

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 18, 2021

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman, dissenting
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

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

ORDER DENYING REHEARING, PROVIDING CLARIFICATION,
AND CONFIRMING TARIFF MODIFICATIONS

(Issued and Effective November 18, 2021)

BY THE COMMISSION:

INTRODUCTION AND BACKGROUND

On April 15, 2021, the Public Service Commission (Commission) issued the Order Adopting a Data Access Framework and Establishing Further Process (Order).¹ The Order adopted a Data Access Framework to serve as a single source for statewide data access requirements and provide uniform and consistent guidance on what is needed for access to energy-related data, including the availability of such data. As part of the Order, and in support of the Data Access Framework, the Commission directed, among other things, the implementation of a Data Ready

¹ Case 20-M-0082, Order Adopting a Data Access Framework and Establishing Further Process (issued April 15, 2021).

Certification program that would replace the current individual utility Data Security Agreement/Self-Attestation processes. Additionally, the Order directed the utilities to modify their current tariffs to remove all established fees associated with the release of customer data, except those cost-based fees associated with requests for historical energy usage data in excess of 24 months.

On May 14, 2021, Mission:data Coalition (Mission:data) filed a petition for rehearing (Petition) requesting that the Order "be reconsidered and the audit requirements eliminated until such time as the Commission has sufficient information to thoughtfully examine these topics."² On May 17, 2021, the Joint Utilities³ filed a separate Petition (collectively with Mission:data, the Petitions) requesting that "the Commission (1) eliminate the requirement in Ordering Clause 12 directing utilities to remove existing tariffed [Community Choice Aggregation (CCA)] data access fees now; and (2) delay the elimination of such CCA data access fees required under Ordering Clause 12 at least until the Commission has addressed all related matters in its review of the CCA Whitepaper."⁴ Regarding

² Mission:data Petition, p. 8.

³ The Joint Utilities include: Consolidated Edison Company of New York, Inc. (Con Edison); Orange and Rockland Utilities, Inc. (O&R); Central Hudson Gas & Electric Corporation (Central Hudson); National Fuel Gas Distribution Corporation (NFG); Liberty Utilities; The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric & Gas Corporation (NYSEG), and Rochester Gas and Electric Corporation (RG&E).

⁴ Joint Utilities Petition, p. 4. The Joint Utilities reference the CCA Whitepaper that was filed on April 14, 2021, in Case 14-M-0224; Case 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs, Department of Public Service Whitepaper on Community Choice Aggregation Programs (filed April 14, 2021) (CCA Whitepaper).

the Joint Utilities' second request, the Secretary to the Commission issued a ruling on the requested extension on June 11, 2021, extending the deadline to comply with Ordering Clause No. 12 of the Order until such time as the Commission issues an order addressing the Joint Utilities' rehearing petition.⁵

The Commission sought public comments on the Petitions, which were timely filed within the 30-day period prescribed in Public Service Law (PSL) §22 and 16 NYCRR §3.7(a). By this Order, the Commission addresses the comments received and denies the Petitions filed by Mission:data and the Joint Utilities, while otherwise providing clarification of the Order, as discussed below, and reestablishing the deadline to make the tariff modifications directed in the Order.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking (Notice) was published in the State Register on June 9, 2021 [SAPA No. 20-M-0082SP4]. The time for submission of comments pursuant to the Notice expired on August 9, 2021. Two comments were received on each Petition.

THE PETITIONS

Mission:data Petition for Rehearing

On May 14, 2021, Mission:data filed a Petition requesting that the Commission "address errors of fact, self-conflicting provisions, and the lack of evidentiary basis for certain conclusions" in the Order.⁶ Mission:data first asserts

⁵ Case 20-M-0082, Notice Granting Extension Request (issued June 11, 2021).

⁶ Mission:data Petition, p. 1

that "the Order imposes new cybersecurity audit requirement that are sweeping, unjustified, confusing, and would cause substantial harm to energy innovation in New York."⁷ Arguing that the introduction of the new audit requirement in the Order was established "with minimal discussion and with virtually no evidentiary record," Mission:data maintains that the adoption of this requirement constituted a "substantial departure" from the SAPA notice that served as a basis for the Order.⁸ Further, Mission:data claims that the Order requiring audits for Energy Service Entities (ESEs) is extremely costly and unjustified.

Second, Mission:data asserts that "the Order creates unnecessary confusion and conflicts for existing signatories to the Data Security Agreement."⁹ While stating its support for eliminating unclear or inconsistent requirements for ESEs seeking access to data, Mission:data opines that the Order creates "unresolvable conflicts and additional confusion" by simultaneously providing that an ESE can demonstrate they have met the data security agreement and self-attestation (DSA/SA) requirements to the Provider and that the certification process is not meant to create further challenges for ESEs, while also implying that ESEs are going to be audited regardless.¹⁰ Mission:data suggests that the Order would result in ESEs going through two security audits, which would be significantly more expensive and burdensome than the current process. Mission:data concludes that "the Order is unworkable in its current form and

⁷ Mission:data Petition, p. 2.

⁸ Mission:data Petition, pp. 2-4.

⁹ Mission:data Petition, p. 6.

¹⁰ Mission:data Petition, pp. 6-7.

will have extremely negative consequences on distributed energy resources ("DERs") in New York unless modified."¹¹

Joint Utilities Petition for Rehearing

The Petition filed by the Joint Utilities on May 17, 2021, requests rehearing of the requirement to eliminate utility fees for the release of customer data. The Joint Utilities assert that this directive was premised on an error of fact that utility systems are able to automate data processing, thereby eliminating the basis for utilities to charge fees for that data. While acknowledging that aspects have been automated and implemented via Electronic Data Interchange (EDI) transactions, the Joint Utilities avow that data transfers require compilation and manual review that is not automated currently or expected to be in the future. In addition, with the Commission currently considering expansion of the CCA data sets to include additional information, even more utility resources and manual processes will be required. Elimination of the data access fees, the Joint Utilities contend, will only serve to shift the costs associated to utilities and non-participating customers.

While there is a cost to compile and transfer the data, the Joint Utilities further argue that the fees were not based solely on the cost, but also the value associated with that data. The Joint Utilities assert that "the Commission expressly acknowledged in both the CCA Framework Order¹² and the

¹¹ Mission:data Petition, p. 1.

¹² Case 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs, Order Authorizing Framework for Community Choice Aggregation Opt-Out Program (issued April 21, 2016) (CCA Framework Order).

REV Track Two Order¹³ the appropriateness of utility fees for providing refined data or analysis such as aggregated data or filtered lists to be used by CCA developers conducting opt-out campaigns.”¹⁴ The Joint Utilities further argue that the Commission supported the concept that CCA data was a form of value-added data in its CCA Data Access Fees Order.¹⁵

COMMENTS

Advanced Energy Companies

With respect to the Mission:data Petition, Advanced Energy Companies disagrees with Mission:data’s interpretation that the Order requires a SOC-II Type 2 audit.¹⁶ Instead, Advanced Energy Companies reads the Order to mean that a SOC-II Type 2 audit could be used in place of the default option for an audit conducted by the Provider to ensure that the necessary cybersecurity and/or privacy requirements are in place for certification. Advanced Energy Companies supports this approach and requests the Commission clarify that a risk-based approach extends to the Provider audit requirement as well.

The Joint Utilities

The Joint Utilities comment that Mission:data did not demonstrate that the Commission erred as a matter of law or fact and therefore, did not meet the standard for requesting

¹³ 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) (REV Track Two Order).

¹⁴ Joint Utilities Petition, p. 2.

¹⁵ Case 14-M-0224, supra, Order Establishing Community Choice Data Access Fees (issued December 14, 2017) (CCA Data Access Fees Order).

¹⁶ Advanced Energy Companies include Advanced Energy Economy, the Alliance for Clean Energy New York, and the Advanced Energy Management Alliance.

rehearing. According to the Joint Utilities, "the record supports the Commission's continuation of requiring proper cybersecurity and privacy controls for those seeking customer information and access to utility systems."¹⁷ The Joint Utilities assert that the audit requirement was identified in the Department of Public Service Staff's Data Access Framework Whitepaper (Staff Whitepaper) and the associated SAPA notice, thereby invalidating the argument regarding a purported lack of notice.

The City of New York

Regarding the Joint Utilities' Petition, the City of New York (City) supports the Commission's directive to remove customer data access fees because they are a barrier to utility data access, particularly for municipalities and third parties seeking access to aggregated energy usage data for public purposes. The City asserts that these fees have historically hindered benchmarking capabilities and have led to poor data quality due to individuals manually calculating usage in lieu of having to pay the data access fee. Further, the City avows the Commission should encourage participation in benchmarking endeavors, such as Local Law 84, by removing the fees for access to the necessary data. The City further argues that the Commission premised the removal of data access fees on the fact that they should be able to automate them at this point, rather than a presumption that data access processes are automated.

The Retail Energy Supply Association

The Retail Energy Supply Association (RESA) also opposes the Joint Utilities' Petition. RESA supports the Commission decision to remove data access fees, stating that such fees impede access to customer and system data and

¹⁷ Joint Utilities Comments on Mission:data Coalition Petition for Rehearing, p. 7.

frustrate the Commission's clean energy policy. RESA further asserts that CCAs provide statewide benefits to all ratepayers through the procurement of renewable energy, and that it is appropriate to recover costs associated with the provision of data from all ratepayers, not just CCA program participants.

LEGAL AUTHORITY

Pursuant to PSL §22, any person or corporation may apply for rehearing of a Commission order within 30 days of issuance, unless directed otherwise. A party seeking rehearing bears the burden of establishing that the Commission committed an error of law or fact or that new circumstances warrant a different determination.¹⁸ This burden is not satisfied unless each alleged error or new circumstance purporting to warrant rehearing is separately identified and explained by the petitioner.¹⁹ The Commission's underlying authority was specified in the Order.²⁰

DISCUSSION

Mission:data Petition for Rehearing

The current DSA/SA process allows an ESE to provide a SOC-II Type 2 audit report as proof of necessary cybersecurity and privacy requirements for connection to utility information systems and access to customer utility data in lieu of alternative certification. The Order supports this existing option and upholds its continuation as part of the Data Ready Certification (DRC) process.

¹⁸ 16 NYCRR §3.7(b).

¹⁹ Id.

²⁰ Order, pp. 5-7

Mission:data's arguments regarding the audit requirement are misplaced. As detailed in the Order, the Data Ready Certification process must include verification that an ESE has the required cybersecurity and/or privacy protections. This can be achieved by an audit conducted by the Provider or through the ESE's submission of an independent recognized security controls audit report, such as the SOC-II Type 2 Audit Report. Either of these audit paths will provide verification that, at the time of certification, the ESE has met the necessary requirements.²¹

For clarity, an ESE does not have to obtain a SOC-II Type 2 audit to be certified. This was meant to serve as an alternative for those ESE's that did not want to have its cybersecurity and/or privacy requirements verified by the company selected to perform the Provider role for the DRC process.

With the filing of the Staff Whitepaper, a notice of proposed rulemaking was published in the State Register on June 24, 2020. That SAPA notice detailed, among other things, the proposal that the Data Ready Certification process would "require confirmation/testing that necessary cybersecurity and privacy requirements are in place, which may be done directly with the Provider or as part of an audit."²² Thus, Mission:data incorrectly claims that the SAPA Notice did not provide sufficient notice and an opportunity to comment on an audit provision as part of the Data Access Framework. While the exact audit type, in this instance a SOC-II Type 2, was not defined, the ability for an ESE to use an alternative audit in lieu of the Provider audit was clearly presented.

²¹ Order, p. 16.

²² New York State Register, Vol. XLII, Issue 25, p. 38 (issued June 24, 2020).

In response to Advanced Energy Companies request for clarification regarding a risk-based approach extends to the Provider audit requirement as well, the Commission confirms that an ESE will only be audited on the requirements necessary for the level of data access that an ESE is seeking access to. As an example, an ESE directly connecting to a data custodian will have greater requirements than an ESE who is not.

Joint Utilities Petition for Rehearing

The Joint Utilities' Petition hinges on two primary arguments. First, that the ability to provide data for CCA programs is not automated; and second, that even if it was, it is value-added data and therefore they are able to charge for it.

There are three different sets of data necessary to facilitate CCA programs: aggregated data to facilitate bids, customer contact data for mailing of opt-out letters, and customer specific data for enrollment purposes. In its CCA Data Access Fees Order, the Commission established uniform per customer account fees for the aggregated data and customer data requests, establishing that there will be no fee associated with the customer specific data because these transactions relate to the customer being served by the selected ESE.²³ Additionally, in its Petition, the Joint Utilities acknowledge that the customer specific data functions, such as enrollment, have been automated and implemented via Electronic Data Interchange transactions.²⁴ Therefore, the discussion will not include the customer specific data set and will be limited to the data sets that the fees are associated with (i.e., the aggregated data and customer contact data).

²³ CCA Data Access Fees Order, p. 22.

²⁴ Joint Utilities Petition, p. 2.

Since CCA programs began in 2016, each utility has worked with the CCA Administrators to develop the processes necessary to facilitate these data requests. The aggregated data and customer contact data are compiled by running programmed utility Information Technology (IT) system queries on the specific CCA municipalities and then provided, in spreadsheet format, to the CCA Administrators via email or a File Transfer Protocol (FTP) site.²⁵ The Joint Utilities argue that "other resources and manual processes remain in place to support CCA data requests at all of the Joint Utilities today. Data transfers require compilation and manual review that are not automated today, nor are they expected to be automated in the near future."²⁶ The Commission agrees that there will always be, and should always be, some sort of manual review necessary to ensure data accuracy and data quality. Nevertheless, the necessary data accuracy and quality review, conducted manually, and the need to manually transfer the data to a CCA Administrator, via electronic mail in secured spreadsheets or through access to a secure website, does not equate to the data pull, or data query, not being compiled through an automated process.

The REV Track Two Order required the utilities to file a progress report regarding data transfer automation efforts by September 1, 2016.²⁷ At the time the reports were filed, Central Hudson anticipated that the programming framework to provide aggregated non-demand energy usage data by political district

²⁵ In compliance with Ordering Clause 6 of the Order, each utility filed a listing of its current data access use cases, which all indicated the CCA data was provided in Excel format via email or FTP site.

²⁶ Joint Utilities Petition, p. 2.

²⁷ REV Track 2 Order, p. 151.

would be completed by mid-September 2016. NYSEG and RG&E explained that because it developed data queries for its system during the Sustainable Westchester pilot CCA, the queries needed would not require a large amount of manual intervention. National Grid stated that they would begin the automation process in October 2016 and expected the development to extend 8-9 months. Con Edison and O&R planned to use their Enterprise Data Analytics Platform to integrate solutions for automation and that those solutions would be developed over the next 18 months starting in September 2016. With the ratepayer funded advancements in utility IT systems and CCA programs being active for over five years, there is no valid reason for why a utility has been unable to create an efficient process for providing CCA data at this junction. Additionally, the CCA Administrators continue to pay for data that, in many instances, is not usable for the purposes for which it has been obtained, further supporting the decision to remove data access fees.

Thus, the Commission concludes that CCA data transfer processes are either sufficiently automated to justify discontinuing the charging of data access fees, or that, to the extent more automated processes are necessary, the utilities have had sufficient time to do so and should not be permitted to charge data fees in perpetuity while the utilities continue to work toward automation. The Commission further recognizes that there will likely always be some manual component of these data transfers and concludes that these manual aspects should not hinder the removal of data access fees simply because the process is not fully automated.

The Commission next turns to the argument that the aggregated data and customer contact data sets are value-added and thus permit the utilities to charge for such data. Regarding the customer contact data set, the REV Track Two Order

determined that utilities may not charge for the basic level of customer data which was defined as the level of data necessary to render, reconstruct, and understand the customer's bill.²⁸ Subsequent to the REV Track Two Order and within its CCA Data Access Fees Order, the Commission explained that defining what elements of utility data fall into either the basic or value-added data category will need to be based on specific situations and use cases. While the CCA Data Access Fees Order concluded that customer contact data sets would be considered value added, that determination warrants additional consideration in light of experience with CCAs to date.

In general, where data is retained and stored by way of the utilities' enterprise systems and is not readily or reasonably available by other means, but the provision of that data is essential for fundamental customer/provider relationship (e.g., billing) or provides broad system-wide benefits, the data will be considered basic data.²⁹ In order to compile the list of customers who are eligible for opt-out treatment, also referred to as the customer contact data sets, the utility needs to identify the customer's service class to determine if they are opt-out eligible. Thus, the necessary data required to generate opt-out eligible customer list is retained and stored by way of the utilities' enterprise systems and is not readily or reasonably available by other means. Additionally, the CCA customer contact data set provides the customer's name and mailing address, which are data that would fall under the basic level of customer data designation because it is necessary to render a customer bill. Therefore, the Commission determines

²⁸ REV Track Two Order, p. 139.

²⁹ CCA Data Access Fees Order, p. 19.

that the customer contact data set should be considered "basic" data and should no longer have a fee associated with it.

Conversely, the CCA and Utility Energy Registry (UER) aggregated data set requests would not fall under the basic level of customer data designation. However, in its CCA Data Access Fees Order, the Commission spoke to the potential future use of the UER for obtaining aggregated data necessary for the facilitation of CCA programs.³⁰ Prior to the recent UER Modification Order, that ability had not been realized, but with the modifications to the UER protocol directing each utility to report the CCA eligible opt-out customer count and load data for each municipality or zip code every month, utilities will be publicly providing the same information that they are currently providing for a fee to CCA Administrators.³¹ With the population of UER information being automated, the aggregated CCA data being publicly available and therefore benefitting all or most ratepayers, and the fact that the utilities would be essentially providing data they have already compiled, there is no basis by which this data should continue to have a fee associated.

CONCLUSION

The petitions for rehearing filed by Mission:data and the Joint Utilities are denied for the reason discussed above. As mentioned above, the time to comply with the directive to the distribution utilities to make tariff modifications was previously extended by the Secretary pending resolution of the Joint Utilities' petition for rehearing. With the denial of

³⁰ CCA Data Access Fees Order, p. 21.

³¹ Case 17-M-0315, In the Matter of the Utility Energy Registry, Order Adopting Utility Energy Registry Modifications (issued August 12, 2021) (UER Modification Order).

that petition, this Order hereby establishes the new timeline to implement these tariff modifications.

The Commission orders:

1. The petition for rehearing filed by Mission:data Coalition and the petition for rehearing filed by Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, National Fuel Gas Distribution Corporation, Liberty Utilities, The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation are denied, consistent with the discussion in the body of this Order.

2. Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, National Fuel Gas Distribution Corporation, Liberty Utilities, The Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, Niagara Mohawk Power Corporation d/b/a National Grid, Corning Natural Gas Corporation, New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation shall, within 60 days of the effective date of this Order, modify their current tariffs to remove all established fees associated with the release of customer data, except those cost-based fees associated with requests for historical energy usage data in excess of 24 months, consistent with the discussion in the body of this Order. The tariff revisions shall be filed, on not less than one day's notice, to become effective on or before January 17, 2022.

3. The requirements of Public Service Law Section 66(12)(b) as to newspaper publication of the tariff revisions filed in accordance with Ordering Clause No. 2 are waived because the process in this proceeding and this Order give adequate notice of the changes.

4. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

5. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary