



**Subject:** Advance Metering Infrastructure (AMI) Data Privacy and Security Policy

**Policy:** Decision 12-08-045, issued by the California Public Utilities Commission (Commission) on August 31, 2012, requires certain privacy protections for the energy usage data of customers of Community Choice Aggregators, including PCE. This policy provides those protections.

**1. General**

- a. PCE will implement reasonable administrative, technical, and physical safeguards to protect “covered information”<sup>1</sup> from unauthorized access, destruction, use, modification, or disclosure.
- b. PCE will provide reasonable training to all employees and contractors who use, store, or process covered information.
- c. PCE will collect, store, use, and disclose only as much covered information, and for as long, as is reasonably necessary or as authorized by the Commission, to accomplish (1) a specific primary purpose or (2) a specific secondary purpose authorized by a customer.<sup>2</sup>
- d. PCE will ensure that the covered information it collects, stores, uses, and discloses is reasonably accurate and complete or otherwise compliant with applicable rules and tariffs regarding the quality of energy usage data.

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<sup>1</sup> “Covered information” means “any usage information obtained through the use of the capabilities of Advanced Metering Infrastructure when associated with any information that can reasonably be used to identify an individual, family, household, residence, or non-residential customer, except that covered information does not include usage information from which identifying information has been removed” or “information provided to the Commission pursuant to its oversight responsibilities.” Decision (D.) 12-08-045, at B1-B2.

<sup>2</sup> “Primary purposes” include: (1) providing or billing for electrical power or gas; (2) providing for system, grid, or operational needs; (3) providing services required by law or the Commission; and (4) planning, implementing, or evaluating “demand response, energy management, or energy efficiency programs” under a contract with CCAs or the PUC, “or as part of a PUC-authorized program conducted by a governmental entity under the supervision of the” Commission. “Secondary purposes” include “any purpose that is not a primary purpose.” D.12-08-045, at B2.

- e. PCE will use covered information only for the purpose(s) it specifies in its Notice of Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information (see Section 2(b)).

## **2. Transparency and notification**

- a. PCE will provide customers with meaningful, clear, accurate, specific, and comprehensive notice regarding the accessing, collection, storage, use, and disclosure of covered information. However, when PCE uses covered information solely for a primary purpose on behalf of and under contract with a utility, PCE is not required to provide notice separate from that provided by the utility.
- b. PCE will provide written notice when confirming a new customer account and at least once a year. The notice will: (1) inform customers how they may obtain a copy of PCE's notice regarding the accessing, collection, storage, use, and disclosure of covered information; (2) provide a conspicuous link to the notice on the home page of PCE's website; and (3) include a link to PCE's notice in all electronic correspondence to customers.
  - i. The notice will be labeled "Notice of Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information," written in easily understandable language, and be no longer than is necessary to convey the requisite information.
  - ii. The notice and the posted privacy policy will state clearly: (1) the identity of PCE; (2) the effective date of the notice or posted privacy policy; (3) PCE's process for altering the notice or posted privacy policy, including how the customer will be informed of any alterations; (4) where prior versions will be made available to customers; and (5) the title and contact information, including email address, postal address, and telephone number, of an official at PCE who can assist the customer with privacy questions, concerns, or complaints regarding the collection, storage, use, or distribution of covered information.
  - iii. The notice will provide an explicit description of: (1) each category of covered information collected, used, stored or disclosed, and for each category of covered information, the reasonably specific purposes for which it will be collected, stored, used, or disclosed; (2) each category of covered information that is disclosed to third parties, and, for each such category, a description of the means by which customers may view, inquire about, or dispute their covered information; and (3) the means, if any, by which customers may limit the collection, use, storage or disclosure of covered information and the consequences to customers if they exercise such limits.

- c. PCE will provide to customers upon request convenient and secure access to their covered information, in an easily readable format that is at a level no less detailed than that at which PCE discloses the data to third parties.

**3. Use, disclosure, and customer authorization**

- a. PCE may disclose covered information without customer consent to a third party acting under contract with the Commission for the purpose of providing services authorized pursuant to an order or resolution of the Commission, or to a governmental entity for the purpose of providing energy efficiency or energy-efficiency evaluation services pursuant to an order or resolution of the Commission.
- b. PCE may disclose covered information to a third party without customer consent when explicitly ordered to do so by the Commission, or for a primary purpose being carried out under contract with and on behalf of PCE, provided that PCE requires, by contract, the third party to agree to access, collect, store, use, and disclose the covered information under policies, practices and notification requirements no less protective than those under which PCE itself operates.
- c. Any entity that receives covered information derived initially from PCE may disclose such covered information to another entity without customer consent for a primary purpose, provided that the entity disclosing the covered information shall, by contract, require the entity receiving the covered information to use the covered information only for such primary purpose and to agree to store, use, and disclose the covered information under policies, practices and notification requirements no less protective than those under which the covered entity from which the covered information was initially derived operates.
- d. When PCE discloses covered information to a third party under this subsection it will specify by contract, unless otherwise ordered by the Commission, that it shall be considered a material breach if the third party engages in a pattern or practice of accessing, storing, using or disclosing the covered information in violation of the third party's contractual obligations to handle the covered information under policies no less protective than those under which the covered information was initially derived.
- e. If PCE finds that a third-party contractor to which it disclosed covered information is engaged in a pattern or practice of accessing, storing, using or disclosing covered information in violation of the third party's contractual obligations related to handling covered information, PCE will promptly cease disclosing covered information to such third party.
- f. Separate authorization by each customer will be obtained for all disclosures of covered information except as otherwise provided for

herein.

- g.** PCE will permit customers to cancel authorization for any secondary purpose of their covered information by the same mechanism initially used to grant authorization.
- h.** PCE will permit the use of aggregated usage data that is removed of all personally-identifiable information to be used for analysis, reporting or program management provided that the release of that data does not disclose or reveal specific customer information because of the size of the group, rate classification, or nature of the information.

**4. Disclosures pursuant to a legal process**

- a.** When PCE receives a subpoena for covered information:

  - i.** The recipient must immediately inform, via email, the Director of Customer Care, Director of Regulatory Affairs, Chief Executive Officer, Office Manager, and General and Deputy Counsels (at the San Mateo County Counsel's Office).
  - ii.** Working with counsel, the Director of Customer Care and Office Manager must: (1) calendar the subpoena next steps and requirements; (2) create designated electronic and paper folders; (3) save the subpoena and all related documents in the designated folders; (4) add the subpoena to the tracking spreadsheet for inclusion in any following compliance report; and (5) within 7 days of receipt, inform the affected customer(s) of the potential disclosure (see D.12-08-045, Att. B., § 4(c)(2)).
  - iii.** Counsel will evaluate the subpoena for specificity and ensure customer contact and information (see D.12-08-045, Att. B., § 4(c)(1)-(2)).

- b.** In addition, in processing a subpoena for covered information, PCE will meet the requirements in Section 4(c) of Attachment B to D.12-08-045, which provide as follows:

(1) Except as otherwise provided in this rule or expressly authorized by state or federal law or by order of the Commission, a covered entity shall not disclose covered information except pursuant to a warrant or other court order naming with specificity the customers whose information is sought. Unless otherwise directed by a court, law, or order of the Commission, covered entities shall treat requests for real-time access to covered information as wiretaps, requiring approval under the federal or state wiretap law as necessary.

(2) Unless otherwise prohibited by court order, law, or order of the Commission, a covered entity, upon receipt of a subpoena for disclosure

of covered information pursuant to legal process, shall, prior to complying, notify the customer in writing and allow the customer 7 days to appear and contest the claim of the person or entity seeking disclosure.

(3) Nothing in this rule prevents a person or entity seeking covered information from demanding such information from the customer under any applicable legal procedure or authority.

(4) Nothing in this section prohibits a covered entity from disclosing covered information with the consent of the customer, where the consent is express, in written form, and specific to the purpose and to the person or entity seeking the information.

(5) Nothing in this rule prevents a covered entity from disclosing, in response to a subpoena, the name, address and other contact information regarding a customer.

(6) On an annual basis, covered entities shall report to the Commission the number of demands received for disclosure of customer data pursuant to legal process or pursuant to situations of imminent threat to life or property and the number of customers whose records were disclosed. Upon request of the Commission, covered entities shall report additional information to the Commission on such disclosures. The Commission may make such reports publicly available without identifying the affected customers, unless making such reports public is prohibited by state or federal law or by order of the Commission.

## **5. Data security**

- a.** PCE will follow the procedures outlined below to prevent, identify, report, and respond to security breaches of covered information. Such breaches may be unauthorized access, destruction, use, modification, or disclosure to third parties for secondary purposes.
- b.** Procedures:
  - i.** All PCE employees who handle or have access to covered information must protect that information from unauthorized access, destruction, use, modification, or disclosure to non-covered entities for secondary purposes.
  - ii.** PCE's Director of Customer Care (or CEO) will review and approve any request by third parties for access to PCE's customer usage data to ensure that there is no inadvertent release of covered information.
  - iii.** All authorized releases of covered information to third parties will be logged and reported to PCE's Director of Customer Care and Director of Regulatory Affairs for PCE's reporting purposes.

- iv. Any discovery by a third party of a security breach of covered information must be reported by the third party to PCE within one week of detection.
- v. The discovering party, after receiving complaint/notification from a third party or having discovered any security breach of covered information, must immediately contact PCE's Director of Customer Care and Chief Executive Officer.
- vi. PCE's Director of Customer Care will then quantify and validate the type and extent of the security breach(es).
- vii. PCE will report any single security breach of covered information affecting 1,000 or more PCE customers to the California Public Utilities Commission's Executive Director. PCE will make such report within two weeks of detecting the breach or within one week of notification of a breach by a third party.
- viii. PCE will report any security breaches of covered information to the Commission's Executive Director when ordered to do so by the Commission.
- ix. Within sixty (60) days of the end of a calendar year, PCE's Director of Customer Care will review all annual discoveries of security breaches of covered information and prepare a summary report to PCE's Chief Executive Officer and Director of Regulatory Affairs.
- x. By April 30 of each year, PCE will file an annual report with the Commission identifying all breaches of covered information during the prior calendar year. The report must include, for the prior calendar year: (1) the number of authorized third parties accessing covered information, and (2) the number of non-compliances with the Commission's security-breach requirements or with contractual provisions required by those requirements, and the number of customers affected by each non-compliance and a detailed description of each non-compliance.
- xi. At least annually, PCE's Director of Customer Care will review this policy and PCE's Notice of Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information to update them based on their implementation over the prior year. Any changes to this policy or the aforementioned Notice will be reviewed by PCE's Director of Regulatory Affairs, Chief Executive Office, and counsel, and then approved by PCE's Board of Directors.

## **6. Accountability and auditing**

- a. PCE will submit to the Commission on an annual basis the data breach report described in Section 5(x) above.

- b.** PCE will cause to be conducted an independent audit of PCE's data privacy and security measures every three years, to be submitted to the Commission by April 30 of the year following the three-year period.
- c.** PCE will provide its customers a process for reasonable access to covered information, for correction of inaccurate covered information, and for addressing customer complaints regarding covered information.
- d.** PCE will provide reasonable training to all employees and contractors who use, store or process covered information;
- e.** PCE will make available to the Commission, upon request:
  - i.** PCE's privacy notices, including its Notice of Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information;
  - ii.** PCE's internal privacy and data-security policies;
  - iii.** The categories of agents, contractors and other third parties to which PCE discloses covered information for a primary purpose, the identities of agents, contractors and other third parties to which PCE discloses covered information for a secondary purpose, and the purposes for which all such information is disclosed, indicating for each category of disclosure whether it is for a primary purpose or a secondary purpose (PCE will also retain and make available to the Commission upon request information concerning who has received covered information from PCE); and
  - iv.** Copies of any secondary-use authorization forms by which PCE secures customer authorization for secondary uses of covered data.