



Memorandum

Date: February 8, 2022

To: MPSC Staff – Data Access and Privacy
Kayla Gibbs
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From: Dan Dundas, President
Michigan Electric and Gas Association

Subject: Feedback on Draft Report – Data Access and Privacy

The Michigan Electric and Gas Association’s (MEGA) members¹ appreciate the opportunity to provide comments on the MPSC Staff’s Data Access and Privacy Recommendations.

MEGA members remain committed to ensuring the integrity of customer personal information and energy use information and welcome the ongoing discussions at the Commission.

The impact of the draft recommendations to Michigan’s EWR programs could be significant because of the data access and privacy boundaries Staff is recommending be placed on Michigan utilities such as receiving explicit customer consent before releasing customer data for any outreach other than that used in serving electricity and natural gas (e.g., billing, reconnects, disconnects, outages). Some of the recommendations will have unintended, undesirable effects in reaching other public policy goals that the Commission and State are interested in achieving, particularly on carbon reduction.

The recommendations want to level the playing field but fail to recognize that regulated utilities are not operating in a competitive market. Utilities operate under government mandates and regulations, especially in the areas of energy waste reduction (EWR), demand response (DR), and load management. Staff has also recommended that utilities be directed to consider demand response programs more fully in IRP filings and upon completion of advanced metering infrastructure (AMI) investments. The requirement to meet these mandates is not placed on other actors nor is there a penalty, or means of penalizing, other actors if they do not deliver upon the services provided.

As addressed further below, the impact of the recommendations will have a broad impact such that

¹ The MEGA companies are Alpena Power, Citizens Gas Company, Indiana Michigan Power Company, Michigan Gas Utilities, Northern States Power-Wisconsin, SEMCO Energy, Upper Michigan Energy Resources Corporation, Upper Peninsula Power Company.



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- Utilities will be restricted in the ability to personalize outreach efforts and deliver EWR, DR, renewable energy (RE), and energy assistance programs to customers.
- Customers will be impacted as new barriers are created to access and understand EWR, DR, RE, and energy assistance programs.
- EWR vendors will experience restrictions on ability to personalize outreach and communications, severely limited ability to innovate and improve offerings.

Further, some of the new requirements that are being suggested would be difficult or impractical for MEGA members to implement as it relates to AMI infrastructure or additional data reporting. Those items are specifically noted below.

Lastly, MEGA is concerned that several of the recommendations are focused on issues that purportedly currently exist but no facts to support the claims have been provided. For example, the recommendation for alternative dispute resolution process for data requests supposes a problem that data requests are being improperly denied by utilities without evidence.

Specific comments on each section of the report follow:

4.1 Customer Data Privacy Framework

MEGA notes that the draft report identifies Case No. U-17102 as the primary case although there are several topics discussed and updated in Case No. U-18485.

While MEGA does not oppose standards to protect customer data and privacy, because of limited staff and resources to implement, MEGA would appreciate consideration of a defined start date that gives MEGA members ample time to evaluate current tariffs and make appropriate revisions to those standards.

4.1.1 Fair Information Practice Principles (FIPPS)

MEGA reiterates its comments that any updates or revisions required of MEGA members would require staff time and investment that would take time and resources to implement. As such, MEGA would request an extended timeline to implement these revisions.

4.1.2 Increased Transparency and Regulatory Oversight Recommendations

MEGA members have been willing and will continue to provide additional information on an as-needed basis to ensure compliance. However, there are already numerous channels of communication with the Commission and Staff to ensure this compliance. MEGA believes compiling and aggregating this information outside of existing tariffs would be duplicative.



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Further, the staff time to provide this information would further strain resources. MEGA welcomes further dialogue to ensure that members follow best practices and Commission orders.

4.2 Primary Purpose Definition and Energy Services

Staff purports that the definition of primary purpose be revised to protect customer data and provide for competitive marketplace for energy services. Revision of this definition is problematic and concerning for many reasons. MEGA respectfully disagrees with the recommendations and underlying assumptions.

MEGA requests that this recommendation be removed from the draft report for the reasons outlined below.

Energy Waste Reduction (EWR) Services are Mandated Services, Not Voluntary

MEGA respectfully disagrees that the definition of primary purpose needs revision. The definition of primary purpose was established specifically to address the utility's central role prescribed by the legislature to provide for energy waste reduction programming (among other programs) to their customers and mandating specific metrics to meet these goals. The intent of EWR programs is to support reliable utility services by reducing load.

Customers are charged for these programs, whether they utilize them or not, and utilities have a duty to research, identify, and offer programming to customers to assist them in reducing their energy consumption. These programs continue to be a success, exceeding the statutorily mandated targets each year.

Additionally, the legislature identified those programs that are open to market competition and when a regulated utility opts to participate in those markets for value-added programming, the utility must participate in a level playing field and share data appropriately. These optional, value-added programs are distinctly different from the mandated programming utilities must bill and offer to their customers and illustrate the differences as to how data is shared.

Opening these primary purposes, required by statute, to outside vendors would create a situation whereby the utilities are mandated to provide services, but would not have full capabilities to manage the programs. Measurement and verification (EM&V) of EWR programming, required by statute and Commission order, would not be possible, resulting in inaccurate or incomplete data necessary for compliance. Utilities would not be able to provide independent contractors with necessary customer information to ensure installations are meeting energy savings targets and that the customers are satisfied with the products without customer consent. This will increase costs and complicate efforts by the state to reduce greenhouse emissions and properly track this information.



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Finally, this could create situations whereby utility customers are subsidizing vendors and contractors for data that is not being adequately compensated.

Energy Waste Reduction and Other Energy Services are Competitively Bid

Many EWR programs are contracted through a competitive bid process, open to anyone offering similar services in the competitive market. There is no market advantage. Customer facing EWR contractors (HVAC, Insulation, construction, etc.) are not disadvantaged for two reasons. First, they are eligible to participate in EWR programs. Second, and more importantly, neither MEGA members nor their implementing contractor/subcontractors share customer data with customer facing EWR contractors.

Removing Marketing from Primary Purpose will Result in Higher Costs

Restricting a utility's ability to utilize customer data will increase costs. MEGA members identified other unintended consequences of revising the definition of primary purpose, including impacts on rate transparency, customer validations, cost effectiveness of implementing EWR programming, and other business operations.

Market research allows utilities to better understand where the most needed opportunities for EWR work exist, to serve low-income customers, to determine the most cost effective EWR opportunities, and to complete market & potential studies for planning and goal achievement purposes under state law and policy goals. The ability to offer EWR, DR and low-income programs based upon market research is meant to allow a utility to deliver reliable, safe, and affordable energy service. The cost to market and achieve targets could potentially cause EWR programs to no longer meet cost-effectiveness targets.

Market segmentation is key to cost-effectively implementing programs, providing customers with information specific to their unique energy usage. For example, the need to identify known low-income customers is critical to ensure our most vulnerable customers appropriately take advantage of the programs available to them. Without this targeted approach to customer assistance, costs would rise because utilities would not be able to identify specific customers capable of utilizing the service the utility is offering.

Another potential scenario that a MEGA member noted is the need to validate eligible customers one by one instead of supplying confirmed lists to their independent contractors. The costs to validate one by one would be higher and the process would be delayed, frustrating both customers and contractors.

Revising Primary Purpose Could Have Adverse Effects on Low-Income Programs

The primary purpose also includes low-income programming, and there is not much discussion on the possible effects that would have on data sharing to assist low-income customers.



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Requiring low-income energy assistance programs to obtain customer consent would have implications on shutoff protection plan enrollment. MEGA members are concerned we would no longer be able to share lists identifying potential low-income customers to low-income assistance programming grantees.

4.2.1 Personal Data Sharing with Contractors, Agents, Third Parties

Generally speaking, contractors are acting as agents of the utility and are subject to the same terms and conditions of data protection that the utility would be. In many cases, contracts between the utilities and their contractors specify that all contractors are held to the same confidentiality and privacy standards as the utility, its employees, and its operations. Further, these contracts also prohibit contractors from using any information supplied by the utility for any purpose not defined in the applicable contract.

Some of these revisions would hinder utility business operations (ex.: DOB, SSN, Driver's License for credit reporting, fraud prevention) and some may not. A few (GPS, device identifiers) could be done without identifying the specific customer but may still need to be disclosed to 3rd party contractors.

For example, credit agencies are used to determine need for deposits, collection agencies and even supply information subject to court orders and subpoenas in certain circumstances. This data is needed for fulfillment of the contractor's duties. Restricting its use would reduce ability to serve customers effectively and efficiently and would likely increase costs.

4.3 Data Sharing for Secondary Purposes

While MEGA appreciates the Staff's effort to find a workable solution, this solution does not effectively relieve the problem created in making many existing primary purposes secondary purposes. Issues remain, and these changes impede the utility's ability to comply with legislative mandates and Commission orders.

For example, customer account information would not be able to be used to pre-validate a customer, low-income customer lists could not be shared, consumption data to target high energy users could not be utilized, consumption information could no longer be used to identify customers best suited for a particular pilot, and customer specific data could not be shared with independent EM&V evaluators to validate energy savings achieved.



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4.3.1 Aggregated Data for Market Research and Product Development in Competitive Energy Services Markets

MEGA notes that energy assistance is referenced in the original scope of part 4 of the primary purpose but omitted throughout when talking about the recommended change. Clarification is needed if energy assistance is still a primary purpose or if the recommendation is to move that to secondary too.

The association also notes that this type of access, if not paid for by the party seeking the information, could lead to cost increases just to benefit private market requests. Essentially, customers are being required to pay for the “market research” of private market providers. MEGA asks whether, at a minimum, there should be an accompanying tangible, quantifiable benefit for the customer to limit subsidization?

4.3.2 Aggregated Data Availability – Local Government Benchmarking

MEGA remains concerned on potential costs that all customers would bear to service select customers in a part of the utility’s service territory. This proposal fails to reflect principles of cost causation, and unreasonably shifts the costs driven by a small group of customers onto the remaining customers. Staff’s proposal does not set forth a justification for relieving the cost causer from full payment of the costs incurred to provide requested information.

4.3.3 Building Owners and Multi-Unit Dwellings

MEGA members have concern about cost and staff resources if the frequency of these requests go up by a large margin. Removing the need for tenant authorization may significantly increase these requests and the accompanying costs.

For some members, the billing system does not link service addresses of customers to within a certain building, therefore fulfilling these aggregate requests is not possible.

4.3.4 Aggregated Data Availability for Regulatory Policy Considerations

MEGA has no comment on this section.

4.3.5 Data Access for Research Institutions (Academia)

MEGA has concerns on the frequency, scope, and size of potential data requests, and the potential for customer costs that do not provide a net benefit to the customer. Much research is done under grants and there is significant publicly available data. In addition, Staff’s



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recommendations do not address the costs associated with requests. It is MEGA's position that the costs of providing data should be placed on the cost causer, not utility customers.

4.4 Data Access Dispute Resolution: Company and Third-Party

As previously stated, MEGA members are not aware of significant third-party data requests being requested and denied, and respectfully disagrees that the current complaint and review process needs revision.

Creating another, informal review process outside of the process outlined in the Administrative Procedures Act is not a preferred avenue for dispute resolution.

MEGA asks this recommendation be removed from the final report.

4.5 Data Access Cost Recovery Regulatory Treatment

Assembling and providing data to third parties is a non-trivial exercise, and that such release, beyond the provision of standard usage information, should be at the requestor's sole expense. MEGA Members appreciate that Staff recognizes there are costs to providing data to third parties. However, MEGA is also concerned that tracking the cost of these data requests for future ratemaking purposes would be administratively burdensome. Requests can come in via a variety of methods (i.e., call center, regulatory, customer services, corporate communications, etc.) Tracking the cost of the request from the time it is received, reviewed, approved, and responded may require input from several individuals and departments.

MEGA members are also concerned that this proposed policy does not ensure costs are attributed to appropriate entities and potentially results in all customers subsidizing the requestor. In addition, a data request that does not demonstrate net benefits to a customer make not be recoverable by the utility in a future proceeding. Also, without the requestor paying for costs, there is no limit to the number, frequency, and un-ending iterations that will be requested by the private market.

4.6 Customer Access and Sharing of Customer Energy Usage Data

In a survey of MEGA members, there are not a lot of customer requests for the type of data suggested. Some members have conducted pilot studies with real-time access and the customer engagement was low.

Some members fulfill data requests on a per-customer basis at no charge. For requests that extend beyond that information, the customer or third party (if appropriate) bears that cost.



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Finally, regarding Green Button, as in other instances throughout the report, MEGA is concerned about the cost and net benefit for customers. MEGA would suggest a carve out for smaller utilities, or, at a minimum, a cost-benefit analysis prior to adoption.

4.7 Data Access and Equity Concerns – Use of Home Area Network (HAN)

MEGA appreciates the Staff's interest and efforts to increase low-income customer's access to timely information related to energy usage and billing. Generally, MEGA members do not collect customer data regarding age, gender, race/ethnicity, income, education level.

Staff's recommendation to "require" a pilot for a certain customer segment fails to recognize that not all "low-income" or "senior citizen" customers are identified in billing systems as such, or that a senior citizen, by age alone, should be identified as a "vulnerable population."

In addition, not all members are deploying AMI, and in a survey of members, it is worth noting that some HAN-capable meters do require internet access for data to be accessed, perhaps limiting functionality. MEGA would recommend that this be done in a utility defined pilot to study the efficacy of such a service to determine their applicability.

MEGA appreciates the opportunity to provide feedback on the Draft Report and welcomes additional dialogue on the report.