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COMMISSION STAFF'S PETITION
TO DETERMINE REQUIREMENTS
FOR SMART METER TEXAS

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ALLIANCE FOR RETAIL MARKETS AND
TEXAS ENERGY ASSOCIATION FOR MARKETERS'
JOINT BRIEF ON CONTESTED ISSUE

Pursuant to SOAH Order No. 5, the Alliance for Retail Markets (ARM)¹ and the Texas Energy Association of Marketers (TEAM)² (collectively, ARM/TEAM) timely file this Joint Brief on Contested Issue (Joint Brief). The single remaining unresolved issue in this docket is: Whether Smart Meter Texas (SMT) should allow a residential customer or a business customer that is not a large business customer to enter into a usage data sharing agreement authorizing a Competitive Service Provider (CSP)³ to access the customer's 15-minute interval usage data for a term exceeding 12 months?⁴

For the reasons stated in this Joint Brief, ARM/TEAM contend that the term of a SMT usage data sharing agreement between a CSP and a residential customer or a business customer that is not a large business customer should not exceed a 12-month period. As a matter of policy, those categories of customers merit additional protection in the process by which a CSP accesses the customer's 15-minute interval usage data from the SMT repository. The maximum 12-month term currently applicable to usage data sharing agreements protects the residential customer or a business customer that is not a large business customer by giving the customer reasonable control over the disclosure of this highly sensitive proprietary customer information to unregulated third

¹ The members of ARM participating in this proceeding are: Direct Energy, LP; NRG Retail Companies; and TXU Energy Retail Company LLC.

² TEAM members participating in this proceeding are: AP Gas & Electric; Accent Energy d/b/a IGS Energy; Amigo Energy; Discount Power; Entrust Energy; Hudson Energy; Infinite Energy; Just Energy; Source Power & Gas; Spark Energy; StarTex Power; Stream Energy; and Tara Energy.

³ For purposes of this Joint Brief, a Competitive Service Provider, or "CSP", is defined an entity that is not the customer's retail electric provider (REP) of Record (ROR), such as an aggregator, broker, consultant, or REP acting as a third-party service provider. Stipulation at 2, Section I.B.; Direct Testimony of Donny R. Helm, Joint TDU Exh. 1 at 7:8-12; Cross-Rebuttal Testimony of John Schatz, ARM/TEAM Exh. 2 at 4:1-3; Corrections to Cross-Rebuttal Testimony of John Schatz, ARM/TEAM Exh. 3.

⁴ SOAH Order No. 5 at 1 (Jan. 9, 2018).

104

parties by limiting its disclosure to a discrete period of time, *i.e.*, a 12-month period. In ARM/TEAM's view, the maximum 12-month term of these usage data sharing agreements strikes an appropriate balance between those categories of customers' interest in the protection of their proprietary 15-minute interval usage data and those categories of customers' interest in sharing this highly sensitive information with third parties for the purpose of customer-approved services. Once this proprietary and confidential information is disclosed to a CSP pursuant to a usage data sharing agreement, the ability of SMT to protect the information ends.

I. Procedural Background: Contested Issue

On January 29, 2018, the signatory parties filed an unopposed Stipulation, which includes a proposed set of SMT 2.0 Business Requirements as Attachment 1.⁵ The Stipulation resolves all issues in this proceeding, with the exception of the remaining contested issue addressed in this Joint Brief.⁶ The Stipulation includes a streamlined and informed process by which a customer affirmatively authorizes a CSP to access the customer's 15-minute interval usage data in the SMT repository through a usage data sharing agreement. This proposed process requires the customer to affirmatively opt in to sharing the consumption information with the CSP for a specified term in response to an email sent by SMT.⁷ In contrast to the current process, the proposed process in the Stipulation does not require the customer to establish an SMT user account as a prerequisite to authorizing a CSP to access the customer's 15-minute interval usage in the SMT repository.⁸

The single unresolved issue in this proceeding relates to the maximum term of a usage data sharing agreement in which a residential customer or a business customer that is not a large business customer affirmatively authorizes a CSP to access the customer's consumption data in the SMT repository. A large business customer is defined under the Stipulation as a commercial customer whose maximum monthly kilowatt-hour (kWh) consumption during the prior 12 months

⁵ Stipulation (Jan. 29, 2018). To date, one party (Orcutt Enterprises, LLC) has not taken a position on the Stipulation.

⁶ Stipulation at 8, Section II.

⁷ Stipulation at 3-4, Section I.E.5(a),(d); Stipulation, Attachment 1 at 20-21, Business Requirement 180(a),(d).

⁸ Stipulation at 4, Section I.E.6; Stipulation, Attachment 1 at 21, Business Requirement 181.

meets or exceeds 15,000 kWh.⁹ Conversely, a business customer that is not a large business customer is a commercial customer whose maximum monthly kWh consumption during the previous 12 months is less than 15,000 kWh. For purposes of this Joint Brief, this latter category of business customer will be referred to as a “small commercial customer”.¹⁰

The Stipulation and proposed SMT 2.0 Business Requirements allow a large business customer to enter into an SMT usage data sharing agreement with a CSP for a term up to 36 months.¹¹ The rationale for this maximum 36-month period is explained in Section II.C. of this Joint Brief. With one exception, all of the signatory parties take the position that a residential or small commercial customer may enter into an SMT usage data sharing agreement for a term not to exceed 12 months.¹² The one remaining party – Brasovan Energy’s Electricity Users Group (BEEC) – takes the position that a residential customer or small commercial customer may allow a CSP to access the customer’s SMT usage data for a term not to exceed 36 months.¹³

II. The 12-Month Maximum Term for a Usage Data Sharing Agreement Between a CSP and a Residential or Small Commercial Customer Should be Retained as a Reasonable Customer Protection

Currently, a customer may authorize a CSP to access the customer’s usage data in the SMT repository pursuant to a data sharing agreement for a period of no more than 12 months, regardless of the customer’s classification or size.¹⁴ ARM/TEAM contends this element of the existing data-

⁹ Stipulation at 4, Section I.E.5(c); Stipulation, Attachment 1 at 21, Business Requirement 180(c). *See also* Stipulation, Attachment 1 at 9, Business Requirement 78 (ability of SMT to create a “Large Business Customer List”, a monthly internal list of premises associated with business customers whose monthly billed usage during the previous 12 months ever equaled or exceeded 15,000 kWh).

¹⁰ The proposed SMT 2.0 Business Requirements do not employ a short-hand name to designate this latter category of business customer, though it refers to an SMT usage data sharing agreement executed by a residential customer or a business customer that is not a large business customer as a “*Small Customer Data Sharing Agreement*”. (Emphasis added). Stipulation, Attachment 1 at 11, 12-13, Business Requirements 91, 100-102.

¹¹ Stipulation at 4, Section I.E.5(c); Stipulation, Attachment 1 at 11, Business Requirement 92; Stipulation, Attachment 1 at 21, Business Requirement 180(c).

¹² Stipulation at 8, Section II. Those signatory parties’ position on this issue is codified as Business Requirement 91. Stipulation, Attachment 1 at 11, Business Requirement 91 n. 2.

¹³ Stipulation at 8, Section II.

¹⁴ Third Party Access to Smart Meter Texas (Version 1.0) (Nov. 2014), ARM/TEAM Exh. 4 at 27 (Table Three: Third Party Agreements), 31.

sharing agreement process should continue as a reasonable customer protection applicable to an SMT usage data sharing agreement between a CSP and a residential or small commercial customer.

ARM/TEAM relies upon four grounds for its position: (1) the Public Utility Regulatory Act (PURA)¹⁵ affords an elevated level of protection to a customer's proprietary 15-minute interval usage data accessed from the SMT repository; (2) under PURA, the Commission lacks any regulatory authority over a CSP, other than a registered aggregator or certificated REP not acting the capacity of an ROR, meaning the unregulated CSP is not subject to the Commission's customer protection rules in Chapter 25, Subchapter R; (3) the customer protections in Chapter 25, Subchapter R mandatorily apply to electric service provided to residential and small commercial customers; and (4) no party to the usage data sharing agreement is unreasonably impacted by the maximum 12-month term, given the Stipulation and SMT 2.0 Business Requirements permit the customer to affirmatively renew the agreement for an equivalent term prior to the agreement's expiration with minimal effort.

A. Statutory Framework: Proprietary Customer Information/Customer Privacy

SMT is the common web portal and usage data repository jointly owned and operated by four ERCOT transmission and distribution utilities (Joint TDUs) with Commission-approved advanced metering system (AMS) deployments.¹⁶ The four ERCOT TDUs that jointly own and operate SMT are Oncor Electric Delivery Company LLC (Oncor); CenterPoint Energy Houston Electric, LLC (CenterPoint); AEP Texas (AEP), which formerly operated as two separate TDUs, AEP Texas Central Company and AEP Texas North Company; and Texas-New Mexico Power Company (TNMP).¹⁷ The SMT repository warehouses the 15-minute interval consumption data for the Electric Service Identifiers (ESIIDs) in the competitive areas of the ERCOT region that are assigned to points of electric service delivery at residential and non-residential customer premises

¹⁵ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016 (West 2016 and Supp. 2017) (PURA).

¹⁶ Direct Testimony of John Schatz, ARM/TEAM Exh. 1 at 5:4-7.

¹⁷ ARM/TEAM Exh. 1 at 5:19-22.

with provisioned advanced meters.¹⁸ The residential and non-residential premises at which advanced meters are provisioned have a historical peak demand of less than 700 kilowatts (kW).¹⁹

PURA affords an elevated level of protection to a customer's 15-minute interval usage information generated by advanced meters and warehoused in the SMT data repository. First, PURA § 39.107(b) designates this 15-minute interval consumption data as customer-owned proprietary information in which the customer has a privacy interest. It states in pertinent part:

All meter data, including all data generated, provided, or otherwise made available, by advanced meters and meter information networks, shall belong to a customer, including data used to calculate charges for service, historical load data, and any other proprietary customer information.

Similarly, both PURA §§ 17.004(a)(6) and 39.101(a)(2) entitle a customer to the privacy of such consumption information.

Second, PURA § 39.107(k) requires the Commission to adopt rules prohibiting a transmission and distribution utility (TDU) from selling, sharing, or disclosing information generated, provided, or otherwise collected from an AMS, including information used to calculate charges for service, historical load data, and any other customer information. PURA § 39.107(k), however, also requires the Commission to allow the TDU to share a customer's consumption data if the information is used for the purpose of providing electric utility service to the customer or providing other customer-approved services. To effectuate PURA § 39.107(k), the Commission has adopted two rules, 16 Texas Administrative Code (TAC) § 25.44 (applicable to electric utilities) and 16 TAC § 25.500 (applicable to TDUs), that track the statutory language. The 15-minute interval consumption information generated by a TDU's AMS and made available through the SMT repository falls squarely within the scope of protected data addressed in both PURA § 39.107(b) and PURA § 39.107(k).²⁰

While PURA § 39.107(k) permits a CSP to access a customer's 15-minute interval data in the SMT repository for the provision of customer-approved services, nothing in the statute

¹⁸ ARM/TEAM Exh. 1 at 5:7-10.

¹⁹ Tr. at 26:11-22 (Schatz Cross) (Dec. 4, 2017).

²⁰ ARM/TEAM Exh. 2 at 13:16-19. Both of these statutory provisions are found in OPUC Exh. 3.

precludes the imposition of reasonable customer protection safeguards in the context of the usage data sharing agreements by which the CSP accesses such proprietary customer information. Indeed, the application of customer protection safeguards in this context is supported by the totality of statutory provisions mandating the protection of proprietary customer information, which includes the AMS data warehoused in the SMT repository.²¹ The more granular level of customer consumption data in the SMT data repository merits greater protection than other manifestations of such usage data (*e.g.*, monthly consumption meter reads) because the information reveals how and when a customer consumes energy in each 15-minute interval.²² Given the heightened sensitivity with respect to such usage data under PURA, the retention of the 12-month maximum term for a usage data sharing agreement between a CSP and residential or small commercial customer is a customer protection justified on such statutory grounds.²³ The maximum current 12-month term protects the residential customer or small commercial customer by giving the customer reasonable control over the period of time this highly sensitive proprietary customer information can be disclosed to a CSP.

B. Statutory Framework: Unregulated Status of CSPs

While PURA affords an elevated level of protection to the 15-minute interval usage information a CSP may access from the SMT repository pursuant to a usage data sharing agreement, it does not provide the Commission with any regulatory authority over the CSP accessing the proprietary customer information. In fact, the term “competitive service provider” is not a term used in PURA. Unless the CSP accessing the customer’s usage data is a registered aggregator or a retail electric provider (REP) acting as a third-party service provider, nothing in

²¹ In addition to the above cited statutory provisions, PURA § 39.107(b) states that “metering and billing services provided to residential customers shall be governed by the customer safeguards adopted by the Commission under Section 39.101.” PURA § 39.101(a)(2) directs the Commission to adopt rules that, among other things, entitle a customer “to privacy of consumption and credit information.” Moreover, PURA § 39.157(d)(4) addresses the prohibition against a utility’s release of proprietary customer information to a competitive affiliate or any entity, other than ERCOT or a provider of corporate services, without first obtaining verifiable authorization, as determined by the Commission, from the customer.

²² ARM/TEAM Exh. 2 at 13:8-11.

²³ See ARM/TEAM Exh. 2 at 4:4-26 (recitation of the principal statutory grounds upon which ARM/TEAM witness Mr. Schatz relied upon in advocating retention of the current authorization process for CSP access to customer usage data in the SMT repository).

the statute expressly gives the Commission authority to regulate the CSP and its business activities in the competitive electric market. The statute does not require such a CSP to be certificated or registered by the Commission as a condition of participating in the competitive electric market, unlike a REP or an aggregator. Furthermore, PURA does not impose any obligations, requirements, or customer protections with respect to such a CSP's participation in the competitive electric market. Consequently, none of the Commission's electric substantive rules governing the protection of proprietary customer information extend to those CSPs.²⁴

As an entity certificated to provide retail electric service, a REP is subject to the Commission's statutory authority as defined by PURA. This is likewise true for a registered aggregator. Consequently, a REP or an aggregator is obligated to safeguard proprietary customer information and to ensure the privacy of such information under the Commission's customer protection rules.²⁵ For example, 16 TAC § 25.472(b)(2) unqualifiedly states that “[u]nder no circumstances shall a REP or aggregator sell, make available for sale, or authorize the sale of any customer-specific information or data obtained.” This absolute prohibition does not apply to an unregulated CSP.²⁶ Given the Commission's lack of authority over such an entity, the Commission cannot leverage any enforcement or other direct authority (for example, complaint proceedings, certificate revocation or suspension, and administrative penalties) to ensure a customer's privacy interests in proprietary usage data accessed by such a CSP through the SMT repository pursuant to a usage data sharing agreement are adequately being protected.²⁷

As ARM/TEAM witness Mr. John Schatz testified, the stakeholders designing the initial SMT third-party functionality properly accounted for the unregulated status of CSPs in fashioning the current process by which a customer authorizes a CSP to access usage data in the SMT

²⁴ ARM/TEAM Exh. 2 at 9:4-12; ARM Exh. 3.

²⁵ ARM/TEAM Exh. 2 at 9:22-27; ARM Exh. 3.

²⁶ ARM/TEAM Exh. 2 at 10:8-12; *see also* ARM/TEAM Exh. 2 at 9:27-10:8; ARM/TEAM Exh. 3 (citing 16 TAC § 25.472(b)(1), which states a REP or aggregator is prohibited from releasing proprietary customer information to any other person, including an affiliate of the REP or aggregator, without obtaining the customer's or applicant's verifiable authorization by means of one of the enrollment methods authorized in 16 TAC § 25.474, unless specific prerequisites for such disclosure are met).

²⁷ ARM/TEAM Exh. 2 at 9:13-16.

repository.²⁸ They recognized that a CSP (other than a registered aggregator or certificated REP) is not subject to the Commission's customer protection rules and, consequently, understood that SMT's ability to protect the privacy of a customer's usage data ended once the customer authorized the CSP to access the data.²⁹ The maximum 12-month term for usage data-sharing agreements in the current process reflects this recognition.

The lack of direct Commission authority over CSPs is particularly problematic when a CSP engages in "bad behavior" when accessing 15-minute interval customer usage data from the SMT repository. For example, at the October 12, 2017 technical conference, Joint TDU witness Mr. Donny Helm stated that SMT had discovered instances in which a person other than the customer performed the registration of a customer's SMT user account.³⁰ On cross-examination, he testified that the creation of a customer's SMT user account by someone other than the customer violated SMT's terms and conditions, regardless of the circumstances under which or the reasons why the account was created by the non-customer.³¹

In creating a new process by which a CSP accesses customer usage data pursuant to a data sharing agreement, the signatory parties to the Stipulation have included certain customer protections in the proposed SMT 2.0 Business Requirements to address the lack of Commission regulatory authority over CSPs not bound by the customer protection rules in Chapter 25, Subchapter R. These customer protections include the process for customer authentication and authorization of CSP access to the customer's 15-minute interval usage data; required disclosures to the customer; the requirement for SMT to monitor usage data sharing agreements; and the ability of the SMT Management Committee to suspend or revoke CSP access to data if certain

²⁸ ARM/TEAM Exh. 2 at 9:16-18.

²⁹ ARM/TEAM Exh. 4 at 25.

³⁰ ARM/TEAM Exh. 2 at 8:9-10; Cross-Rebuttal Testimony and Workpapers of Michele Gregg, OPUC Exh. 2 at 13:7-11; Tr. at 348:25-349:7 (Helm Cross) (Dec. 5, 2018); *see also* OPUC Exh. 2 at 13:12-15 (OPUC witness Ms. Gregg testified that Mission:data witnesses Messrs. Hays and Murray both acknowledged at the October 26, 2017 technical conference there have been instances in which CSPs had knowingly circumvented SMT terms and conditions for accessing customer usage data warehoused in the SMT repository).

³¹ Tr. at 350:18-351:4 (Helm Cross) (Dec. 5, 2018).

Commission-approved criteria exist or are met.³² The retention of the current 12-month maximum term for a usage data sharing agreement between a CSP and residential or small commercial customer is a similar customer protection also justified on the unregulated status of CSPs. In other words, this customer protection should remain in place to reasonably protect residential and small commercial customer proprietary usage data accessed by an unregulated CSP, given the inability of the Commission to protect the information once it is released to the CSP through the usage data sharing agreement.

C. Applicability of Customer Protection Rules

The retention of the maximum 12-month term for a usage data-sharing agreement between a CSP and a residential or small commercial customer is consistent with the regulatory framework of the Commission's customer protection rules. As dictated by 16 T.A.C. § 25.471(a)(3), the customer protection rules in Chapter 25, Subchapter R of the Commission's substantive electric rules are "minimum, mandatory requirements that shall be offered to or complied with for all customers unless otherwise specified." A customer other than a residential or small commercial customer, however, may agree in writing to terms of service that reflect either a higher or lower level of customer protections otherwise applicable pursuant to Chapter 25, Subchapter R, with limited exceptions.³³ For purposes of the Commission's customer protection rules, a "small commercial customer" is defined in 16 T.A.C. § 25.471(d)(11) as follows:

A non-residential customer that has a peak demand of less than 50 kilowatts during any 12-month period, unless the customer's load is part of an aggregation program whose peak demand is in excess of 50 kilowatts during the same 12-month period.

While residential customers are always subject to the customer protection rules, the dividing line between the subcategory of business customers subject to the customer protection rules (*i.e.*, small commercial customers) and the subcategory of business customers that may waive those

³² Direct Testimony of Therese Harris in Support of Stipulation at 9:7-18 (Jan. 26, 2018). Note: At the time this Joint Brief was filed, Ms. Harris's direct testimony had not yet been admitted into evidence.

³³ Three customer protection rules cannot be waived or modified pursuant to this provision: (1) 16 T.A.C. § 25.495 (relating to Unauthorized Change of Retail Electric Provider); (2) 16 T.A.C. § 25.481 (relating to Unauthorized Charges); and (3) 16 T.A.C. § 25.485(a)-(b) (relating to Customer Access and Complaint Handling).

protections (*i.e.*, large commercial and industrial customers) is the 50 kW peak demand threshold identified in 16 T.A.C. § 25.471(d)(11).

The Stipulation and proposed SMT 2.0 Business Requirements roughly draw the same line of demarcation for purposes of distinguishing business customers. They define a “large business customer”³⁴ as a business or commercial customer whose maximum monthly kWh for the prior 12 months meets or exceeds 15,000 kWh.³⁵ As stated earlier, a business or commercial customer with a consumption history that falls below the 15,000 kWh threshold is designated as a “small commercial customer” for purposes of this Joint Brief. The 15,000 kWh threshold used by the Stipulation and related Business Requirements serves as a reasonable proxy for identifying business customers with a 12-month peak demand less than 50kW versus business customers with a 12-month peak demand equal to or greater than 50kW,³⁶ similar to the threshold in the definition of “small commercial customer” in 16 T.A.C. § 25.471(d)(11). In other words, the threshold aims to distinguish business customers in the same way that 16 T.A.C. § 25.471(a)(3) distinguishes commercial customers for purposes of the applicability of the Commission’s customer protection rules. The Stipulation and proposed SMT 2.0 Business Requirements must rely upon an energy consumption amount measured in kWh to differentiate business customers because SMT only stores energy consumption data for ESIIDs, as opposed to demand data, and therefore can only distinguish business customers on that basis.³⁷

For a large business customer whose maximum monthly kilowatt-hour (kWh) consumption during the prior 12 months meets or exceeds 15,000 kWh, the Stipulation and proposed SMT 2.0

³⁴ The terms “Large Commercial Customer” and “Large Business Customer” appear to be used interchangeably in the Stipulation and proposed SMT 2.0 Business Requirements.

³⁵ Stipulation at 4, Section I.E.5(c); Stipulation, Attachment 1 at 21, Business Requirement 180(c). *See also* Stipulation, Attachment 1 at 9, Business Requirement 78 (ability for SMT to create a monthly internal list of premises associated with Business Customers whose monthly billed usage during the previous 12 months ever equaled or exceeded 15,000 kWh, *i.e.*, the “Large Business Customer List”).

³⁶ Supplemental Direct Testimony of Michele Gregg in Support of Stipulation at 9:10-12; Supplemental Direct Testimony in Support of Stipulation of Kevin Boudreaux at 3:16-20 (Jan. 26, 2018). Note: At the time this Joint Brief was filed, neither Ms. Gregg’s nor Mr. Boudreaux’s supplemental direct testimony had been admitted into evidence.

³⁷ Supplemental Direct Testimony of Michele Gregg in Support of Stipulation at 9:12-14 (Jan. 26, 2018). Note: At the time this Joint Brief was filed, Ms. Gregg’s supplemental direct testimony had not yet been admitted into evidence.

Business Requirements permit such a customer to execute a usage data sharing agreement with a CSP for a term up to 36 months. On each anniversary date of the agreement, SMT will send an email to the large business customer reminding the customer that a CSP has access to the customer's usage data in the SMT repository. The large business customer may renew the agreement for an additional term equal to the original term, using a simple click-through process providing affirmative consent.³⁸

The Stipulation and proposed SMT 2.0 Business Requirements increase the current 12-month maximum term for all usage data sharing agreements to a 36-month maximum term for those agreements executed by large business customers that meet or exceed the 15,000 kWh threshold in recognition of: (1) those customers' relative level of general sophistication in electricity purchasing matters, including their use of dedicated energy managers; (2) the general length of their long-term retail electric contracts from three to five years; and (3) their financial ability and technical expertise to pursue legal actions to protect their interests. Given these characteristics of large business customers, Ms. Gregg opined "it would be difficult for large commercial customers to be subject to some type of fraudulent data sharing agreement or to misunderstand the ramifications of a data sharing agreement or contract".³⁹ Stated another way, large business customers do not require the same level of customer protection as less sophisticated and more vulnerable residential and small commercial customers do, a distinction that is codified in the application of the Commission's customer protection rules in 16 T.A.C. § 25.471(a)(3).

In view of the mandatory applicability of the Commission's customer protection rules in Chapter 25, Subchapter R to residential and small commercial customers, the retention of the 12-month maximum term for a usage data sharing agreement between a CSP and residential or small commercial customer is justified by the Commission's policy of mandating minimum standards of protection for those categories of customers. Unlike the large business customers defined under the Stipulation and proposed SMT 2.0 Business Requirements, residential and small commercial customers may not have the resources or the expertise to navigate the protection of their proprietary

³⁸ Stipulation at 4, Section I.E.5(c); Stipulation, Attachment 1 at 11, Business Requirement 92; Stipulation, Attachment 1 at 13, Business Requirement 103; Stipulation, Attachment 1 at 21, Business Requirement 180(c).

³⁹ Supplemental Direct Testimony of Michele Gregg in Support of Stipulation at 10:3-15 (Jan. 26, 2018). Note: At the time this Joint Brief was filed, Ms. Gregg's supplemental direct testimony had not yet been admitted into evidence.

15-minute usage data in the SMT repository in data sharing agreements with CSPs, particularly in view of the unregulated status of most CSPs. While unregulated CSPs are not subject to the Commission's retail customer protection standards, the 12-month maximum term for a usage data sharing agreement between a CSP and a residential commercial customer is consistent with the Commission's general statutory authority to protect retail customers from fraudulent, unfair, misleading, deceptive, or anticompetitive practices pursuant to PURA § 17.001(b).

D. Absence of Adverse Impact on Parties to Agreement

Finally, neither the CSP nor the residential or small business customer is unreasonably impacted by the retention of the 12-month maximum term requirement for a usage data sharing agreement between those entities. Under the Stipulation and proposed SMT 2.0 Business Requirements, SMT will send two renewal notifications to the customer and the CSP, via separate emails, prior to an agreement's expiration: (1) one email will be sent 30 days prior to the expiration of the agreement; and (2) a second email will be sent 15 days prior to the expiration of the agreement if the customer has failed to respond to the first reminder email. The emails shall be subject to machine language protection technology. The email notification will inform the customer that the term of the usage data sharing agreement is nearing its expiration date. The residential customer and small commercial customer will have the option to affirmatively consent to the renewal of an SMT usage data sharing agreement for an equivalent term prior to the agreement's expiration by clicking on a "Renew" link in the email.⁴⁰ The customer will not be required to create an SMT account in order to initiate or renew the usage data sharing agreement.⁴¹

Given this straightforward renewal process, neither the customer nor the CSP is unduly impacted by the maximum 12-month term of the usage data sharing agreement. If the customer desires to continue to provide a CSP access to 15-minute interval usage data beyond the initial 12-month period, he only needs to renew his usage data sharing agreement with the CSP at the appropriate time.

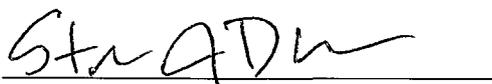
⁴⁰ Stipulation at 3, Section I.E.4(a)-(b); Stipulation, Attachment 1 at 12-13, Business Requirements 100-101.

⁴¹ Stipulation, Section I.E.6; Stipulation, Attachment 1 at 11, Business Requirement 91; Stipulation, Attachment 1 at 21, Business Requirement 181.

III. Conclusion

In crafting a new process by which a customer executes a usage data sharing agreement authorizing a CSP to access the customer's 15-minute interval data in the SMT repository, the signatory parties included many customer protections for the benefit of a customer executing such an agreement with a CSP. For the reasons stated in this Joint Brief, ARM/TEAM contends the 12-month maximum term for usage data sharing agreements is a customer protection that should remain in place for an agreement between a CSP and a residential or small commercial customer.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon all parties on January 29, 2018 by email per the agreement of the parties.

By: 
Stephen J. Davis