

## Comments on Draft Report

February 8, 2022

Consumers Energy appreciates the time and effort of the MPSC in compiling information and the opportunity provided by the MPSC Staff to provide comments regarding the draft report. The Company respectfully notes that adoption of these recommendations would likely add significant cost to ratepayers and the value to all customers should be carefully evaluated.

The Company would note that a number of the recommendations would significantly impact general utility operations and all customers, and would offer the following specific comments on recommendations made in the draft report.

### RECOMMENDATION TO ADOPT FAIR INFORMATION PRACTICE PRINCIPLES (FIPPS) (4.1.1):

Consumers Energy supports the adoption of FIPPs as foundational privacy principles.

RECOMMENDATION FOR ANNUAL REPORTING BY IOUS ON PERSONAL DATA COLLECTION NECESSARY TO SUPPORT PRIMARY PURPOSES (4.1.2): Some of the reporting would be useful; however, some components of the recommendation would be expensive, administratively burdensome, and Consumers Energy believes would not add value.

- Consumers Energy recommends annual reporting at a higher level than recommended, which would include:
- Categories of data collected by customers,
- A summary of business needs met by contractors with which customer data has been shared to conduct primary utility business, and
- A summary of confidentiality requirements in place that protect the data and restrict its use.
- Consumers Energy is willing to support annual sharing of data privacy and security policies and procedures.
- Consumers Energy is in agreement that transparency in customer data protection activities is helpful. Should additional requirements be adopted, the Company recommends:
- Annual summary reporting standards, and that
- Any show cause Orders be limited to investigations of a material breach of privacy requirements.

RECOMMENDATION TO UPDATE THE EXISTING DEFINITION OF "PRIMARY PURPOSE" (4.2): In the report, the claim is made that "market research is not an essential part of providing customers safe and reliable utility service". Consumers Energy would respectfully disagree with this statement. The Company strives to continually improve its processes, and information from customers is key to these efforts.

The stated purpose for this recommendation is to create a level playing field in the competitive energy service market; the Company would respectfully note that even with adoption with this

recommendation a “level playing field could not be achieved” since other entities do not have the same requirements and restrictions as do utilities. **Consumers Energy respectfully suggests that this recommendation not be included within the draft report.**

RECOMMENDATION THAT EWR AND DEMAND RESPONSE BE CLASSIFIED AS SECONDARY PURPOSES AND SUBJECT TO CUSTOMER CONSENT PRIOR TO BEING AFFORDED ACCESS TO PERSONAL CUSTOMER DATA (4.2): The Company offers a reminder the EWR and Demand Response are programs that utilities are legislatively<sup>1</sup> directed to be engaged in with their customers not only to assist customers but to meet the core function of generating, delivering, and managing energy supply using the electric grid. Changes that make this more difficult will have negative consequences on these processes. If adopted, this change will (a) impact Consumers Energy's ability to deliver on our Integrated Resource Plan and clean energy commitments; (b) conflict with existing statutory requirements around energy waste reduction; and (c) significantly increases the cost of compliance with privacy requirements.

The Company respectfully offers the following information explaining the likely negative outcomes from adoption of this recommendation.

- Adoption of this recommendation will limit the information available to utilities to develop and implement programs, and make it difficult for utilities to achieve legislatively mandated savings and demand reduction goals. Consumers Energy would note that the stated purpose is to create a level playing field in the competitive energy service market – however, adopting this recommendation would not do so given that other entities do not have the same requirements that utilities do.
- Additionally, adoption of this recommendation will make it significantly more difficult to identify and enroll customers in utility programs. This will have the simultaneous impact of decreased participation and increased costs resulting in less cost effective programs.
- Customer-specific data is necessary to validate and process customer rebates in the EWR program. Requiring individual customer consent will add barriers and costs that will limit access to energy efficiency rebates.
- When piloting new programs and technologies, innovation becomes slower and more expensive.
- Customers would become frustrated when utility representatives do not have access to data that would allow them to offer assistance. As customers reach out to the Company via the customer contact center or self service via the company website, they expect to see all facets of their service including their bill, payment programs, energy usage, as well as their enrollments in clean energy products.
- For programs such as EWR for targeted programs, customers expect that the utility representative be aware of eligibility expectations and the qualifications of that customer. In particular, low income customers are likely to be impacted negatively as eligibility must be determined prior to reaching out to them to be effective. In addition, this would negatively impact recent initiatives to expand and assure diversity, equity and inclusion in the various utility program offerings. The Company would note that some programs may be eliminated entirely.

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<sup>1</sup> See 2008 PA 295, 2016 PA 341 and 2016 PA 342.

- Adoption of this recommendation would also limit the ability of a utility to perform studies which assess customer satisfaction with utility interactions. This feedback is essential to continually improve the service provided to customers.
- Customers have long had expectations that, when in discussion with a utility representative, the representative has access to the data stored by that utility and be in a position to propose useful suggestions.
- Many programs require evaluation, measurement and verification by an external party. Without access to the data, these expectations cannot be met. If a customer can only participate in such programs by granting access to the data, this would reduce the willingness of some customers to participate – impacting all of Michigan.
- The statute addressing EWR for Michigan provides for measures to be provided to challenged customers below their cost. Adoption of this recommendation could greatly limit the ability to design and deliver programs to low income customers.
- Adoption of this recommendation will require utilities to make significant investments to update IT infrastructure and the compliance controls necessary to separately handle customer data for the different utility functions.

Adoption of this recommendation will lead to less overall customer participation in demand response, energy efficiency, and renewable energy programs in the state of Michigan. Utility-run programs are specifically designed to accelerate adoption of these programs, technologies, and associated markets. EWR programs in particular are created to remove market barriers such as financial barriers, technical awareness, inconvenience factors, and others. In fact, without utility run energy efficiency programs there would be no market for providing the financial and technical assistance necessary to accelerate the adoption of energy efficient appliances, technologies, and processes. **Consumers Energy respectfully suggests that this recommendation not be included within the draft report.**

#### RECOMMENDATION TO ADOPT A DEFINITION OF UN-SHAREABLE PERSONAL INFORMATION

(4.2.1): Consumers Energy agrees that there are some customer data elements that should never be shared from the utility to contractors without customer consent, although the Company respectfully suggests the list provided in the report is too broad. **The Company recommends un-shareable data be limited to biometrics, health information, security questions, GPS location, and IP address and would welcome a discussion with the MPSC Staff to discuss necessary sharing of specific types of customer information.**

- The MPSC Staff states that “individuals’ personal data sets should no longer be made available to utility contractors and agents for the purpose of market research and product development in competitive markets.” Consumers Energy suggests a distinction should be made between personal data sharing for utility business operations and personal data sharing for market research and product development. Additionally, the Company suggests that this be clarified by specifically stating that data sharing for other utility business operations outside of market research and product development are not to be prohibited – such as bill assistance efforts and collection activity. Consequences of a broad prohibition include severe limitations on business operations, e.g. bill collection. Additionally, prohibiting utilities from marketing EWR, Demand Response, and other programs to utility customers without explicit consent could restrict the utility’s ability to meet statutory requirements and will put at risk the goals approved in the Company’s Integrated Resource Plan.
- Consumers Energy works with a number of external partners to provide assistance services to customers experiencing life challenges. Adoption of a recommendation that limits data, which is only provided in a manner that protects this data, will make it more difficult to for utilities to enable assistance to reach the customers that need it.

- Note that, for Consumers Energy, contracted entities are required to safeguard all confidential data, including customer data, in accordance with the terms of their contract with the Company. To ensure such safeguards are in place,
- Contractors must provide standard evidence of Privacy and Security programs.
- Protection of confidential information by contractors must meet or exceed Consumers Energy's own standards.
- Confidential information can only be used as necessary to complete the contracted work.
- Confidentiality obligations survive termination of the contract for a minimum of 5 years, and in perpetuity for personally identifying customer information.
- A regular technical review is conducted to ensure appropriate security protocols are in place.
- **Consumers Energy recommends that "third party" be defined as an individual or entity that does not have a formal business relationship documented by contract with the company.** Currently, Consumers Energy would not share the personal data referenced in the Staff report with third parties.

RECOMMENDATION FOR MORE PRESCRIPTIVE STATEWIDE DATA AGGREGATION STANDARDS AND LIFTING THE EXISTING BAN ON DATA SHARING FOR PURPOSES OTHER THAN PRIMARY PURPOSES (4.3)

AND

RECOMMENDATION TO ADOPT DATA AGGREGATION STANDARDS FOR MARKET RESEARCH, LOCAL GOVERNMENT BENCHMARKING, BUILDING BENCHMARKING, ACADEMIC RESEARCH, AND REGULATORY POLICY ANALYSIS AND DEVELOPMENT. ADOPT THE 15/15 AGGREGATION STANDARD AS A MINIMUM STANDARD FOR AGGREGATED DATASETS FOR RESIDENTIAL AND COMMERCIAL CUSTOMERS. . . FOR INDUSTRIAL CUSTOMERS, GIVEN THE SIGNIFICANTLY FEWER NUMBER OF CUSTOMERS THAT MAKE UP THIS CLASS, STAFF PROPOSES A MINIMUM STANDARD OF 4/50 (4.3):

Consumers Energy supports the proposed data aggregation standards of 15/15 aggregation minimum for residential and commercial customers, and 4/50 aggregation minimum for industrial customers, but respectfully notes that nonstandard data and non-standard requests should be anticipated and may require exceptions.

Consumers Energy is willing to develop processes for the sharing of data in an aggregated and anonymized manner geographically by zip code similar to that previously reported in the report submitted in Case No. U-21122 for utility storm damage response, Case No. U-20757 for customer impacts of the pandemic, and Rule 460.151. The Company is willing to engage in dialogue regarding expectations concerning "investment equity", as this description is broad and vague and we are unable to determine the expectation and would **suggest that the recommendation be revised to recommend review by appropriate workgroups such as the Energy Affordability and Accessibility Collaborative, the Service Reliability Collaborative, or others as appropriate.**

RECOMMENDATION TO ADOPT A DEFINITION AND STANDARD FOR SHARING OF ANONYMIZED CUSTOMER DATA FOR ACADEMIC RESEARCH PURPOSES (4.3.5): Consumers Energy is willing to share data in an aggregated and anonymized manner for academic research purposes. The Company would note that unless there is additional dialogue or specific requests are received, a definition or standard cannot be developed at this time and would **suggest that this recommendation be revised to recommend dialogue between academic institutions, the MPSC Staff and utilities on this topic.**

RECOMMENDATION FOR A DATA SHARING DISPUTE RESOLUTION PROCESS OUTSIDE OF COMPLAINT CASES BEFORE THE COMMISSION (4.4): Consumers Energy would note that there is a formal dispute resolution process that goes before the Commission, and an informal process using a Hearing Office. The Company believes that such disputes would be complaints and can use these processes.

RECOMMENDATION FOR DEFERRED ACCOUNTING TREATMENT FOR COSTS ASSOCIATED WITH THE PROPOSED EXPANSION OF DATA SHARING (4.5): Consumers Energy compliments the Commission on its recognition that costs will be involved should any of the recommendations be adopted. The Company would respectfully note that approximately \$100,000 would be needed to configure accounting reporting before implementing any of the recommendations and incurring costs.

RECOMMENDATION TO ADOPT GREEN BUTTON CONNECT AS THE PREFERRED DATA-SHARING SELECTION OPTION (4.6): Consumers Energy is currently using or implementing Green Button Connect. The Company would respectfully note that customers do choose tools other than Green Button Connect as well. Some items of note regarding this specific technology:

- Consumers Energy is currently seeking certification of our Green Button functionality via the Green Button Alliance in 2022. However, it is noteworthy that Uplight, the vendor which provides our Dashboards and Green Button functionality, does not expect to achieve certification with our existing Residential Connect functionality due to the costs of keeping current with ever changing Green Button standards. Uplight is recommending Consumers Energy use UtilityAPI for Green Button Connect functionality. UtilityAPI is the leading Green Button vendor and is Green Button certified. A significant cost challenge exists with this solution as well.
- Consumers Energy has asked the Green Button Alliance for a 'certification checklist' to speed up certification efforts, as to our knowledge such a guide does not exist today based on recent conversations representatives of the Green Button Alliance.
- Ongoing changes to Green Button Alliance standards have and will continue to make Green Button management resource intensive (human and financial resources). Consumers Energy remains committed to continuous improvement.
- Consumers Energy currently provides easy and secure access to customer energy usage information in a consumer-friendly and computer-friendly format in several ways and is working diligently to improve customer experiences in this area.

RECOMMENDATION FOR INVESTOR-OWNED UTILITIES WHO HAVE FULLY DEPLOYED AMI PILOT HAN AND IN-HOME DISPLAYS FOR LOW-INCOME, PRE-PAY, AND SENIOR CUSTOMERS TO ACCESS CUSTOMER BILLING DATA (4.7): There are opportunities to work with external technology partners such as Google to pilot solutions for this customer group. Note that there are pilots already in progress or in development that may provide insights regarding the best methods to assist these customers – for example, the Powerley Pilot by DTE and the Predictable Billing Pilot by Consumers Energy.

Consumers Energy notes that opening the HAN table on an AMI meter would introduce cyber security concerns. Significant testing would need to occur and may require limiting access to a small number of approved devices. The Company would need to ensure that this configuration would not jeopardize the broader AMI system and architecture.

If the cyber security concerns can be addressed, a significant investment in technology and processes would be needed to make HAN registration a reality. Analysis should be done to ensure the perceived benefits outweigh the costs incurred by all customers to implement such a

solution. **The Company would respectfully suggest that the Energy Affordability and Accessibility Collaborative review this recommendation before inclusion in a report or prior to action taken by the Commission.**

RECOMMENDATION FOR UPDATED GUIDANCE/FRAMEWORK REGARDING CUSTOMER PRIVACY AND DATA ACCESS (SPECIFICALLY THE "CUSTOMER DATA PRIVACY (EXHIBIT A)" USED IN U-17102):  
Consumers Energy is supportive of changes to the framework following consideration of comments and concerns relayed to the MPSC regarding these recommendations.