

MARTIN KUSHLER COMMENTS ON THE CUSTOMER EDUCATION AND PARTICIPATION DRAFT, DATA ACCESS AND PRIVACY PORTION

4.2 Primary Purpose Definition and Energy Services

Under existing privacy guidance, primary purposes include an IOU or its contractors or agents to perform market research for energy services utilizing personal customer data without prior customer consent. While this personal information often has a legitimate primary purpose associated with its collection (account set-up, billing, etc.) the IOUs ability to re-purpose that data to market voluntary programs and energy services to individual customers warrants reconsideration given the evolving energy landscape. Of greatest concern is utility-offered energy services such as demand response, load management, and energy efficiency all competing in a competitive market.

IOU supported programs operating in these markets have a major advantage due to their ability to access personal customer data for the planning, implementation, and evaluation of their energy services programs without customer consent. This arrangement not only skews the competitive market's effectiveness but also promotes unnecessary risks to a customer's private data for the development of voluntary programs and services that may be available to the customer in the future.

Given the elective nature of these programs and the recognition that market research is not an essential part of providing customers safe and reliable utility service,

Staff recommends the Commission remove the following portion from the existing primary purpose definition;

Commented [MK1]: It is hard to think of a more important component of "the evolving energy landscape" than the increasingly urgent need to address the climate crisis. The importance of that issue is well-demonstrated in the Governor's Executive Orders and Directives (); by the formation of the Michigan Council on Climate Solutions; and by many elements of the MPSC MI Power Grid effort. Increasing energy efficiency is one of the core strategies for reducing greenhouse gas emissions, and by clear state policy (PA 295 of 2008 and PA 342 of 2016) utilities have a primary and required role in promoting energy efficiency.

Commented [MK2]: This is hardly the "greatest concern" in the "evolving energy landscape". See above comment. In fact, this concern is minimal given existing guidelines on utility market activities. Moreover, see comment below.

Commented [MK3]: It is crucial to understand that in their EWR activities, utilities do not provide utility-owned products and services that displace market actors. Rather, these utility programs, through providing education and incentives, foster much greater use of products and services provided by market actors.

Commented [MK4]: This is a good thing! Utility access to information and relationship with their customers is one of the major reasons why utilities are identified as key entities to promote energy efficiency in nearly every state, including by explicit statute in Michigan. Their ability to constructively use this information to educate and promote energy efficiency actually increases EE related business opportunities for market actors.

Commented [MK5]: The actual guiding mission under utility regulation is "safe, reliable, and affordable" utility service... and energy efficiency is an important resource for reducing overall utility system costs (as clearly expressed in Michigan statute).

Commented [MK6]: For all the above reasons, that is an undesirable and counter-productive recommendation.

“(4) plan, implement, or evaluate, energy assistance, demand response, energy management, energy efficiency, or renewable energy programs by the Company or under contract with the Company, under contract with the Commission, or as part of a Commission-authorized program conducted by an entity under the supervision of the Commission, or pursuant to state or federal statutes governing energy assistance.”

Staff recommends that these activities be classified as secondary purposes and subject to customer consent prior to being afforded access to personal customer data. For instance, a customer signing up for a voluntary energy service offering from the IOU could also authorize the Company to use their data for tailoring of future voluntary offerings. However, a customer who has never provided consent to participate in a Company voluntary energy service offering would not be subject to any tailoring of services or market research based on their personal data. Given the captive nature of the IOU ratepayers, removing the ability of the IOU and its contractors and agents to perform market research using personal data as a term of service to accepting monopoly services is appropriate.

The Commission should also consider the removal of subsection four in order to address the market advantages provided to Company contractors operating regulated energy service programs within competitive markets. The current data asymmetry allowed by providing only utility selected contractors and agents access to personal information without customer consent creates an unlevel playing field in the competitive market for energy services. Currently, utility affiliated providers of EWR, distributed generation, and DR can provide targeted and tailored programs unique to customers and based on their “actual” data during the first interaction with a potential customer. Non-affiliated providers are required to learn and explain the unique process for requesting third-party access to usage data in the customer jurisdiction (if it exists), wait for the potential customer to submit the request, wait for the data to be compiled, and wait for delivery of the data in a non-standardized presentation it must then adapt for its own use. Only then could the provider begin to develop an offering of a similar product. Staff believes that regardless of affiliation with the utility, energy service providers should have equal opportunity to offer equivalent services in a functional market. Staff believes that prudent policies should avoid preferential treatment for data access between regulated program offerings and their non-regulated competitors. This is especially important in programs such as EWR where the regulated offerings are legislatively (or by Commission order) limited in funding or participation. In these instances, regulated programs may fall short of meeting the public and rate-payer demand for the services and thereby limiting customer access and choice.

Recommendation: Staff recommends updating the existing definition of “primary purpose” to increase the protection of customer personal information and support an equal playing field in the competitive energy services market.

Commented [MK7]: Given the clear expression of the importance of utilities promoting energy efficiency in state policy, both in statute and through executive actions (see above), this recommendation should not be supported. Energy efficiency, demand response, etc. are indeed primary purposes for utilities...a key part of providing “safe, reliable, and affordable” service.

Commented [MK8]: As a practical matter, requiring prior consent for a utility to be able to use that data to provide future offerings would create an unworkable “catch-22”. Customers could not be expected to volunteer for a program if the utility is unable to identify potentially eligible customers and inform them of the availability of programs and services. Such a requirement for ‘prior consent’ would also destroy the ability to conduct statistically representative market research or program evaluation.

Commented [MK9]: On the contrary. Under appropriate regulation, utilities are the ideal source to conduct such important market research. Indeed, no independent market entity would either (a) have the technical capability and access to conduct such research, or (b) be under appropriate regulation to safeguard customers from misuse of information. Utilities under regulatory oversight can conduct research that will be critically important for benefitting customers and the public interest.

Commented [MK10]: Note that there are some important advantages to utilities being able to screen potential contractors and service providers (e.g., for technical qualifications, legal or ethical problems, etc.) prior to enrolling them in particular programs or eligible contractor lists.

Commented [MK11]: To the extent that there are demonstrable problems with market actor access, those should be addressed through a Staff/utility/contractor oversight process, without a need for a counter-productive ‘meat ax’ approach of classifying EE and DR activities as a “secondary purpose” for utilities.

