

MEMORANDUM

Date: May 28, 2020

To: Commissioners

From: Kevin O'Grady, Commission Staff

RE: Additional Staff Comment; Docket E-002/M-19-666

Commissioners:

With respect to the 19-666 docket, for which you will hear oral arguments on Friday, CUB has filed a number of decision options under the heading “Data Access Policies to Unlock Customer Value.” Staff wishes to give you some context regarding those issues, specifically to suggest that CUB’s arguments here may circumvent the complex and directly-relevant record developed in the forthcoming Second Privacy Docket. Dissemination of customer data, absent customer consent, raises particularly thorny issues, not the least of which are legal considerations as to what level of privacy customers can expect in their own homes, the most protected space in customers’ lives.

CUB’s proposal cannot be fully understood without reference to the First Privacy Docket, which was a multi-year examination of privacy issues by numerous parties attending 13 workshops. Although CUB was not the moving party in that docket, it did propose a framework for public access to customer data without customer consent. The Commission declined to approve any process for releasing customer data without consent.

The Second Privacy Docket, the one that is currently open before you, was initiated by CUB approximately three years after the close of the First Privacy Docket. In the Second Privacy Docket CUB proposed a broad, industry-level, comprehensive plan to open up access to customer data, without customer consent, to a large array of third parties. CUB’s proposal is complex and detailed and has the density of legal rules. CUB’s proposal addresses practices that it believes will help protect customer privacy. Those practices rely, in part, on statistical arguments that are controversial and empirical in nature. Nineteen parties filed comments in that docket.

Staff is concerned that a decision to adopt CUB's data-access proposal on Friday would be made without the benefit of the comprehensive record developed by the parties in the Second Privacy Docket. Approval on Friday could establish practices that could hamper the creation of a coherent, industry-level privacy policy and foreclose options better informed by the Second Privacy Docket. Privacy is an issue complicated by the increasing demand for detailed customer data by third parties (within and outside the energy sector); the effect of changing technology and the decreasing ability to protect privacy; the heightened interest in privacy in today's interconnected digital world; and the unsettled legal climate surrounding privacy. The Second Privacy Docket provides a rich record to support Commission decisions.

The COVID crisis has upset many schedules, including that of the Second Privacy Docket. The Briefing Papers have been prepared for some time and Staff awaits an opening in the Commission's hearing schedule.