

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

---

**Proceeding on Motion of the Commission  
Regarding Strategic Use of Energy Related Data**

---

**Case 20-M-0082**

**COMMENTS OF THE CITY OF NEW YORK  
IN RESPONSE TO THE PETITION FILED BY THE JOINT UTILITIES  
REQUESTING DIRECTION FROM THE PUBLIC SERVICE  
COMMISSION ON THE SHARING OF PROTECTED CONSUMER DATA  
WITHOUT CUSTOMER CONSENT**

**Dated: February 27, 2023**

**COUCH WHITE, LLP  
540 BROADWAY  
ALBANY, NEW YORK 12201-2222  
(518) 426-4600**

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

---

Proceeding on Motion of the Commission Regarding  
Strategic Use of Energy Related Data

---

Case 20-M-0082

**PRELIMINARY STATEMENT**

On December 1, 2022, the Joint Utilities filed a *Petition for Clarification Seeking Commission Direction Regarding the Direct Sharing of Protected Customer Data With the Integrated Energy Data Resource Platform Administrator* (hereinafter “Petition”) with the Public Service Commission (“Commission”). The Petition requests clarification on three points related to the implementation of the Integrated Energy Data Resource (“IEDR”): “(1) direct the Joint Utilities to provide non-anonymized, non-aggregated customer specific data (“Protected Customer Data”) to the IEDR Solution Architect and Development Team (“IEDR Administrator”) without customer consent; (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.”<sup>1</sup> The City of New York (“City”) submits these comments in response to the Joint Utilities’ Petition.

The City has been an active participant in Commission proceedings involving access to customer use data. The City maintains that access to customer data is critical for its planning purposes and to facilitate the successful implementation of State and City energy policies.

---

<sup>1</sup> Case 20-M-0082, Proceeding on Motion of the Commission Regarding Strategic Use of Energy Related Data, Joint Utilities Petition for Clarification Seeking Commission Direction Regarding the Direct Sharing of Protected Customer Data With the Integrated Energy Data Resource Platform Administrator (filed Dec. 1, 2022) at 1 (hereinafter “Petition”) (footnotes omitted).

The Commission has highlighted the importance of the availability of customer usage data, stating that “[a]ggregated and anonymized usage data has been, and continues to be, an important tool in understanding overall usage patterns that facilitate energy planning.”<sup>2</sup> This is particularly true for the City because usage data plays a key role in its efforts to electrify and reduce greenhouse gas emissions in the building sector.

Aggregated usage data is also central to the City’s benchmarking activities, an essential part of understanding building-level energy performance and determining how to improve energy efficiency and climate policy programs. To date, the benchmarking data that the City has collected in furtherance of its local laws has allowed it to develop effective climate and energy planning policies that have provided leadership for other cities and that will help both the City and the State meet their ambitious decarbonization goals.

As discussed more fully below, the City’s comments focus on the Joint Utilities’ second request for clarification regarding confirmation that the IEDR Administrator will not share Protected Customer Data without customer consent. The City respectfully requests that the Commission clarify that customer consent is not needed prior to the disclosure of Protected Customer Data if such data falls in the Data Access Framework’s 4/50 aggregated data privacy screen rule (“4/50 Standard”). The City also requests the Commission to clarify when the use of non-aggregated but anonymized usage data can be used for IEDR purposes without customer consent.

---

<sup>2</sup> Case 20-M-0082, Proceeding on Motion of the Commission Regarding Strategic Use of Energy Related Data, Order Adopting a Data Access Framework and Establishing Further Process (issued April 15, 2021) at 69 (hereinafter “Data Access Framework”).

## COMMENTS

### POINT I

**THE COMMISSION SHOULD CLARIFY THAT PROTECTED CUSTOMER DATA THAT IS CAPTURED BY THE 4/50 AGGREGATED DATA PRIVACY SCREEN RULE DOES NOT REQUIRE CUSTOMER CONSENT TO BE SHARED WITH THIRD PARTIES.**

In the Data Access Framework Order, the Commission held:

. . . the 4/50 whole building aggregated data standard has demonstrated a balance between the protection of customer’s identities and the broader interest of the public. For that reason, the Commission hereby establishes a statewide aggregated data set privacy screen of 4/50 to be applied generally to all aggregated data sets reporting monthly or annual energy usage totals. The 4/50 privacy screen will replace all existing Commission approved privacy screens and become the starting point from which use case specific screens may be developed. In the case where a data access application or initiative, such as the UER or IEDR, adopts a privacy screen distinct from the 4/50 privacy screen, that differentiated privacy screen shall be applied solely to that use case or application addressed, unless otherwise directed by the Commission. All aggregated data sets that pass the 4/50 privacy screen shall be made accessible upon request.<sup>3</sup>

The Commission’s Data Access Framework established the 4/50 Standard as the starting point in assessing privacy concerns when it comes to disclosure of customer data without consent. It is not clear from the language of the Petition if the Joint Utilities are requesting that Protected Customer Data only be shared when customer consent has been received, regardless of if the data falls within the 4/50 Standard.

Energy usage data is one of the central building blocks on which the City uses to develop its energy planning policies. The City has several Local Laws (“LL”) in place that necessitate

---

<sup>3</sup> *Id.* at 29 (footnote omitted).

access to customer utility data. For example, the City's LL 84 of 2009 and 133 of 2016 require data collection from large buildings to gauge energy and water consumption. LL 97 of 2019 relies on data to track building emissions, which are one of the greatest sources of emission for the City. Without ready and easy access to customer utility data, the City cannot further these important policy objectives.

The City acknowledges the important sensitivities surrounding access to customer energy usage data and fully agrees that consumer privacy must be prioritized and protected. Notwithstanding, the City continues to assert that such risks are *de minimis* when solely aggregated, anonymized building data is being shared with non-commercial entities, such as governments.

For these reasons, the City respectfully requests that the Commission confirm that customer consent is not necessary for disclosure of customer energy usage data when the 4/50 Standard is applied.

## **POINT II**

### **FOR CERTAIN PUBLIC POLICY ENERGY PLANNING NEEDS, THE 4/50 STANDARD IS TOO RESTRICTIVE AND ALTERNATIVE PRIVACY PROTECTION APPROACHES SHOULD BE CONSIDERED.**

The current 4/50 Standard has the potential to be too restrictive for analyzing energy planning opportunities, especially for buildings smaller than 25,000 square feet. Throughout this proceeding, the City has maintained that the 4/50 Standard imposes an unnecessary barrier to such information for municipal purposes, and if left unchanged, will seriously hinder the City and State's climate action planning and its ability to meet climate targets.

Buildings smaller than 25,000 feet serve an important role in transforming the City's future energy policies. An imperative first step in this effort is understanding use data from this group of smaller buildings. This group of buildings represents:

- Small properties: 829,140 (out of 858,619 total properties in NYC)
- Small buildings: 1,022,250 (out of 1,089,899 total properties in NYC)
- Square footage of small buildings: 2,213,098,583 ft<sup>2</sup> (out of 5,625,926,655 ft<sup>2</sup> total in NYC)
- Small buildings as percentage of total (area): 39%
- Small buildings as percentage of total (count): 94%

This group of small buildings is composed of many different building types, ages, and construction types with different heating and cooling systems and envelope designs. Developing effective strategies to retrofit these buildings will require a much deeper understanding of the building stock and how different property types consume energy. Without significant retrofits to most existing buildings in New York City, State climate goals will be unattainable.

In the Commission's Data Access Framework Order, it recognized the need for creative approaches for anonymization for varying use cases. The Commission stated:

Anonymization could be done through the use of a proxy identification number associated with the record or by masking a customer's identification information, such as has been done with Pilot Integrated Energy Data Resource ("PIEDR") which allows the non-aggregated data to be viewed but does not identify the individual customer to whom the data belongs. Aggregating data may also be a means to create anonymization, however, **there are instances when data should be anonymized without the need to combine a customer's usage with another customers' usage.** Identifying additional potential mechanisms by which unconsented energy-related data may be shared that does not require aggregation but still provides the necessary privacy protections is still being explored.<sup>4</sup>

---

<sup>4</sup> *Id.* at 25-26 (bold added) (footnote omitted).

The City requests clarification regarding when the use of non-aggregated, but anonymized data can be disclosed without customers consent, as described in the Data Access Framework Order. The City submits that the proxy identification number process used in the PIEDR has the potential to assist in providing the data needed for assessing buildings smaller than 25,000 feet. This approach should be analyzed, with input from the City, for use for municipal IEDR use cases targeted at climate planning and public health and safety initiatives.

### CONCLUSION

The City appreciates the Commission's continued prioritization of access to utility energy data. In ruling on the Joint Utilities' Petition, it is critical that the Commission ensure that the certain governmental entities, such as the City, continue to have access to customer usage data. Without it, advancing important decarbonization policy measures will be hindered. Accordingly, the City respectfully requests that the Commission adopt the City's recommendations.

Respectfully submitted,

*Amanda De Vito Trinsey*

Amanda De Vito Trinsey, Esq.  
COUCH WHITE, LLP  
*Counsel for the City of New York*  
540 Broadway  
P.O. Box 22222  
Albany, New York 12201-2222  
Tel.: 518-320-3421  
Fax: 518-426-0376  
E-mail: [adevito@couchwhite.com](mailto:adevito@couchwhite.com)

Dated: February 27, 2023  
Albany, New York



Ross MacWhinney  
New York City Mayor's Office of Climate  
and Environmental Justice  
Senior Advisor  
253 Broadway  
New York City, NY 10007  
Tel: 212-676-2684  
E-mail: [rmacwhinney@cityhall.nyc.gov](mailto:rmacwhinney@cityhall.nyc.gov)

Dated: February 27, 2023  
New York, New York