

Eric Lightner
Director
Federal Smart Grid Task Force
Office of Electricity Delivery and Energy Reliability
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

October 9, 2014

Re: DOE Request for Public Comment — Data Privacy and the Smart Grid: A Voluntary Code of Conduct

Dear Mr. Lightner:

The Edison Electric Institute ("EEI"), on behalf of its member companies, hereby submits the following comments in response to the Request for Public Comment issued by the Department of Energy ("Department" or "DOE") in connection with the August 12, 2014 draft "Data Privacy and the Smart Grid: A Voluntary Code of Conduct" ("VCC").¹ The VCC resulted from a multi-stakeholder process facilitated by the Department and is designed to be utilized by utilities and third parties providing consumer energy use services. The purpose of the VCC is to describe principles for voluntary adoption that (1) encourage innovation while appropriately protecting privacy and confidentiality, (2) provide appropriate customer access to their energy data, and (3) do not infringe upon applicable laws or regulations.²

EEI is the association of the United States investor-owned electric utilities and industry associates worldwide. Its U.S. members serve almost 95 percent of all customers served by the shareholder — owned segment of the U.S. industry, about 70 percent of all electricity customers, and generate about 70 percent of the electricity delivered in the United States. EEI frequently

¹ Office of Electricity Delivery and Energy Reliability, Department of Energy, *Data Privacy and the Smart Grid: A Voluntary Code of Conduct*, 79 Fed. Reg. 54695

² VCC at 1.

represents its U.S. members before Federal agencies, courts, and Congress in matters of common concern.

EEI's members are committed to protecting customer privacy because they recognize that privacy protection is particularly important with regard to the type of customer energy usage data ("CEUD") that utilities collect and use in order to provide reliable service to their customers, as well as to secure the nation's electric grid. Unlike many companies, electric utilities have a long-standing interest in and extensive experience with handling and protecting sensitive customer data in a highly regulated environment. As a result of state regulatory requirements and oversight, EEI members typically have policies and procedures in place to maintain the privacy of CEUD and other customer data. In fact, the Department of Energy ("DOE") has recognized both that issues of access to and privacy of energy data are not new, and the historic role of electric utilities and the states in protecting and managing data access and privacy when in its *DOE Privacy Report* the agency "commend[ed] the utilities' strong track record of protecting the privacy of customer data and acknowledge[ed] the traditional responsibility of state utility commissions in regulating issues associated with data privacy."³

As a consequence, EEI and its members have been participants in the multi-stakeholder process from the very beginning. We helped structure the VCC collaborative process, lead and/or participated in all or most of the working groups organized to address various aspects of privacy policy, and lead the integration of individual working group reports into an integrated final product.

The VCC is a positive step. Given that the voluntary code is intended to be utilized by a variety of service providers, the VCC intentionally defines concepts and principles in a non-

³ Department of Energy, Data Access and Privacy Issues Related to Smart Grid Technologies at 3 (released October 5, 2010) ("DOE Privacy Report").

prescriptive manner. This is important because service providers vary tremendously in terms of size, market or service territory, demographics, ownership structure, regulatory environment etc. The VCC is designed to — and does — give service providers discretion in how to best implement privacy policies within the context of their circumstances. A more prescriptive code would not work.

The VCC also recognizes the importance of promoting cost-efficiency. This is an important concern for utilities, customers and state regulators. Privacy, customer data access, and market access/innovation are important values which must not only be balanced among themselves, but also weighed against the costs of and of various options for realizing the VCC's concepts and principles. Once again, the VCC affords appropriate discretion to service providers. As the Department has previously recognized in this context "[s]ound economics and public policy suggest that an entity causing particular costs should pay for those costs so that these entities do not demand the good without appreciating its true cost."⁴

Although the VCC is a positive step, it is important to realize that data issues continue to evolve. As a result it can be anticipated that there will be a need to revisit the VCC at some point in the future. For example, the question of how to treat aggregated and anonymized data is a relatively new issue which was not addressed in NAESB REQ-22.⁵ Another new issue is cyber security, regarding which the prime reference is that developed by the National Institute of Standards and Technology.⁶ Cyber security is an important aspect of protecting customer privacy, but it goes beyond customer data to address the security of all system data. Procedures

⁴ DOE Privacy Report at 22.

⁵ NAESB REQ-22, Third party Access to Smart-Meter Based Information.

⁶ *Framework for Improving Critical Infrastructure Cybersecurity*, Version 1.0, National Institute of Standards and Technology February 12, 2014.

for information sharing inevitably create security exposures, and must be carefully designed so as not to compromise system security.

In conclusion, EEI commends the good work of all those who participated in the development of the VCC.

Respectfully submitted,

/s/ Eric Ackerman

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