



Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL: 717 237 6000
FAX: 717 237 6019

Sarah C. Stoner, Esq.
717.237.6026
sstoner@eckertseamans.com

May 5, 2022

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Investigation into Conservation Service Provider and Other Third Party Access to
Electric Distribution Company Customer Data – Docket No. M-2021-3029018

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Retail Energy Supply Association's ("RESA")
Comments in the above-referenced matter.

If you have any questions regarding this filing, please do not hesitate to contact me.

Sincerely,

/s/ Sarah C. Stoner
Sarah C. Stoner, Esq.

SCS/lww
Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Investigation into Conservation Service :
Provider and Other Third Party Access to : Docket No. M-2021-3029018
Electric Distribution Company Customer :
Data :

**COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION**

Deanne M. O'Dell, Esquire
(PA Attorney ID No. 81064)
Sarah C. Stoner, Esquire
(PA Attorney ID No. 313793)
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Fl.
Harrisburg, PA 17108-1248
717.237.6000

Date: May 5, 2022

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. COMMENTS REGARDING THIRD PARTY ACCESS TO CUSTOMER METER DATA.....2

A. Legal Concerns with EDC Smart Meter Data Access by CSPs and Other Parties.....3

B. Uniform Approach to Requirements for Unlicensed Third-Party Data Access6

C. Financial Security and Insurance Requirements to Protect Confidentiality of Customer Meter Data8

D. Technical Recommendations Regarding EDC Smart Meter Customer Meter Data Access.....9

 1. Single Portal for Access to Customer Meter Data9

 2. Standardization of Customer Meter Data Access10

 3. Quality and Timeliness of Customer Meter Data11

III. CONCLUSION13

I. INTRODUCTION

On February 8, 2022, the Pennsylvania Public Utility Commission (“Commission”) entered a Secretarial Letter (“Secretarial Letter”) initiating a new proceeding to review potential avenues for Conservation Service Providers (“CSPs”) and other third parties to obtain access to customer meter data electronically from electric distribution companies (“EDCs”). The Secretarial Letter contains questions posed by stakeholders and Commission staff on various topics associated with potential pathways for CSPs and other third parties to access customer meter data. The Secretarial Letter invited parties to file written comments with the Commission regarding third party access to customer meter data by April 5, 2022. The deadline for comments was subsequently extended to May 5, 2022.¹

The Retail Energy Supply Association (“RESA”)² is an association of electric generation suppliers (“EGSs”) that include member companies licensed and operating in Pennsylvania as well as throughout the country. RESA appreciates this opportunity to provide input given the critical importance that fair and workable data access practices play in creating a robust and sustainable competitive market for the benefit of consumers. Below RESA provides suggestions

¹ On March 14, 2022, the Energy Association of Pennsylvania filed a Petition for an Expedited Order Granting an Extension of Time to File Comments. A Secretarial Letter dated March 23, 2022, granted the Energy Association of Pennsylvania’s request, and established a deadline of May 5, 2022, for the comments.

² The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

regarding a few of the topics identified in the Secretarial Letter as well as other topics that it recommends be addressed as part of this process.

In sum, RESA does not oppose unlicensed third parties being provided access to customer meter data so long as they are required to safeguard customer information in a consistent and transparent manner. As these third parties are not licensed by the Commission, RESA recommends that the Commission promulgate regulations or establish interim guidelines that require EDCs to impose uniform requirements, such as financial security and insurance requirements, on unlicensed third parties seeking access to customer meter data. The EDCs could impose those requirements on unlicensed third parties via tariff provisions.

Regardless of whether the Commission decides to afford unlicensed third parties access to customer meter data, RESA encourages the Commission to establish a single portal in the Commonwealth for access to customer meter data. If the Commission elects to not establish a single portal for customer meter data access, RESA recommends that the EDCs be required to provide customer meter data in a secure File Transfer Protocol Secure method to promote effective and efficient customer meter data sharing. Lastly, RESA urges the Commission to require quality and timely access to customer meter data and interval usage data to support the development of innovative products and services for the benefit of Pennsylvania's electric customers.

II. COMMENTS REGARDING THIRD PARTY ACCESS TO CUSTOMER METER DATA

The increasing availability of advanced metering infrastructure and smart meters provides important interval level usage data necessary to enable third parties to develop creative and new products and services. RESA does not oppose allowing third parties to access customer meter

data so long as they are required to meet certain requirements to safeguard customer information. It is imperative that third parties seeking customer meter data meet requirements to safeguard customer information because third parties are not required to be licensed by the Commission. RESA's recommendations are intended to achieve the appropriate balance between protection of customer meter data, equitable standards for third parties, and efficiency.

A. Legal Concerns with EDC Smart Meter Data Access by CSPs and Other Parties

The Pennsylvania Public Utility Code expressly provides that:

Electric distribution companies shall, with customer consent, make available direct meter access and electronic access to customer meter data to third parties, including electric generation suppliers and providers of conservation and load management services.

66 Pa. C.S. § 2807(f)(3). Notwithstanding the requirement that EDCs provide third parties access to customer meter data if a customer consents, RESA has concerns with unlicensed third parties gaining access to customer meter data from EDCs. RESA's concerns primarily stem from a lack of Commission oversight over unlicensed third-party entities. Third-party entities may include energy consultants, curtailment service providers, researchers, etc. Those non-EGS entities are unlicensed and not subject to the same regulatory oversight as EGSs.

Unlicensed third parties, as well as other consumers, have not been granted access to the EDCs' web portals, except as an agent of a licensed EGS or as an Act 129 CSP contracted by an EDC.³ While the Commission has previously acknowledged that

³ *Submission of the Electronic Data Exchange Working Group's Web Portal Working Group's Solution Framework for Historical Interval Usage and Billing Quality Interval Use*, Docket No. M-2009-2092655 at 10 (Final Order Entered June 30, 2016).

unlicensed third parties may have innovative products and/or services to offer Pennsylvania's electric customers, the Commission has expressed concerns regarding the security of customer meter data.⁴ In noting regulations imposed on EDCs and EGSs pertaining to data privacy, the Commission has stated that its current regulations regarding data privacy would not apply to unlicensed entities.⁵

While EGSs have access to customer meter data from EDCs via web portals (with customer consent), there are various safeguards in place to protect customer meter data provided to an EGS. The Commission has the authority to investigate an EGS, review complaints regarding an EGS, penalize an EGS and revoke licensure of an EGS. The Commission imposes financial security requirements on EGSs.⁶ In addition, Commission regulations governing the confidentiality of customer information are imposed on EGSs.⁷ The aforementioned safeguards are not currently available to protect the confidentiality of customer meter data that is provided to unlicensed third parties. To ensure the integrity of data systems and confidentiality of customer meter data, RESA asserts that stringent requirements and standardized processes should be in place. Third parties seeking customer meter data from a utility should be required to safeguard customer meter data in a uniform manner.

⁴ *Id.* at 10-11.

⁵ *Id.* at 11.

⁶ 52 Pa. Code § 54.40 (Bonds or other security).

⁷ 52 Pa. Code § 54.8 (privacy of customer information); 52 Pa. Code § 54.43(d) (standard of conduct and disclosure for licensees).

The Commission has maintained a zero tolerance policy regarding safeguarding customer information confidentiality.⁸ The Commission has reminded EGSs and EDCs that they will be held responsible for misuse of customer information by their own representatives, as well as by third party entities such as CSPs with which they have entered into a contract.⁹ In support of this zero tolerance policy, RESA encourages the Commission to promulgate regulations or establish interim guidelines that establish uniform requirements that safeguard customer meter data to be provided by EDCs to unlicensed third parties.

Pursuant to the Public Utility Code, EDCs have an affirmative obligation to provide safe and reasonable service.¹⁰ The failure of an EDC to maintain the integrity of a customer's personal account information has been found to be a violation of Section 1501 of the Public Utility Code.¹¹ Further, the Commission's Chapter 56 regulations, obligate EDCs to employ all reasonable measures to safeguard customer information.¹² Adequate safeguards must be in place to assure that customers receive safe and reasonable service. Requiring EDCs to implement customer meter data protection

⁸ *Submission of the Electronic Data Exchange Working Group's Web Portal Working Group's Solution Framework for Historical Interval Usage and Billing Quality Interval Use*, Docket No. M-2009-2092655 at 10 (Final Order Entered June 30, 2016); *Submission of the Electronic Data Exchange Working Group's Web Portal Working Group's Solution Framework for Historical Interval Usage and Billing Quality Interval Use*, Docket No. M-2009-2092655 at 14 (Final Order Entered September 3, 2015).

⁹ *Id.*

¹⁰ 66 Pa.C.S. § 1501.

¹¹ *Daniel C. Matestic v. Duquesne Light Company*, Docket No. C-2014-2438493, Opinion and Order at 6 (Order entered July 2, 2015).

¹² 52 Pa. Code § 56.25. EGSs are also obligated to conform with Chapter 56 regulations pursuant to the Commission's EGS licensing orders.

measures on unlicensed third parties through tariff provisions is a logical approach to safeguarding customer information and ensuring that utilities provide safe and reasonable service.

B. Uniform Approach to Requirements for Unlicensed Third-Party Data Access

RESA has concerns about each EDC establishing its own requirements to safeguard customer meter data provided to unlicensed third parties and submits that transparent and consistent rules are a critically important step to protect customer meter data. A standardized approach to protecting customer meter data will help to ensure that access to customer meter data is fair and optimizes ratepayer investment in advanced metering infrastructure and smart meter technology. If the Commission elects to permit EDCs to provide unlicensed third parties access to customer meter data (with the customer’s consent), the Commission should require EDCs to adopt tariff provisions that impose requirements on unlicensed third parties,¹³ that are uniform and consistent across all EDC territories.

RESA did not oppose Third-Party Data Access Tariffs presented in the Joint Petition for Partial Settlement (“Joint Petition”) in FirstEnergy’s most recent default service proceeding.¹⁴ In the Joint Petition, the Joint Petitioners agreed that FirstEnergy

¹³ If the Commission determines a path forward to permit EDCs to provide unlicensed third parties access to customer meter data and requires EDCs to adopt tariff provisions that impose requirements on unlicensed third parties, it may want to consider similar requirements for natural gas distribution companies.

¹⁴ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2021-3030012, P-2021-3030013, P-2021-3030014, and P-2021-3030021 at 22 (Joint Petition for Partial Settlement (filed April 20, 2022)). See Third-Party Data Access Tariffs in Exhibits G-1 to G-4 to the Joint Petition. If approved by the Commission, the Third-Party Data Access Tariffs will become effective June 1, 2023.

would adopt Third-Party Data Access Tariffs to establish standard rules for customer meter data access and ensure that authorized third parties responsibly handle customer meter data. The Joint Petitioners also agreed that FirstEnergy would implement a standard form of authorization for all new requests from third parties seeking customer meter data through the terms of FirstEnergy's Third-Party Data Access Tariffs. Pursuant to the Third-Party Data Access Tariffs, third-party data access is limited to Conservation Service Providers registered with the Commission or Curtailment Service Providers that are PJM members and identified by PJM as a demand response provider.¹⁵

FirstEnergy's proposed Third-Party Data Access Tariffs also provide that FirstEnergy companies will conduct periodic, randomized internal audits of the third parties that access data under tariffs. The audits would ensure that letters of authorization are being properly obtained by the third parties when seeking data access. Those audits are to occur semi-annually and are to include at least 10% of active participants governed by the tariff. If third parties are noncompliant, FirstEnergy will permanently restrict them from access to customer meter data under the tariffs.¹⁶

If the Commission decides to grant unlicensed third parties access to customer meter data (with customer consent), RESA recommends that the Commission utilize FirstEnergy's Third-Party Data Access Tariffs as a starting point to develop statewide

¹⁵ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2021-3030012, P-2021-3030013, P-2021-3030014, and P-2021-3030021 at 22 (Joint Petition for Partial Settlement (filed April 20, 2022)). See Third-Party Data Access Tariffs in Exhibits G-1 to G-4 to the Joint Petition. If approved by the Commission, the Third-Party Data Access Tariffs will become effective June 1, 2023.

¹⁶ *Id.* at 23.

guidelines. If access to unlicensed third parties is granted, RESA supports clarity in data access provisions and standardized methods to provide unlicensed third parties with access to customer meter data. The Commission could tailor its requirements based on the purposes for which the information is disclosed.

RESA believes that the ability to terminate a third-party's access to customer meter data is a powerful deterrent that will help ensure third parties will not misuse customer meter data. Consequently, if the Commission decides to permit unlicensed third parties with access to customer meter data held by EDCs (with customer consent), the Commission should mandate that EDCs implement uniform tariff provisions that establish requirements for unlicensed third parties to help safeguard customer information.

C. Financial Security and Insurance Requirements to Protect Confidentiality of Customer Meter Data

To ensure that the Commission's expectations regarding confidentiality of customer meter data are met (if the Commission determines that third parties should have access), RESA encourages the Commission to establish requirements for EDCs that provide unlicensed third parties access to customer meter data. The Commission should require EDCs to impose financial security, insurance, and other data access requirements on unlicensed third parties seeking access to customer meter data. Through the promulgation of regulations or issuance of interim guidelines, the Commission should mandate statewide financial security and insurance requirements to be imposed on unlicensed third parties by EDCs.

RESA believes that imposing financial security and insurance requirements on unlicensed third-party entities seeking access to customer meter data is a reasonable

approach to help safeguard customer meter data, especially as the Commission does not impose licensing or regulatory requirements (aside from CSP registration) on CSPs and other third-party entities. Imposing financial security and insurance requirements is judicious because imposing the requirements decreases the risk of a security breach and incentivizes third parties to increase the security of their systems to achieve a lower-cost insurance policy. Moreover, obtaining insurance and financial security are normal expenditures for prudent businesses.

RESA submits that, to the extent financial security instruments and insurance coverages are required of unlicensed third parties, those requirements be imposed on all unlicensed third parties at the same thresholds. Requiring the same security and insurance thresholds for unlicensed third parties would establish an equitable approach to data protection.

D. Technical Recommendations Regarding EDC Smart Meter Customer Meter Data Access

1. Single Portal for Access to Customer Meter Data

Regardless of whether the Commission decides to afford unlicensed third parties access to customer meter data, RESA recommends that the Commission establish a single portal in the Commonwealth for access to customer meter data. A Commission endorsed portal would provide a convenient, easy-to-use process whereby customers may authorize EGSs, CSPs and (potentially) other third parties to access their customer meter data (including interval usage data). The single portal structure has been successfully utilized in other jurisdictions.

Smart meters measure and collect granular energy usage data in intervals ranging from one minute to an hour (referred to as interval usage data). Timely and reasonable

access to customer meter data and interval usage data from smart meters is a critical part of fostering the development of a functional competitive market. The interval usage data generated by smart meters belongs to the customer as the customer used and paid for the electricity, paid for smart meter investment, and the customer's electricity usage generated the data. Customers should be able to grant access to their data and a Commission endorsed portal would be an efficient pathway to meet that fundamental objective.

2. Standardization of Customer Meter Data Access

If the Commission does not establish a single portal for access to customer meter data, RESA recommends that the EDCs be required to provide customer meter data in a secure File Transfer Protocol Secure ("FTPS") method. Standard formats allow parties to develop automated systems to exchange information. Unless a standard protocol is used, effective and efficient customer meter data sharing will not occur.

The Commission has adopted the use of Electronic Data Interchange ("EDI") standard formats in the electric industry in Pennsylvania. EDI is the computer-to-computer exchange of business documents in standard, machine-readable formats. The sheer volume of customer meter data can be problematic in an EDI format and there are significant costs associated with accessing data on an EDI platform. In addition, EDI is not capable of transmitting Billable Quality Interval Usage ("BQIU") data (which is critically important, as described in Section II.D.3 below).

A FTPS method of providing customer meter data is preferred, as it is an efficient and low-cost method of sharing files, including BQIU data. If the Commission permits

data access by CSPs and other unlicensed third parties, the FTPS method would be necessary since those entities are not likely to be familiar with EDI and the costs associated with access to EDI would be unduly burdensome.

3. Quality and Timeliness of Customer Meter Data

Quality and timely access to customer meter data and interval usage data would benefit ratepayers and leverage the significant investment in smart meters that ratepayers have made. While the Commission has overseen the rollout of smart meter technology to consumers and enabled EGSs to obtain access to the data, it is critical for the Commission to provide prompt access to quality data that supports innovative product and service offerings. For efficiency purposes, the Commission should ensure that an authorized entity can access the data for all its customers at one time.

RESA recommends that the Commission require EDCs to provide, with customer consent, near real-time interval usage data with watt level precision. RESA envisions data files that include an account identifier, consumption date, an EGS or third-party identifier, and watts per usage broken down in consistent interval periods (such as 15-minute increments, or lower). It is important, especially for residential customers, that data is provided at the watt level so that customer usage can be properly analyzed. Providing such data with watt level precision ensures that products may be designed to meet customer needs.

EDCs should be required to provide access to customer's BQIU data within 48 hours or less. The creation of BQIU data should be automated and be made available as quickly as possible so that authorized third party entities can quickly load the data into

their systems and provide it to their customers promptly. The data files provided should include 48-hour or less BQIU data for all customers served by the authorized third-party entity. It is paramount to be able to communicate with customers about their consumption promptly so that products and services can empower them to change their behavior and energy consumption. BQIU data that is older is less valuable, especially as customers expect instant access to information. To engage customers, authorized entities must have access to customer meter data as quickly as possible.

Access to near real-time interval usage data and BQIU data on a timely basis is important so that EGSs, CSPs and unlicensed third parties (if authorized by the Commission) may bring innovative products and services that leverage this data to market. It takes time for EGSs, CSPs and other third parties to compile and analyze their customer's usage information and to develop, test and launch new products. Through access to interval usage data on a timely basis, products may be developed to educate consumers about their usage and create products that are tailored to their needs. EDC's providing data access in near real-time intervals is essential to the development of products and services. A delay in access to interval usage data could discourage competitors from coming to the market and offering their products and services. By requiring EDCs to provide timely access to customer meter data and interval usage customer meter data, the Commission would enable customers to better manage their energy consumption and third parties to develop creative products and services.

III. CONCLUSION

RESA appreciates this opportunity to provide its viewpoint regarding this important proceeding and looks forward to continuing to assist the Commission with the process of evaluating potential pathways for unlicensed third parties to gain access to customer meter data electronically from electric distribution companies.

Respectfully submitted,



Deanne O'Dell, Esquire
(PA Attorney ID No. 81064)
Sarah C. Stoner, Esquire
(PA Attorney ID No. 313793)
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Fl.
Harrisburg, PA 17108-1248
717.237.6000

Date: May 5, 2022

Attorneys for the Retail Energy Supply Association

