

May 5, 2022

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

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:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Comments of the Industrial Energy Consumers of Pennsylvania, in the above-referenced matter.

This document was filed electronically with the Commission on this date. All parties are being served a copy of this document in accordance with the enclosed Certificate of Service.

Please contact me if you have any questions concerning this filing.

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC

By 

Derrick Price Williamson
Barry A. Naum

BAN/sds

Enclosures

c: Scott Thomas, Law Bureau (via E-mail)
Christian McDewell, Law Bureau (via E-mail)
Jeff McCracken, Bureau of Technical Utility Services (via E-mail)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the following parties to this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by participant).

VIA E-MAIL


Richard Kanaski, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265
rkanaskie@pa.gov

Patrick M. Cicero, Esquire
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101
pcicero@paoca.org

Steven C. Gray, Esquire
Office of Small Business Advocate
300 North Second Street
Suite 202
Harrisburg, PA 17101
sgray@pa.gov

Larry Spielvogel, PE
L.G. Spielvogel, Inc.
190 Presidential Blvd., Suite 310
Bala Cynwyd, PA 19004
spielvogel@comcast.net

Donna M.J. Clark, Esquire
Energy Association of Pennsylvania
800 North Third Street, Suite 205
Harrisburg, PA 17102
dclark@energypa.org



Barry A. Naum

Dated: May 5, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF
INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA**

On February 19, 2022, the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Secretarial Letter in the above-referenced docket was published in the *Pennsylvania Bulletin*. The Commission initiated the above-referenced proceeding in response to previous comments submitted at Docket No. A-2019-3009271, a proceeding that raised issues concerning conservation service providers' ("CSP") and other third parties' potential access to customer data from electric distribution companies ("EDC"). The Secretarial Letter requested that interested parties submit Comments on the Commission's questions within 45 days of its publication in the *Pennsylvania Bulletin*, or by April 5, 2022. On March 14, 2022, the Energy Association of Pennsylvania filed a Petition for an Extension of Time to File Comments. The Petition was granted on March 23, 2022, by Secretarial Letter extending the deadline to file Comments to May 5, 2022.

The Industrial Energy Consumers of Pennsylvania ("IECPA")¹ is an association of energy-intensive industrial consumers of electricity taking service from regulated utilities in Pennsylvania, including Duquesne Light Company ("Duquesne"); Metropolitan Edison Company ("Met-Ed"); PECO Energy Company ("PECO"); Pennsylvania Electric Company ("Penelec"); Pennsylvania Power Company ("Penn Power"); PPL Electric Utilities Corporation ("PPL"); and West Penn Power Company ("West Penn"). IECPA offers these Comments in response to the Secretarial Letter in the above-referenced matter on issues of particular importance to its members. The fact that IECPA does not address each and every question presented by the Secretarial Letter should not be construed as either support or opposition to those issues as stated in the Secretarial Letter, and IECPA reserves the right to respond to other Comments as they pertain to any element of the order.²

1. Smart Meter Customer Data Access by CSPs and Other Third Parties Technical Concerns:

- a. Is it possible to develop a path in which certain CSPs or other third parties are granted authorization to access EDC smart meter customer data electronically in a secure manner?**

While it may be possible for CSPs or other third parties to access EDC smart meter customer data electronically in a secure manner, IECPA does not support carte blanche access to large commercial and industrial ("C&I") customer data. While IECPA does not take a position regarding residential or small commercial customer data, large C&I customer data includes commercially sensitive information that should not be broadly or unconditionally accessible.

¹ For the purpose of this matter, IECPA's membership consists of: Air Products & Chemicals, Inc.; AK Steel Corporation; ArcelorMittal USA LLC; Arconic, Inc.; Benton Foundry, Inc.; Carpenter Technology Corporation; Domtar Paper Company, LLC; East Penn Manufacturing Company; Keystone Cement; Knouse Foods Cooperative, Inc.; Marathon Petroleum Corporation; Praxair, Inc.; Proctor & Gamble Paper Products Company; and United States Gypsum Company.

² Responses to individual questions are labeled using the same identifiers in the Secretarial Letter.

These large C&I customers employ significant efforts to protect this commercially sensitive data, including, but not limited to, the use of encryption, cloud security, and employee data security education. Additionally, IECPA believes that access to any large C&I customer's data by CSPs or other third parties should only be provided if direct consent and express approval is obtained from each individual large C&I customer. If a customer chooses to give approval, then that customer should also be allowed to decide exactly what information the CSP or other third party is able to access; however, under no circumstances should a customer be required to take any independent affirmative steps to protect its data from being provided to CSPs or other third parties without its consent. In other words, a customer should not have to execute any contract or other document to prohibit access or otherwise protect sensitive information. Any party seeking such data should be required to request approval from an individual customer and receive consent before any customer data is accessed.

b. Can the web portals available to electric generation suppliers be utilized for this access, or is an alternate pathway necessary?

As addressed in the previous comment, IECPA does not support wholesale access to large C&I customer data. As such, unless the web portals are able to provide narrowly tailored information based exclusively on customer consent, they should not be used for this access. Because it is unlikely that the web portals available to and employed by EDCs could easily be restricted, an alternate pathway may be necessary.

f. Aside from CSPs, what other third party entities should be considered for potential access?

At least in terms of large C&I customers, IECPA is concerned with access to additional third parties. The energy use of large C&I customers is confidential and commercially sensitive information that should be limited to as few parties as possible. As expressed previously, IECPA believes that any third party access should only be granted upon direct approval from an individual

customer. At least as it pertains to large C&I customers, EDCs should not be permitted to provide any customer data access without explicit approval from the customer.

g. What criteria should the EDCs utilize to determine eligibility for CSPs and other third parties? Should there be different standards and/or different levels of access to data for different types of CSPs and other third parties?

If a customer agrees to permit access to its data to a CSP or other third party, IECPA supports different levels of access depending on the type of CSP and/or third party requesting such access. Because IECPA strongly believes that customers, especially large C&I customers, need to not only agree to access, but also to the level of access, the standards and/or level of access needs to be determined by the customer on an individual basis. As a matter of threshold eligibility and scope of access, if a customer has an existing relationship with a CSP or other third party, then access to data could be given as broadly as the requirements of that relationship dictate, as agreed upon by the customer. Conversely, a third party without such existing relationship with customers should not be granted such broad information access. As such, IECPA does not support a Commission-wide set of standards or access levels for EDCs to follow for all customers.

h. Should the EDCs require financial security instruments, such as bonds, to help protect data confidentiality?

IECPA supports any measures that protect data confidentiality and reduce the risk of any breaches of data security.

2. EDC Smart Meter Data Access by CSPs and Other Third Parties Legal Concerns:

a. What legal limitations currently prevent EDCs from providing smart meter customer data electronically to CSPs or other third parties?

At present, 66 Pa. C.S. § 2807(f)(3) provides that EDCs "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." Commission regulations at 52 Pa. Code § 54.8 also address the privacy of customer

information for EDCs and electric generation suppliers ("EGSs"). This code section allows a customer to restrict the release of its telephone numbers and historical billing data. Additionally, 52 Pa. Code § 54.43(d) requires EGSs to keep certain customer information confidential.

The Pennsylvania Uniform Trade Secrets Act, 12 Pa C.S. § 5302, also protects information that (1) derives independent economic value from not being generally known by other persons who can obtain economic value from its disclosure or use, and (2) is subject to efforts to maintain the information's secrecy. As explained earlier in these Comments, members of IECPA and other large C&I customers generally go to great lengths to protect their energy use and related information, as these customers consider such information as trade secrets that are closely protected and not available to competitors.

c. Could the EDCs utilize contracts to protect the confidentiality of the data?

66 Pa. C.S. § 2807(f)(3) already requires that customers provide consent for third party access to customer meter data. Customers should not have to enter into any additional agreements to protect their information from disclosure in the context of smart meter data to third parties. The same protection should apply in the context of the information now sought. That said, IECPA believes that any written consent provided by a customer should include legal obligations on both the EDC and the third party accessing the data. These obligations should limit not only what customer information is accessed, but also for what purpose the customer data can be used. Otherwise, IECPA is not certain what other contracts might be contemplated in this regard. If this question contemplates potential contracts between EDCs and other third parties then, in no uncertain terms, an EDC should not be able to contract away its customers' rights to protection of their individual data.

e. **How should a CSP or other third party obtain customer consent for access to data from EDC systems?**

In the event a CSP or other third party desires access to EDC systems, the CSP or other third party should directly reach out to the customer, in writing, to request specific access. If the customer chooses to provide such access through written consent, then the customer should be permitted to limit what information the CSP or other third party is able to access. This should not present any undue burden, as customers -- and particularly large C&I customers -- routinely contract for services with CSPs.

f. **How would the EDC be notified when a customer grants consent for a CSP or other third party to access its' EDC-maintained customer data?**

If a customer provides written consent for access to EDC-maintained customer data, then the CSP or other third party could provide a copy of the customer's written consent to the EDC. Regardless, the EDC should confirm with the customer that such consent has been given prior to granting access to customer data or otherwise providing such data.

g. **How should a customer withdraw previously granted consent for CSP or other third party access to the EDC's data? How would the EDC be notified of this withdrawal of consent?**

At least in terms of large C&I customers, IECPA maintains that each individual customer should (1) choose to consent to data access, (2) be permitted to decide what specific data a CSP or third party has access to, (3) select the time frame for which the data is accessible, and (4) approve of data use for specific purposes by the CSP or third party. For example, a customer should be able to limit, if it so chooses, that a CSP or third party receive only specific information from the past calendar year for the purpose of evaluating demand needs. In that circumstance, the consent would already be limited to a specific set of information for a designated amount of time and specific purpose. Since all of this would be provided in writing, the EDC would know exactly what information it is providing and for what time frame it is providing that information. If a CSP

or third party desires access to further information, it would need additional, written consent from the customer. Additionally, if a customer decides that it no longer wishes to provide previously approved access, it should be able to withdraw its consent at any time by contacting its customer representative and indicating such withdrawal. Ultimately, the information being accessed is the customer's information, and as such, there should be no issue rescinding third party access to a customer's data at any time.

h. How would the EDCs monitor data access to determine if a CSP or other third party becomes a "bad actor" by violating its agreements (failing to maintain data confidentiality, pulling data for a customer without proper authorization, etc.)?

Since IECPA only supports access to specific data that is approved by an individual large C&I customer, a CSP or other third party should never have access to unauthorized data. If a CSP or third party is provided access, it should be subjected to the same data privacy and confidentiality standards set forth by the Commission. As addressed earlier, the Commission already has customer privacy regulations in place for EDCs and EGSs. Those same regulations should be imposed on any CSP or other third party that requests, and ultimately receives, access to any customer data.

3. Utility Usage Data and Meter Access:

a. What customer data should the utility share with CSPs and other third parties?

At least in terms of large C&I customers, IECPA believes that each individual customer should be able to limit what specific information is shared with CSPs and other third parties. IECPA does not take a position on this issue with respect to residential or small C&I customers.

b. What types of data should the EDCs withhold from CSPs and other third parties?

See above.

f. **Should CSPs and other third parties be provided *direct access to the meter*?**

66 Pa. C.S. § 2807(f)(3) already provides "third parties" may have direct access to customer meters, *upon consent*. CSPs and other third parties should not be provided direct access to the meter, at least for large C&I customers, unless these customers affirmatively consent to such access in writing. In particular, because large C&I customer data is commercially sensitive information, any access must be limited.

Respectfully submitted,

SPILMAN, THOMAS & BATTLE, PLLC

By 

Derrick Price Williamson (I.D. No. 69274)

Barry A. Naum (I.D. No. 204869)

1100 Bent Creek Boulevard, Suite 101

Mechanicsburg, PA 17050

Phone: (717) 795-2740

Fax: (717) 795-2743

dwilliamson@spilmanlaw.com

bnaum@spilmanlaw.com

Counsel to Industrial Energy Consumers of Pennsylvania

Dated: May 5, 2022