

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Consider
Smart Grid Technologies Pursuant to Federal
Legislation and on the Commission's Own
Motion to Actively Guide Policy in
California's Development of a Smart Grid
System.

Rulemaking 08-12-009
(Filed December 18, 2008)

**COMMENTS OF
THE LOCAL GOVERNMENT SUSTAINABLE ENERGY COALITION
ON WORKING GROUP REPORT**

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I. INTRODUCTION

In accordance with the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), and with the Rulings of Administrative Law Judge Sullivan, the Local Government Sustainable Energy Coalition (“LGSEC”)¹ submits these comments on the Working Group Report (“Report”). The LGSEC was an active participant in the working group meetings.

The LGSEC continues to urge the Commission to expedite and facilitate the transmittal of energy usage data, appropriately aggregated and anonymized, to those entities that require the data to help California meet its energy and environmental goals. The LGSEC’s recommendations include:

- ✦ The definition of “primary purpose” must be modified to include data related to local government activity undertaken in response to State or Federal legislation or State General Plan requirements, or in response to local ordinances and policies.
- ✦ The Commission should use the Energy Data Access Map developed by the LGSEC as a tool in communicating about energy usage data.
- ✦ The Commission should follow the example of regulators in other states, and require the utilities to provide data that allows building owners and governmental entities to comply with building benchmarking requirements.
- ✦ The Commission must require that data be provided timely, in a consistent format that allows data to be manipulated electronically, and that allows local governments to perform the analysis required to implement and evaluate programs and policies.

¹ Across California, cities, counties, associations and councils of government, special districts, and non-profit organizations that support government entities are members of the LGSEC. Each of these organizations may have different views on elements of these comments, which was approved by the LGSEC’s Board.

- ✦ Any Advisory Board the Commission authorizes must include the recipients of energy usage data, particularly local governments.
- ✦ The Commission should use this opportunity to facilitate the transmission of data that is critical to the success of Commission-authorized energy efficiency programs.
- ✦ The Commission should start from an expectation that parties will use non-disclosure agreements, with appropriate recourse and penalties, to preclude efforts to re-identify individual customers.

II. WORKING GROUP PROCESS

The Working Group process has afforded the LGSEC a valuable opportunity to deeply understand the important policy and privacy issues in this proceeding. The many meetings provided parties with appropriate space to discuss their priorities and concerns. As the Report reflects, the parties did not in most cases reach agreement on the many issues under consideration. The Report attempts to summarize the disparate views that may exist on each topic. In some instances, as will be seen in these comments, the Report does not accurately capture the range of opinion and the options available to the Commission.

III. RECOMMENDED NEAR-TERM PRIORITIES

The LGSEC appreciates the Commission's commitment to facilitate in the near-term the provision of energy usage data to local governments and other entities that require this information. The LGSEC recognizes and supports the use of non-disclosure agreements and other tools that protect consumer privacy. The LGSEC also knows that sound public policy must strike a balance between privacy issues and progress on policy goals adopted by government entities, particularly at the State and local level. Adoption of the recommendation below will allow local governments to comply with local, State, and Federal requirements, and continue to support California's energy and environment goals..

A. *Definition of Primary Purpose Must Be Modified*

It is clear that the definition of “primary purpose” adopted in D.11-07-056 is too narrow. It does not anticipate the critical role of data in the possession of the utilities to other State and local programs. For example, the working group process and the Report indicate that the California Energy Commission requires energy usage data in order to implement AB 1103 and AB 758. The LGSEC has explained in numerous venues and pleadings the many local government policies designed to address climate change, reduce energy usage, and generally promote sustainability. Local government climate action plans, sustainability plans, benchmarking ordinances, and related policies directly support California’s AB 32, AB 758, SB 375, and AB 1103.

The LGSEC recommends that the definition of primary purpose include data related to local government activity undertaken in response to State or federal legislation or General Plan requirements, or in response to local ordinances and policies. A simple way to do this would be to modify the primary purposes listed in the Report (p. 28) as indicated below:

(3) [to] provide services as required by local, state or federal law or policy, or as specifically authorized by an order of the Commission

The Report refers to the direction provided in D.11-07-056 for the Energy Division to resolve questions on a case-by-case (p. 29). This policy has been in place for two years and clearly is not sufficient. If it were, the LGSEC and its members would not need to participate in this proceeding. The Commission must adopt a policy that expands the definition of primary purpose, at minimum for local government programs that are undertaken in response to local, state, or federal law and policy. The Commission may also find that there are other situations that would benefit from an expanded definition of primary purpose.

B. Energy Data Access Map is a Valuable Tool

During the course of the working group meetings, the LGSEC developed an Energy Data Access Map to help the parties approach the discussions. The map, which is included in the report, allows one to place a data request on a time and space continuum, thinking about data at the most granular level such as interval meter and individual house (Quadrant A), to much broader levels such as city and annual (Quadrant D). The map is presented in the Report. The only modification the LGSEC would suggest at this time is the recognition that in Quadrant A of the report, the public policy value may be different for different users. For example, while a local government may find that at this time the data provided in Quadrant A is more than the local government needs, other market players may find that information important.

The LGSEC suggests that the Commission use this map as a tool in communicating about energy usage data. Being able to ask parties to identify the quadrant into which a data request falls may provide all market players with a shorthand and common understanding.

C. Data Aggregation and Summation Rules

A key area of contention has been the procedure or number of accounts to be combined in order for data to be provided in a given use case. Since the late 1990s, the Commission's default guidance has been the "15/15 Rule." The LGSEC has in numerous other pleadings in this proceeding described why the 15/15 Rule is not appropriate for discussions of energy usage data. The 15/15 Rule was developed during the era of electricity industry restructuring, and was supposed to prevent emerging energy service providers from skimming the investor-owned utilities' highest usage customers. In that context, the idea was to prevent the identification of specific customers. Yet, the Report asserts that – given the ability to repeatedly directly query a data set – there would be virtually no data that could not be reverse engineered to connect usage

habits with a customer. The Working Group Report argues against combining “Naïve Data Aggregation Rules” with a naïve straw man data interface allowing direct, repeated queries of a substantial set of raw underlying data.² Thus any simplistic rule such as 15/15, 20/15 et al., should be dispensed with as the primary line of defense for data because naïve rules are neither effective in protecting data in and of themselves, nor able to yield sufficient data to achieve the objectives of the Use Cases discussed by the Working Group..

As a practical matter, local governments cannot fulfill our obligations to our citizens and elected governing bodies if a naïve 15/15-style rule governs data release. Of particular concern, and as outlined in the LGSEC’s proposal for Use Case 7, local governments are working with the California Energy Commission as it implements AB 1103, the building energy usage disclosure program. Additionally, some local governments have adopted their own building energy usage ordinances. These state and local requirements require the building owner to summarize monthly energy usage in the U.S. Environmental Protection Agency’s ENERGY STAR Portfolio Manager – a single, common tool required by eight U.S. cities and two states, including California – and then engage in limited disclosure summarizing energy usage in the building.

In the context of building benchmarking, the concept of identification or re-identification is both moot and unnecessary. Identity is moot because the building owner is inherently aware of the “identity” of their tenants; the parties have an established business relationship enshrined in a lease, and the building owner is already routinely responsible for reasonably protecting various types of data about the tenant. The building owner is inherently aware of, and engaged in an ongoing relationship predicated upon, the two largest factors in relative energy use of tenants: the fraction of the building leased by that tenant, and the general use for which the tenant has

² Note that no such interface is suggested in any of the Use Cases; the first line of data defense is instead suggested to be application of Fair Information Practices Principles, combined with suitable legal protections, including Non-Disclosure Agreements.

leased the space. As elaborated in the joint comments by the Natural Resources Defense Council (“NRDC”), the Institute for Market Transformation (“IMT”), and the California Center for Sustainable Energy (“CCSE”), for purposes of Use Case 7, it is impractical, inappropriate, and would defeat the purpose of AB 1103, the benchmarking objectives of the California Energy Efficiency Strategic Plan, and local policies to treat landlord access to the sum of monthly tenant energy use under the same standards as other requests for data.

It is encouraging that the Working Group Report acknowledges that summation of monthly energy use for the purpose of enabling a building owner to comply with AB 1103 and local benchmarking laws, but perplexing that after effectively arguing against naïve rules, the Report suggests at pp. 60 and 76 that a 20/15 Rule should be applied for the purpose of building benchmarking in Use Case 7. The LGSEC concurs with the joint comments in the Report from NRDC, IMT, CCSE and the UCLA Center for Sustainable Communities (pp. 78-83) that any risks to customer privacy be mitigated with a registration process that clearly conveys terms and conditions prior to receiving energy usage information, and further protected by summing monthly energy use for the whole building, and directly uploading such data to ENERGY STAR Portfolio Manager. (Cases where more detailed information may be desired can be addressed via the existing data release consent processes.)

The LGSEC proposes that the Commission direct the utilities to implement AB1103 (CA Public Resources Code 25402.10 (a-d)) as written by the Legislature, by directing the utilities to supply monthly whole-building energy usage data to the building owner’s ENERGY STAR Portfolio Manager account upon request. “Whole-building” can reasonably and simply be interpreted as the sum of energy use for all meters serving a given commodity (i.e., the sum of all electricity use for the month, and the sum of all natural gas consumption for the month.) As a

simple rule is helpful in the practical implementation of such policies, we suggest not creating an additional rule not stated or implied in AB 1103. The Commission should provide clear direction that utilities must provide building owners with the sum of monthly energy use for the entire building for the purpose of benchmarking in compliance with a state or local mandate – down to even one (1) meter – after completing a registration process to authenticate the party as the owner of the building, and clarify any penalties for misuse of the information. Similar conclusions have been reached by seven public utility regulatory commissions across the nation, summarized in the table below.

Utility Company / PUC	Account Aggregation Threshold
	Number of accounts / maximum percentage of total energy usage one account can contribute*
Austin Energy (Texas)	4/80** ³
Avista (Washington)	No threshold ⁴
California PUC	TBD ⁵
Colorado PUC	15/15 ⁶
Commonwealth Edison (Illinois)	4** ⁷

*Over what time period may be included in any specific policy (ie, Austin Energy specifies that any account cannot contribute more than 80% of the total energy usage per annum).

**Applies to commercial buildings only.

³ Interview with Stuart Reilly, Austin Energy, December 4, 2012.

⁴ Interview with Leona Doege, Avista Utilities, March 13, 2013.

⁵ Docket R.08-12-009.

⁶ Ruling 10R-799E.

⁷ Presentation by Kevin Bricknell. “Energy Usage Data System.” Energy Efficient Buildings Hub Regional Data Management Working Group Meeting, October 25, 2012.

Utility Company / PUC	Account Aggregation Threshold
Consolidated Edison (New York)	No threshold ⁸
Pepco (District of Columbia)	5 ⁹
Puget Sound Energy (Washington)	5 ¹⁰
Seattle City Light (Washington)	2 ¹¹

The Commission has the discretion to establish a process to deliver information to building owners that reasonably protects customer privacy, while supporting the requirements of the California Legislature in the form of AB 1103, AB 531, labeling/benchmarking direction in AB 758, and the public policy objectives independently established in the Commission's own *Long Term California Energy Efficiency Strategic Plan*. Anonymization is not applicable in Use Case 7, because identity is reasonably known by each party.

D. Data Must Be Provided in a Consistent Format, with Consistent Content

The LGSEC understands the Commission may want more detailed information about the format and content of data that would be provided, as well as how parties would obtain those data. Below we provide more information, and are happy to respond to specific questions.

⁸ See ConEd, "Aggregated Consumption Data, FAQs", www.coned.com/energyefficiency/PDF/FAQ-Aggregated-Consumption.pdf

⁹ See Pepco, "Building Electricity Consumption Data Request Form," <http://www.pepco.com/business/services/consumptionrequestform/>

¹⁰ Presentation by Chris Thompson. "Energy Data and Benchmarking." Energy Efficient Buildings Hub Regional Data Management Working Group Meeting, October 25, 2012.

¹¹ See City of Seattle, "Seattle City Light Portfolio Manager Automated Benchmarking Consumption Request Form," <http://www.seattle.gov/environment/benchmarking.htm>

1. Format

Data must be provided electronically, in a format that can be manipulated electronically. That is, to send a PDF file electronically would not be useful. Data must be provided in a format that can be easily transported to Excel or a statistical analysis package. There must also be some quality control over the data provided. For example, providing CSV data where fields are missing can create huge challenges for the requesting party because those data will not easily transport to analytic tools.

2. Access

The Report on pp. 88 – 93 describes how a local government or other interested entity would request data. The LGSEC applauds the idea of a “one-stop shop.” In the current electronic age, automating the process to the maximum extent should expedite receipt of the energy usage data for the various purposes for which it is required. Parties should be able to request data through an online data input form. Moving this process to a web portal or other online venue will address concerns about standardizing the delivery method for data requests. It appears the utilities anticipate being able to provide a web portal.

The Report also indicates the utilities anticipate that parties that request data will sign appropriate non-disclosure agreements before they receive data. The default option for such NDAs should also be standardized and automated; while custom NDAs may be necessary in exceptional circumstances, executing legal agreements such as Terms of Use and NDA in the course of accessing online services is *de rigeur* in modern operations. Data with both high public policy value and relatively low sensitivity – i.e., energy use data in quadrant D of the Energy Data Access Map – should be directly available online upon request. Negotiating agreements with utilities adds significant time and cost to the process of obtaining data, and should be limited to circumstances where customization is necessary and data sensitivity is very high.

The Report indicates some sample times by which utilities will deem data requests complete and then fulfill them. It looks like this process could take at minimum two months to get data.

Action	Time Required (per Working Group Report)	Suggested Response Time Budget for “Quadrant D” standardized data access¹²
Parties sign non-disclosure agreement and contracts, if required	Unclear	Immediate (Online NDA as with common End User License Agreement with software and services)
Utility provides standard report on available data formats	7-10 business days	Eliminate step; utility to publish (and update as needed) a report listing available data and formats.
Utility responds by phone, email, or in writing regarding whether request is complete	7-10 business days	Standardized requests: eliminate step. Custom requests: 7-10 business days
Utility responds by email or in writing whether it is able to meet the request, with a proposed schedule and cost estimate for compiling the requested data	30 business days	Standardized requests: 7-10 business days for first request (to authenticate user and NDA as valid.) Subsequent standardized requests: Immediate Custom requests: 10 business days

¹² On the LGSEC Energy Data Access Map, information in Quadrant D has the least sensitive data granularity. with high public policy value for local governments. In this area at minimum, it should be possible to make data readily available.

There is no information in the Report on when the utility will actually provide the requested data. There also is no indication of the cost to obtain the data. The Commission must pay close attention to this implementation detail, which could derail the entire effort if the utilities choose to not timely fulfill requests in a cost-effective manner. The LGSEC suggests that requests for standardized data should be fulfilled immediately online, with the most substantial step being authentication of the initial request, to confirm that the requestor is the representative of a local government, and that the requestor understands and agrees to the terms of the NDA.

3. Content

Use Cases 1 and 7 proposed by the LGSEC describe the type of data local governments need for those use cases. In most instances local governments need only monthly data. There are some instances where more frequent time intervals – weekly or daily – might be needed in order to account for weather or other extenuating conditions. In addition to the detailed content information provided in Use Cases 1 and 7 and presented in the Report, local governments would also benefit from the following information, and we encourage the Commission to expedite the availability of these data:

- Energy Use Intensity (“EUI”) is an important measurement that allows a local government to identify those buildings that would most benefit from energy efficiency and/or clean energy technologies. In order to calculate EUI, one needs to have both total building energy usage, and building size. Presently, local governments do not have access to building energy use.
- Ownership status of customer: provide data on whether the payer of the bill is a renter or an owner of the property. The utilities already know this, so it is not new information to

collect. It would allow local governments the ability to target programs to just homeowners or just renters, and help provide data for a variety of outside uses (confirmation of municipal demographics, assistance with housing programs, etc).

- Commercial and multi-family aggregated whole building usage for building owners for compliance with energy benchmarking programs/ordinances. These reports are not provided to local governments.
- Same data reported to local governments for policy analysis to support benchmarking ordinances and compliance. This would also allow for more sophisticated ordinances — for example, Austin , Texas is the first city to implement a requirement that multifamily buildings that are in the lowest performing quartile must complete upgrades.
- Residential usage data—this can be aggregated to a neighborhood scale (e.g. census block groups or zip7) to allow local governments to target outreach to neighborhoods with high energy bills.

E. Advisory Board Must Include Data Users

The Report proposes the formation of an Advisory Committee that will meet at least quarterly “to review and advise on the implementation of the utilities’ energy usage data access programs, and to consider informally any disputes...” (pp. 90-91). Any advisory committee adopted around energy usage data must include representatives of all market sectors, particularly local governments. Given the large interest local governments have in this topic, to exclude them from any entity that is potentially making recommendations to the Commission on technical, policy, or disputed issues would disadvantage the interests of local governments.

F. Report Mischaracterizes “Issues Not Addressed”

On pp. 11-13, the Report discusses “issues not addressed.” The basic thrust of this argument is that “This phase of the proceeding has (properly) *not* included extensive discussion of access to customer-specific information and data that is not energy usage data generated by the utilities’ advanced metering infrastructure (AMI).” The report then goes on to use this definition as a reason to preclude discussion of data that is currently deemed “secondary purpose.” This does a disservice to the time and expertise of the many parties who have participated in this process. If the Commission is going to examine the rules that govern the exchange of data, it should address as many related issues as possible.

During the pendency of the Working Group meetings, local governments that are implementing energy efficiency programs under Commission authorization have encountered difficulty in obtaining from the utilities basic information about prior customer participation in utility incentive and rebate programs. Similar to the issues raised in the Use Case 9 from the State Department of Community Services (“CSD”), local governments participating in energy efficiency partnership programs and local government Regional Energy Networks need data from the utility to determine whether customers have previously received incentives or rebates and to evaluate the success of energy efficiency programs authorized by the Commission. Lack of easy access to these data is hampering local government efforts to implement these programs, which should be considered a primary purpose under the current definition. Using the current proceeding to address these data exchange issues now will eliminate a situation in the not-so-distant future where parties are back at the Commission asking for assistance in resolving these data exchange disputes.

G. Portfolio Manager

The LGSEC describes in Proposed Use Case 7 the role of the U.S. EPA Portfolio Manager tool in benchmarking buildings. Using Portfolio Manager provides consistency across the country in terms of how data are presented and evaluated. The Institute for Market Transformation, a national non-profit that advises municipalities on benchmarking, reports that large building owners much prefer only needing to learn one program and being able to learn one procedure; this makes a big difference in cost and time spent on benchmarking. Also, consistency makes them more likely to adopt a company-wide policy, even in jurisdictions that do not require benchmarking. As more jurisdictions consider benchmarking policies, and as California implements AB 1103, there will likely be less opposition from large owners if there is consistency in the benchmarking policies and they have access to whole-building data.¹³

A recent report from the U.S. EPA shows a 7% reduction in energy usage over three years for buildings that have benchmarked with Portfolio Manager. Many government entities have already made an investment in uploading data about their facilities to Portfolio Manager. As a tool offered by the federal government, costs to use Portfolio Manager are relatively minimal.

H. Tenor of the Report

The Report presents comments from Solar City (pp. 13-15) that question the assumptions from the Report's authors about personally identifiable information ("PII") and customer level energy usage data. While the LGSEC is not at this time seeking to obtain data at the same level of granularity as Solar City, there is merit in Solar City's suggestion that "it is premature to draw

¹³ Personal communication between Local Government Sustainable Energy Coalition and Institute for Market Transformation, July 23, 2013.

the conclusion that customer-level usage data with or without PII is covered information and, in so doing, treating this as the starting point for establishing protocols around data access.” (p. 14)

The LGSEC supports the suggestion from Solar City that rather than establish elaborate data blurring and related techniques, the Commission could require third parties and other entities that seek customer level energy usage data to execute a contract or non-disclosure agreement, with appropriate recourse and penalties, which precludes any efforts to re-identify customers. This is a much simpler approach that will allow data to actually begin moving, and will move the Commission closer to its energy goals.

IV. CONCLUSION

The Working Group process has allowed parties to better understand the issues and priorities that are present in the discussion of energy usage data. The Commission is now well positioned to proceed with policies that will facilitate the immediate flow of data that local governments and other entities require to meet Federal, State, and local priorities. The Commission should adopt the recommendations of the LGSEC as embodied in these comments.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jody S. London".

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