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December 1, 2022

Hon. Michelle Phillips
Secretary
New York State Public
Service Commission
Three Empire State Plaza
Albany, NY 12223

Re: Case 20-M-0082: Joint Utility Petition Regarding Sharing Data with the Integrated Energy Data Resource

Dear Secretary Phillips:

The Joint Utilities[1] hereby file the attached document, Joint Utilities Petition Seeking Commission Direction Regarding the Direct Sharing of Protected Customer Data with the Integrated Energy Data Resource Platform Administrator.

Please feel free to reach out if you have any questions.

Sincerely,

Mary Krayeske

Attachment

[1] The Joint Utilities are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, KeySpan Gas East Corporation d/b/a National Grid and The Brooklyn Union Gas Company d/b/a National Grid NY, Liberty Utilities (St. Lawrence Gas) Corp., Orange and Rockland Utilities, Inc. (O&R), and Rochester Gas and Electric Corporation.

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STATE OF NEW YORK

PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission Regarding Strategic Use of Energy Related Data	))	Case 20-M-0082

JOINT UTILITIES PETITION FOR CLARIFICATION SEEKING COMMISSION DIRECTION REGARDING THE DIRECT SHARING OF PROTECTED CUSTOMER DATA WITH THE INTEGRATED ENERGY DATA RESOURCE PLATFORM ADMINISTRATOR

Pursuant to 16 NYCRR §§ 3.5 and 17.1, the Joint Utilities[1] petition the Public Service Commission (Commission) to address the following implementation aspects of its April 2021 Data Access Framework Order[2] and its February 2021 Integrated Energy Data Resource (IEDR) Implementation Order:[3] (1) direct the Joint Utilities to provide non-anonymized, non-aggregated customer specific data (Protected Customer Data)[4] to the IEDR Solution Architect and Development Team (IEDR Administrator) without customer consent;[5] (2) confirm that the IEDR Administrator will not share Protected Customer Data without customer consent; and (3) authorize the Joint Utilities to make tariff filings removing any utility liability associated with the IEDR Administrator experiencing a data loss. These directives will bring clarity to sharing customer data with the Commission's statewide IEDR and

[1] The Joint Utilities are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, KeySpan Gas East Corporation d/b/a National Grid and The Brooklyn Union Gas Company d/b/a National Grid NY, Liberty Utilities (St. Lawrence Gas) Corporation, Orange and Rockland Utilities, Inc. (O&R), and Rochester Gas and Electric Corporation.

[2] Case 20-M-0082, *In the Matter of the Strategic Use of Energy Related Data* (Strategic Use of Energy Data Proceeding), Order Adopting a Data Access Framework and Establishing Further Process (issued April 15, 2021) (Data Access Framework Order).

[3] Strategic Use of Energy Data Proceeding, Order Implementing an Integrated Energy Data Resource (issued February 11, 2021) (IEDR Implementation Order).

[4] This includes, but is not limited to, the customer data sets as defined in the Data Access Framework Order. This language is consistent with the Data Access Framework Order's statement on page 4 of Appendix A that the data sets may be expanded or updated. *See* Appendix A, pp. 1-5.

[5] The term IEDR herein refers to both the IEDR platform and the data-repository warehouse (where information will be stored prior to the implementation of the IEDR). Development and implementation of the IEDR is pending relative to non-anonymized, non-aggregated customer specific data whereas the overall development and implementation of the IEDR is in a nascent stage.

that the Joint Utilities should have no liability for cyber incidents or inadvertent data disclosure by the IEDR Administrator.

The Joint Utilities support the Commission's objective for an IEDR to help meet the State's clean energy goals through increased customer participation in clean energy markets. Since 2020, the Joint Utilities, Department of Public Service Staff (Staff), and the New York State Energy Research and Development Authority (NYSERDA) have worked collaboratively toward implementing the IEDR. Most recently, this group has discussed providing Protected Customer Data to the IEDR including use cases, data analyses, and eventual access thereto by Energy Service Entities[6] and other market participants (collectively, ESEs).

The next step in the IEDR development, as Staff and NYSERDA requested, is that the Joint Utilities share Protected Customer Data[7] with the IEDR Administrator without customer consent. Recognizing the Commission's record of protecting customer data, the Joint Utilities submit this petition seeking clarity on the issue of whether they are required to share Protected Customer Data and requesting a Commission directive in that regard. In addition, the Joint Utilities ask the Commission to prohibit the IEDR Administrator from sharing Protected Customer Data with any third parties, including ESEs, without customer consent. Finally, to address the risks in sharing data with an entity over which they have no control, the Joint Utilities request that the Commission direct the filing of utility-specific tariff changes to eliminate utility liability for any improper access or sharing by the IEDR Administrator of Protected Customer Data.[8]

[6] ESEs are generally energy service companies (ESCOs), distributed energy resource suppliers (DERS), Community Choice Aggregation (CCA) administrators, and direct customers.
[7] Strategic Use of Energy Data Proceeding, Data Access Framework Order, pp. 2-3, 64; and IEDR Implementation Order, pp. 13-14.
[8] The Joint Utilities expect that the IEDR Administrator will agree to reasonable indemnity provisions in the contract, *e.g.*, a cybersecurity and non-disclosure agreement, to be negotiated between the IEDR Administrator and each utility.

I. BACKGROUND

The Commission has a longstanding policy of protecting customer data, including requiring customer consent for customer-specific data sharing. When determining it appropriate that Protected Customer Data be shared without customer consent, the Commission has specifically ordered such sharing.[9] As part of its day-to-day function of providing utility service to customers, each of the Joint Utilities collects and/or measures customer data, including, but not limited to, name, service and billing address, email, phone number, energy usage, bill amounts and rate class, meter information, and low-income indicators. Each of the Joint Utilities' privacy policies (which generally state that utilities will not share data without consent unless provided to utilities' vendors or where required by law or Commission order) publicly explain how they protect customer information. Accordingly, the utilities are required to properly handle and protect customer data and face both legal and reputational risks associated with lost or misused data.[10]

The Commission outlined its objectives for sharing data to assist with the clean energy future in its *Strategic Use of Energy Data Proceeding*.[11] There, the Commission directed NYSERDA to build the

[9] *See*, *e.g.*, Cases 07-M-0548 *et al*., *Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio Standard* (EEPS Proceeding), Order on Rehearing Granting Petition for Rehearing (issued December 3, 2010), pp. 17-18; EEPS Proceeding, Order Modifying Budgets and Targets for Energy Efficiency Portfolio Standard Programs and Providing Funding for Combined Heat and Power and Workforce Development Initiatives (issued December 17, 2012), p. 53; Case 14-M-0224, *Proceeding on Motion of Commission to Enable Community Choice Aggregation Programs*, Order Authorizing Framework for Community Choice Aggregation Opt-Out Program (issued April 21, 2016), p. 20; Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (issued May 19, 2016), p. 147; Case 15-M-0180, *In the Matter of Regulation and Oversight of Distributed Energy Resource Providers and Products*, Order Establishing Oversight Framework and Uniform Business Practices for Distributed Energy Resource Suppliers (issued October 19, 2017); Case 98-M-1343, *In the Matter of Retail Access Business Rules*, Order Adopting Revised Uniform Practices (issued January 19, 2018); and Case 14-M-0094, *Proceeding on Motion of the Commission to Consider a Clean Energy Fund* (Clean Energy Fund Proceeding), Order Regarding New York State Energy Research and Development Authority Data Access and Legacy Reporting (issued January 17, 2019) (NYSERDA Data Access Order). *See also* New York State Technology Law §204.

[10] Case 18-M-0376 *et al., Proceeding on Motion of the Commission Regarding Cyber Security Protocols and Protections in the Energy Market Place*, Order Establishing Minimum Cybersecurity and Privacy Protections and Making Other Findings (issued October 17, 2019), pp. 9, 12-13.

[11] Strategic Use of Energy Data Proceeding, Order Instituting Proceeding (issued March 19, 2020), p. 7.

IEDR and the utilities to develop an implementation plan for a Data Access Framework.[12] Over the last two years, the Joint Utilities have actively assisted in the initial development of the IEDR, including working with Staff, NYSERDA, and its contractors to identify use cases and provide certain non-customer specific data. As the IEDR continues to develop, the Joint Utilities submit this Petition for clarity in their provision of Protected Customer Data to the IEDR.[13]

II. DATA ACCESS FRAMEWORK ORDER

In its Data Access Framework Order, the Commission set forth the need for a consistent process, with defined pathways for access to customer data, which includes provision of consent for sharing.[14] In describing the purpose of the IEDR, the Commission stated that the IEDR must include "mechanisms that (a) facilitate customers' ability to easily consent to share their data and (b) educate and engage customers as a means to encourage customer consent to data sharing."[15] Nevertheless, there is no explicit requirement in either the Data Access Framework Order or the IEDR Implementation Order that the Joint Utilities share the data with the IEDR Administrator absent consent. Nor is there any statement concerning whether the IEDR Administrator can share such data[16] with any third parties, including ESEs, without consent.

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[12] Strategic Use of Energy Data Proceeding, Data Access Framework Order. p. 8. Once up and running, the Data Access Framework will provide a cybersecurity screening process so that entities seeking data from the IEDR (or the Joint Utilities) meet the then-current cybersecurity requirements for data access. The Joint Utilities' request for updated cybersecurity protections and a governance process is pending before the Commission. Strategic Use of Energy Data Proceeding, Joint Utilities Petition to Modify Self Attestation (filed May 3, 2022).

[13] A consent process must be developed for data to be shared beyond the IEDR Administrator as part of the overall IEDR implementation process. The Joint Utilities will work with NYSERDA, Staff, and the other stakeholders in the IEDR Data Working Group to develop this process consistent with the requirement of the Data Access Framework Order that: "the establishment of standardized consent requirements are necessary to ensure a common application and process for customers, ESEs, and utilities across New York State." Strategic Use of Energy Data Proceeding, Data Access Framework Order, p. 64.

[14] *Id*., pp. 25-26, 62.

[15] *Id*., p. 61.

[16] Any third party under contract with Staff and/or NYSERDA using customer data provided by the Joint Utilities to the IEDR Administrator for data analysis or other purposes would be required to sign a non-disclosure agreement to maintain the confidentiality of the protected customer data. The Joint Utilities assume that these contracted parties would not use the data for marketing purposes and therefore a non-disclosure agreement is an acceptable path for protecting customers' rights for these entities.

Indeed, when finding that circumstances warrant sharing customer data without consent, the Commission has historically specifically ordered utilities to share data. Thus, when mandating utilities to share low-income customer data with NYSERDA without consent so that these customers could benefit from NYSERDA's referral program, the Commission found that "to make the obligation uniformly clear, we will direct that [the Joint Utilities] shall make referrals to Empower [Empower New York program]."[17] Similarly, the Commission ordered the utilities to share customer information with municipalities for CCA programs, noting that a municipal official's approval of a CCA program "represents a reasonable proxy for consent."[18] Beyond NYSERDA[19] and the municipality (and their contractors, *e.g*., CCA administrator), the Commission has not directed the sharing of Protected Customer Data without consent.

NYSERDA recently selected a team led by E Source Companies, LLC as the IEDR Administrator. As noted, pursuant to the Commission's direction,[20] the IEDR Administrator will receive Protected Customer Data, such as name, address, and energy usage information, for 20 million electric and gas customers statewide. The Commission specifically noted that this data would be housed in a statewide-centralized platform for "DER providers, utilities, energy consumers, government agencies and others"[21] to enable the market and develop tools. The Commission further stated that it envisions that "the proposed IEDR will provide New York State's energy stakeholders with useful access to useful energy-related information and tools in a manner that will most efficiently accelerate progress toward

[17] EEPS Proceeding, Order Modifying Budgets and Targets for Energy Efficiency Portfolio Standard Programs and Providing Funding for Combined Heat and Power and Workforce Development Initiatives (issued December 17, 2012), p. 53.
[18] Case 14-M-0224, *Proceeding on Motion of Commission to Enable Community Choice Aggregation Programs*, Order Authorizing Framework for Community Choice Aggregation Opt-Out Program (issued April 21, 2016), p. 20.
[19] As part of the NYSERDA Data Access Order, NYSERDA is also permitted to receive energy usage data for non-energy efficiency program participants solely for evaluation purposes. The NYSERDA Data Access Order specifically noted that some broad sharing may fall within the Commission policy, such as sharing for evaluation, measurement and verification purposes, but sharing other information with "third parties to individually identify and target customers to participate in particular programs could reduce costs of [Clean Energy Fund] implementation, but would be inconsistent with Commission precedent regarding use of utility data for third party solicitations." Clean Energy Fund Proceeding, NYSERDA Data Access Order, p. 15.
[20] Strategic Use of Energy Data Proceeding, IEDR Implementation Order, pp. 24-25.
[21] *Id*., pp. 7-9.

achieving the State's clean energy and climate goals."[22] In other words, the Commission expects this data to be broadly shared, including for marketing. After, however, the Joint Utilities share this data with the IEDR Administrator, they have no control over the data, including how it is protected or shared.

III. DISCUSSION

Sharing certain types of data with the IEDR Administrator without first obtaining customer consent requires proper protections. Thus, the Joint Utilities request that the Commission issue an order explicitly directing the Joint Utilities to share Protected Customer Data with the IEDR Administrator without consent and directing the IEDR Administrator not to disclose Protected Customer Data to any third party without first obtaining customer consent. Finally, the Commission should authorize the Joint Utilities to file tariff provisions addressing liability with respect to Protected Customer Data that is shared with the IEDR Administrator, over which the Joint Utilities have no control to protect.

A. The Commission Should Explicitly Direct the Joint Utilities to Share Protected Customer Data with the IEDR Absent Customer Consent.

As shown above, neither the Commission's Data Access Framework Order nor its IEDR Implementation Order require the Joint Utilities to share protected customer data with the IEDR platform without customer consent. These orders, and others,[23] discuss customers' ability to control their data and provide consent for sharing unless there are circumstances where the Commission believes that it is appropriate to share data without consent. The Joint Utilities are willing to comply with NYSERDA and Staff requests to provide Protected Customer Data to the IEDR if the Commission finds this approach appropriate and specifically directs the utilities to comply. The Joint Utilities accordingly request a

[22] *Id.* Moreover, the recent O&R Pilot DER platform was intended to contain anonymized customer and system data for developers to plan and develop energy storage and other types of DER. The O&R Pilot DER platform allowed DERs to query anonymized data but the Commission required O&R to obtain customer consent before customer information could be shared with developers. Case 18-E-0130, *In the Matter of Energy Storage Deployment Program*, Order Establishing Energy Storage Goal and Deployment Policy (issued December 13, 2018), pp. 84-86.
[23] S*upra,* note 9.

Commission order directing them to share Protected Customer Data with the IEDR without consent if the Commission finds such sharing is warranted to facilitate the IEDR.

B. The Commission Should Require That the IEDR Only Disclose Protected Customer Data upon Customer Consent.

If the Commission orders the Joint Utilities to provide Protected Customer Data to the IEDR Administrator without customer consent, the Commission should explicitly clarify that the IEDR Administrator should not share Protected Customer Data with third parties, including ESEs, unless customer consent is first obtained. This finding is consistent with longstanding Commission policy that Protected Customer Data should not be shared absent customer consent[24] and with the Commission's requirement of customer consent before a DER could access Protected Customer Data in the O&R Pilot DER platform.[25]

C. The Commission Should Authorize the Joint Utilities to File Tariffs Addressing Liability for Customer Protected Data Provided to the IEDR.

The Joint Utilities were not participants in the selection of the IEDR Administrator, nor do the Joint Utilities have any role in overseeing the activities or operations of the IEDR Administrator or IEDR and, therefore, should not be held liable for acts or omissions of the IEDR Administrator in designing, building, and/or operating the IEDR platform. The Joint Utilities will have no ability to protect the data stored in the IEDR. If a disclosure occurs, the Joint Utilities should not be liable and should have clear liability limitations in their respective electric and gas tariffs to defend against potential legal actions. The Commission should acknowledge that the Joint Utilities have no control over any type of disclosures by the IEDR Administrator and/or the IEDR by approving tariff language that protects them against legal liability if there is an event that discloses Protected Customer Data. Commission-approved tariff language would also serve to alert customers that their confidential data is being shared in a prescribed process with the IEDR Administrator and will be stored in the IEDR platform.

[24] *Id*.
[25] *Supra*, note 22.

Accordingly, the Joint Utilities request that the Commission authorize the filing of utility-specific tariff changes that would eliminate any utility liability under each utility's tariff for the IEDR Administrator's handling of customer data. To accomplish this, each of the Joint Utilities would file tariffs on three days' notice to clarify liability associated with the IEDR's possession of the data. As an example, the tariff leaves would state: "The [Utility] has provided non-anonymized and non-aggregated customer specific data to the State's Integrated Energy Data Resource (IEDR) pursuant to the New York Public Service Commission's [XX Order] in Case 20-M-0082. If such data is improperly released from the IEDR as the result of a cyber-related incident, or inadvertently disclosed by the IEDR administrator or its agents or contractors due to an operational error, the [Utility] will not be liable for such release or disclosure."

IV. CONCLUSION

To help achieve New York State clean energy goals, the Joint Utilities are willing to provide Protected Customer Data to the IEDR Administrator without customer consent if the Commission finds such disclosure is warranted and specifically directs the Joint Utilities to provide such data to the IEDR Administrator. The Joint Utilities also request that the Commission require that the IEDR only disclose

Protected Customer Data upon receipt of customer consent. Finally, the Commission should clarify liability limitation for data provided to the IEDR Administrator and authorize utility-specific tariff changes to be filed that would eliminate utility liability as set forth in the Joint Utilities' proposed tariff language.

Dated: December 1, 2022

Respectfully submitted,

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. and ORANGE AND ROCKLAND UTILITIES, INC.

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