

October 10, 2017

VIA ELECTRONIC FILING

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

Re: 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

Dear Secretary Burgess:

Pursuant to the Notice issued on September 8, 2017 in the above-captioned matters, attached for filing please find the *Comments of the City of New York on Benchmarking of Aggregated Customer Data Privacy and Proposed Privacy Standard for Building Energy Management*. Please contact me if you have any questions.

Very truly yours,

COUCH WHITE, LLP

Devlyn C. Tedesco

Devlyn C. Tedesco

DCT/srg
Attachment
Cc: Party List (via email; w/att.)

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**In the Matter of Distributed System Implementation
Plans**

Case 16-M-0411

**Proceeding on Motion of the Commission in Regard
to Reforming the Energy Vision**

Case 14-M-0101

**COMMENTS OF THE CITY OF NEW YORK
ON BENCHMARKING OF
AGGREGATED CUSTOMER DATA PRIVACY
AND
PROPOSED PRIVACY STANDARD FOR
BUILDING ENERGY MANAGEMENT**

Dated: October 10, 2017

**COUCH WHITE, LLP
540 Broadway
P.O. Box 22222
Albany, New York 12201-2222
518-426-4600**

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**In the Matter of Distributed System Implementation
Plans**

Case 16-M-0411

**Proceeding on Motion of the Commission in Regard
to Reforming the Energy Vision**

Case 14-M-0101

PRELIMINARY STATEMENT

The City of New York (“City”) strongly supports the Public Service Commission’s (“Commission”) policy objective of providing consumers with enhanced knowledge and the tools needed to support effective management of their energy bills.¹ For building owners, achievement of this objective requires, among other things, easy and ready access to usage data for their buildings. Throughout the REV proceeding, the City has advocated for removing barriers to data access for non-merchant third parties. In considering the Joint Utilities’ (“JU”) Privacy Standard Proposal,² the Commission should reject the JU’s attempt to erect unnecessary barriers to achievement of its policy objectives.

Namely, the Commission should ensure that privacy standards aimed at protecting consumers do not to hinder important public policy goals such as increasing energy literacy, empowering consumers to make educated energy choices, and reducing emissions levels. The

¹ Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision (“REV”), Order Instituting Proceeding (issued April 25, 2014), p. 2.

² Case 16-M-0411, In the Matter of Distributed System Implementation Plans, Joint Utilities’ Benchmarking of Aggregated Customer Data Privacy and Proposed Privacy Standard for Building Energy Management (filed June 7, 2017) (“Privacy Standard Proposal”).

City respectfully submits that: (i) there should not be a privacy standard for aggregated energy usage data shared with building owners and their agents who will use the data for benchmarking purposes only, regardless of the existence of a benchmarking local law or ordinance; (ii) the local law compliance exception to the proposed 4/50 standard does not obviate the need to remove privacy standards for providing data to governmental agencies; (iii) the local law compliance standard does not sufficiently reduce administrative burdens for building owners; and (iv) the proposed 4/50 standard will not provide any material protections to utility customers and will only hinder progress toward the City and State’s companion energy policy goals.

BACKGROUND

In their Supplemental Distributed System Implementation Plan (“DSIP”), the JU proposed a 15/15 privacy standard for aggregated data provided by utilities to third parties.³ Under the 15/15 standard, a data set may be shared only if it contains at least 15 customers, with no single customer representing more than 15 percent of the total load for the group. In its comments on the utilities’ initial DSIPs, the City urged the Commission to ensure that as utility DSIPs evolve, aggregated building data is made available to both building owners, for benchmarking purposes, and governmental agencies, for benchmarking, as well as energy and climate planning purposes, without overly restrictive limits.⁴ In its comments on the Supplemental DSIP, the City opposed the JU’s proposal of a 15/15 privacy standard for aggregated data when applied to building owners and governmental entities because such a standard is inconsistent with the need for active energy

³ Case 16-M-0411, *supra*, Joint Utilities’ Supplemental Distributed System Implementation Plan (filed November 1, 2016), p. 144.

⁴ Case 16-M-0411, *supra*, Comments of the City of New York (filed Sept. 12, 2016) (“Initial DSIP Comments”).

management capabilities to advance both the State's and City's energy goals, particularly greenhouse gas reductions.⁵

In ruling on the Supplemental DSIP, the Commission agreed with the City's position, finding that applying a 15/15 privacy standard to aggregated data used for building energy management and benchmarking reporting would "greatly limit the number of buildings that would be capable of reporting their building energy consumption."⁶ The Commission therefore ordered the JU to work with Staff and other stakeholders to create a more appropriate privacy standard for providing aggregated building data to those building owners and their authorized agents seeking the data for benchmarking purposes.

In response to the DSIP Order, the JU developed a 4/50 privacy standard for utilities to provide whole-building aggregated data to building owners or their authorized agents.⁷ Under this standard, a utility would release a building's aggregated energy usage data only where the building has at least four accounts and no one account represents more than 50 percent of the annual energy use of that building.⁸ The privacy standard would apply to the owners, operators, and authorized agents of commercial, residential, and multifamily buildings.⁹ In the event that a building does

⁵ Case 16-M-0411, *supra*, Comments of the City of New York In Response to the Joint Utilities' Supplemental Distributed System Implementation Plan (filed January 9, 2017), p. 4 ("Supplemental DSIP Comments").

⁶ Case 16-M-0411, *supra*, Order on Distributed System Implementation Plan Filing (issued March 9, 2017), p. 27 ("DSIP Order").

⁷ Privacy Standard Proposal at 1.

⁸ *Id.*

⁹ *Id.* at 9.

not meet those standards, the building owner or its agent would need individual tenant authorization to access the data.¹⁰

In practice, applying even a 4/50 privacy standard to building owners is likely to impair the ability of the City and other government agencies to perform important public policy tasks. As the City asserted in its comments on the Utility Energy Registry, the City relies heavily on aggregated utility data for its greenhouse gas inventory, climate action planning, building efficiency analyses, and policy analyses. The City's access to aggregated utility data has helped to make it a leader in combating climate change.¹¹

The City respectfully submits the following comments on the JU's proposed revised standard.

¹⁰ *Id.* at 1-2.

¹¹ Case 17-M-0315, In the Matter of the Utility Energy Registry, Comments of the City of New York (filed July 31, 2017), pp. 1-2 (“UER Comments”).

COMMENTS

POINT I

THERE SHOULD NOT BE A PRIVACY STANDARD FOR ENTITIES WHICH USE AGGREGATED BUILDING DATA FOR PUBLIC POLICY PURPOSES ONLY

In its Supplemental DSIP Comments, the City noted the distinction between sharing aggregated data with an energy service company (“ESCO”) or distributed energy resource (“DER”) provider that is offering a for-profit service to a customer, and with a building owner or governmental entity for planning and/or other non-commercial purposes (such as achievement of environmental policy goals).¹² The City continues to assert that no privacy standard should be applied for aggregated customer data obtained and used for governmental, non-commercial purposes.

Protecting consumers from predatory practices of certain ESCOs and DER providers and setting thresholds for access to customer data for commercial purposes are important tasks for the Commission to undertake. Indeed, the City has been a strong proponent of the need for continued adherence to the Commission’s personal privacy protection rules. However, the same concerns do not apply, and consumers do not face the same risks, when aggregated building data is provided to the building owners and directly or indirectly to the City or other governmental agencies for the purpose of energy usage benchmarking or in furtherance of other energy policy goals.

The Privacy Standard Proposal noted two objectionable applications of energy usage data in support of retaining a privacy standard: “allowing competitors to gain insight into a non-residential customer’s operations or individual residential customer’s energy usage patterns.”¹³

¹² Supplemental DSIP Comments at 6.

¹³ Privacy Standard Proposal at 7.

Building owners and governmental agencies receiving aggregated data for public policy reasons do not engage in either of those activities. Additionally, these entities will not be using the data to target potential customers or for any sales-related purposes.

As the Commission observed in the DSIP Order, “Con Edison currently provides whole building energy data without an aggregation limit to building owners in New York City such that they can comply with Local Law 84.”¹⁴ National Grid and PSEG Long Island also provide aggregated whole building energy data without privacy limits in support of Local Law 84. It is the City’s understanding that in all the time that these utilities have provided aggregated building data without privacy standards, they have not received a single complaint, and no claims have arisen that confidential personal information has been released. This experience supports the City’s position and demonstrates that there is no need for privacy standards for the release of building aggregated data when used for governmental, non-commercial purposes. Accordingly, the City respectfully requests that the Commission continue to follow the practice that is presently in place and limit the application of the proposed 4/50 standard to the release of aggregated data for marketing and other commercial purposes.

POINT II

THE EXCEPTIONS TO THE 4/50 STANDARD RECOMMENDED IN THE PRIVACY STANDARD PROPOSAL ARE NOT SUFFICIENT

A. The Exception For Compliance With Local Laws On Benchmarking Is Too Limited

¹⁴ Local Law 84 is discussed in greater depth on page 9 of these comments; DSIP Order at note 24.

In the Privacy Standard Proposal, the JU recommend the creation of an exception where building owners whose properties do not meet the 4/50 standard will be able to receive aggregated whole building data without securing individual tenant authorizations in situations where they are required by a local benchmarking law to submit energy consumption information.¹⁵ This exception is helpful, but it is not sufficiently comprehensive. Governmental planning efforts go beyond benchmarking, and as such governmental agencies may need access to building energy data for additional purposes.

In New York City, energy data is used to inform the development of public policies and support a number of energy-related studies. Examples include *One City: Built to Last*, the City long-range policy document for reducing carbon emissions from the buildings sector;¹⁶ the *Greener, Greater Buildings Plan*, which is the City's original plan for targeting energy efficiency initiatives in its building stock;¹⁷ and *New York City's Roadmap to 80 x 50*, which discusses the pathways to maximize citywide greenhouse gas ("GHG") emissions reductions and achieve 80% reductions below 2005 levels by 2050.¹⁸ At the State level, the City understands that aggregated data may have been used in the development of the New York State Energy Plan. Going forward, such data will continue to be useful, and necessary, to inform and help structure City and State policies. It also will be necessary to prepare progress reports and track compliance with the goals adopted in the above plans.

¹⁵ Privacy Standard Proposal at 3.

¹⁶ Available at <http://www.nyc.gov/html/builttolast/assets/downloads/pdf/OneCity.pdf>.

¹⁷ Details can be found at <http://www.nyc.gov/html/gbee/html/plan/plan.shtml>.

¹⁸ Available at http://www1.nyc.gov/assets/sustainability/downloads/pdf/publications/New%20York%20City's%20Roadmap%20to%2080%20x%2050_Final.pdf.

Other uses beyond benchmarking under Local Law 84 include Local Law 22 of 2008, under which the City must prepare an annual GHG inventory to measure “changes in citywide emissions [and] changes in city government emissions measured in carbon dioxide.”¹⁹ To prepare the GHG inventory, the City must acquire energy data regarding privately- and publicly-owned buildings from utilities. Additionally, on June 2, 2017, Mayor de Blasio issued Executive Order No. 26, which requires City agencies to work with stakeholders to develop a plan that aligns New York City with the Paris Agreement’s “goal of limiting temperature increases to 1.5 degrees Celsius above pre-industrial levels.”²⁰ Compliance with this Executive Order will require the City to gather a significant amount of building-level data from building owners and utilities. Because it is not a benchmarking-related activity, it does not fall under Local Law 84 and would not qualify for the benchmarking law exception to the 4/50 standard.

City agencies also use energy data for municipal planning purposes. Municipal planning includes energy resource siting, where the energy data regarding a particular building, neighborhood, and/or zip code is critical to determining the most beneficial location for a resource. For many years, the City was relatively easily able to obtain the data needed for these and related efforts and activities from building owners or directly from the utilities. Since the DSIP Order was issued, the City has found it increasingly difficult to obtain building energy data from the utilities. Data that was once available to the City on a building or zip code level is now being offered only on a city-wide basis because the requested data sets do not meet the JU’s new privacy standards. By failing to provide granular energy data to governmental agencies, utilities are

¹⁹ 2008 N.Y.C. Local Law No. 22.

²⁰ The City of New York, Office of the Mayor, Executive Order No. 26 (issued June 2, 2017), available at, http://www1.nyc.gov/assets/home/downloads/pdf/executiveorders/2017/eo_26.pdf.

creating barriers that prevent the agencies from performing meaningful analyses and properly undertaking their official responsibilities and duties.

In the same way that the Commission needs unfettered access to utility data to perform its regulatory duties, other governmental agencies need access to aggregated building data to perform their official duties and tasks (which, in all cases, are intended to serve the public interest). The City respectfully submits that the benchmarking exception to the 4/50 standard is insufficient to allow them to perform these duties and tasks. Accordingly, the City respectfully requests that the Commission reject application of the 4/50 standard for all governmental, non-commercial purposes and allow governmental agencies access to data they need to perform important functions beyond benchmarking.

B. The Exception To The 4/50 Standard For Local Law Compliance Does Not Remove Barriers For Building Owners Interested In Voluntary Building Benchmarking

The City submits that it is imperative that the Commission allow *all* building owners to access aggregated building data without a privacy standard because many buildings will not fall under the proposed local law exception. For example, Local Law 84 applies only to buildings over 25,000 square feet.²¹ There are over 900,000 buildings in New York City that are less than 25,000 square feet and thus not subject to the requirements of this local law, but are also likely to fail the 4/50 threshold. However, at least some owners of these buildings have an interest in using energy more efficiently and would benefit from benchmarking their building energy usage. Indeed, energy efficiency has become an important consideration for many residential and commercial tenants in New York City. Absent relief from the 4/50 standard, building owners interested in

²¹ 2016 N.Y.C. Local Law No. 133, N.Y.C Admin. Code § 28-309.2 (2016) (lowering the building compliance threshold for energy and water use benchmarking in privately owned buildings, from 50,000 square feet to 25,000 square feet).

voluntarily benchmarking must either meet the 4/50 standard or secure individual tenant authorizations to access aggregated energy usage data. Considering that the City has observed that this building size segment has been the least engaged in energy efficiency programs offered by the City to begin with, these requirements undoubtedly will continue to deter some building owners from voluntarily tracking their building's data usage or engaging in efforts that are consistent with State and City energy policies.

While expanding the reach of Local Law 84 to encompass smaller buildings is an option, doing so could impose hefty compliance costs on small building owners. Further, increasing the breadth of Local Law 84 would require an extensive campaign via the City's legislative process. Additionally, the City does not believe that it is necessary or appropriate to expand its local law primarily to allow for an exemption from a proposed standard when the standard itself can be modified directly. Moreover, it is important to note that the standard has no basis in law or Commission precedent and was advanced unilaterally by the JU. The most administratively expedient and financially sensible approach is to reject the proposed 4/50 privacy standard for building owners seeking aggregated building data (for their own buildings) for use for benchmarking purposes and allow such owners to voluntarily participate in the City's or other governmental agencies' benchmarking programs.

There are many benefits to be gained from removing barriers to voluntary benchmarking. In the first four years of implementation of Local Law 84, buildings subject to the law's requirements realized cumulative energy savings of 5.7%, equal to energy bill savings of \$267,492,147.²² The City experienced concomitant GHG emissions reductions of 9.9% and

²² U.S. Department of Energy, *New York City Benchmarking and Transparency Policy Impact Evaluation Report* (May 2015), p. ii, available at

estimates that the labor/job increases over the same time period was equivalent to 127 full time jobs.²³ If building owners who are not legally required to benchmark were empowered voluntarily to do so, these benefits could be much greater.

For the foregoing reasons, the Commission should apply the 4/50 standard only to entities seeking aggregated building data for marketing and other commercial purposes, and it should decide this matter in a manner that advances the companion State and City policies of reducing GHG emissions and energy burdens.

POINT III

THE RELIEF SOUGHT BY THE CITY WILL NOT DIMINISH CONSUMER PROTECTIONS BUT WILL FACILITATE PROGRESS TOWARD STATES AND CITY ENERGY POLICY GOALS

The JU defend the proposed 4/50 standard by asserting that it will “both protect customer privacy and facilitate access to building energy usage information for [energy efficiency] measurements or improvements and environmental policy objectives.”²⁴ However, empirical evidence supports the opposite position. The findings of a 2014 Minnesota Public Utility Commission Working Group revealed that no studies conclusively identify the aggregated data standard that best balances consumer protection with access to data.²⁵ A study conducted by the

<https://energy.gov/sites/prod/files/2015/05/f22/DOE%20New%20York%20City%20Benchmarking%20and%20Transparency%20Policy%20Impact%20Evaluation.pdf> .

²³ *Id.*

²⁴ Privacy Standard Proposal at pp. 8-9.

²⁵ The Minnesota Public Utility Commission convened a working group to examine privacy standards for energy use data. After conducting the examination, the working group opined that “there has been no demonstrably verifiable statistical or other analysis to support adoption of the 15/15 rule, the rule of 4/80, the Large Industrial Exemption, or any other data aggregation proposal.” Docket No. E, G-999/CI 12-1344, In the Matter of a Commission

Pacific Northwest National Laboratory concluded that the consumer privacy benefits associated with the 4/50 standard may be significantly outweighed by the restrictions it places on data collection.²⁶ That study cautioned that “policy-makers selecting an aggregation threshold may wish to consider not only the percentage of meters resembling their building average at each threshold, but also the tradeoff between the incremental gain in protection compared to the loss in building coverage resulting from increasing the threshold any further.”²⁷

Thus, there is no proof that the 4/50 standard is an appropriate methodology to both protect consumers and encourage data collection. For the reasons discussed above, the City submits that the 4/50 standard is not appropriate for non-commercial access, and it does not represent a proper balancing between the need for data and the consumer privacy protections it provides.

When considering the efficacy of a data aggregation threshold for protecting consumer privacy, it is important to note the distinction between energy profile matching (the ability to estimate the energy usage of a specific customer based on the average building meter profile) and tenant reidentification (identifying a specific tenant based on specific meter consumption).²⁸ Energy profile matching in and of itself is not a privacy risk to tenants, and it is difficult to perform even with as few meters as four. In fact, according to the PNNL study, if the threshold number of meters is set at four, then the percentage of meters that resemble the average building profile is

Inquiry into Privacy Policies of Rate Regulated Utilities, Final Report of the CEUD Working Group (filed September 14, 2014), pp. 54 - 55.

²⁶ Pacific Northwest National Laboratory, *Commercial Building Tenant Energy Usage Data Aggregation and Privacy* (October 2014) (“PNNL Study”), p. vii, available at http://www.pnnl.gov/main/publications/external/technical_reports/PNNL-23786.pdf.

²⁷ *Id.* at vii.

²⁸ *Id.* at 21.

only 22%.²⁹ In other words, only about one in five meter profiles could be estimated from the aggregated data of four meters.³⁰ To identify a specific tenant from this data would require additional information that is likely not included in the benchmarking data set. Further, potential risks to specific customers may be mitigated through a variety of channels, including disclosure statements and a customer complaint resolution mechanism.

In the Privacy Standard Proposal, the JU assert that the 50% consumption threshold will add an “additional layer of protection, by giving those customers whose consumption represents a significant share of a building’s overall usage, the opportunity to raise objections before aggregated whole-building data is released.”³¹ However, as noted above, a four meter threshold alone sufficiently anonymizes data, making the alleged additional layer of protection unnecessary.

Although the risk of identifying a tenant with a four-meter threshold is low, the same number of meters significantly limits the amount of data eligible for collection. The PNNL Study found that with a four-meter aggregation threshold, only 28% of multi-metered buildings would be eligible for reporting.³² The limiting of data sets because of overly burdensome privacy standards prevents benchmarking activities from providing an appreciable impact on the City and State’s policy goals.

Both the City and the State have ambitious goals to reduce GHG, provide greater energy choices to consumers, and increase energy efficiency. A key component of achieving both the State’s and City’s energy goals is granular data analysis. Thus, it is imperative that the Commission ensure that unnecessarily restrictive barriers are not created and that State and local

²⁹ *Id.* at 23.

³⁰ *Id.*

³¹ Privacy Standard Proposal at 7.

³² *Id.*

governmental agencies, as well as building owners, are able to access building energy consumption data for use in achieving these purposes.

CONCLUSION

The City appreciates and supports the need to protect individual consumer privacy. However, the Commission should adopt policies that are better tailored to protect individual consumer privacy without erecting barriers to data access for important public policy goals. Those goals are broader than benchmarking, and the Commission should not draw an artificial distinction between obtaining aggregated building usage data for benchmarking and for other governmental, non-commercial purposes.

For the reasons set forth in these comments, and in the City's prior comments on access to aggregated building usage data (which are cited herein), the City therefore respectfully requests that the Commission reject the JU's 4/50 proposed privacy standard as it relates to requests by building owners for access to aggregated building usage data for non-commercial purposes. Further, the City asks that the Commission not adopt any limitation on access to such when sought by building owners and governmental agencies to facilitate the ability of these entities to use such data to lower energy costs and GHG emissions and enhance energy efficiency efforts.

Respectfully submitted,

/s/ Kevin Lang

Kevin M. Lang, Esq.
Devlyn C. Tedesco, Esq.
COUCH WHITE, LLP
Counsel for the City of New York
540 Broadway
P.O. Box 22222
Albany, New York 12201-2222
Tel.: 518-426-4600
Fax: 518-426-0376
E-mail: klang@couchwhite.com
dtedesco@couchwhite.com

Dated: October 10, 2017
Albany, New York

Susanne DesRoches

Susanne DesRoches
Deputy Director, Infrastructure Policy
NYC Mayor's Office of
Recovery and Resiliency
253 Broadway, 14th Floor
New York, New York 10007
Tel.: 212-788-7554
E-mail: sdesroches@cityhall.nyc.gov

Dated: October 10, 2017
New York, New York