

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

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In the Matter of a Petition by Citizens Utility Board of
Minnesota to Adopt Open Data Access Standards

Docket No. E,G-999/M-19-505

In the Matter of a Commission Inquiry into Privacy
Policies of Rate-Regulated Energy Utilities

Docket No. E,G-999/CI-12-1344

Reply Comments of the Citizens Utility Board of Minnesota

The Citizens Utility Board of Minnesota (“CUB”) respectfully submits these Reply Comments in response to the Minnesota Public Utilities Commission’s (“Commission”) Notice of Comment Period issued on December 1, 2023 in the above-referenced matters. With these comments, CUB respectfully reiterates our recommendation that the Commission implement the Standards in their entirety, with the adjustments described below.

I. RESPONSE TO PARTIES’ INITIAL COMMENTS

1. What specific use-cases for anonymized CEUD could be used by the Commission to continue to incrementally apply the Standards while maintaining the balance between customer privacy and CEUD access?

CUB agrees with the Department of Commerce (“the Department”) that the limited release of anonymized customer energy use data (“CEUD”) for the purposes of study and program design would “further public interest and policy goals.”¹ We continue to recommend these use cases, as discussed in our initial comments.

We agree with Xcel Energy (“Xcel”),² and the Commission has concluded, that the consideration of Open Data Access Standards (“the Standards”) involves a balancing of risks and benefits.³ The Commission has recognized that it is impossible to guarantee with certainty that individual customers could never be re-identified from aggregated or anonymized CEUD. For this reason, the Standards include multiple layers of protection for anonymized CEUD. Anonymized CEUD is protected by employing a 15/15 screen, imposing geographic boundaries on CEUD requests, and restricting access

¹ *In the Matter of a Petition by Citizens Utility Board of Minnesota to Adopt Open Data Access Standards*, Docket No. E,G-999/M-19-505, Comments of the Minnesota Department of Commerce at 3-4 (Mar. 4, 2024) (hereinafter “DOC Initial Comments”).

² *In the Matter of a Petition by Citizens Utility Board of Minnesota to Adopt Open Data Access Standards*, Docket No. E,G-999/M-19-505, Xcel Comments at 4 (Feb. 16, 2024) (hereinafter “Xcel Initial Comments”).

³ *See In the Matter of a Petition by Citizens Utility Board of Minnesota to Adopt Open Data Access Standards*, Docket No. E,G-999/M-19-505, CUB Initial Comments at 2 (Mar. 4, 2024) (hereinafter “CUB Initial Comments”).

to qualified third parties under terms stipulated in a contract the third parties must sign with the utility.⁴ Each of these parameters reduces the risk that a customer may be re-identified.

Further, the Standards recognize, as does Minnesota Energy Resources Corporation (“MERC”), that a “one size fits all” approach is not appropriate in all situations.⁵ For this reason, the Standards allow a utility to refuse to provide anonymized CEUD to a qualifying third party “when it reasonably believes the data release would create a security risk for the utility, its customer(s), or [the] public, or that the release would allow the third party to re-identify customers, violate the terms of the contract [required by section 2(v) of the Standards], or otherwise use the data in violation of these standards.”⁶

In combination, these protections reduce risk of disclosure while also allowing for limited sharing of CEUD to advance state policy and the public interest.

2. What modifications, if any, should be made to the anonymized data access contract requirements set by ODAS section III.B.(2)(v)?

In its initial comments, Xcel expressed support for a requirement that a third party delete anonymized CEUD “once it is no longer required, or after a certain time period, so that the data does not remain accessible.”⁷ To accomplish this, Xcel recommends a requirement that anonymized CEUD be deleted “once it is no longer required or 12 months after received (whichever is sooner).”⁸

We agree that it is reasonable to require that anonymized CEUD be deleted when no longer in use. However, we are concerned that Xcel’s proposed timeframe is so short that it is likely to interfere with the use of anonymized CEUD by qualified third parties. Upon receipt of a data set from a utility, we understand that it may take two years for a researcher to correct errors and otherwise clean the data to the point that it can be used in analysis. After that, the analysis, writing, peer review, and publication of research may take multiple additional years. It is best practice for researchers to retain source data for some period after publication, in case further questions arise. In the case of research supported by federal grants, federal agencies typically require that researchers’ supporting documents and other records relevant to the awards be retained for a minimum of three years after the close of a project.⁹ Further, in their initial analysis, researchers may identify follow-on questions, or they may wish to consider multiple research questions using a single CEUD data set. The expense and time required to request and clean a data set makes it particularly likely that a researcher will want to conduct multiple studies with a single data set.

⁴ Standards Section III.B.(2); *see also* CUB Initial Comments at 3-4.

⁵ *In the Matter of a Petition by Citizens Utility Board of Minnesota to Adopt Open Data Access Standards*, Docket No. E,G-999/M-19-505, Comments of the Minnesota Energy Resources Corporation at 2 (Feb. 23, 2024) (hereinafter “MERC Initial Comments”).

⁶ Standards Section III.C.

⁷ Xcel Initial Comments at 5.

⁸ *Id.*

⁹ Record Retention and Access Rule, 2 C.F.R. § 200.334 (2024), available at <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR4acc10e7e3b676f/section-200.334>; *see, e.g.,* Data Management, Nat’l Inst. Health, <https://sharing.nih.gov/data-management-and-sharing-policy/data-management> (last visited Apr. 26, 2024) (stating that “grantee institutions are required to keep the data for 3 years following closeout of a grant or contract agreement. Contracts may specify different time periods. Please note that the grantee institution may have additional policies and procedures regarding the custody, distribution, and required retention period for data produced under research awards”).

Given the above, CUB recommends that contracts allow for compliance with federal retention requirements (if applicable); allow for a sufficient amount of time (and a minimum of five years) to allow for the peer-review process, including analysis, publication, and any subsequent review; and allow researchers to use anonymized CEUD in multiple analyses. Utilities may wish to include a requirement for a data management plan that specifies a method of secure data storage, and/or that third parties delete the data once it is out of use for a certain amount of time, though we do not recommend that the Commission adopt particular requirements at this time.

Additionally, we continue to recommend that the Standards be modified to require that any individual with access to anonymized CEUD execute a nondisclosure agreement directly with the utility.¹⁰

3. What modifications, if any, should be made to the shortest allowable time interval for anonymized data set by ODAS section IV.A? Are utilities currently able to produce anonymized data sets using hour-long time intervals?

CUB continues to believe, as discussed in our initial comments, that it is neither necessary nor useful to prohibit third parties from requesting, and utilities from providing, anonymized CEUD at intervals shorter than hourly, if it is practicable for utilities to do so. CUB continues to recommend that the Commission remove the prohibition on providing CEUD at intervals shorter than hourly.

As discussed in our initial comments: “That a qualified third party may request sub-hourly interval data, however, does not mean that each utility must grant such a request. . . . The Standards require utilities to provide requested interval usage data only if it is ‘practicable’ to do so.”¹¹ We agree with Otter Tail Power’s conclusion that the requirement that utilities provide anonymized CEUD in “as short intervals as practicable” . . . recognizes differences among Minnesota utilities and provides necessary flexibility depending on each utility’s unique circumstances.”¹²

4. What considerations should the Commission make regarding the application of the 15/15 anonymization screen to the shortest allowable time interval (currently one-hour intervals)? Does each interval of time need to pass the 15/15 anonymization screen?

Comments by multiple utilities reinforce CUB’s concern that requiring each interval of time to pass the 15/15 screen is likely to be overly onerous. Minnesota Power estimates that it would require more than 200 hours of computer processing time to produce such a data set covering two years, plus additional staff time for quality assurance.¹³ MERC and Otter Tail Power, too, recognize that applying the 15/15 screen to each interval of time would likely be administratively burdensome for the utility.¹⁴ By creating significant administrative burden for utilities, implementing the 15/15 screen at each time interval also would result in higher costs for third parties requesting the data. CUB worries that these costs may be prohibitively high and may prevent CEUD from being used to further public interest and

¹⁰ See CUB Initial Comments at 9.

¹¹ CUB Initial Comments at 10.

¹² *In the Matter of a Petition by Citizens Utility Board of Minnesota to Adopt Open Data Access Standards*, Docket No. E,G-999/M-19-505, Initial Comments of Otter Tail Power Company at 4 (Feb. 23, 2024) (hereinafter “Otter Tail Power Initial Comments”).

¹³ *In the Matter of a Petition by Citizens Utility Board of Minnesota to Adopt Open Data Access Standards*, Docket No. E,G-999/M-19-505, Initial Comments of Minnesota Power at 4 (Feb. 16, 2024) (hereinafter “Minnesota Power initial Comments”).

¹⁴ MERC Initial Comments at 3; Otter Tail Power Initial Comments at 4.

policy goals. Implementing the 15/15 screen at each time interval might also limit the amount of data that could be available to researchers, similar to how utilities' application of more restrictive screens have previously limited the availability of aggregated data.¹⁵

For these reasons, we conclude that balancing the usability of the data set with privacy requires a less stringent application of the 15/15 screen. We continue to recommend that the screen be applied to the full time period of data in any report.

5. Given the new customer exemptions added to the Standards at section III.E. by the Commission's August 1, 2023 Order, is it necessary for the Commission to continue to maintain its previous policy of exempting large commercial and industrial customers with peak demands of 5 MW or more from aggregated building-level and anonymized CEUD datasets? If so, what is the appropriate threshold for limiting the application of the Standards to commercial and industrial natural gas and electric customers for anonymized CEUD requests?

CUB has no concern with maintaining the policy of exempting large commercial and industrial customers with peak demands of 5 MW or more from both aggregated building-level and anonymized CEUD data sets, as recommended by Minnesota Power, Otter Tail Power, and MERC.¹⁶

6. Should the Commission consider making any technical corrections to the Standards?

The Department of Commerce proposed two technical corrections:¹⁷

- Amending section III.B.1.(vi)(b) to read "CEUD," rather than "CUD."
- Amending section III.B.2.(iv)(c) to read: "Entities that provide or seek to provide demand response, energy efficiency, or other services to a utility under the condition that the requested data be used may access anonymized data for the sole purpose of providing such services or preparing a proposal to the utility to do so."

Xcel recommends additional clarifying language in section III.B.2.(ii) as follows: "A unique customer identification code shall be assigned to each anonymous customer in a data set. The customer identification code shall remain consistent within the data set and shall not be used in other data sets."¹⁸

CUB appreciates and supports each of these recommendations.

¹⁵ *In the Matter of a Petition by Citizens Utility Board of Minnesota to Adopt Open Data Access Standards*, Docket No. E,G-999/M-19-505, Order Refining Open Data Access Standards at 7 (Mar. 13, 2023).

¹⁶ Minnesota Power Initial Comments at 5; Otter Tail Power Initial Comments at 5; MERC Initial Comments at 3.

¹⁷ DOC Initial Comments at 5.

¹⁸ Xcel Initial Comments at 6-7.

II. CONCLUSION

For the reasons discussed in our initial comments and above, CUB respectfully recommends that the Commission make adjustments to the Standards and implement them in their entirety. Specifically, CUB recommends that the Commission:

1. Adopt the following changes to the Standards:

- a. Permit a utility to require the deletion of anonymized CEUD in a manner that allows for compliance with federal retention requirements (if applicable); allows for a sufficient amount of time (and a minimum of five years) to allow for the peer-review process, including analysis, publication, and any subsequent review; and allows researchers to use anonymized CEUD in multiple analyses.
- b. Replace the text in Section III.B(2)(v)(d) with: "Prohibit the third party from disclosing the CEUD to any individuals unless such an individual has first executed a reasonable nondisclosure agreement with the utility consistent with this section."
 - i. In the alternative, make the following technical correction to this section:

"Require the third ~~a~~-party to have contractual terms for disclosure with contracted entities noted in paragraphs (b) and (c) above that are equivalent to utilities' contracts ~~here-in~~, and provide executed copies of those agreements to the utility in advance or when they're made;"
- c. In Section IV.A: "Utilities will provide CEUD in as short intervals as practicable, with aggregated CEUD reported in intervals no shorter than monthly, ~~and anonymized CEUD reported in intervals no shorter than hourly.~~"
- c. Amend Section III.B.1.(vi)(b) to read "CEUD," rather than "CUD."
- d. In Section III.B.2.(ii): "A unique customer identification code shall be assigned to each anonymous customer in a data set. The customer identification code shall remain consistent within the data set and shall not be used in other data sets."¹⁹
- e. In Section III.B.2.(iv)(c): "Entities that provide or seek to provide demand response, energy efficiency, or other services to a utility under the condition that the requested data be used ~~may access anonymized data~~ for the sole purpose of providing such services or preparing a proposal to the utility to do so."

¹⁹ Xcel Initial Comments at 6-7.

- f. In Section III.C: “Notwithstanding section III.B, a utility may refuse to provide aggregated or anonymized CEUD when it reasonably believes the data release would create a security risk for the utility, its customer(s), or ~~that the~~ public, or that the release would allow the third party to re-identify customers, violate the terms of the contract in 2(v) above, or otherwise use the data in violation of these standards.”
- g. In Section III.E: “Notwithstanding any other provisions in law or in these Standards, a utility shall not aggregate or anonymize customer energy use data of any customer exempted by the commissioner of commerce under section 216B.241 from contributing to investments and expenditures made by a utility under an energy and conservation optimization plan, unless the customer provides written consent to the utility, pursuant to Minn. Stat. § 216C.331, subd. 8~~(e)(d)~~.”

- 2. Conclude that the 15/15 screen apply to the full time period of data in any report.
- 3. Implement the Standards in their entirety.

Thank you for the opportunity to provide these comments.

Sincerely,

April 29, 2024

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cc: Service lists