SEE Action

STATE & LOCAL ENERGY EFFICIENCY ACTION NETWORK

A Regulator's Guide to Data Access and Privacy for Energy Efficiency

February 19, 2012

SEE Action Working Groups

Working Group Leadership

Susan Ackerman, OR PUC
Vaughn Clark, OK SEO
Todd Currier, WA SEO
Jennifer Easler, IA Consumer Advocate
Joshua Epel, CO PUC
Jim Gallagher, NY ISO
Bryan Garcia, CT Clean Energy Fund
Frank Murray, NY SEO
Phyllis Reha, MN PUC
Keith Welks, PA Treasury

Overview

1. **Access to Customer Information**
2. Survey of Existing Policies
3. Policy Options to Address Major Issues

Why is Access to Customer Information an Issue?

- Utilities routinely collect energy use data
- There is a robust private sector of energy efficiency service providers who would like access to this data
- Access to customer data can help more effectively target services and evaluate impacts

Concerns About Releasing Data

- **Customer Hesitation**
  - What can data reveal about the household or business?
  - How will the data be used?

- **Utility Hesitation**
  - Reluctance to reveal potentially sensitive data
  - Infrastructure and transactional burden of sharing large quantities of data
  - Commercial value of the data

Objective of the Guide

Inform regulators and other stakeholders about the issues and policy options related to providing access to *customer information* held by utilities that can be used to support and enhance *energy efficiency services*.

Defining Customer Information

- **Personally Identifiable Information (PII)**
  - Name, address, social security number
- **Customer-specific Energy Usage Data (CEUD)**
  - Monthly and/or interval energy use data
- **Aggregated Customer Energy Use Data**
  - Data from multiple buildings to provide info about energy use across the service territory
  - Data from energy audits, program evaluations, and appliance surveys

Energy Efficiency Market Entities

- **Program Administrators *(direct PUC oversight)***
  - Utilities
  - Nonprofit & for-profit companies
  - State energy agencies
- **Program Implementation Contractors *(indirect PUC oversight)***
- **Energy Efficiency Service Providers (EESP) *(no PUC oversight)***
  - Lighting, HVAC & home performance contractors
  - Appliance & equipment retailers
  - Local governments & nonprofits administering non-utility programs

Overview

1. Access to Customer Information
2. **Survey of Existing Policies**
3. Policy Options to Address Major Issues

Study Approach

- Study conducted in Spring 2012
- The study included:
  - A review of other industry experiences
  - State statutes, rules, and constitutions
  - Federal law, privacy policies and initiatives
  - Industry standards
  - Discussions with state regulators & stakeholders

Health Care Industry Experience

- In 1996, Congress passed the Health Insurance Portability and Accountability Act (HIPAA)
  - HIPAA Rule (2003) establishes specific rules on how personal data can be used and disclosed
  - Information can only be used or disclosed if:
    - Required to treat the patient or obtain payment
    - Can be given to patient caregivers, but only if the patient expressly or impliedly consents
    - To accomplish public policy objectives (i.e. elder abuse)
    - If the patient specifically authorizes the disclosure in writing

Telecommunications Industry Experience

- In 2007, the Federal Communications Commission (FCC) adopted privacy rules that require:
  - Obtain authorization from customers before sharing their information
  - No call data can be released over the phone without password
  - File an annual report with the FCC that includes all consumer complaints

SEE Action
STATE & LOCAL ENERGY EFFICIENCY ACTION NETWORK

Retail Grocery Industry Experience

- Voluntary loyalty cards are typically offered to incentivize data disclosure
- Most grocery chains have fairly extensive privacy policies
  - Policies often prohibit the grocery store from selling individualized data to a third party

Example: Giant

- Giant does not disclose 'Customer Identifiable Information" except to affiliates and entities providing services to Giant (those entities must sign a confidentiality agreement).
- Giant may transfer the data to another company in the event of a sale only if the new entity agrees to be bound by the privacy policy.
- Customers can request that Giant not disclose your data but that may limit participation in certain programs.
- Code of Ethics that includes language about safeguarding privacy.
- Pharmacy records are kept separate

https://www.giantfood.com/customer_service/privacy_policy/index.htm?linkid=F

Example: Cub Foods

- Enrolling in the loyalty program is consent for the privacy policy.
- Does not sell or rent "Personal Information" to third parties without consent.
- Cub Foods may disclose personal information to service providers.
- Customers can review information through the Customer Interaction Center.
- Customers may opt-out of certain communications.

http://www.cub.com/about/security-privacy.html

Statute & State Policy Review Findings

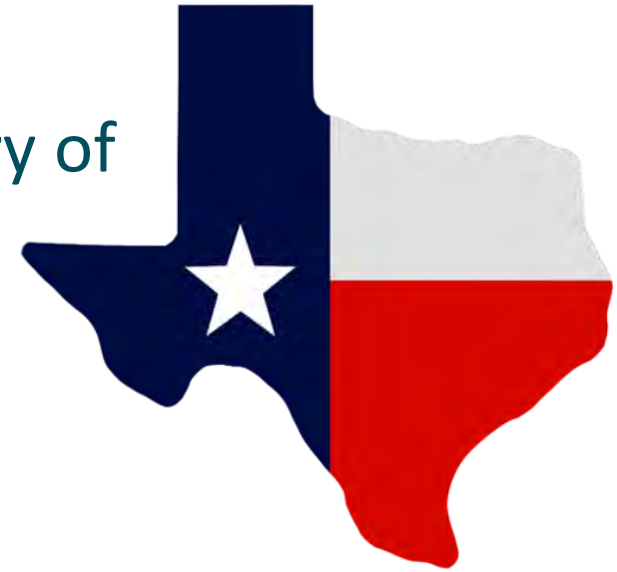
- Most states have not acted definitively
  - Typical default policy: no third party access
- Clear policies adopted in:
  - California, Colorado, Oklahoma, Oregon, Texas, Vermont, Washington, and Wisconsin
- Several states have open dockets and/or legislation pending

Example: Colorado

- Utility must provide customer data to a third party upon authorization from a customer.
- Data must be in a standard format and electronic machine readable.
- No additional charge is allowed for standard data but for things like real-time data, a reasonable fee is allowable.
- A non-contracted third party is not subject to the privacy regulations.
- Aggregated data can be disclosed, uses the 15/15 rule.
  - The utility is not liable for harm or loss as a result of sharing aggregated data.

Example: Texas

- Electric utility to provide customer advanced meter data to the customer, the customer's retail electricity provider, and other customer-authorized entities.
- Meter data belongs to the customer.
- Data must be provided the day after it was created.
- Smart Meter Texas is a central repository of CEUD.



Example: Vermont

- VT PSB: "without customer information, Vermont Energy Investment Corporation (VEIC), the state's third-party program administrator, will be unable to provide the same level of customer service to all customers who have paid for that service through the energy efficiency charge."

- Utilities may only release usage data to specific entities
- Legislation requires a Confidential Information Management System
- Aggregate data must contain a sample no smaller than the "town level"

Overview

1. Access to Customer Information
2. Survey of Existing Policies
3. **Policy Options to Address Key Issues**

Key Issues States Have Addressed

- Customer Consent
- Data Management & Security
- Enforcement & Business Practices
- Cost Recovery

Consent: Aggregated Energy Use Data

- Several states have established rules for releasing aggregated data without customer consent (CO, VT, OK)
- CO: 15/15 rule
  - Aggregated data must contain at least fifteen customers or premises, and
  - No single customer's data may comprise more than 15 percent of the total aggregated data

Consent: EESP Access to Individual Data

- CA, CO, OK, TX, WA require customer consent to release data
- Opt in typically requires:
  - Written or electronic consent
- WA requires that the customer be informed about:
  - The entity accessing the data
  - How long they will keep the data

Consent: Streamlining Access to Data

- Provides a standardized process & format for accessing customer data
- Opportunity to promote independent industry standards

Green Button

Consent: Program Administrator Limitations

- Prohibit program administrators (including utilities) from using data for secondary commercial uses unless the customer consent (e.g. Telecom, FIPPs, Customer Privacy Bill of Rights, CA, CO, TX, WA)

- Limited data used to accomplish specific purpose, management & security requirements
(e.g. CO, OK)

Data Management & Security

- Require entities to maintain specified security measures (e.g. FIPPs, Consumer Privacy Bill of Rights, CA, CO, VT, WI)
- Granularity and quantity: disclose only the quantity and granularity of data that is necessary to complete the task (e.g. HIPAA, NAESB, CA)
- Time limitations: require 3rd parties to destroy data after task is completed (e.g. HIPAA, FIPPs, CO, WI)

Enforcement & Business Practices

- Require third parties interested in gaining access to utility customer data to register with the PUC (e.g. CO, CA)

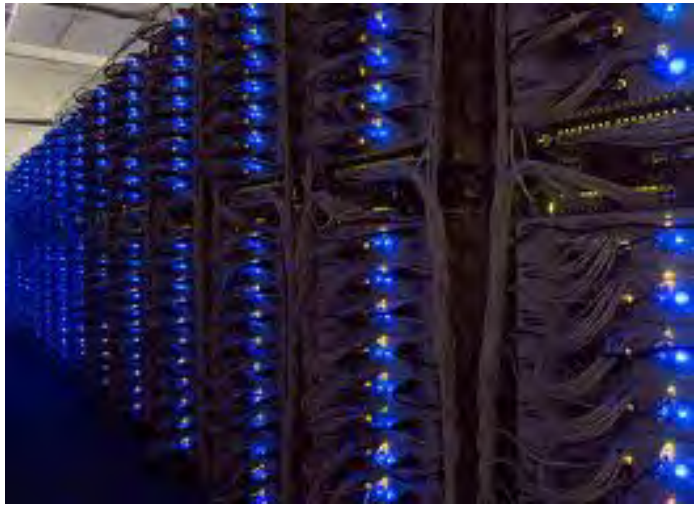
- Promote independent industry standards that would allow consumers to distinguish between certified and un-certified 3rd parties and encourage utilities and third parties receiving customer data to adopt Codes of Conduct.

Cost Recovery

- Utilities often seek compensation for the cost of managing and transferring data
- Several options have emerged:
  - Allow utilities to include costs in general operating expenses
  - Allow utilities to charge third parties for access to the data
  - Allow utilities to recover the costs through customer charges
  - Prohibit utilities from recovering any additional costs for providing data to third parties.

Challenges & Opportunities

- New technologies have enabled an unprecedented level of access to detailed energy use data
- This data has the potential to greatly improve our ability to reduce energy use in homes and buildings through:
  - Targeting EE programs for greatest impact
  - New private sector products, services, and apps
  - Improved ability to measure savings & learn from experience
- Data access issues **must** be addressed to unleash the potential of this new information



SEE Action

STATE & LOCAL ENERGY EFFICIENCY ACTION NETWORK

Contacts:

Michael Li
U.S. Department of Energy
Michael.Li@ee.doe.gov

Megan Billingsley
Lawrence Berkeley National Laboratory
mabillingsley@lbl.gov

This information was developed as a product of the State and Local Energy Efficiency Action Network (SEE Action), facilitated by the U.S. Department of Energy/U.S. Environmental Protection Agency. Content does not imply an endorsement by individuals or organizations that are part of SEE Action working groups, or reflect the views, policies, or otherwise of the federal government.