



November 1, 2022

**Via Electronic Filing**

Pennsylvania Public Utility Commission  
Attention: Secretary Rosemary Chiavetta  
400 North Street  
Harrisburg, PA 17102

Re: Docket No. M-2021-3029018, Questions Related to the Commission's Investigation into Conservation Service Provider (CSP) and Other Third Party Access to Electric Distribution Company Customer Data

Dear Secretary Chiavetta:

Mission:data Coalition (“Mission:data”) hereby provides these comments in response to the Pennsylvania Public Utility Commission’s (“Commission”) September 17, 2022 Notice in the *Pennsylvania Bulletin* (the “Notice”) regarding Conservation Service Provider (“CSP”) and other third party access to customer data held by Electric Distribution Companies (“EDCs”). Mission:data submits these comments in accordance with 52 Pa. Code §1.12.

The Commission asks three sets of questions that follow up on questions posed in a February 19, 2022 notice. With the exception of question #8, which we believe is aimed at EDCs, Mission:data provides its responses below.

- 1. Question #7 (What barriers, if any, prevent EDCs from implementing the components of the third-party data access tariff supplement contained in the FirstEnergy settlement at Docket No. P-2021-3030012, including but not limited to, the following policies?)**

Mission:data is supportive of a general approach that uses a Commission-approved tariff to outline the obligations of EDCs and customer-authorized third parties with regard to data transmission. Indeed, tariffs for data-sharing services have been established in other jurisdictions such as California and Illinois. With that said, however, Mission:data wishes to highlight several barriers to adoption that are embedded within the FirstEnergy settlement agreement tariff as written. Mission:data strongly recommends that the Commission consider these barriers prior to applying the FirstEnergy settlement agreement tariff to the applications contemplated in this proceeding.

First, Sections 4.1(c) of the tariff reads:

(c) The Third Party acknowledges that any data specific to a Customer that it accesses or retrieves, or both, have no warranties with respect to accuracy, completeness, or fitness for any purposes.

This is problematic because the EDC is not required to provide accurate customer data. While convenient to the EDC, no purpose is served by expending resources on the provision of inaccurate or incorrect customer data. Mission:data does not advocate spending any money – whether by ratepayers, customer, or third parties – on a system that provides incorrect data. Not only would energy management efforts be frustrated by incorrect data – causing significant confusion among customers and resulting in time-consuming troubleshooting by the third party and the utility – but the above disclaimer ties the Commission’s hands unnecessarily. If a utility were found to operate its information technology (“IT”) systems in a substandard manner with incorrect data being routinely transmitted – a circumstances which, unfortunately, has happened in other jurisdictions<sup>1</sup> – the Commission would be unable to disallow cost recovery. The Commission should keep its options open for prudence review of IT systems and reject any disclaimers of the type described in the FirstEnergy settlement tariff. Mission:data notes the same point also applies to Section 8.1 of the tariff, “Limitations on Liability.”

Second, Section 4.1(d) of the tariff reads:

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<sup>1</sup> See Mission:data Coalition, *Energy Data Portability*. January, 2019 at pages 10-11, describing how a California utility provided incorrect customer energy usage data that led to problems with wholesale market settlement. <http://www.missiondata.io/s/Energy-Data-Portability.pdf>

(d) The Third Party agrees that data specific to a Customer must not be sold or licensed to any other entity for any purpose.

Section 4.1(d) is problematic because of modern IT outsourcing practices. Suppose that Acme Energy is an energy management firm serving Pennsylvania residents, and Acme Energy wishes to hire a software firm to act as an intermediary to interface with the EDC's IT systems and provide Acme Energy employees with a spreadsheet of customer energy usage (subject to the customer's consent, of course). Acme Energy could be in breach of the tariff language as written because its software vendor could be construed to be "selling" or "licensing" customer data to Acme Energy, even though the software vendor is merely acting on Acme Energy's behalf. A similar circumstance has existed for many years with electric generation suppliers ("EGSs") who routinely contract with specialists in Electronic Data Interchange ("EDI") to interact with the EDCs on behalf of the EGS. In the context of EDI, however, it is understood that the software intermediary is acting as an agent on behalf of the EGS, and customer data that transits through the software firm's IT systems is not equivalent to sharing customer data with the software firm. Mission:data believes that this issue can, and should, be easily resolved in the case of non-EGS third parties by relying on guidance from the Federal Trade Commission ("FTC") in the following manner. The FTC stated in 2012 guidance that "[c]ompanies do not need to provide choice before collecting and using consumer data for practices that are consistent with the context of the transaction or the company's relationship with the consumer, or are required or specifically authorized by law."<sup>2</sup> Mission:data notes that it is "consistent with the context of the transaction" for customer energy data to transit through software firms, internet service providers, and cloud hosting providers before being analyzed by Acme Energy, the entity known to the customer. The Commission could eliminate the risk that Section 4.1(d) becomes a costly and unnecessary *de facto* ban on IT outsourcing by simply adding this phrase to Section 4.1(d): "unless agreed to by the customer or consistent with the context of the transaction agreed to by the customer."

Third, Section 4.3 of the tariff reads:

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<sup>2</sup> Federal Trade Commission, *Protecting Consumer Privacy in an Era of Rapid Change*, March 2012, available at <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf>

**4.3 Company Continuing Obligations.** For a situation in which the Company must provide or make available, or both, to a Third Party data specific to a Customer as described in Section 5.1.1 of this Tariff, *such data must be provided or made available, or both, within one business day after the Company determines the data are available for the Customer*, provided the Third Party is in compliance with applicable provisions in Section 3.1 of this Tariff and submits a request for such data prior to 5:00 p.m. Eastern Prevailing Time on the previous business day. *The Company is not required to provide or make available, or both, revisions to data after such data are provided or made available, or both, to a Third Party in accordance with the provisions of this Tariff...*[emphasis added]

Section 4.3 is problematic because it implies that requests cannot be fulfilled automatically by an IT system, but rather must be processed manually. Given modern IT systems in 2022, manual processing of data-sharing requests is an imprudent practice, and Mission:data does not believe the Commission should accept substandard performance from EDCs in this regard – particularly as millions of Americans in other states ranging from Texas to New York have electronic, instantly-accessible energy records. In addition, failing to provide updates to interval energy usage records is a poor practice. It is well known that interval usage records sometimes have gaps or errors which are later corrected as the advanced metering infrastructure system communicates with meters that may be temporarily inaccessible via their radio network. Failing to provide updated records as they are finalized by the validation, editing and estimation process (“VEE”) would deprive demand response participants of the data needed to settle transactions at PJM. Mission:data further notes that technical standards such as Green Button Connect My Data specifically allow for updating interval usage records for this reason. Thus, the EDC continuing obligations in Section 4.3 of the tariff should be amended to specify automatic fulfillment of data requests and updates over time as they are generated (subject to a customer’s consent).

Finally, Mission:data believes that the tariff would benefit from further specification on technical details such as application programming interface (“API”) specifications, data definition, and system availability metrics. While Mission:data is in favor of using a tariff as an instrument to define EDCs’ and third parties’ responsibilities, we highlighted in our May 5, 2022 comments numerous lessons learned from other jurisdictions in which the lack of specificity in regulations caused problems with standardization, interoperability, unnecessary administrative costs, and utility accountability. Pennsylvania would be better served with a more comprehensively

designed tariff that establishes consistent, state-wide technical and business standards, thereby ensuring more effective Commission oversight.

**2. Question #9 (What specific customer electric usage data do other parties believe EDCs should have available to reasonably be released to 3rd parties?)**

Conceptually, Mission:data's answer to the question is "Anything that the meter collects and/or processes." There are several reasons for this broad answer. First, metering technology will change in the next few years as the EDCs' smart meters begin to reach end of life and are replaced with contemporary equivalents. As we stated in our May 5, 2022 comments, new advanced meters contain computers that enable high-frequency analysis of power and voltage waveforms in a manner that is not possible with advanced meters installed throughout Pennsylvania today. The resulting insights have the potential to accelerate energy efficiency, demand response and load-shifting in ways that benefit customers, but reaching maximum benefits will only occur if customers can easily share all of their available meter data with competitive providers. After all, monopoly utilities are not well-suited to put ratepayer capital at risk in order to develop innovative new energy management solutions that use granular customer data. Moreover, Pennsylvania would suffer from an un-level playing field if EDCs had access to rich, sub-second energy usage patterns that can identify unique devices and appliances while customer-authorized third parties were granted access only to inferior 15-minute readings. The best solution to achieve a level playing field and information symmetry between market actors is for any data that is stored or analyzed on the meter – including data or insights generated by next-generation advanced meters – to be electronically accessible to customers and/or customer-owned devices.

Finally, Mission:data proposes that hourly greenhouse gas emissions data also be provided as a component of customer energy usage data. Increasingly, customers of all types are interested in minimizing their carbon emission and are able to cost-effectively shift their electric loads to times of lower emissions. Consumer electronics such as smartphones and electric vehicle chargers are being shipped with the ability to optimize their charging times based upon

emissions signals from the power grid. Mission:data recommends the Commission seek additional comments on the calculation methodology in order to align with ongoing standards efforts across the country, and then require EDCs to uniformly provide an hourly emissions signal.

### **3. Conclusion**

Thank you for the opportunity to provide comments. Mission:data appreciates the work of the Commission and Staff and looks forward to further participation in this proceeding.

November 1, 2022

Respectfully submitted,

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