STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

Rulemaking to modify existing consumer protection and meter rules to include Advanced Metering Infrastructure	)))	Docket No. U-180525

RESPONSE OF MISSION:DATA COALITION TO THE COMMISSION'S AUGUST 14TH, 2019 NOTICE OF OPPORTUNITY TO FILE WRITTEN COMMENTS

Mission:data Coalition ("Mission:data"),[1] a national non-profit coalition of technology companies delivering data-enabled energy management services, is pleased to provide this response to the Commission's questions concerning Washington's privacy rules.

Mission:data advocates for consumers' rights to access, use and share energy information collected about them. Empowering customers with secure access to their own energy usage and cost information – including the ability to easily share that information with third parties of their choice – will give consumers access to advanced tools that cost-effectively reduce energy consumption and save money. We advocate for Green Button Connect ("GBC") nationwide, a standard developed by industry and the U.S. Department of Energy and National Institute of Standards and Technology ("NIST") to facilitate permission-based customer sharing of energy usage information with third parties. Mission:data has been active in over 15 states and the District of Columbia; to date, five (5) leading states, representing over 36 million electric meters, have adopted Green Button Connect.

Mission:data is very concerned that the updated draft rules represent a large step backwards from the initial draft. Instead of helping customers benefit from the state's ongoing investments in advanced metering or take advantage of new digital technologies that help them save energy

[1] www.missiondata.io

and money, the draft rules do little to change the status quo. Furthermore, we wish to bring to the Commission's attention problems experienced by our members with the accuracy and reliability of Puget Sound Energy's existing electric usage data for commercial customers. Given that the Commission is addressing accuracy issues relating to advanced meters in this docket, Mission:data believes the Commission must consider not only accuracy at the point of measurement but also in the handling of customer data by utilities' back-end information technology ("IT") systems, where additional problems can be introduced. Mission:data strongly encourages the Commission to consider best practices from other states regarding data access and data privacy, and to make significant modifications to the rules, as we describe below.

1. Revisions to WA 480-90-153, "Protection and disclosure of private information."

There are several shortfalls in the latest rules as proposed by Staff. Not only would the rules as written fail to help customers realize the benefits of Washington's investments in advanced metering, but several problematic concepts from the previous draft have not been remedied, as we explain below. Each comment below applies to both the electric and natural gas rules.

(A) Sub-section 153(17) was deleted, opening the door to utilities charging fees for customers to make use of their energy information for conservation or bill management purposes.

Sub-section 153(17) as originally written is very important for customers to receive the most value from utility investments in advanced metering infrastructure (AMI). Customers pay for the large capital costs of AMI through rates, and customers are therefore entitled to directly receive the benefits of AMI such as energy efficiency, conservation and reduced monthly bills. Charging a fee for the provision of information, either to customers or to customer-authorized third parties, would dramatically reduce the number of customers who would avail themselves of the opportunities presented by AMI. It would also put Washington out of step with national trends: None of the five states with Green Button Connect mandates (California, Colorado, Illinois, New York and Texas) charge fees for accessing customer information. For these reasons, Mission:data strongly urges the Commission to maintain sub-section 153(17) as originally proposed:

Customers should incur no additional charge for the provision of their retail [electric/gas] consumption data in a timely, accessible manner to themselves or their third-party designee.

(B) Sub-section 153(15) permits utilities to continue with antiquated, manual and inefficient processes for handling customer data requests, encouraging credential-sharing.

According to Staff's latest draft, sub-section 153(15) reads: "The utility must make a reasonable effort to respond to requests from customers for their own customer information within five business days of the customer request." Unfortunately, this language creates two problems: it (1) formalizes inefficient and antiquated processes for handling customer data requests, and it (2) encourages distributed energy resource (DER) providers to ask their customers for their utility website logins and passwords in order to gather customer information because credential-sharing is faster than waiting five business days for a manual process to be executed.

The purpose of sub-section 153(15) is unclear, particularly because the previous sub-section, 153(14), requires utilities to offer a "user-friendly website interface through which customers may access their own customer information without charge." If utilities are required to have websites that allow customers to access all of their billing and usage information, then what purpose is served by allowing customers to submit manual, written requests to utilities for information? Adopting the rule as written would encourage inefficient business practices because utilities will continue to process information requests by hand, rather than building a modern, efficient, zero-marginal-cost electronic system for processing such requests by customer-authorized third parties.

Furthermore, utilities are likely to interpret sub-section 153(15) to mean that customer requests to share their information with third parties need only be answered within five business days. This means that DER providers have a significant competitive advantage if they persuade their customer to share login and password information for the utility's website with the DER provider, rather than fill out a paper form. The DER provider can login on the customer's behalf and automatically and immediately gather the energy information needed using a process known as "web scraping" or "screen scraping." Web scraping is endemic to the utility industry because

utilities have not provided a modern, electronic or standardized alternative. As Mission:data representative Michael Murray described at the March 13, 2019 workshop in Olympia, web scraping is widely used by multifamily and commercial property owners today because there is simply no other way to gather energy usage and cost information across multiple utility territories in a standardized, machine-readable manner. With many large companies (such as LinkedIn, and various banks and financial software firms) encouraging users to share their usernames and passwords to websites across the internet, it is extremely unlikely that the utility industry in Washington will be successful in discouraging this behavior. Instead, the best solution is to eliminate the incentive that exists for web scraping in the first place: Utilities should be required to fulfill third party requests for customer information (with customer permission) as quickly, or more quickly, than a customer can view his or her information on the utility's website. If third party DERs, acting with customer permission, are treated relatively worse in any respect than customers accessing the utility's website, then a structural incentive for web scraping will persist in Washington. Mission:data proposes to remedy this imbalance with language described in Section #2 below.

(C) The Commission should reject a vaguely-defined NIST standard for safeguarding customer information and instead require reasonable security practices and procedures.

As Mission:data argued in our January 31, 2019 comments, it is confusing, unnecessary and potentially very costly to require that utilities adhere to "the National Institute of Standards and Technology (NIST) standard" for encryption. NIST has dozens or hundreds of technical standards regarding data protection, but the rule declines to specify which one. Utilities might reasonably interpret sub-section 153(1) to refer to critical infrastructure protection standards, which would require Avista and Puget Sound Energy (PSE) to verify biometric data from customers such as fingerprints prior to accessing customer information. Under this interpretation, utilities' call centers would become useless because telephone inquiries lack biometric authentication. Other unintended consequences stemming from the rule's incorrect reference to "the" NIST standard are numerous because the sheer number of possible NIST standards involving data security or encryption implicated in the draft rule would create conflicts with existing policies or practices. The Commission should either decide *which* NIST standard it

wishes the utilities to follow or, as Mission:data recommended in our January 31, 2019 comments, the Commission should abandon references to NIST altogether in favor of a much more common reasonableness standard for data protection:

1) A gas/electric utility must safeguard all personally identifiable information within the utility's possession or control from unauthorized access or disclosure ***with reasonable security practices and procedures****.* ~~*For purposes of this section, "safeguard" includes but is not limited to encrypting the information in a manner that meets or exceeds the National Institute of Standards and Technology (NIST) standard.*~~

(D) Draft rule sub-section 153(9) should limit utility liability for the actions of a customer-authorized third party.

In our January 31, 2019 comments, Mission:data strongly supported sub-section 153(9). As we noted, the Commission may not realize it, but sub-section 153(9) is critical to ensuring that customers receive the benefits of investments in advanced metering infrastructure (AMI). In our experience, it is essential that utilities are not put in the position of being a "policeman" as it relates to third parties, such as energy management companies, and their handling of customer energy information. The utilities do not want a policing responsibility, nor would it be appropriate for a utility to have such responsibility. If, hypothetically, the utilities *are* required to police third party behavior, then utilities could refuse to follow customers' wishes to share their information with third parties because of a risk, no matter how small, that a subsequent breach by the third party might occur and the utility would be "on the hook." Such refusal to serve customers would make the utility the *de facto* monopoly for all distributed energy resources, particularly energy efficiency and demand response, that depend upon the customer's energy information.

However, Mission:data has recognized that sub-section 153(9) does not go far enough in removing utilities from a "policeman" role because the draft rule would only apply when the *customer* discloses his or her information to a third party, and not when the *utility* discloses information to a third party at the request of a customer. Therefore, we strongly recommend that the Commission adopt the following change highlighted in bold:

*9) If a customer discloses**, or directs the utility to disclose,** his or her gas consumption data to a third party that is unaffiliated with, and has no other business relationship with, the utility, the utility will not be responsible for the security of that data, or its use or misuse.*

(D) Sub-section 153(10)(d) should be deleted because it is inconsistent with modern, web-based data-sharing practices of utilities nationwide.

Mission:data recommends deleting sub-section 153(10)(d) because it references an antiquated, manual, paper-based process. Utilities across the country are offering electronic, web-based authorizations such as Green Button Connect (GBC), which has been adopted by utilities with over 36 million electric meters nationwide. The rule's language suggests that a human is reviewing a paper authorization form submitted by the customer and that the customer name, service address and account number must match the utility's records. This is very inefficient and, given the digital technologies available to utilities in 2019, virtually certain to be imprudent and wasteful when compared with automated alternatives.

At a minimum, the rules should not make it impossible for utilities to offer online data-sharing tools that are in-line with best practices from across the country. Most utilities – including Avista and PSE – offer a website at which customers register by providing their account number and other information. Sub-section 153(10)(d) would micro-manage the utilities' existing authentication standards which do not today require verification of the customer's address. Puget Sound Energy's website requires customer name and account number, but not address, to create an online account.[2] Similarly, Avista's website requires account number and the last four digits of the customer's phone number, but not address, to create an online account.[3] Therefore, adopting sub-section 153(10)(d) will require significant changes to Avista's and PSE's website in order to authenticate customers prior to electronically directing the utility to share customer information with a third party. These are unnecessary and costly changes that provide no security benefit to ratepayers.

---

2 See https://www.pse.com/create-account.

3 See https://myavista.com/register-account.

(E) Demand-side management should be explicitly included as a valid purpose for utilities to share aggregate customer information.

Previously, sub-section 153(15) stated, "The utility may disclose customer information in aggregate form for legitimate business purposes." Mission:data recommended adding "including, but not limited to, demand side management" as a legitimate business purpose. This is because new "pay for performance" (P4P) efficiency programs evaluate site-level energy savings and can report on aggregate savings across a portfolio of homes or buildings without the possibility of an individual customer's usage information being derived. It is important for the future of efficiency programs in Washington that demand side management be retained as a legitimate use for revealing aggregated data (regardless of what the Commission ultimately decides upon as an acceptable aggregation method). In the updated draft rules, however, the above sentence is deleted entirely. Demand-side management is not explicitly addressed in the definition of "primary purpose," which has been narrowed to cover only tariffed services. This would force each evolution of efficiency programs to achieve costly and time-consuming changes to each utility's tariffs prior to using aggregated information to improve energy efficiency for the benefit of ratepayers.

As a solution, Mission:data strongly recommends returning to the original definition of "primary purpose" which includes providing for "system or operational needs" and for planning, implementing or evaluating "energy assistance, energy management, renewable energy, or as part of a commission-authorized program." Since not every detail concerning customer information is addressed in a utility's tariffs, sub-section 153(15) would severely restrict utilities' abilities to improve their efficiency programs over time, particularly in cases where disclosing aggregated energy savings performance is critical to ensuring program cost-effectiveness. The latest draft would inadvertently prevent certain utility energy efficiency programs from improving over time. For this reason, Mission:data believes the Commission should revert to the original definition of "primary purpose."

2. Proposed Additions to WA 480-90-153, "Protection and Disclosure of private information."

(A) Utilities must be responsible for the accuracy of energy information delivered to customers and customer-authorized third parties.

While the Commission has asked the utilities and stakeholders for information about the accuracy of electric usage measurement in the present docket, there has not been any discussion about accuracy problems introduced by utilities' back-end software in processing, storing, and providing such information to customers or customer-authorized third parties. It has come to our attention that Puget Sound Energy has not consistently provided accurate interval energy usage data for some commercial customers. For example, some of our members, who provide energy management services to commercial buildings, report routinely seeing "spikes" of energy use in 15-minute periods that, as reported by PSE, are 10 to 100 times larger than expected. The spikes reported by our members are so large that it would clearly be impossible for the commercial building to consume power at such high a rate. Whatever the underlying cause of the glitches seen – perhaps a back-end IT system is inadvertently multiplying usage values by 10 or 100 – the end result is that customers are hindered in their energy efficiency efforts by the lack of consistent and reliable data available from PSE (not to mention the confusion surrounding peak demand charges). Mission:data strongly recommends that the Commission require all utilities to provide not just accurate meters but accurate data to customers, whether such data are provided through the utility's web portal or any other method. Mission:data therefore recommends the following addition to sub-section 153(17) highlighted in bold:

> (17) Each customer must have the opportunity to dispute the accuracy or completeness of the customer information the utility has collected for that customer. The utility must provide adequate procedures for customers to dispute the accuracy of their customer information and to request appropriate corrections or amendments. **Notwithstanding the foregoing, the utility is responsible for accurate metering and for accurately reporting usage information to customers or customer-authorized third parties**.

(B) Utilities should be required to follow nationally-recognized standards and best practices with regard to providing data to customers and customer-authorized third parties on a non-discriminatory basis.

Finally, to reiterate from our January 31, 2019 comments, the Commission should also add the following to the electric and gas rules:

1. **"Nothing in these rules shall limit a customer's right to provide his or her information to anyone."** This sentence will ensure that the utility acts in a fair and non-discriminatory manner as it relates to customers voluntarily sharing their information with any third party of their choice. The above sentence was approved recently by Colorado's Commission in a comprehensive rulemaking concerning data access and data privacy.[4] As mentioned above, limiting the utility's liability in case of a third party's breach (provided the customer affirmatively agreed to share his or her information with the third party) is critically important to avoiding putting utilities in the role of policeman. To further assure fair treatment with any energy management or demand response company, the above sentence should be incorporated into the rules.

2. **"As part of basic utility service, all utilities shall provide access to the customer's information, including energy use, billing, account, and any information necessary for energy efficiency or demand response participation, in electronic machine-readable form, without additional charge, to the customer or to any third party recipient to whom the customer has authorized disclosure. Such access shall conform to nationally recognized open standards and best practices."** The above paraphrases Colorado's Rule 3027(d) that was approved by the Commission in 2016 after extensive comment from numerous interveners over a period of one year. It is important that the rules refer to machine-readable formats conforming to nationally recognized open standards and best practices. The growing energy management and Internet of Things industries depend upon a technologically-consistent environment from utility to utility. Since over 36 million electric meters are now subject to a Green Button Connect mandate, Washington ratepayers can benefit from the same ecosystem of energy management services that currently serve other states, but only if standards are adhered to. If Washington utilities were to make their own idiosyncratic platform, then energy

[4] Colorado Public Utilities Commission. 4 Code of Colorado Regulations 723-3, Section 3027(e).

management software companies would face increased interoperability costs in Washington and consumers' options would be substantially limited.

Thank you for the opportunity to provide comment.

Dated: September 16th, 2019

Respectfully submitted,

FOR MISSION:DATA COALITION, INC.

____/s/_____

Michael Murray, President
Mission:data Coalition
1752 NW Market St #1513
Seattle, WA 98107
(510) 910-2281 (phone)
michael@missiondata.io