

**John F. Povilaitis**  
717 237 4825  
john.povilaitis@bipc.com

409 North Second Street  
Suite 500  
Harrisburg, PA 17101-1357  
T 717 237 4800  
F 717 233 0852

October 31, 2022

**VIA E-FILING**

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

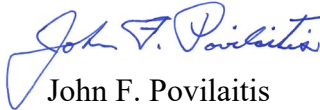
Re: Investigation into Conservation Service Provider and Other Third-Party Access to  
Electric Distribution Company Customer Data  
Docket No. M-2021-3029018

Dear Secretary Chiavetta:

Enclosed for filing please find the Comments of Empower Gas and Electric, LLC in the  
above-captioned proceeding.

Please contact me with any questions.

Respectfully submitted,

  
John F. Povilaitis

JFP/kas

Enclosure

cc: Jeff McCracken ([jmccracken@pa.gov](mailto:jmccracken@pa.gov))  
Scott Thomas ([sjthomas@pa.gov](mailto:sjthomas@pa.gov))  
Christian McDewell ([cmcdewell@pa.gov](mailto:cmcdewell@pa.gov))

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF EMPOWER GAS AND ELECTRIC LLC**

**I. INTRODUCTION**

On February 8, 2022, the Pennsylvania Public Utility Commission (“Commission” or “PUC”) issued a Secretarial Letter initiating a policy proceeding “to determine if a safe, acceptable path exists for registered CSPs and other third parties to potentially gain access to customer data electronically from the electric distribution company’s (“EDC’s”) data systems, with customer consent, as permitted under Section 2807(f) of the Code, 66 Pa.C.S. § 2807(f).”

This proceeding arises from the Commission’s Final Order entered October 7, 2021 in connection with the application of Enerwise Global Technologies, LLC, d/b/a CPower (“Enerwise”), which sought to be licensed as an electric generation supplier (“EGS”) in order to access utility data on behalf of its customers. Docket No. A-2019-3009271. The Secretarial Letter invited interested parties to file written comments within forty-five (45) days of publication in the Pennsylvania Bulletin. The proceeding was published in the Pennsylvania Bulletin on February 19, 2022, 52 Pa.B. 1209. On March 14, 2022, the Energy Association of Pennsylvania filed a Petition for an Expedited Order Granting an Extension of Time to File Comments, which was granted by a Secretarial Letter dated March 23, 2022. That Secretarial Letter established May 5, 2022 as the new deadline for the submission of comments. In a Secretarial Letter dated September 6, 2022, the PUC posed three additional questions for parties to address and invited

responses to those inquiries, as well as “any additional questions or any other information that they deemed relevant” within 45 days after publication of the letter in *Pennsylvania Bulletin*.

These Comments are being submitted by Empower Gas and Electric LLC (“EmpowerSaves”) in accordance with the PUC’s September 6, 2022 Secretarial Letter. Because EmpowerSaves is an Ohio-based company and was not previously aware of this Commission policy proceeding, it did not submit comments earlier in the proceeding. However, EmpowerSaves believes these Comments will be valuable to the Commission and other stakeholders on the legal and policy issues under consideration in this proceeding, and requests they be considered by the Commission in any further order issued in this proceeding.

## **II. BACKGROUND - EMPOWER SAVES**

Empower Gas and Electric is an Ohio company that operates under the brand name “EmpowerSaves.” EmpowerSaves (or the “Company”) sells various energy savings products, including gas and electricity generation in some jurisdictions. EmpowerSaves was formed in 2013 to provide responsive energy solutions to communities as well as residential and commercial customers. EmpowerSaves utilizes its unique data platform to analyze customer utility bills and help customer save and manage energy resources at a reasonable cost. The Company leverages utility and consumer data to assist customers in purchasing energy and services. By utilizing its proprietary data analytics, EmpowerSaves allows utility customers to analyze their utility bills, identify potential energy savings and receive individualized product and solution packages that assist them in attaining energy savings.

In conjunction with the University of Dayton energy efficiency analytics school, EmpowerSaves has created proprietary data analytics technology that can analyze individual utility customer usage data to identify components of the home, multi-family or small commercial

entity that use and/or abuse energy consumption. The model can predict whether significant energy efficiency and savings will take place with improved insulation, or proactive improvement of all types of HVAC equipment, smart thermostat use, etc.

The analytics technology merges utility usage data with age of home/size of home/historical information, along with weather normalization and other factors, to predict the savings that could be achieved if products or solutions are installed. That information can also predict the scope of the solutions needed, their probable cost, and the relationship of that cost to the potential savings.

EmpowerSaves currently qualifies as a Competitive Retail Energy Services (“CRES”) provider and energy broker in Ohio that allows it to access constantly refreshed individual customer usage data.<sup>1</sup> In addition, EmpowerSaves’ officers and directors have a long history in energy-related development, management, delivery and sales.

The data EmpowerSaves is currently obtaining in Ohio includes the names and addresses of the homeowner and continuously updated electric usage data. EmpowerSaves is looking for a cost-effective way to obtain similar information and data in Pennsylvania to enable the provision of energy efficiency and conservation services to retail customers.

### **III. SUMMARY OF COMMENTS**

EmpowerSaves fully understands and appreciates the delicate balance between protecting customer usage and data gathered routinely by electric distribution companies (“EDC’s”) and the need of energy services and related companies to have this information to provide meaningful, value-added services to electric consumers in the marketplace. The answer to deciding the proper

---

<sup>1</sup> An Ohio CRES provider delivers aggregation services, power brokerage services and power marketing services to municipalities and retail customers.

balance of these interests is not to foreclose or unreasonably limit access to this data. EmpowerSaves believes a reasonable solution is available.

The Commission's procedures and protocols regarding access to customer data and usage information should be modified to allow both Electric Generation Suppliers ("EGS's") and Conservation Service Providers ("CSP's) not participating in an EDC's Act 129 Energy Efficiency and Conservation Plan to have similar access to customer and usage data via the EDC's already existing customer portals for *all* customers who have not opted out of the Eligible Customer List<sup>2</sup> ("ECL"). Most importantly, the Commonwealth Court has sustained the use of an opt-out ECL as consistent with Commission regulations. CSP's should be allowed to access this customer usage and data *irrespective of whether a particular CSP is presently under contract to provide services under an approved Energy Efficiency and Conservation ("EE&C") Plan*. The Commission's registry of CSPs is a list of persons "qualified to provide conservation services to all classes of customers". 66 Pa.C.S. § 2806.2(a). CSP's provide substantial value-added energy services and products to end-use consumers that will be enhanced if the CSP is given the opportunity to access customer usage and related data that is at issue in this proceeding. The status of being a registered CSP under applicable Commission regulations should be sufficient to support a right of access, along with the execution of an accepted and Commission-approved confidentiality agreement.<sup>3</sup>

While there is statutory support for requiring customer metered data to be made available to third parties, not just EGS's and CSP's (e.g., 66 Pa. C.S. § 2807(f)(3)), EmpowerSaves

---

<sup>2</sup>The ECL is developed by EDCs and provides suppliers with customer information, such as customer name, account number, service address and telephone number; historical usage data; and rate class. Customers may choose to limit the inclusion of their information on the ECL. *Interim Guidelines for Eligible Customer Lists* Final Order on Reconsideration issued November 15, 2011. Docket Nos. M-2010-2183412, et. al.

<sup>3</sup> EmpowerSaves assumes that CSPs assisting an EDC in its EE&C Plan by agreement are already under a contractual obligation with the EDC to preserve the confidentiality of customer data.

recognizes that, due the proprietary nature of the data and information at issue, allowing full access to all customer data via the ECL to entities not in some way regulated by the Commission could be viewed as a step too far at this time. Hence, allowing CSP's access to these customer portals strikes a reasonable balance of the various stakeholders' interests.

Neither the EDCs nor the Commission should be concerned about accessing entities breaching the confidentiality of the data and information obtained via the customer portals. To the extent necessary, the Commission's regulations at 52 Pa. Code Section 54.8 applicable to EGS's and CSP's can be strengthened initially by guidelines issued in this proceeding and eventually by rulemaking, if necessary, to specify (i) the process by which customer data and information can be obtained; (ii) a list of potential violations of the duty to maintain such information in confidence; and (iii) the enforcement mechanism and sanctions available for non-compliance. EDC's, under the direction of the PUC, should also mandate and utilize Commission reviewed and approved standard Confidentiality Agreements signed by EGS's or CSP's to further define the terms and conditions under which customer data and usage information can be obtained and utilized, without the need for the use of such agreements to unreasonably absorb utility resources.

#### **IV. RESPONSES TO QUESTIONS IN SECRETARIAL LETTER**

EmpowerSaves will respond only to those questions posed by the Commission in the Secretarial Letter that are most relevant to EmpowerSaves and its proposed resolution of the issues extant in this proceeding.

##### **1. Electric Distribution Company (EDC) 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?**

*Response:*

*Yes. As noted above, there is no reason not to allow EGS's and CSP's, both of which are required to submit applications to the Commission to obtain such status and are subject to the Commission's regulatory oversight, to be given access to customer data and information via each EDC's portal for those customers appearing on the EDC's ECL. Those portals are secure and any concerns about maintaining the confidentiality of such data and information can be addressed by requiring the execution of a standard Confidentiality Agreement developed by each EDC with input and authorization from the Commission. To ensure that such Confidentiality Agreements are not unnecessarily restrictive, the EDCs' proposed agreement should be made public for review and comment by interested stakeholders before any Confidentiality Agreements are approval by the Commission.*

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

*Response:*

*Yes. Of course, the EDC's should adapt their customer portals to allow for increased access as proposed by EmpowerSaves in these Comments.*

**d. How are CSPs provided customer data when performing services under ACT 129?**

*Response:*

*EmpowerSaves understands that generally CSP's that are providing services to/for an EDC under an EE&C Plan receive customer usage and related data directly from the EDC. Further, EDC's typically require such CSP's to enter into confidentiality agreements with terms addressing data access and usage, cybersecurity, etc. Under EmpowerSaves' proposal, CSP's not tethered to an EDC under an EE&C Plan would also be given access to customer information via the EDC's portal for all customers on the ECL without the need to obtain individual customer consent. Such access would be subject to the execution of a form of confidentiality agreement intended to, among other things, reinforce the CSP's obligations to maintain the confidentiality of all customer usage and data provided via the portal and subject to enforcement and sanctions for failure to do so. As part of this proceeding or via a separate working group, EmpowerSaves suggests various EDCs and other stakeholders attempt to establish, along with Commission staff input, a form of "standard" confidentiality agreement that would govern CSP access to the ECL when such CSP's are not assisting an EDC in the implementation of an existing EE&C Plan. Utility-required standard agreements for important functions such as customer net-metering, facility extensions, etc. have been successfully developed and this development process could be applied to CSP's,*

*not participating in utility EE&C Plans, to assure confidential treatment of customer data. The same rationale – policy and legal – supporting the use of the ECLs for EGS’s is applicable to CSP’s access to customer information as proposed by EmpowerSaves.*

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

*Response:*

*While in theory many entities could desire access to customer usage and related data, EmpowerSaves is proposing that in this initial expansion phase such access be made available to CSP’s not performing services directly for an EDC under an existing EE&C Plan, subject to the CSP executing a standard confidentiality agreement developed by all key stakeholders with input and review from Commission staff.*

- 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?**

*Response:*

*Under EmpowerSaves’ proposal, only two categories of CSP’s would have access to customer data and usage information via a portal for those customers on the ECL: (i) CSP’s performing services directly to/for and EDC under an existing EE&C Plan (which category exists today) and (ii) CSP’s on the Commission’s CSP registry not performing services directly to/for and EDC under an existing EE&C plan (which category does not exist today). As noted above, the second category of CSP’s eligibility to access customer information would be based on their registration as a CSP under the Commission’s existing procedures and the execution of the standardized confidentiality agreement. Other than EGS’s, no other “third party” would be entitled to access an EDC’s customer portal at this time.*

**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?**

*Response:*

*The core legal authorities relevant to customer information, consent and access are Section 2807(f)(3) of the Public Utility Code (“Code”), the Commission’s*



regulations at Sections 54.8 and 54.43(d), and its pronouncements regarding use of ECLs and third-party access to smart meter data.

The starting point of the analysis is Code Section 2807(f)(3) 66 Pa. C. S. Section 2807(f)(3), which provides as follows:

*(3) 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.*

*This statutory provision clearly requires EDCs to make customer meter data available to various third parties, including CSPs and EGSs, with customer consent. Significantly, it does not restrict access to the information only to EGSs and CSPs, or only CSPs assisting an EDC with their EE&C Plan. In accord are orders entered by the Commission in connection with the implementation of smart meters (“Act 129 requires EDCs to make available to third parties, including electric generation suppliers and load management services, with customer consent, direct access to meter and electronic meter data”). Smart Meter Procurement and Installation, Docket No. M-2009-2092655 (Order entered June 24, 2009).*

*In addition, the Code defines “smart meter technology” as technology that “[e]ffectively support the automatic control of the customer’s electricity consumption by one or more of the following as selected by the customer:...(iii) a third party engaged by the customer or the customer’s utility.”*

*The Commission’s regulations specify the duties and responsibilities imposed on EDC’s, to safeguard customer data and information:*

**§54.8. Privacy of customer information.**

*(a) An EDC or EGS may not release private customer information to a third party unless the customer has been notified of the intent and has been given a convenient method of notifying the entity of the customer’s desire to restrict the release of the private information.<sup>4</sup> Specifically, a customer may restrict the release of either the following:*

- (1) The customer’s telephone number.*
- (2) The customer’s historical billing data.*

*(b) Customers shall be permitted to restrict information as specified in subsection (a) by returning a signed form, orally or electronically.*

---

<sup>4</sup> This is the opt-out option.

- (c) *Nothing in this section prohibits the EGS and EDC from performing their mandatory obligations to provide electricity service as specified in the disclosure statement and in the code.*

*Thus, Commission regulations bar both EDCs and EGSs from releasing private customer information to any third party unless the customer has been notified and provided an opportunity to restrict the release of their private information.<sup>5</sup> EGSs must also “maintain the confidentiality of a consumer’s personal information including the name, address and telephone number, and historic payment information, and provide the right of access by the consumer to their own load and billing information.”<sup>6</sup> Through these regulations, the Commission has established a clear legal mandate that EDCs and EGSs maintain confidentiality of customer information relative to third parties.*

*Status as an EGS is important in Pennsylvania because entities licensed as EGSs are authorized by the PaPUC order and statute to have access to two different types of customer information. First, basic customer information, including electricity usage, is presumed to be available to EGSs as part of the ECLs. A customer’s information is automatically provided to EGSs through the ECL unless the customer has affirmatively elected to restrict the release of their information through an “opt-out” from this information being shared. Interim Guidelines for Eligible Customer Lists, Docket Nos. M-2010-2183412, M-2009-2104271, P-2009-2135500 (Order entered November 15, 2011) (“ECL Order”) at 18 (“EDCs should allow customers the option to withhold the disclosure of all customer account and usage information from the ECL. Moreover, the option should be presented, in the EDC customer solicitation process, in a manner that discloses clearly what information is to be released to Commission-licensed marketers; namely, name, address, telephone number and historic usage data.”). Importantly, the Commission explicitly rejected the “opt-in” approach, where the customer had to affirmatively consent before the EDC made customer information available to the EGS. The Commission agreed that an opt-in process would make it far more difficult for EGSs to make efficient and effective offers to potential retail customers and the opt-out process had been working well in Pennsylvania for many years. ECL Order at 24-27.*

*Importantly, the Commission’s “opt-out” approach to allowing customer information to be released to EGS’s has been upheld in court. See, Mid-Atlantic Power Supply Ass’n v. Pa.P.U.C., 746 A.2d 1196(Pa. Cmwlth. 2000) at 1201 (“The PUC properly exercised its discretion and preserved the delicate balance between a viable and competitive marketplace and customer privacy.”).*

---

<sup>5</sup> 52 Pa. Code § 54.8.

<sup>6</sup> 52 Pa. Code § 54.43.

- c. **Could the EDCs utilize contracts to protect the confidentiality of the data? If yes, what limitations currently exist that prevent the utilities from implementing these contracts?**

*Response:*

*Yes. See the above discussion regarding the establishment of standardized confidentiality agreements with CSP's. EDC's have a variety of "standard" service and related contracts (e.g., net metering, line extension, trenching, easements, etc.) that they routinely utilize. Adding a new standard confidentiality agreement to address access to customer usage and data information for CSP's as proposed by EmpowerSaves will not be, in EmpowerSaves' view, a materially increased burden on EDCs, particularly in light of the benefits to customers of having increased access to energy services and products available to them from CSP's.*

- e. **How should a CSP or other third party obtain customer consent for access to data from EDC systems? Would the EDC determine if a CSP or other third party has obtained the proper customer authorization before customer data is provided? If yes, how? If no, please explain why not.**

*Response:*

*As noted above, under EmpowerSaves' proposal, CSP's access to an EDC's portal would occur via the existing ECL applicable today to EGS's and based upon an opt-out approach to customer consent that has been established by the Commission and upheld by the Commonwealth Court.*

- i. **Should a utility be held accountable for the improper or illegal acts of a customer authorized CSP or other third party?**

*Response:*

*No. Unless the EDC has been complicit in any improper or illegal acts of an authorized CSP, it should not be accountable for such acts.*

9. **What specific customer electric usage data do other parties believe EDCs should have available to reasonably be released to 3<sup>rd</sup> parties?**

*Response:*

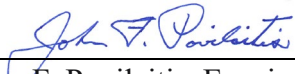
*As an entity currently providing services in the State of Ohio which, like Pennsylvania, has a competitive retail electric generation market, EmpowerSaves can provide its value-added suite of energy services and products to retail customers in Pennsylvania*

*if given access to similar customer information. Currently in Ohio, EmpowerSaves has access to monthly electric usage data on each residential and small business customer, which data can be refreshed/updated upon request each quarter. In addition, EmpowerSaves obtains and would similarly like to access in Pennsylvania, customer contact information such as name and address. In general, EmpowerSaves could accept as sufficient all customer data and information made available today to EGS's via the applicable portal, in addition to a customer's email and phone number, if available from the portal.*

## V. CONCLUSION

EmpowerSaves thanks the Commission for its willingness to consider these Comments. The issues under consideration in this proceeding are important and hopefully EmpowerSaves' comments and proposal to address increased access to existing EDC customer portals by CSP's using the ECL reflects a reasonable balance of some of the competing issues expressed to date by various stakeholders.

Respectfully submitted,

By:   
\_\_\_\_\_  
John F. Povilaitis, Esquire  
Alan M. Seltzer, Esquire  
409 North Second Street, Suite 500  
Harrisburg, PA 17101-1357  
[john.povilaitis@bipc.com](mailto:john.povilaitis@bipc.com)  
[alan.seltzer@bipc.com](mailto:alan.seltzer@bipc.com)

*Counsel for Empower Gas & Electric LLC  
d/b/a EmpowerSaves*

Date: October 31, 2022