

Consumer Power Advocates

Columbia University Medical Center
Fordham University
Memorial Sloan Kettering Cancer Center
NYU Langone Medical Center

Mount Sinai Health System
New York Presbyterian Hospital
New York University

February 26, 2018

VIA ELECTRONIC FILING

Honorable Kathleen H. Burgess
Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

RE: Case 14-M-0094 – Proceeding on Motion of the Commission to Consider a Clean Energy Fund – Petition of NYSERDA Regarding Data and Legacy Reporting

Dear Secretary Burgess,

Consumer Power Advocates (CPA) is a coalition of not-for-profit commercial health care and educational customers in the Consolidated Edison service territory that advocates on behalf of consumer interests before the Commission, NYISO and elsewhere. CPA's members have an active interest in customer data access issues, and CPA has submitted comments to the Commission on multiple occasions regarding whether and under what conditions customer data should be disclosed by utilities to third parties.

On December 5, 2017, the New York State Energy Research and Development Authority (NYSERDA) submitted a Petition in the above-captioned proceeding requesting that customer-specific energy usage data be disclosed to it by the state's investor-owned utilities, subject to appropriate confidentiality protections.

Specifically, NYSERDA requests:

“NYSERDA therefore requests that the Commission establish a process through which Non-Participant Data be provided to NYSERDA by the utilities without the need for a signed customer consent where that data is necessary for NYSERDA to implement its statutory and regulatory missions, including Commission-approved strategies and programs, as they may evolve. This data will include data that reflects usage by the State's energy end-users and building stock, data required to assess the State's clean energy

potential, and data elements used for sampling customers for various data collection and analysis activities -- which in some cases may be aggregated and/or anonymized.[11,12](#)

NYSERDA proposes that with respect to each request for data it will prepare a dataset request that will provide detail regarding the data requested, the need for the requested data, the expected use of the data, and the CEF or other program function for which the data is needed. NYSERDA requests that the Commission provide an order that describes: (i) a structured process through which NYSERDA can request the dataset from the relevant utility; (ii) a utility review and response process; and (iii) a DPS Staff issue resolution process for specific circumstances where Staff engagement may be needed. NYSERDA understands that dataset requests may require careful consideration, including with respect to any privacy and proprietary concerns.¹”

NYSERDA describes the roles it plays in assisting in the development and implementation of energy policies in the state and makes the case that access to customer energy usage data, particularly from customers that are not active in NYSERDA programs is essential in order to fulfil its mandate². NYSERDA notes that, as a state agency it is subject to requests for information under the Freedom of Information Law (FOIL,) but that it has rules to protect commercially sensitive customer information from disclosure under FOIL and that the information sought here would be subject to such protections³. NYSERDA notes that obtaining individual customer consent is impractical, given the volume of data at issue. Finally, NYSERDA notes that “When necessary for programmatic purposes, data will be disclosed to NYSERDA’s directors, officers, and employees, and to NYSERDA’s consultants and contractors, but only if each such consultant or contractor has signed a Non-Disclosure Agreement in accordance with the order (being sought from the Commission here.”

CPA Supports the NYSERDA Request with Caveats

CPA agrees that, for the reasons broadly described in the Petition, that NYSERDA has a legitimate need for the data it seeks. CPA also agrees that obtaining individual customer consent, even if possible, would represent an unreasonable burden and inefficient use of NYSERDA resources. Subject therefor to the development of appropriate processes that would govern when, how and under what conditions utilities would be obligated to provide NYSERDA with the data it seeks, CPA supports the Petition.

However, the Petition leaves much to be decided by the Commission, including

¹ Petition at 4.

² Id.

³ Id. at 5.

“structured process through which NYSERDA can request the dataset,” the “utility review and response process,” and the “DPS Staff issue resolution process.” Without greater specificity regarding each of these, 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. While generally supporting the Petition’s goals, CPA must therefore reserve judgement on the proposal.

Notwithstanding the above, CPA is particularly concerned about NYSERDA providing commercially sensitive data to non-employees, such as contractors or consultants. While NYSERDA appropriately states that disclosure to such entities would occur only subject to a protective agreement, CPA members view this data as incredibly sensitive and many NYSERDA contractors and consultants are in a position to directly and inappropriately benefit from access to such data. No matter how strong the NDA may be, once seen, such data cannot be unseen and once the “grey matter is contaminated” it often cannot be sterilized again. As such, CPA believes that customer-specific data should not be disclosed to third parties without specific consent from the relevant customer.

CPA basically supports the Petition, but reserves the right to comment further as the key details are developed. We recommend that the Commission issue an Order supporting 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. The results of that collaboration should be submitted to the Commission for final action, subject to normal SAPA procedures.

Respectfully Submitted,

/s/

Aaron Breidenbaugh
Director of Regulatory Affairs

cc: Active Parties