related to the smart grid, which is expected to produce even more detailed personal information than at issue in these programs.

Allowing OPower access to customer information, subject to the limitations and safeguards described above is consistent with public expectations of privacy. It is consistent with our treatment of such information in other instances (e.g. telecom and the use of billing service companies).¹⁹ In addition, programs similar to those at issue here are being administered in at least 16 other states without any known release or inappropriate use of customer information.

Moreover, transferring customer data to OPower solely to administer and analyze the behavioral modification program is not a prohibited sale of customer information under Public Service Law §65(7). PSL §65(7) states: "No gas corporation or electric corporation shall sell or offer for sale any list of names of its customers." Here, OPower is explicitly prohibited from obtaining any ownership in the customer information.

¹⁹ Some utilities hire third-party contractors to print and/or mail utility bills. This practice requires the utility to transfer customer data including usage to the third party.

Moreover, OPower is prohibited from using the information for any purpose other than to perform the utility function of administering this program and may not contact customers in any fashion beyond what it was specifically contracted to do - provide usage analysis reports. These restrictions prevent OPower from obtaining any value from the information beyond its usefulness in performing the specific function it was contracted to perform.

Authorization to implement these behavioral modification programs is subject to the following conditions. First, the language contained in the non-disclosure agreement that permits OPower to disclose customer information to "approved contractors" on a need-to-know basis shall be modified to expressly include only those contractors that have been approved of in writing by the utility, and these contractors shall be limited to printing and data-server entities. Second, Central Hudson and Niagara Mohawk shall submit to the Director of the Office of Consumer Policy copies of the agreements between OPower and the utilities as well as any agreements between OPower and any of its contractors that may have access to customer information.²⁰

Third, any mailings sent to the customer shall not be allowed to include a logo or other identifying information indicating that OPower is providing the data service to the utility. The behavior modification programs are designed so that the mailings are a communication between the utility and its customers, purposefully capitalizing on the existing relationship and degree of trust between these parties. The use of an OPower logo or other identifying information in the mailing would tend to undermine that utility customer

²⁰ OPower has indicated that a printing firm and a data-server provider are the only contractors it hires with access to any customer data.

relationship unnecessarily and would serve no legitimate purpose, as OPower has no need to establish an independent relationship with the customer in order to conduct the program. Also, utility mailings provided at ratepayer expense should not be used to provide free advertising for OPower's business.

Finally, because of the delay in implementing these programs relative to their original approval dates, we will extend the program authorization period appropriately. Niagara Mohawk's Residential Building Practices and Demonstration Program is authorized for implementation from April 1, 2011 until December 31, 2012 and Central Hudson's Home Energy Reporting Program is authorized for implementation from April 1, 2011 until June 30, 2012. The previously authorized total budgets and savings goals will remain unchanged but the annual allocation is adjusted to conform to the shifted program periods. The budgets and savings goals are listed in the Appendix.

Con Edison/O&R's comments that the companies are already providing customer data to contractors in another context related to EEPS programs prompts us to require that all gas and electric utilities identify and report all other instances where the utility is making customer information available to any EEPS contractor. As part of that report, the utilities shall provide the name of the contractor, the information made available to the contractor, details regarding how the information was used, a copy of the contract involved, an explanation concerning the need to make the information available, a description of the consumer protections and security provisions that apply to that information and any other information relevant to protecting the confidentiality of the information.

Con Ed/O&R suggested reconsideration of whether the privacy guidelines set forth in the June 12, 2009 letter should continue to apply to program evaluation activities. Because this issue is not raised in Central Hudson's petition or contained in the relevant SAPA notice, we are not considering the suggestion here.

SUMMARY & CONCLUSION

We grant the relief sought by Central Hudson in its petition for rehearing subject to the conditions and safeguards described above. Specifically, the condition previously imposed on Central Hudson's Home Energy Reporting Program to obtain customer consent prior to disclosing customer information to OPower is eliminated. Niagara Mohawk is similarly authorized to administer the program without the need to obtain prior customer consent. The authorization to implement these programs is conditioned on the utilities and OPower agreeing to the non-disclosure agreement modifications and submission of all the relevant contracts as discussed above.

The Commission orders:

1. The relief sought in Central Hudson Gas & Electric Corporation's (Central Hudson) petition for rehearing is granted and Central Hudson is authorized to implement its Home Energy Reporting program subject to the conditions as described above. Niagara Mohawk Power Corporation (Niagara Mohawk) is authorized to begin implementing its Building Practices and Demonstration Program subject to the conditions as described above. The approved budgets and savings goals are listed in the Appendix.

2. Central Hudson and Niagara Mohawk shall, within 60 days of the issuance of this order, shall file Implementation

Plans for the authorized programs that reflect this order with the Secretary.

3. Central Hudson and Niagara Mohawk shall each incorporate reports on the programs authorized by this order into the periodic quarterly program and evaluation reports, annual program reports and evaluations, and monthly scorecard reports already required for the other EEPS programs they administer. Central Hudson and Niagara Mohawk shall track their expenditures on evaluation-related market research in such a manner that they may be reported and scrutinized in the future.

4. KeySpan Gas East Corporation d/b/a National Grid (KeySpan LI), The Brooklyn Union Gas Company d/b/a National Grid (KeySpan NY), Central Hudson, Consolidated Edison Company of New York, Inc., Corning Natural Gas Corporation, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk, Orange & Rockland Utilities Inc., Rochester Gas & Electric Corporation, and St. Lawrence Gas Company, Inc. shall identify and report to the Secretary within 30 days of the date of that this order is issued all instances where the utility is making customer information available to any Energy Efficiency Portfolio Standard program contractor. As part of that report, the utilities shall provide the name of the contractor, the information made available to the contractor, details regarding how the information was used, a copy of the contract involved, an explanation concerning the need to make the information available, a description of the consumer protections and security provisions that apply to that information and any other information relevant to protecting the confidentiality of the information.

5. The Secretary at her sole discretion may extend the deadlines set forth herein.

6. These proceedings are continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

**Central Hudson Home Energy Reporting
Program Costs for the Years 2011-2012**

Home Energy Reporting	2011	2012	Total
Electric Program Component	\$623,251	\$415,500	\$1,038,751
Gas Program Component	\$207,750	\$138,500	\$346,250

**Central Hudson Home Energy Reporting
Program Savings Goals for the Years 2011-2012**

	2011	2012	Total
MWhs	6,000	6,000	12,000
Therms	100,000	100,000	200,000

**Niagara Mohawk Building Practices and Demonstration Program
Costs for the Years 2011-2012**

Building Prac. & Demon.	2011	2012	Total
Electric Program Component	\$541,981	\$788,864	\$1,330,845
Gas Program Component	\$513,547	\$754,006	\$1,267,553

**Niagara Mohawk Building and Practices and Demonstration Program
Program Savings Goals for the Years 2011-2012**

	2011	2012	Total
MWhs	9,720	14,580	24,300
Therms	776,520	1,164,780	1,941,300