

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 Seventh Place East, Suite 350

St. Paul, MN 55101-2147

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

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

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

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

PETITION FOR EXPEDITED RELIEF

The Minnesota Large Industrial Group (“MLIG”), a continuing *ad hoc* consortium of large industrial end-users of energy in Minnesota spanning multiple utilities and functioning to represent large industrial interests before regulatory and legislative bodies, submits this Petition for Expedited Relief to the Minnesota Public Utilities Commission (“Commission”) pursuant to Minn. Stat. § 216B.25 (Further Action on Previous Order) and Minn. R. 7829.1200 (Informal or Expedited Proceeding) in the above-titled dockets.¹

I. INTRODUCTION

Following initiation of a comment period exploring potential refinements to the Open Data Access Standards,² the Commission issued its Order Refining Open Data Access Standards (the “Order”) on March 13, 2023.³ On March 31, 2023, MLIG filed a petition requesting reconsideration of the Order.⁴ On April 10, 2023, CUB filed a response requesting that the Commission deny MLIG’s petition.⁵

¹ Prior to filing, MLIG discussed this Petition with Citizens Utility Board of Minnesota (“CUB”), Minnesota Energy Resources Corporation, Minnesota Power, and Northern States Power Company d/b/a Xcel Energy, and understands that there are no objections to the requested relief at this time.

² Notice of Comment Period on Refinements to Open Data Access Standards (Feb. 11, 2022) (eDocket No. 20222-182688-02).

³ *In the Matter of a Petition by Citizens Utility Board of Minnesota to Adopt Open Data Access Standards*, PUC Docket No. E,G-999/M-19-505, Order Refining Open Data Access Standards (Mar. 13, 2023) (eDocket No. 20233-193874-01).

⁴ Petition for Reconsideration by MLIG (Mar. 31, 2023) (eDocket No. 20233-194413-03).

⁵ CUB Answer to Petition for Reconsideration (Apr. 10, 2023) (eDocket No. 20234-194655-03).

On May 17, 2023, MLIG and CUB jointly filed a letter,⁶ noting that then-pending (and now final) legislation, H.F. 2310,⁷ likely impacted the Order. CUB and MLIG urged the Commission to grant the petition solely for the purpose of tolling the statutory deadline set forth in Minn. Stat. § 216B.27, subd. 4 to account for the impending passage of H.F. 2310 into law.

On May 18, 2023, the Commission met to consider the matter. Without the benefit of a finalized and enacted bill, the Commission denied the petition for reconsideration via written order issued the same day, noting that, “the petition [did] not raise new issues [and did] not point to new and relevant evidence” and “[its] decisions are consistent with the facts, the law, and the public interest.”⁸

Since the Commission denied the petition for reconsideration on May 18, 2023, H.F. 2310 passed both chambers of the Minnesota Legislature and was presented to Governor Walz for signature on May 24, 2023; Governor Walz signed the bill into law on the same day. Relevant here, Minn. Stat. § 216C.331 (Energy Benchmarking) became effective on May 25, 2023.

In light of these recent developments, MLIG now requests expedited relief in the form of an amendment to the Order that reflects the exemption of commercial/industrial (“C&I”) customers from the Open Data Access Standards included in the Order. MLIG emphasizes that this Petition is limited and narrowly tailored in that it only requests that the Commission make an administrative amendment to a previously issued Order to account for updates to Minnesota law that did not previously exist to guide the Commission’s analysis of the Open Data Access Standards—nothing more.

As described further below, MLIG and CUB do not dispute that Minn. Stat. § 216C.331 impacts the Order, warranting limited modifications to the Open Data Access Standards.

⁶ Letter by CUB and MLIG (May 17, 2023) (eDocket No. 20235-195908-02).

⁷ *Minnesota Session Laws - 2023, Regular Session, Chapter 60, H.F. No. 2310*, OFF. OF THE REVISOR OF STATUTES, (last accessed May 30, 2023) (see lines 371.31–372.3, “Energy Benchmarking,” subd. 8(d)). As is relevant here, Minn. Stat. § 216C.331 (the “Law”) provides that: “Notwithstanding any other provision of law, a qualifying utility shall not aggregate or anonymize customer energy use data of any customer exempted by the commissioner under section 216B.241 from contributing to investments and expenditures made by a qualifying utility under an energy and conservation optimization plan, unless the customer provides written consent to the qualifying utility.”

⁸ *In the Matter of a Petition by Citizens Utility Board of Minnesota to Adopt Open Data Access Standards*, PUC Docket No. E,G-999/M-19-505, Order Denying Petition for Reconsideration at 1 (May 18, 2023) (eDocket No. 20235-195965-02).

Cognizant of the fact that any subsequent petition for review of the Commission’s May 18, 2023, Order Denying Petition for Reconsideration is due on or around June 16, 2023, MLIG respectfully requests that the Commission grant this Petition for expedited relief. Granting the requested relief will avoid the need for subsequent litigation, saving time and resources for stakeholders, the Commission and Commission Staff, and the judiciary. In furtherance of this objective, MLIG requests that the Commission hear this matter on or before its scheduled agenda meeting on June 8, 2023 (with any written order being issued by June 12, 2023).

II. ANALYSIS

A. **Expedited Relief Is Warranted to Account for the Passage of H.F. 2310 into Law, Which Warrants Amendment of the Commission’s March 13, 2023 Order**

The “[C]ommission may at any time, on its own motion or upon motion of an interested party, . . . rescind, alter, or amend any order . . . made by the commission.”⁹ In addition, “[i]nformal or expedited proceedings may be used when . . . there are no material facts in dispute.”¹⁰ In other words, the Commission can review petitions—including petitions for expedited relief—to determine whether they raise new issues, point to new and relevant evidence, expose errors in the underlying order, or otherwise persuade the Commission to reconsider its previous order.¹¹ The Commission should modify the Order for two reasons.

First, the Law directly affects substantive provisions of the Order related to the applicability of the Open Data Access Standards to C&I customers; there are no material facts in dispute regarding the recent signing of H.F. 2310 into law.¹² The recently enshrined Law alters the scope and applicability of the Order in that it continues to exempt the C&I customers from having their data aggregated or anonymized by public utilities. This is generally consistent with the Commission’s historical treatment of C&I customer energy usage data (“CEUD”), although the threshold was modified from a peak demand threshold (i.e., 5 MW) to one based on exemption

⁹ Minn. Stat. § 216B.25.

¹⁰ Minn. R. 7829.1200, subp. 1(A).

¹¹ See, e.g., *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, PUC Docket No. E002/GR-13-868, Order Denying Petitions for Reconsideration, at 1 (July 13, 2015).

¹² *In the Matter of a Petition by Citizens Utility Board of Minnesota to Adopt Open Data Access Standards*, PUC Docket No. E,G-999/M-19-505, Order Refining Open Data Access Standards, at 23–29 (internal page number 1–7) (Mar. 13, 2023) (eDocket No. 20233-194413-01).

from the state conservation improvement program (“CIP”). C&I customers were previously exempted by the Commission from CEUD reporting requirements.¹³ The Commission recognized “the unique privacy concerns of large-industrial facilities; these customers operate in highly competitive industries, and energy costs represent a significant portion of their operating budgets.”¹⁴ In a nutshell, the exemption prevented unfettered access to sensitive information about C&I users. The new Law recognizes the Legislature’s desire to maintain these protections. As such, the Order should be modified to be consistent with the Legislature’s intent and to avoid inconsistencies with current Minnesota law.

And second, the Law constitutes a new issue that the Commission could not quite consider on May 18, 2023, because the Law had not passed both chambers of the Minnesota Legislature then. Given its formal enactment, MLIG respectfully urges the Commission to reconsider and amend the Order to rectify any and all inconsistencies between the Order and existing Minnesota law. Modifying the Order will allow the Commission to account for the significant changes in the law since it last considered the issue just a few weeks ago.

The simple changes necessary to bring the Order in line with the Law are reflected in Exhibit A attached to this Petition, which is a redlined version of the “Open Data Access Standards” originally accompanying the Order.

III. CONCLUSION

MLIG respectfully asks the Commission to amend the March 13, 2023 Order to bring it into compliance with current law exempting C&I customers under Minn. Stat. § 216B.241 from having a qualifying utility aggregate or anonymize their energy use data and provide access to such data to third parties. If the Commission does not amend its Order to ensure the integrity of energy use data of C&I customers is not compromised, any such decision may adversely impact

¹³ *In the Matter of a Commission Inquiry into Privacy Policies of Rate-Regulated Energy Utilities*, PUC Docket No. E,G-999/CI-12-1344, Order Governing Disclosure of Customer Energy Use Data to Third Parties, Requiring Filing of Privacy Policies and Cost Data, and Soliciting Comment, at 2 (Jan. 19, 2017); *In the Matter of a Petition by Citizens Utility Board of Minnesota to Adopt Open Data Access Standards*, PUC Docket No. E,G-999/M-19-505, Order Adopting Open Data Access Standards and Establishing Further Proceedings, at 8 (Nov. 20, 2020) (eDocket No. 202011-168476-01).

¹⁴ *In the Matter of a Petition by Citizens Utility Board of Minnesota to Adopt Open Data Access Standards*, PUC Docket No. E,G-999/M-19-505, Order Adopting Open Data Access Standards and Establishing Further Proceedings, at 6 (Nov. 20, 2020) (eDocket No. 202011-168476-01).

sensitive and confidential information of C&I customers. Therefore, MLIG implores the Commission to take swift action that would avoid this unnecessary outcome.

Dated: June 2, 2023

Respectfully submitted,

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Open Data Access Standards¹

I. Purpose and Scope

- A. These standards apply to investor-owned electric or gas public utilities with greater than 50,000 customers within the state of Minnesota. They are intended to set standards for the collection and sharing of customer energy use data (CEUD) for use by third parties, as defined below. In particular, these standards are designed to ensure that:
- (1) Third parties may access aggregated or anonymized, disaggregated CEUD;
 - (2) The data be identified at the closest level of geographical specificity possible to maintain customer anonymity and at the finest practicable time interval;
 - (3) The utility, to the best of its ability, shall in a timely manner furnish this data in a consistent, standard format aligned with industry best practices regarding ease of access and granularity of data; and
 - (4) Unless authorized by a customer, a third party shall not have access to any personally identifiable information for a customer.
- B. Notwithstanding any other provision of law, 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.

II. Definitions

- A. “Aggregated customer energy use data” refers to the data of individual customers located in a defined geographical area, which is combined into one collective data point per time interval.
- B. “Anonymized customer energy use data” refers to the data of individual customers, which has been modified sufficiently to prevent the release of personally identifiable information, collected over a number of time intervals from a defined geographical area.

¹ This version of the open data access standards reflects changes authorized in the March 13, 2023 order issued in dockets E,G-999/M-19-505 and E,G-999/CI-12-1344.

- C. “Customer” means a person contracting for or purchasing electric or natural gas service at retail from an investor owned electric or gas public utility with customers greater than 50,000 within the state of Minnesota.
- D. “Customer energy use data” (CEUD) refers to data collected from the utility customer meters that reflect the quantity, quality, or timing of customers’ natural gas or electric usage or electricity production. For the purposes of these Open Data Access Standards, CEUD includes data regarding:
- (1) the amount and timing of energy use and production;
 - (2) peak load contributions and the amount and timing of demand; and
 - (3) rate class.
- E. “Interval data” means CEUD that is collected and compiled for a particular interval of time—including but not limited to intervals of minutes, hours, or day, but no greater than one month—for an individual customer or for a collective data set.
- F. "Personally identifiable information" (PII) means customer data which can be used to distinguish or trace the identity of an individual (e.g., name, social security number, biometric records, etc.) alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual (e.g., date and place of birth, mother’s maiden name, etc.).
- G. “Regional Unit of Government” means a regional planning board, regional development commission, and the Metropolitan Council as defined by Minnesota Statute Chapters 462 and 473.
- H. “Tax exempt organization” means a business entity organized in the United States for a nonprofit purpose and that is exempt from paying federal income tax pursuant to the Internal Revenue Code.
- I. “Third party” means a person or entity who requests CEUD other than their own from the utility that maintains the data.
- J. “Utility” means an investor-owned electric or gas public utility with customers greater than 50,000 within the state of Minnesota.

III. Third Party Access to Customer Energy Use Data and Customer Privacy Protection

- A. A utility must prepare and make available aggregated and/or anonymized CEUD upon the written or electronic request of any qualifying third party. The procedure a utility uses to allow a person to request this data must be (1) convenient for the typical third party, and (2) available on the utility's website. Additionally, a utility will make available the contact information for third-party CEUD requests and inquiries on the utility's website. Such sets must consist of the past 24 months of historical CEUD in the smallest interval practicable unless otherwise requested by the customer or authorized third party.
- B. CEUD provided may include aggregated and anonymized sets of customer energy use data.

(1) Aggregated CEUD

(i) Aggregation standard: An aggregated customer energy use data set may include CEUD from no fewer than 4 customers. A single customer's energy use must not constitute more than 50 percent of total energy consumption for the requested data set.

(ii) CEUD data sets containing 3 or fewer customers or with a single customer's energy use constituting more than 50 percent of total energy consumption may be provided upon the written consent of (1) all customers included in the requested data set, in cases of 3 or fewer customers, and (2) any customer constituting more than 50 percent of total energy consumption for the requested data set.

(iii) Aggregated CEUD may be requested by customer class and/or building or property, defined municipal boundary, county boundary, U.S. Census boundary, or U.S. postal code, provided that no data set violates paragraphs (i) and (ii).

(iv) Aggregated CEUD may be requested by:

(a) Tax-exempt organizations based within the United States;

(b) U.S. Federal Government agencies and subdivisions thereof; State of Minnesota government agencies, boards, and/or commissions; regional or local government entities with jurisdiction within Minnesota; and government entities of federally recognized tribes that share Minnesota's geography; and

(c) Property owners or managers, so long as the CEUD requested applies only to the property the requestor owns or manages.

(v) Aggregated CEUD at other than whole building level shall be provided in a machine-readable format including (at a minimum):

(a) Customer class including, at a minimum, commercial, industrial, and residential. (These classes shall be inclusive of all customers served. Classes may be combined if a dataset violates the privacy screen).

(b) Number of customers by customer class.

(c) Energy consumption (kWh or therms) by customer class.

(d) Number of customers removed from the dataset by customer class.

(vi) A utility will follow this order of operations when applying the aggregation standard. At any point, when the data meets the privacy screen it will be released. Requesters may identify which solutions work for their needs at the time of request.

(a) First seek to report the aggregated CEUD of residential, commercial, and industrial classes separately. These classes shall be inclusive of all customers served.

(b) Notify any customer whose CUD triggers a privacy screen failure of the data request, the name and contact information of the entity making the request, and the purpose of⁴ the entity's request, and allow the customer to give written permission to include their data in the data set.

(c) Combine commercial and industrial classes into one class (nonresidential).

(d) Remove the CEUD of each customer that triggers a failure of the aggregation screen, and report the number of customers excluded from the data set.

(e) If the nonresidential class still fails the privacy screen, report residential customer CEUD only.

(f) If the residential customer class still fails the privacy screen, exclude the residential class and report only commercial and industrial (or nonresidential).

(g) If all classes fail, combine all classes (total energy).

(vii) Notwithstanding paragraphs (i) and (ii), individual customer CEUD that is publicly reported will be included in aggregated data sets, regardless of whether the customer's usage triggers a failure of the aggregation standard, so long as the time scale of the requested data set and the public data set are equivalent.

(2) Anonymized CEUD

(i) Anonymization standard: Anonymized data sets may include CEUD from no fewer than 15 customers. A single customer's energy use must not constitute more than 15 percent of total energy consumption for the data set.

(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.

(iii) Anonymized data sets may be requested by customer class and/or defined municipal boundary, county boundary, U.S. Census boundary, or U.S. postal code provided that no data set violates paragraph (i).

(iv) Anonymized CEUD may be requested by:

(a) Tax-exempt organizations based within the⁵ United States;

(b) U.S. Federal Government agencies and subdivisions thereof; State of Minnesota government agencies, boards, and/or commissions; regional or local government entities with jurisdiction within Minnesota; and government entities of federally recognized tribes that share Minnesota's geography.

(c) Entities that provide or seek to provide demand response, energy efficiency, or other services to a utility may access anonymized data for the sole purpose of providing such services or preparing a proposal to the utility to do so.

(v) A utility may refuse to provide CEUD to a third party requesting anonymized data if the third party does not sign a contract with the utility that must at a minimum:

(a) Prohibit the third party from attempting to reverse engineer data or reidentify customers included in a data set;

(b) Require a third-party to disclose all of the third party's employees, subcontractors, or agents with access to the data set at the time of the contract and require this to be updated if it changes during the life of the contract;

(c) Prohibit the third party from disclosing anonymized data except to the third party's personnel or to entities with whom the third party has a contractual relationship for the purpose of conducting an investigation with the anonymized data;

(d) 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 contract here in and provide executed copies of those agreements in advance or when they're made;

(e) Hold the third party responsible for its actions with the data;

(f) Require the third party to promptly delete data and notify the utility if it discovers any PII contained in the data set; and

(g) Require the third party to state its intended⁶ use for the data.

(3) Each utility covered under these standards must file their contract form developed pursuant to 2(v) above with the Commission.

(4) The Commission may set alternative aggregation or anonymization standards upon the petition of any party, as long as those new standards do not restrict public access to energy data deemed in the public interest nor allow for the identification of individual customers within a data set.

- 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 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.
- D. A utility that refuses to provide requested CEUD for any reason must provide a timely, written explanation to the requester explaining the utility's reason(s) for refusing to provide the requested CEUD.

IV. Data Type and Format

- 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.
- B. Utilities will work with third parties to provide CEUD in a manner that reasonably facilitates ease of access, ease of CEUD preparation, and comports with accepted data handling standards.
- C. Utilities will clearly indicate how the utility defines which class a customer belongs to when providing CEUD and how customer location is determined.

V. Delivery of Data

- A. Utilities shall work with third parties to facilitate timely and secure delivery of CEUD. Disputes may be brought to the Commission for resolution.

VI. Fees and Cost Recovery

- A. A utility may charge the requester a fee to prepare and supply CEUD. A utility charging a data access fee authorized by this section must:
 - (1) base the fee amount on the actual costs incurred by the utility to create and deliver the requested data;
 - (2) consider the reasonable value of the data prepared to the utility and, if appropriate, reduce the fee assessed to the requesting person;
 - (3) provide the requesting person with an estimate and explanation of the fee; and

(4) collect the fee before preparing or supplying the requested data.

B. Notwithstanding section VI.A, utilities shall provide data aggregated at the Native nation, county, municipal, and building levels at no charge.