



May 5, 2022

VIA E-FILE

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

**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:

Attached for filing, please find the **Comments of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA)** which are respectfully submitted for consideration in the above referenced docket pursuant to the Secretarial Letter issued on February 8, 2022 and published in the *Pennsylvania Bulletin* on February 19, 2022.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ria M. Pereira".

Ria M. Pereira, Esq.

CC: Interested Parties
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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF

THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY
IN PENNSYLVANIA (CAUSE-PA)

PENNSYLVANIA UTILITY LAW PROJECT

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I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) respectfully submits the following Comments in response to the Commission's Secretarial Letter published for comment on February 19, 2022, opening the public comment period for the Commission's Investigation into Conservation Service Provider and Other Third Party Access to Electric Distribution Company Customer Data.

CAUSE-PA is a statewide unincorporated association of low-income individuals which advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to moderate- and low-income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic independence and family well-being.

CAUSE-PA has long been concerned with data protection and privacy and appreciates the opportunity to provide feedback on this critically important and complex issue. Pennsylvania's utility consumers are required to provide personal information to establish and maintain service, enroll in, and receive, critical customer assistance, and exercise their rights to additional protections afforded to certain vulnerable populations - including victims of domestic violence and medically vulnerable households. With the advent of smart meter technology and near-real time usage data, utilities maintain granular usage data capable of disclosing personal information about the household's energy usage that can reveal an individual's habits and movement within and outside their home. Consumers must be able to rely on robust confidentiality protections and processes that ensure that personal information and energy usage data is safeguarded from

inadvertent or unauthorized disclosure - and that any disclosure is done so with the consumer's affirmative, explicit, informed, and time-limited consent.

As discussed throughout these Comments, CAUSE-PA is firmly opposed to widening the scope of third-party data sharing to entities beyond conservation and load management service providers (CSPs) that are employed by consumers to help analyze and manage their energy usage. Providing the broad ability for third parties to access customer data raises myriad concerns about the ability to meaningfully protect customer data and jeopardizes fundamental rights of customers to protect their private data from improper or unconsented disclosure.

II. BACKGROUND

On April 16, 2019, Enerwise Global Technologies, LLC d/b/a CPower (Enerwise), applied to become an electric generation supplier (EGS) within the Commonwealth to obtain access to utility data systems on behalf of its customers, to verify customer performance in demand response programs, and to assist customers wishing to analyze their electricity usage and reduction capabilities. On October 7, 2021, the Commission denied this application in a Final Order, determining that voluntary licensing of a conservation service provider (CSP) as an EGS is prohibited under the PA Public Utility Code.¹ However, this Final Order directed the Commission's Office of Competitive Market Oversight, Law Bureau, and Bureau of Technical Utility Services to commence a new proceeding to ascertain if there exists a safe, acceptable way for third parties to potentially access customer data from electric distribution companies' (EDC)

¹ License Application of Enerwise Global Technologies, LLC d/b/a CPower for Approval to Offer, Render, Furnish, or Supply Electricity or Electric Generation Services, Final Order, Docket No. A-2019-3009271 (Order entered October 7, 2021).

data systems, with customer consent, as permitted under Section 2807(f) of the Public Utility Code.²

Data privacy and security is complex, dynamic, and multifaceted. CAUSE-PA notes that the Commission has explored issues related to data privacy in prior proceedings, but only as data sharing pertains to EGSs and EDCs - which are licensed by the Commission and therefore subject to confidentiality provisions in the Public Utility Code.³ Critically, the scope of this proceeding explores whether to broaden allowable data sharing and access to third parties that are beyond the Commission's ability to oversee and regulate.

III. DISCUSSION

CAUSE-PA's comments center on two fundamental concerns: (1) the entities receiving EDC customer data and (2) the manner in which customer consent is obtained. Unlike in prior proceedings, where the Commission developed policies to govern the release of personal and usage data to EDCs and EGSs, this proceeding contemplates disclosure of personal and usage data to third parties not subject to Commission jurisdiction – or the Commission's regulatory provisions governing confidentiality. As noted above, third parties are not licensed by the Commission and the Commission would have no clear recourse to exercise jurisdiction over a non-licensed third party to provide relief to a customer who has been harmed by their data being inappropriately

² Investigation into Conservation Service Provider and Other Third Party Access to Electric Distribution Company Customer Data, Secretarial Letter, at 1, Docket No. M-2021-3029018 (Secretarial Letter entered February 8, 2022).

³ Interim Guidelines for Eligible Customer Lists, Order, Docket No. M-2010-2183412 (Corrected Final Order entered December 14, 2011). On February 28, 2019, the Commission adopted a Final Rulemaking Order that revise Chapter 56 regulations, which administer and enforce Chapter 14 of the Public Utility Code. *Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa.C.S. Chapter 14*, Docket No. L-2015-2508421 (Order entered February 28, 2019) (Final Rulemaking Order). On June 1, 2019, the final regulations were published in the *Pennsylvania Bulletin* at 49 Pa.B. 2815. The regulations became effective upon publication. On December 16, 2021, the Commission issued a Final Order addressing three issues deferred from the Chapter 56 rulemaking, one of which addressed privacy guidelines. See Working Group on Medical Certificates, Other Court Orders, and Privacy Guidelines Relating to the Rulemaking to Amend the Provisions of 52, Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S. Chapter 14, Docket No. L-2015-2508421 (Order entered December 16, 2021).

shared. While Pennsylvania statute clearly states that third parties include electric generation suppliers and providers of conservation and load management services (CSPs), the broad universe of third parties that might seek to access customer data are outside the scope of these provisions.⁴ For these reasons, CAUSE-PA submits that CSPs registered with the Commission should be the *only* third parties permitted to receive EDC customer data.

CAUSE-PA additionally submits that the Commission utilize a collaborative working group process to establish clear and firm guidelines from which utilities can develop comprehensive data tariffs and processes governing customer authorization. While this iterative and deliberate process will take time to complete, it is critically important that the Commission proceed with caution on this issue, as the harms caused by unauthorized disclosure cannot be undone.

As discussed in further detail below, CAUSE-PA is deeply concerned about the disclosure of customer data without a clear process for customers to provide knowing, affirmative, and time-limited consent to the specific data being disclosed. Any policies developed as a result of this proceeding should be guided by the polestar that customers must be given the knowledge and ability to control what, if any, of their personal information is disclosed to third party CSPs. As discussed by parties in the context of the Eligible Customer List proceeding, customers of EDCs have no choice but to provide personal information to an EDC when establishing service – including the additional information obtained through the metering process so proper bills can be rendered.⁵ The extent of customer data housed by utilities is expansive – including financial data,

⁴ Act 129 of 2008 (66 Pa. C.S. § 2807(f)(3)) clearly states as follows: “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.”

⁵ Interim Guidelines for Eligible Customer Lists, Order, Docket No. M-2010-2183412 (Corrected Final Order entered December 14, 2011)

Social Security numbers, rental and home ownership information, household composition, identification documents, and credit history. Smart meters exponentially increase the amount of data available for every household, including interval data capable of revealing family routines.⁶

Concerns related to data security and privacy are particularly acute for low income households. To receive adequate assistance to afford and remain connected to utility service, low income households must – with frequency – provide detailed annual financial documentation to utilities.⁷ To receive necessary assistance, they have no other option but to provide this data to the utility. In providing this information, these customers must be able to rely on utilities to safeguard their information from broad disclosure to third parties to which they have not specifically consented.

Uniquely vulnerable customers, such as immigrants, victims of domestic violence who has submitted Protection from Abuse (PFA) orders or other court orders, and customers who must provide intimate health details through medical certificate processes, provide additional highly sensitive information to utilities. In particular, customers who are victims of domestic violence may have their physical safety endangered if their personally identifiable information or whereabouts become known to their abusers – and the unauthorized disclosure of interval usage data could reveal information about the victim’s habits and routine, allowing for ongoing stalking or harassment. In short, it is essential that clear guidelines are developed to ensure that all customers are protected from unconsented disclosure of personal information to third parties.

To ensure that customers can ultimately control what data is disclosed to third parties, it is also essential that EDCs establish and maintain comprehensive customer data protection

⁶ See Lee, D. & Hess, D.J., Data privacy and residential smart meters: Comparative analysis and harmonization potential; 2021, available at: <https://www.sciencedirect.com/science/article/pii/S0957178721000229>.

⁷ See Hareem Mannan, Data Privacy Is a Human Right (May 16, 2019), available at: <https://modus.medium.com/data-privacy-is-a-human-right-cf36e1b45859>.

throughout any data transfer process – and have processes clearly delineated beginning with affirmative and time-limited consent, moving through data transfer, and then completing the cycle with data storage. In short, it is essential that the Commission develop policies and procedures to provide clear guidance for electric utilities and CSPs, and clear communication with customers so they understand exactly what they are allowing.

As discussed in further detail throughout, CAUSE-PA recommends the Commission adopt the following approach to data privacy and disclosure:

- Only permit registered CSPs to access EDC customer data.
- Establish a working group to advise the Commission in developing a detailed, codified policy statement establishing policies and procedures for data exchange and setting forth minimum standards for EDCs that wish to adopt a data-sharing tariff.
- Require EDCs to obtain and maintain affirmative, specific, informed, and time-limited customer consent from consumers at least annually, and have it be narrowly tailored to include only the information necessary for the CSP to provide conservation or load curtailment services.
- Require all costs – exclusive of profits – for data sharing to be borne by the CSP receiving the data.
- Direct EDCs to include separate, more flexible tariff provisions to govern the disclosure of aggregate data, where all personal identifying items have been removed from the dataset and the data set is large enough to prevent disaggregation by a third party.

We urge the Commission to exercise caution in moving forward, and to engage in an iterative and deliberate stakeholder working group process to ensure the resulting policies are effectively designed to protect consumer information from inadvertent or unauthorized disclosure.

IV. DIRECTED QUESTIONS

As discussed above, CAUSE-PA is deeply concerned about the disclosure of customer data to third parties outside the Commission’s jurisdiction. The universe of third parties that might seek to access customer data is broad – including government entities, landlords, and other private consumers. When one of these third parties inevitably experiences a data breach, consumers will

be left without recourse if their data is mishandled by third parties over which the Commission has no oversight.

In responding to the Commission’s Directed Questions, CAUSE-PA notes that data privacy and protection (or security) of consumer data, while intertwined, represent distinct issues. Data privacy defines who has access to data, while data protection provides tools and policies that restrict or manage access to data. In investigating these areas of critical importance, the Commission’s Secretarial Letter posits several important questions that raise a number of technical and legal concerns, and issues related to utility usage data and meter access. CAUSE-PA responds below to several of the questions that are critically important to ensure that residential consumers – particularly low-income consumers – are able to access and rely on protections against unconsented or overbroad disclosure of personal data to third parties.

A. Technical Concerns

CAUSE-PA will address, taken together, questions 1(a), 1(f), and 1(g), and will address question 1(j) separately.

1. Which entities should have access customer data, and in what manner?

In Question 1(a), the Commission asks if it is 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. The Commission asks in Question 1(f) what other third-party entities should be considered for potential access to customer smart meter data, and in Question 1(g) the Commission asks what criteria EDCs should use to determine eligibility for CSPs and other third parties. The Commission also asks if there should be different standards and/or different levels of access for different types of CSPs and other third parties.

CAUSE-PA submits that third party data sharing must be limited to CSPs that are registered with the Commission and agree to comply with the terms of an EDC's detailed, Commission-approved data tariff. This is consistent with the language of the Public Utility Code, which limits the availability of meter data to "third parties, including electric generation suppliers and providers of conservation and load management services."⁸ When applying the rules of statutory construction, *expressio unius est exclusio alterius* (including one excludes another), entities other than EGSs and CSPs are necessarily excluded from the data sharing provision.

Consumers must be able to rely on the additional protection provided by Commission oversight. The risks associated with customer data sharing are too great for aggrieved customers to be left without clear and accessible recourse to recover costs associated with any kind of data breach. The most vulnerable customers will be the least likely to be resourced with time or income to handle a breach associated with their utility data. EDCs provide life-sustaining, non-optional services, so consumers do not have the choice to simply not patronize an EDC as they would providers of elective services. The Commission should adopt clear and detailed policy guidelines setting forth minimum data privacy standards and parameters for data sharing, and establishing a framework for EDCs to develop comprehensive data sharing tariffs and attendant policies and procedures.

At a minimum, the Commission's policy should:

- Limit third party data sharing to CSPs that are registered with the Commission and provide conservation or load curtailment services.
- Set minimum data security protocols, and require CSPs to prove they are able to comply with such protocols.
- Require EDCs to obtain and maintain affirmative, time-limited consent from consumers prior to disclosure of data, and set forth a process for a consumer to revoke consent at any time.
- Establish a sample form for obtaining consent from consumers.

⁸ Act 129 of 2008 (66 Pa. C.S. § 2807(f)(3)).

- Prohibit CSPs from using data obtained from the utility for a purpose other than the provision of conservation or load curtailment services.
- Establish stringent penalties for CSPs that violate the terms of a data sharing tariff, including potential financial penalties and/or a bar on access to customer data in the future.
- Impose minimum security protocols, insurance requirements, and bonding requirements for CSPs adequate to remediate an unauthorized breach.
- Require CSPs to file periodic reports detailing how the data is stored and retained, who has access to the data, and how that data is accessed by CSP employees.
- Establish required procedures in the event a CSP experiences a data breach which promptly informs consumers of the breach, explains the steps the CSP and utility are taking to correct the breach, and provides information about how the consumer can access available remedies and relief.
- Include language access provisions to ensure information and educational materials are provided in multiple languages and that consent is obtained in the consumer's primary language.
- Require EDCs to develop educational materials and a training plan to ensure that EDC and CSP employees with access to customer data are well aware of the tariff provisions.
- Develop a separate provision governing aggregate data, consistent with the discussion below.

We recommend that the Commission utilize a collaborative working group process to develop various technical aspects of this policy, and fully vet the manner and method in which information will be disclosed to registered CSPs - and the appropriate consequences and remediation for any breach.

2. Cost Recovery for Data Protection and Privacy

The Commission asks in question 1(j) how costs incurred for this purpose should be recovered. CAUSE-PA submits that all costs for data sharing should be borne by the CSPs receiving the data. As noted at the outset of these comments, CSPs can more equitably recover these costs from customers who choose to contract for their services – rather than requiring all ratepayers to pay. Any such costs incurred by the EDC – exclusive of any profits – should be collected through a tariffed charge for CSPs subject to review and approval by the Commission. EDC customer data is especially sensitive and there should be no incentive for profit. EDCs should

not have a financial interest in disclosure of customer data that might raise serious concerns about the propriety of such disclosures.

CAUSE-PA additionally avers that the Commission should explicitly prohibit the sale of customer data or the use of customer data for purposes other than the provision of conservation and curtailment services, and should require that EDCs develop a clear process for monitoring CSP compliance with its tariff provisions.

B. Legal Concerns

1. Legal Limitations and Contracts

CAUSE-PA will address, taken together, questions 2(a), 2(c), and 2(h).

In question 2(a), the Commission asks what legal limitations currently prevent EDCs from providing smart meter customer data electronically to CSPs or other third parties. The Commission asks in question 2(c) if EDCs could use contracts to protect confidentiality of data and what limitations currently exist preventing utilities from implementing such contracts. Question 2(h) asks how EDCs would monitor data access and determine if a CSP or third party becomes a bad actor by violating its agreements.

CAUSE-PA submits that EDCs are prohibited from sharing customer data without having obtained explicit and affirmative consent from the consumer for a third party CSP to access their account information and usage data. Act 129 of 2008 (66 Pa. C.S. § 2807(f)(3)) clearly states:

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.

Customer consent is the qualifier for all EDC data sharing, written explicitly into the statute. The statute also places the responsibility for obtaining consent squarely on the EDCs.⁹

⁹ See Act 129 of 2008 (66 Pa. C.S. § 2807(f)(3)).

Not specifically identified or directed in the statute is how to obtain consent or what constitutes consent. As discussed above, CAUSE-PA submits that EDCs should be required to obtain and maintain affirmative, informed, and time-limited written consent prior to disclosing any customer data to a CSP.

As discussed, CSPs should have to meet certain specific, rigorous requirements before receiving sensitive customer information.¹⁰ CAUSE-PA supports adoption of a data privacy tariff, subject to Commission review and approval and consistent with Commission guidelines, setting forth detailed parameters. Unlike private contractual terms, requiring implementation of Commission-approved tariffs would allow for a robust review, subject to stakeholder input, to ensure that adequate safeguards were provided to protect consumer interests, as well as the interests of the EDCs,¹¹ and provide a possible method of recourse against CSPs who disclose consumer data or otherwise fail to abide by the provisions set forth by the Commission and the EDCs. Requiring EDCs to file a tariff related to customer data disclosures to third parties would allow the Commission and interested stakeholders to evaluate and periodically review updates to EDCs policies related to third party data access, and ensure EDCs are maintaining data confidentiality in accordance with Commission guidelines.

2. Obtaining Consent and Customer Outreach

CAUSE-PA will address, taken together, questions 2(e), 2(f), 2(g), and question 2(k).

The Commission asks in question 2(e) how a CSP or other third parties should obtain customer consent for access to data from EDC systems and if the EDC would determine if the CSP

¹⁰ See International Association of Privacy Professionals, Data Security Contract Clauses for Service Provider Arrangements (Pro-customer), available at: <https://iapp.org/resources/article/data-security-contract-clauses-for-service-provider-arrangements-pro-customer/>.

¹¹ See Security Intelligence, Report: Cost of a Data Breach in Energy and Utilities (Nov. 3, 2021), available at: <https://securityintelligence.com/articles/cost-data-breach-energy-utilities/>.

or other third party had obtained proper customer authorization. Question 2(f) asks how the EDC would be notified when a customer grants consent for a CSP or other third party to access the EDC's data and how would the EDC be notified of the withdrawal of consent. Question 2(g) asks how a customer should withdraw previously granted consent for access to their data and how the EDC would be notified of such a withdrawal.

As discussed above, CAUSE-PA firmly opposes third parties other than those EGSs and CSPs who operate under the Commission's jurisdiction to access customer data. For appropriate third parties that seek access to customer data, CAUSE-PA avers that all customer consent processes should flow through the EDC as the EDC is the entity collecting the data, and under the jurisdiction of the Commission. With EDCs managing consent processes, they will be able to directly investigate whether customers have provided or withdrawn consent to disclose information to third parties.

Any consent obtained by EDCs from customers should be through an affirmative, opt-in process that clearly informs customers of what and to whom they are agreeing to disclose information. Customer consent should be limited to a maximum of one year, with any new consent to a specific CSP obtained each year. Once a customer provides affirmative consent to disclose certain information, each EDC should provide a separate communication to every customer to inform them that the EDC has entered into a data sharing agreement with CSPs. This notification should indicate – in plain language – which CSPs are being provided data, what data is being shared, and the notice should set forth a clear and accessible process to rescind consent. This notification should also clearly state that the customer's consent is valid for one year or less, where applicable. These communications should additionally include customers' rights with respect to protecting their data. Finally, to ensure that customers can readily discontinue data sharing, we

recommend that customers be permitted to withdraw their consent to disclose their data via multiple means, include by phone to an EDC customer service representative.

CAUSE-PA notes that all notices of this nature should be explicitly clear to customers what is happening with their data. EDC customer service representatives (CSRs) should receive separate training for data privacy and security. All notices should be provided in multiple languages, and CSRs should be able to discuss questions and concerns with customers who have limited English proficiency.

3. Commission Action Against Third Parties for Mishandling of Data

Question 2(k) asks what action, if any, the Commission can take against CSPs and other third parties that misuse their access to customer data or the data itself.

As discussed above, as the Commission regulates EDCs and the EDCs are the first point of contact for customers, EDCs should manage the customer consent process and should have the ability to revoke CSP access to data if CSPs are not in compliance with standards established by the Commission or individual EDCs. Access to customer data should be revoked for any CSP that is out of compliance with data privacy tariffs for a minimum of one year – and appropriate financial penalties should be established in the EDCs tariff.

C. Utility Usage Data and Meter Access

CAUSE-PA will address, taken together, questions 3(a), 3(b), and 3(d).

The Commission asked in question 3(a) what customer data should the utility share with CSPs and other third parties and if different types of CSPs and other third parties should have different access to customer data. Question 3(b) asks what types of data the EDCs should withhold and if EDCs' systems allow for data to be restricted. Question 3(d) asks if aggregated data should

be made available and if it should be made available to a wider array of CSPs and other third parties.

CAUSE-PA reiterates points made previously that only CSPs that can comply – and show evidence of compliance -- with rigorous security standards, as outlined above, should have access to any customer data. If EDCs' systems do not allow for data to be restricted, then no data sharing should occur until that is remedied – with the costs of any updates being factored into the cost to CSPs seeking to access data rather than passed on to ratepayers.

CAUSE-PA recognizes the unique nature of aggregate data which does not provide specific or identifiable information about individual customers or their households. Aggregate data provides a non-detailed, bigger picture overview of customer trends and emerging issues. Aggregate data analysis can be particularly helpful to identify patterns amongst EDCs customers, including energy usage trends, and identifying the need for assistance amongst low income communities. CAUSE-PA supports the sharing of aggregate data as long as all personal identifying items have been removed from the dataset – and the data set is large enough to prevent disaggregation by a third party. CAUSE-PA recommends that EDCs develop separate provisions within their data tariff to ensure that aggregate data is stripped of customer identifiers and unable to be disaggregated, and that proper notice is provided to customers that aggregate data may be provided to third parties.

D. Commission Privacy Guidelines

As stated previously, CAUSE-PA avers the Commission's current investigation should be the first step in a thorough process, that includes ample stakeholder engagement, resulting in establishing and codifying the Commission's detailed, robust privacy guidelines.

These guidelines will include protection of personally identifiable information as well as energy usage data. Detailed guidance will offer the benefit of certainty to customers and to EDCs as technology evolves and the quantities of available data increase and as the rigors and standards associated with data sharing evolve in accordance. Having effective guidance and protections in place and codified will help provide the structure and stability for future deployment of new technology while providing consumers with assurance that their privacy and their data is protected.

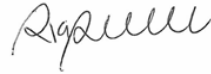
To ensure a strong stakeholder engagement process in the development of the privacy guidelines, CAUSE-PA recommends the Commission establish an advisory group for outreach and communication related to data privacy and security. This group will help to implement the recommendations that the Commission develops as a result of this and following proceedings as part of this docket and will help to provide input and coordinate any additional proceedings related to cybersecurity and consumer information protections.

V. CONCLUSION

CAUSE-PA appreciates the ability to provide comment to the Commission on this critically important issue. As detailed throughout our comments, we recommend that this be the first step of a full stakeholder engagement process resulting in codified policy guidance on this important and complex issue.

Respectfully Submitted,

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