

March 28, 2024

To: Chair Marcotte, Rep. Priestly, and members of the House Committee on Commerce & Economic Development
Cc: Chair Ram Hinsdale and Senate Committee on Economic Development, Housing & General Affairs
Re: H.121, An act relating to enhancing consumer privacy

We appreciate the work of the House Commerce & Economic Development committee in developing a comprehensive and consumer-focused data privacy bill, H.121 (An act relating to enhancing consumer privacy). Vermont's fully regulated public utilities in Vermont share the goals of the legislation for protecting consumer information; it is a role we take very seriously and have for years under the direction of the Vermont Public Utility Commission (PUC). We do this work as part of the PUC's plenary authority over all aspects of our service for customers and work hard every day to protect data from our customers and our systems.

We are concerned that, as passed out of the House, there is a new standard being contemplated for fully regulated utilities that would at worst conflict with existing regulation in Vermont, and at a minimum create a significant new layer of compliance that will add costs for customers without providing any meaningful difference for customer protection.

Unlike other entities that have requested exemptions, the undersigned entities are fully regulated already, including service quality, customer service, and cybersecurity.

Title 30 gives the PUC plenary power over the operations of utilities that fall within its jurisdiction. 30 V.S.A. § 203 provides that:

“The Public Utility Commission and the Department of Public Service shall have jurisdiction over the following described companies within the State, their directors, receivers, trustees, lessees, or other persons or companies owning or operating such companies and of all plants, lines, exchanges, and equipment of such companies used in or about the business carried on by them in this State as covered and included herein.”

Under this broad authority, the PUC and Department of Public Service have exercised their right to oversee technology aspects of these regulated utilities. The Department's current guidance for Integrated Resource Plans (IRPs) requires that companies include their efforts around cybersecurity as part of their planning processes, and the continuing work under Docket 7307, which gave rise to the “Statement of Principles Relative to Cyber Security,” addressed concerns about protecting customer confidential information, and set requirements for utilities in handling customer data related to their electricity usage are all indications that regulating technology concerns such as data privacy falls squarely within the PUC's and Department's purview.

Additionally, the Department and PUC closely oversee utility customer service quality, through service quality and reliability requirements that include penalties when standards are not met. The PUC also adjudicates customer complaints and oversees concerns relating to customer privacy and records confidentiality. Public utility customers have a direct line to the Department's Consumer Affairs and Public Information division, which addresses consumer concerns and complaints. The PUC's authority also extends to the Energy Efficiency Utilities through its oversight of customer record confidentiality, which includes requiring that EEU's have confidential information management systems for holding customer data as a condition of receiving information shared by the electric utilities. In these ways, the PUC and Department provide oversight and regulation of utility companies' handling of customer data.

Therefore we are proposing an exemption for regulated distribution utilities to the provisions set forth in H.121 as passed by the House. It is important to note that Colorado, Indiana, Tennessee, and Texas have exemptions to their data privacy laws that apply directly to utilities.

Entity Based Exemption

9 V.S.A. § 2417. Exemptions

(a) This chapter does not apply to:

* * *

(x) a public service company subject to the rules and orders of the Vermont Public Utility Commission regarding data sharing and service quality.

We again appreciate the work done to date and welcome the opportunity to testify as you continue the work on this bill.

Sincerely,

Dylan Giambatista, VGS
Andrea Cohen, Vermont Electric Coop
Amber Widmayer, Burlington Electric Department
Sarah Braese, Vermont Public Power Supply Authority
Louis Porter, Washington Electric Coop
Brian Evans-Mongeon, Village of Hyde Park Electric
Candace Morgan, Green Mountain Power
Michael Lazorchak, Stowe Electric
Shana Louiselle, VELCO

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Docket No. 7307

Investigation into Vermont electric utilities' use of smart metering and time-based rates	
--	--

Order entered: 2/25/2019

**FINAL ORDER APPROVING A STATEMENT
OF PRINCIPLES RELATIVE TO PRIVACY**

Today, the Vermont Public Utility Commission adopts the hearing officer's proposal for decision.

PROPOSAL FOR DECISION

This proposal for decision is the culmination of many years of work by the Vermont Public Utility Commission ("Commission"), the Department of Public Service ("Department"), Vermont's electric distribution utilities, and interested stakeholders on policies related to privacy and cyber security.¹ Today, I recommend that the Commission approve the Statement of Principles Relative to Privacy ("Privacy Statement") attached to this Order.

I. BACKGROUND & PROCEDURAL HISTORY

The Commission originally opened this proceeding on April 18, 2007, to consider issues related to the possible deployment of advanced meter infrastructure and smart meters for electric distribution utilities.²

¹ Participants in this proceeding have included: the Vermont Department of Public Service; the City of Burlington Electric Department; Green Mountain Power Corporation; Vermont Energy Investment Corporation; Vermont Marble Power Division of Omya, Inc.; Conservation Law Foundation; Barton Village, Inc. Electric Department; Village of Enosburg Falls Water & Light Department, Inc.; Town of Hardwick Electric Department; Village of Hyde Park Electric Department; Village of Jacksonville Electric Company; Village of Johnson Water & Light Department; Village of Ludlow Electric Light Department; Village of Lyndonville Electric Department; Village of Morrisville Water & Light Department; Village of Northfield Electric Department; Village of Orleans Electric Department; Swanton Village, Inc. Electric Department; Stowe Electric Department; Vermonters for a Clean Environment; Vermont Electric Power Company, Inc.; and the American Civil Liberties Union of Vermont. Not all participants have engaged in all portions of the proceeding.

² Docket 7307, Order issued on 4/18/07.

On November 20, 2008, after numerous workshops and rounds of comments, the Department, the utilities, the Vermont Electric Power Company, and the Conservation Law Foundation entered into a Memorandum of Understanding (“MOU”) that represented an agreement by those parties on several smart metering issues and proposed a voluntary process for obtaining Commission approval of a smart metering implementation plan.

On August 3, 2009, the Commission issued a Final Order adopting the parties’ MOU subject to certain modifications and clarifications, which were further refined in a Commission Order dated November 16, 2009.

On July 15, 2011, the Department filed a letter with the Commission requesting that the Commission open a new phase of this docket to explore important emerging issues associated with smart meters, including customers opting out of having a smart meter installed, privacy of customer data generated by smart meters, and cybersecurity concerning how utilities intend to protect the integrity of data transmitted over wireless communication systems.³

Over the ensuing years after the issuance of the Commission’s July 15, 2011, Order, the Commission held numerous workshops, and stakeholders met informally and filed several rounds of comments with the Commission discussing and developing policy statements on cybersecurity and privacy.

On April 10 and November 16, 2017, and February 16, 2018, I held three workshops intended to bring this proceeding to a close by finalizing and issuing policy statements on cybersecurity and privacy.⁴

On December 19, 2017, the ACLU submitted comments in this proceeding on the Privacy Statement (“December ACLU Comments”).

On January 19, 2018, the ACLU filed additional comments on the Privacy Statement (“January ACLU Comments”).

³ Subsequent legislation enacted by the Vermont General Assembly addressed the topic of customers opting out of having a smart meter installed, so that aspect of the investigation was abandoned.

⁴ The current order addresses privacy issues, and a forthcoming order will address cybersecurity issues. In addition to the parties mentioned in footnote 1, parties that filed comments at various times on privacy include: Katherine Pelz, Ray Pealer for Stopsmeters, Len Singer, Esq. and Adam Conway Esq. for International Business Machines, Linda Chagnon, Annette Smith for Vermonters for a Clean Environment, Olga Julinska, Andrew Morrow, Sarah Crepeau, Benjamin Mithoefer, Jennifer Langstaff-French, and Janet Newton of the EMR Policy Institute.

On February 2, 2018, the ACLU and the Department each submitted comments with the Commission on the Privacy Statement (the “February ACLU Comments” and the “February Department Comments,” respectively).

On March 2, 2018, the Department filed with the Commission a “final” version of the Privacy Statement for approval, supported in this filing by the Vermont electric utilities (“Department Comments”).

Also, on March 2, 2018, the ACLU filed comments seeking amendments to the Privacy Statement (“March ACLU Comments”).

II. COMMENTS

The Department and the utilities jointly filed the Privacy Statement, a majority of which is unobjectionable to all participants. However, Section 3 of the Privacy Statement has been the subject of much discussion and some disagreement; Section 3 provides:

(3) Unless specifically required by state or federal law, or the express consent of the affected customer(s), a Utility, or in the case of an EEU⁵ as authorized under its Order of Appointment and the corresponding Process and Administration Document, as established by the Vermont Public Utilit[y] Commission, shall not disclose Individually Identifiable Customer Smart Meter Data by giving, selling or otherwise distributing it to a third party unless required to do so by (1) a judicial order (including a subpoena signed by a judge); (2) a warrant naming with specificity the customer(s) whose information is sought and issued pursuant to the Vermont or Federal Rules of Criminal Procedure upon a finding of probable cause; or (3) as authorized in these Principles. A Utility may not provide real-time access to information unless pursuant to a judicial order issued under the applicable state or federal wiretap law. Municipal Utilities are also subject to nondisclosure provisions of state and federal laws. The foregoing does not restrict the sale, transfer, or other distribution of aggregated data that cannot be used to identify any single Utility customer.

The ACLU objected because, in its opinion, some language in Section 3 “is inconsistent with the robust privacy protections customers expect and deserve.”⁶ Specifically, the parenthetical phrase “including a subpoena signed by a judge” is problematic to the ACLU. The ACLU prefers ¶ 2 of Attachment B-1 to the proposed Proposal for Decision filed by the

⁵ Energy Efficiency Utility.

⁶ March ACLU Comments at 1.

Department on July 2, 2013, and on April 28, 2017; this version omitted the parenthetical phrase “including a subpoena signed by a judge.”

Given its mission, the ACLU is concerned primarily with protecting the privacy and integrity of Individually Identifiable Customer Smart Meter Data.⁷ Throughout this proceeding, the ACLU voiced the importance of the privacy of consumer information, highlighted the many ways that that information can be misused against the best interests of consumers, and identified ways in which various laws, regulations, and policies are formulated so as to protect that information. The ACLU repeatedly advanced positions that would heighten the protection of Individually Identifiable Customer Smart Meter Data.

The ACLU is concerned about language in the Privacy Statement that might release Individually Identifiable Customer Smart Meter Data in response to a subpoena, including an inquest subpoena. The ACLU argues that an inquest subpoena may be signed by a judge, but it is issued only on a statement by a prosecutor that there is a criminal investigation underway and that there is some connection between the information sought and the underlying investigation. It is not, according to the ACLU, subject to the sort of judicial review and oversight to which a warrant is subject, and it is issued on a showing far lower than that of probable cause.⁸ The ACLU argues that, with an inquest subpoena, the court’s oversight is not sufficiently meaningful to protect Individually Identifiable Customer Smart Meter Data.⁹ Further, the ACLU argues that a recent Vermont electronic communications privacy law supports the ACLU’s argument because it sets up three tiers of information, with protections increasing as the sensitivity of the information increases.¹⁰ The ACLU concludes that the Department and the utilities’ Privacy Statement “treats all customer information as the electronic communications privacy bill treated only the least sensitive category of information.”¹¹ The ACLU believes that the consumer information protections in the Privacy Statement should be stronger.

⁷ “Individually Identifiable Customer Smart Meter Data” is any usage information that can reasonably be identified or re-identified with an individual, family, household, residence, or customer. Privacy Statement, Section 1.

⁸ Sections 5131 and 5132 of Title 13 of the Vermont Statutes Annotated provide that “[u]pon the written application of the state’s attorney, a judge of the superior court may institute and conduct an inquest upon any criminal matter under investigation by the state’s attorney.” In furtherance of the inquest, the “judge may issue necessary process to bring witnesses before [the court] to give evidence in any matter there under investigation.” See *State v. Simmons*, 2011 VT 69, ¶ 3 n. 1.

⁹ March ACLU Comments at 1.

¹⁰ 13 V.S.A. §§ 8100-8108.

¹¹ March ACLU Comments at 2.

The Department and the utilities are sensitive to and concerned about the privacy and integrity of Individually Identifiable Customer Smart Meter Data. However, the Department and the utilities also worry about the efficient operation of utilities during the normal course of business. For example, the utilities note that they may have to engage in expensive and time-consuming motions practice to challenge subpoenas that conflict with the legally binding requirements of an order from the Commission. Therefore, the utilities want the Privacy Statement to be clear that the disclosure of Individually Identifiable Customer smart-meter data can only be done when a utility has the consent of the customer or when the utility is required to do so by law.¹²

III. DISCUSSION & CONCLUSION

Having reviewed the participants' filings, I recommend that the Commission rule that the Privacy Statement filed by the Department and utilities on March 2, 2018, with certain modifications, is in the public good and should be adopted.

Disclosure of Private Data

The Commission recognizes the importance of both the protection of Individually Identifiable Customer Smart Meter Data and the efficient operation of the utilities' administrative processes. The challenge before the Commission, then, is to craft language that suitably addresses both concerns. I find that the language the Department has provided can meet both the demands described above – consumer protection and administrative efficiency.

Earlier in this proceeding, the Department recommended the inclusion of the following language in the Privacy Statement:

Unless otherwise prohibited by law, if a Utility receives a duly authorized subpoena requesting disclosure of Individually Identifiable Customer Smart Meter Data, the Utility shall provide written notice to any affected customer(s) no less than ten (10) days prior to responding to the subpoena.¹³

With the additional language, the Privacy Statement would ensure that utilities only release private consumer information pursuant to the law or to the requirements of the Privacy Statement itself. The requirement of a utility to provide written notice to any affected customer

¹² February Department Comments at 1.

¹³ *Id.* at 2.

no less than ten days prior to responding to the subpoena ensures that customers can act to protect their private information (by filing a motion to quash a subpoena) where they find the legal authority to disclose that information insufficiently protective. This both protects the customer and relieves the utility from the need to engage in motions practice to fight subpoenas it finds objectionable because that duty is now shifted to the customer through the utility-issued notice.

Therefore, I recommend that the Commission find that, with the inclusion of the Department's recommended language at the end of Section 3, the Privacy Statement adequately protects consumer privacy interests and efficient utility operations.

Gas Corporations

A second issue for Commission consideration is whether to place gas corporations under the umbrella of this Order and the Privacy Statement. I recommend that the Commission not include gas corporations under the governance of this Order and the Privacy Statement.

The Privacy Statement defines at Section (1)(a) a "Utility" as "any distribution utility, electrical service provider, electric corporation, *gas corporation*, or energy efficiency utility ('EEU') subject to regulation by the Vermont Public Utility Commission" (emphasis added). Thus, on its face, the document would seem to be intended to govern gas corporations.

However, I observe that the April 18, 2007, Order opening this proceeding is captioned as an "Investigation into Vermont Electric Utilities' Use of Smart Metering and Time-Based Rates," and the Commission only ordered the electric utilities to participate in the proceeding; it made no mention of gas corporations.¹⁴ Further, after reviewing the case log for this docket, I can find records of intervention and participation by non-electric utilities and other entities, such as the Vermont Energy Investment Corporation¹⁵ and the ACLU,¹⁶ but I can find no record of a gas corporation intervening in or participating in the privacy portion of this proceeding. Because it appears that no gas corporation participated in the privacy portion of this proceeding, I do not think it is appropriate to have the Privacy Statement apply to gas corporations. Therefore, I

¹⁴ See Docket 7307, Order issued 4/18/07, at 2 ("Each Vermont retail electric utility shall be a party in this proceeding.").

¹⁵ See Docket 7307, Order issued 10/19/11.

¹⁶ See Docket 7307, Order issued 12/1/11.

recommend that the Commission omit gas corporations from the definition of "Utility" for purposes of the Privacy Statement.

This proposal for decision has been served on all parties in accordance with 3 V.S.A. § 811. Comments on the proposal for decision shall be filed with the Commission no later than 14 calendar days from the issuance of this Order.

Dated at Montpelier, Vermont, this 30th day of November, 2018.

A handwritten signature in blue ink, appearing to read "John C. Gerhard". The signature is written in a cursive style and is positioned above a horizontal line.

John C. Gerhard, Esq.
Hearing Officer

IV. COMMISSION DISCUSSION

On November 30, 2018, the hearing officer issued a proposal for decision and asked for comments on the proposal for decision from participants in the case.

On December 14, 2018, GMP and the Department both filed comments on the proposal for decision.

No other comments were received by the Commission.

Summary of Comments

The Department recommended that the Commission adopt the proposal for decision without modification.¹⁷

GMP generally supported the proposal for decision but also sought some changes to the language in the Privacy Statement. GMP stated that it supports providing its customers with written notice when GMP receives a subpoena seeking their Identifiable Customer Smart Meter Data.¹⁸ However, GMP has concerns about the mechanics of how it must reply to a subpoena. GMP asked us to add language that would make it clear that a utility's obligation to provide notice is satisfied by mailing the notice to the customer's most recent address on record.¹⁹ Additionally, GMP stated:

In some instances, a Utility may be required to respond to the subpoena prior to the expiration of the ten-day notice. For example, a Utility may be required to file an objection to a subpoena if the time to respond prescribed by the subpoena is less than the ten-day notice period required by the Privacy Policy.²⁰

Commission Discussion

While we appreciate GMP's concerns, we are not persuaded that those concerns give us cause to change the Privacy Statement's language contained in the proposal for decision. The Vermont Rules of Civil Procedure Rule 45(c)(2)(B) provides, in part:

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time

¹⁷ Letter from Daniel C. Burke, Department Special Counsel, to Judith C. Whitney, Clerk of the Commission, filed 12/14/18 at 1.

¹⁸ Letter from Carolyn Browne Anderson, Esq., to Judith C. Whitney, Clerk of the Commission, filed 12/14/18 at 1.

¹⁹ *Id.*

²⁰ *Id.*

is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises -- or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to the requested production or to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court for which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

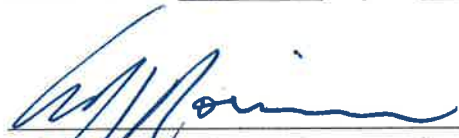

We find that the right to object to a subpoena contained in Rule 45(c)(2)(B) provides GMP and other utilities with the tool they need to object to providing Identifiable Customer Smart Meter Data until a customer has been provided adequate notice that their Identifiable Customer Smart Meter Data has been subpoenaed. Before disclosing any Identifiable Customer Smart Meter Data, utilities may object to the subpoena, notifying the respective parties and tribunal that the utility is bound by the requirements of the Commission's Privacy Statement. Such objections will provide utilities with the time they need to contact the customer and inform the customer of the request for the customer's Identifiable Customer Smart Meter Data.

Further, at this time, we do not find it necessary to state in the Privacy Policy that a utility's obligation to provide notice is satisfied by mailing the notice to the customer's most recent address on record. While that may be sufficient in certain circumstances, there are other circumstances (e.g., where the utility has the customer's e-mail address) where additional notice may be required.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Vermont Public Utility Commission that the conclusions and recommendations of the hearing officer and the Statement of Principles Relative to Privacy, as attached to this Order, are adopted.

Dated at Montpelier, Vermont, this 25th day of February, 2019.


_____)
Anthony Z. Roisman)
_____)

_____)
Margaret Cheney)

PUBLIC UTILITY
COMMISSION
OF VERMONT

Office of the Clerk

Filed: February 25, 2019

Attest: Judith C. Whitney
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.

Statement of Policy Relative to Privacy

- (1) For purposes of these Principles,
 - (a) “Individually Identifiable Customer Smart Meter Data” is any usage information that can reasonably be identified or re-identified with an individual, family, household, residence, or customer.
 - (b) “Utility” is any electric distribution utility, electrical service provider, electric corporation, or energy efficiency utility (“EEU”) subject to regulation by the Vermont Public Utility Commission.
- (2) Vermont’s Utilities, and their authorized subcontractors, will treat customer personal information and usage data as confidential, to the extent permitted by state and federal law, including public records disclosure law in the case of municipal Utilities.
- (3) Unless specifically required by state or federal law, or the express consent of the affected customer(s), a Utility, or in the case of an EEU as authorized under its Order of Appointment and the corresponding Process and Administration Document, as established by the Vermont Public Utility Commission, shall not disclose Individually Identifiable Customer Smart Meter Data by giving, selling, or otherwise distributing it to a third party unless required to do so by (1) a judicial order (including a subpoena signed by a judge); (2) a warrant naming with specificity the customer(s) whose information is sought and issued pursuant to the Vermont or Federal Rules of Criminal Procedure upon a finding of probable cause or (3) as authorized in these Principles. A Utility may not provide real time access to information unless pursuant to a judicial order issued under the applicable state or federal wiretap law. Municipal Utilities are also subject to nondisclosure provisions of state and federal laws. The forgoing does not restrict the sale, transfer, or other distribution of aggregated data that cannot be used to identify any single Utility customer. Unless otherwise prohibited by law, if a Utility receives a duly authorized subpoena requesting disclosure of Individually Identifiable Customer Smart Meter Data, the Utility shall provide written notice to any affected customer(s) no less than ten (10) days prior to responding to the subpoena.
- (4) Each Utility shall create, maintain, and appropriately update measures to protect customer personal information including Individually Identifiable Customer Smart Meter Data from inadvertent disclosure and/or inadvertent accessibility to unauthorized third parties.
- (5) Each Utility shall adopt a privacy policy consistent with this Statement of Principles, which shall be prominently displayed, made available to customers, and presented to third-party vendors where appropriate to ensure protection of customer information. In the case of municipal utilities, such policies shall not be deemed to supersede or override state or federal public records law.
- (6) Any aggregation of customer information by a Utility for any purpose shall be done in such a way that individual customers cannot be identified from that data unless in the case of an EEU such aggregation is otherwise performed as authorized under the EEU’s Order of

Appointment and the corresponding Process and Administration Document as established by the Vermont Public Utility Commission.

- (7) Utilities shall strictly adhere to any confidentiality arrangement governing the provision of customer information to any entity appointed as an EEU under 30 V.S.A. § 209(d)(2).
- (8) Utilities shall have sufficient controls in place to ensure that customer data is maintained securely within infrastructure owned or controlled by the Utility.
- (9) Any interactive connections with a customer shall require a secure method of user authentication on the part of the customer.
- (10) Customer personal information and data shall not be sold, given, or in any fashion conveyed to third persons for any commercial purpose whatsoever without the written, express consent of the customer, except to the extent, if any, that such disclosure may be required by law. Notwithstanding the foregoing, a Utility may disclose customer personal information and data, including Individually Identifiable Smart meter Data, to third party vendors or consultants with whom it works as necessary for the performance of such work. However, such disclosure shall be done in a manner that requires the vendor/consultant to maintain the confidentiality of the customer information and data.
- (11) Nothing in this Statement of Principles Relative to Privacy or in individual Utility privacy policies shall restrict a customer from choosing to provide information or access to data directly to a third-party company, through applications, devices or otherwise.
- (12) For two years, on a semi-annual basis, representatives of the Utilities shall meet with the Vermont Department of Public Service to discuss smart meter data privacy concerns as embodied in these principles and as effectuated in each Utility's individual privacy policies. Following each meeting, the Vermont Department of Public Service shall prepare and file a written report to the Vermont Public Utility Commission regarding the activities of the group.

D. Burke
J. Porter

STATE OF VERMONT
DEPT. OF PUBLIC SERVICE
MONTPELIER, VT.
855-2601

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

2019 DEC 11 P 3:17

Case No. 7307

Investigation into Vermont electric utilities' use of smart metering and time-based rates	
---	--

Order entered: 12/11/2019

**FINAL ORDER APPROVING A STATEMENT OF PRINCIPLES
RELATIVE TO CYBER SECURITY FOR ELECTRIC UTILITIES**

In this Order, the Vermont Public Utility Commission adopts the following Proposal for Decision approving a Statement of Principles Relative to Cyber Security for Electric Utilities, which is attached to this Order.

**PROPOSAL FOR DECISION RECOMMENDING APPROVAL OF A STATEMENT
OF PRINCIPLES RELATIVE TO CYBER SECURITY FOR ELECTRIC UTILITIES**

This Proposal For Decision is the culmination of many years of work by the Vermont Public Utility Commission (“Commission”), the Department of Public Service (“Department”), Vermont’s electric transmission and distribution utilities, and interested stakeholders on policies related to privacy and cyber security.¹ Today, I recommend that the Commission approve the Statement of Principles Relative to Cybersecurity (the “Cybersecurity Principles” or “Principles”) attached to this Order and close this proceeding.

¹ Participants in this proceeding have included: the Vermont Department of Public Service; the City of Burlington Electric Department; Green Mountain Power Corporation; Vermont Energy Investment Corporation; Vermont Marble Power Division of Omya, Inc.; Conservation Law Foundation; Barton Village, Inc. Electric Department; Village of Enosburg Falls Water & Light Department, Inc.; Town of Hardwick Electric Department; Village of Hyde Park Electric Department; Village of Jacksonville Electric Company; Village of Johnson Water & Light Department; Village of Ludlow Electric Light Department; Village of Lyndonville Electric Department; Village of Morrisville Water & Light Department; Village of Northfield Electric Department; Village of Orleans Electric Department; Swanton Village, Inc. Electric Department; Stowe Electric Department; Vermonters for a Clean Environment; Vermont Electric Power Company, Inc.; and the American Civil Liberties Union of Vermont. Not all participants have engaged in all portions of the proceeding.

I. BACKGROUND

The Commission originally opened this proceeding on April 18, 2007, to consider issues related to the possible deployment of advanced metering infrastructure and smart meters for electric distribution utilities.²

On November 20, 2008, after numerous workshops and rounds of comments, the Department, the participating electric utilities, and the Conservation Law Foundation entered into a Memorandum of Understanding (“MOU”) that represented an agreement by those parties on several smart-metering issues and proposed a voluntary process for obtaining Commission approval of a smart-metering implementation plan.

On August 3, 2009, the Commission issued a Final Order adopting the parties’ MOU, subject to certain modifications and clarifications, which were further refined in a Commission Order dated November 16, 2009.

On July 15, 2011, the Department filed a letter with the Commission requesting that the Commission open a new phase of the docket to explore important emerging issues associated with smart meters, including customers opting out of having a smart meter installed, privacy of customer data generated by smart meters, and cybersecurity concerning how utilities intend to protect the integrity of data transmitted over wireless communications systems.³

Over the ensuing years after the issuance of the Commission’s July 15, 2011, Order, the Commission held numerous workshops, and stakeholders met informally and filed several rounds of comments with the Commission discussing and developing policy statements on privacy and cybersecurity.

On April 10 and November 16, 2017, and February 16, 2018, Commission staff held three workshops intended to bring this proceeding to a close by finalizing and issuing policy statements on privacy and cybersecurity.

On December 8, 2017, the Vermont Electric Cooperative, on behalf of itself, the Vermont Electric Power Company, Green Mountain Power Corporation, Washington Electric Cooperative, Burlington Electric Department, Stowe Electric Department, and the Vermont

² Docket 7307, Order issued on 4/18/07.

³ Subsequent legislation enacted by the Vermont General Assembly addressed the topic of customers opting out of having a smart meter installed, so that aspect of the investigation was abandoned.

Public Power Supply Authority (the “Utilities”), filed a letter stating that Vermont’s electric efficiency utilities (“EEUs”) should be included in the Cybersecurity Principles.⁴

Also, on December 8, 2017, the Department filed a letter stating that it does not think the EEUs should be included in the Cybersecurity Principles but that, after discussing the Principles with Vermont Gas Systems, Inc. (“VGS”) and National Grid, the latter two entities have agreed to be included in the Cybersecurity Principles.⁵

On December 21, 2017, the Vermont Energy Investment Corporation (“VEIC”) filed a letter stating that it was willing to be included in the Cybersecurity Principles.⁶

On January 12, 2018, the Department filed a letter providing a small amendment to the Cybersecurity Principles, which the Department represented was agreed to by the Utilities.⁷

On February 25, 2019, the Commission issued an Order approving a Statement of Principles Relative to Privacy.

On July 22, 2019, I issued an Order asking parties to comment on the most recent version of the Cybersecurity Principles, which were attached to the Order.

On August 23, 2019, the Vermont Electric Cooperative commented that it supported the Cybersecurity Principles, and Green Mountain Power Corporation commented that it had no suggested changes to the Cybersecurity Principles.

On November 1, 2019, after conferring with VGS and National Grid, the Department filed a letter stating that it is no longer “necessary for either National Grid or VGS to be subject to the [Cybersecurity] Principles.”⁸

No other comments were filed.

II. DISCUSSION AND RECOMMENDATION

Having reviewed the participants’ filings, I recommend that the Commission rule that the most recent iteration of the Cybersecurity Principles, attached to this Order, is in the public good

⁴ Letter from Victoria J. Brown, Esq., to Judith C. Whitney, Clerk of the Commission, filed on 12/8/17 (“Utility Letter”).

⁵ Letter from Jeanne Elias, Esq., to Judith C. Whitney, Clerk of the Commission, filed on 12/8/17 (“Department Letter”).

⁶ Letter from Morris L. Silver, Esq., to Judith C. Whitney, Clerk of the Commission, filed on 12/21/17 (“VEIC Letter”).

⁷ Letter from Jeanne Elias, Esq., to Judith C. Whitney, Clerk of the Commission, filed on 1/12/18.

⁸ Letter from Daniel C. Burke, Esq., to Judith C. Whitney, Clerk of the Commission, filed on 11/1/19.

and should be adopted. I also recommend that VEIC should be included in the Cybersecurity principles but not VGS or National Grid.

Principles

The Department, Utilities, and other interested parties have spent significant time and resources discussing, formulating, and proposing these Cybersecurity Principles. The Principles form an excellent framework within which Utilities can work on cybersecurity issues. The Principles will ensure that every Vermont electric transmission, distribution, and efficiency utility has in place a Cybersecurity Program, subject to both Department and Commission scrutiny, that puts in place measures to protect grid reliability and ratepayers' private information. The ongoing Department and Commission oversight required by the Cybersecurity Principles will help ensure that the Utilities' Cybersecurity Programs remain up to date and effective. For all these reasons, I recommend that the Commission approve the attached Statement of Principles Relative to Cybersecurity.

Covered Entities

Regarding VEIC, I recommend that the Commission include VEIC under the coverage of the Principles.

The Department does not think it is "necessary or appropriate" to include VEIC under the Principles.⁹ The Department "believes that the current Confidential Information Management System ("CIMS") governing VEIC's operation of Efficiency Vermont adequately addresses potential hacking and other cybersecurity concerns pertaining to the confidential information that VEIC receives from Vermont utilities."¹⁰ The Department argues that the Cybersecurity Principles protocol was designed to provide a platform to facilitate an exchange of information between regulators and distribution and transmission utilities concerning cybersecurity because, unlike CIMS for VEIC, this kind of forum does not currently exist in Vermont for distribution and transmission utilities.¹¹ The Department argues that a central feature of the Principles is that they contemplate an annual meeting during which the Department and the Utilities can

⁹ Department Letter at 1.

¹⁰ *Id.*

¹¹ *Id.*

participate in a confidential exchange of information. “In the Department’s view, restricting participation in this annual meeting to just the transmission and distribution utilities will facilitate the important goal of ensuring that sensitive information is only shared with entities who require that information to discharge a legal obligation.”¹²

VEIC and the Utilities disagree with the Department. The Utilities think that it would be “appropriate for the state’s energy efficiency utilities to be included in the cybersecurity principles.”¹³ The Utilities observe that VEIC is prepared to abide by the terms of the cybersecurity principles being proposed in this proceeding.¹⁴ VEIC further states that “it is important for customers to be provided assurances that the EEU’s and Utilities are being held to the same cybersecurity principles and responsibilities to protect customer information.”¹⁵ Finally, VEIC does not “believe that the participation of EEU’s in the reach of the cybersecurity principles will cause harm.”¹⁶

Having reviewed the parties’ comments, I recommend that the Commission include VEIC under the coverage of the Principles. First, the Utilities and VEIC agree that VEIC can be covered by the Principles with no harm arising from that coverage. Next, I agree with VEIC that it is important for customers to be provided assurances that the EEU’s and [Utilities] are being held to the same cybersecurity principles and responsibilities to protect customer information. Finally, I am not persuaded by the Department’s fears about VEIC’s participation undermining the confidential exchange of information during an annual meeting. In the worst-case scenario, a well-crafted confidentiality agreement signed by VEIC could alleviate the Department’s concerns. For the foregoing reasons, I recommend that the Commission include VEIC under the coverage of the Principles.

Regarding VGS and National Grid, I do not recommend that they be covered by the Principles. Neither VGS nor National Grid still seeks to be covered by the Principles. Also, the Department has withdrawn its recommendation that the two companies be covered. Finally, neither VGS nor National Grid took part in the process that created the Principles. Given these

¹² Department Letter at 1-2.

¹³ Utility Letter at 1.

¹⁴ VEIC Letter at 2.

¹⁵ Utility Letter at 2.

¹⁶ *Id.*

factors, I see no reason to recommend that the Principles apply to VGS or National Grid, so I do not do so here.

III. CONCLUSION

For the foregoing reasons, I recommend that the Vermont Public Utility Commission approve this Proposal for Decision and adopt the Statement of Principles Relative to Cybersecurity.

This Proposal for Decision has been served on all parties to this proceeding in accordance with Title 3, Section 811, of the Vermont Statutes Annotated.

Dated at Montpelier, Vermont, this 12 day of November, 2019.



John C. Gerhard, Esq.
Hearing Officer

IV. COMMISSION DISCUSSION

On November 12, 2019, the Hearing Officer issued a Proposal for Decision in this proceeding, seeking comments from the parties.

On November 22, 2019, Green Mountain Power Corporation and the Vermont Electric Cooperative, Inc. each filed comments with the Commission. Neither of these utilities suggested edits or comments to the Proposal for Decision, nor did either utility request oral argument.

On November 26, 2019, the Vermont Energy Investment Corporation (“VEIC”), as administrator of Efficiency Vermont, the statewide energy efficiency utility, filed comments asking for one change to the language in the Statement of Principles Relative to Cyber Security for Electric Utilities (the “Principles”). VEIC asked that the following change be made to paragraph 1 of the Principles so that it is clear that the Principles also apply to the statewide energy efficiency utility (the added text is underlined):

Vermont’s electric utilities and the statewide energy efficiency utility appointed by the Commission pursuant to 30 V.S.A. § 209(d)(2) (together for purposes of the Principles the “Utilities”) acknowledge the importance of adhering to all cybersecurity requirements imposed by law, of being familiar with relevant industry standards and recommendations of best practices, and of working collaboratively to ensure appropriate and coordinated approaches to cybersecurity.

On November 27, 2019, the Vermont Department of Public Service filed comments on the Proposal for Decision. The Department did not suggest any edits or comments and did not request an oral argument.

Having reviewed the comments, we accept the change recommended by VEIC because we agree that the additional language will make it clear that the Principles also apply to the statewide energy efficiency utility. The change is included in the Principles attached to this Order.


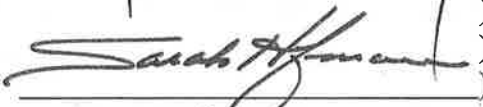
No other comments were received by the Commission.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission (“Commission”) of the State of Vermont that the findings, conclusions, and recommendations of the Hearing Officer are hereby adopted, as is the Statement of Principles Relative to Cyber Security attached to this Order. All other findings proposed by parties, to the extent that they are inconsistent with this Order, were considered and not adopted.

This proceeding is closed.

Dated at Montpelier, Vermont, this 11th day of December, 2019.

Anthony Z. Roisman)	
)	PUBLIC UTILITY
)	
Margaret Cheney)	COMMISSION
)	
)	
Sarah Hofmann)	OF VERMONT

OFFICE OF THE CLERK

Filed: December 11, 2019

Attest: Jessith C. Whitney
Clerk of the Commission

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. E-mail address: puc.clerk@vermont.gov.

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.

Statement of Principles Relative to Cyber Security

1. Vermont's electric utilities and the statewide energy efficiency utility appointed by the Commission pursuant to 30 V.S.A. § 209(d)(2) (together for purposes of the Principles the "Utilities") acknowledge the importance of adhering to all cybersecurity requirements imposed by law, of being familiar with relevant industry standards and recommendations of best practices, and of working collaboratively to ensure appropriate and coordinated approaches to cybersecurity.
2. Each Utility shall develop and maintain a Cybersecurity Program, which shall be tailored to that Utility's specific needs and infrastructure. Utilities shall comply with the terms of any cybersecurity requirements included in applicable law, regulation, and industry standards and those voluntarily adopted by the Utility. Upon request, each Utility will provide to the Vermont Department of Public Service ("Department") an oral briefing describing the Utility's Cybersecurity Program and a written list of the applicable cybersecurity laws and regulations with which the Utility's Cybersecurity Program is designed to comply.
3. Annually, the Department shall convene a meeting with representatives of the Utilities to discuss, under terms of an appropriate non-disclosure agreement, the following:
 - a. Any significant developments arising from, or updates to, the Cybersecurity Programs of each Utility developed under paragraph 2, above.
 - b. The existence, impact, and implementation of any new or proposed state or federal cybersecurity standards.
 - c. Areas of prospective collaboration or information sharing in the interest of ensuring the existence of effective and efficient cybersecurity protections for Vermont electric utilities and customers.
 - d. Each Utility's experience and observations regarding cybersecurity during the prior year.
 - e. Communication protocols, including confidentiality protections where appropriate, to be used in the event that a Utility experiences an incident that results in a potential or actual release of confidential customer information, a compromise of grid reliability, or required reporting to another entity. These measures should be formulated to allow Utilities to share time-sensitive, critical information among themselves and with the Department, while limiting dissemination to external entities and individuals other than those to whom disclosure is required by existing law or regulation.
4. In the event that a cybersecurity attack results in the release of confidential customer information, a compromise of grid reliability, or required reporting to another entity, the affected Utility(ies) will promptly report the attack to the Commissioner of the Department and take necessary steps to mitigate future breaches.
5. At least annually, the Department will offer to provide an oral briefing to the Vermont Public Utility Commission summarizing the Department's conclusions as to Utilities'

cybersecurity programs and joint efforts. Such briefings shall not involve the transmission of confidential information without appropriate confidentiality protections.

6. Nothing in these principles shall be deemed to limit the responsibility or authority of Utilities to take appropriate measures to implement and maintain appropriate cybersecurity measures.