



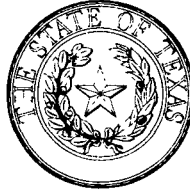
Control Number: 47472



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Addendum StartPage: 0

# State Office of Administrative Hearings



2018 MAR 14 AM 11:00

Lesli G. Ginn  
Chief Administrative Law Judge

March 14, 2018

**TO: Stephen Journeay, Director**  
**Commission Advising and Docket Management**  
**William B. Travis State Office Building**  
**1701 N. Congress, 7th Floor**  
**Austin, Texas 78701**

**VIA EMAIL**

**RE: SOAH Docket No. 473-18-0708**  
**PUC Docket No. 47472**

***Commission Staff's Petition to Determine Requirements for Smart Meter Texas***

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this letter, the parties to this proceeding are being served with the PFD.

Please place this case on an open meeting agenda for the Commissioners' consideration. There is no deadline in this case but the parties have requested that the PFD and the Stipulation in this case be considered together at the same open meeting, currently set for April 12, 2018. Please notify me and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Drews".

Elizabeth Drews  
Administrative Law Judge

Enclosure

xc: All Parties of Record

**SOAH DOCKET NO. 473-18-0708  
PUC DOCKET NO. 47472**

**COMMISSION STAFF’S PETITION TO § BEFORE THE STATE OFFICE  
DETERMINE REQUIREMENTS FOR § OF  
SMART METER TEXAS § ADMINISTRATIVE HEARINGS**

**TABLE OF CONTENTS**

<b>LIST OF ACRONYMS AND ABBREVIATIONS.....</b>	<b>i</b>
<b>I. BACKGROUND .....</b>	<b>1</b>
<b>II. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION .....</b>	<b>3</b>
<b>III. THE CONTESTED ISSUE .....</b>	<b>4</b>
<b>A. Relationship between the Stipulation and the Contested Issue.....</b>	<b>4</b>
<b>B. Burden of Proof .....</b>	<b>6</b>
<b>C. Applicable Law .....</b>	<b>6</b>
<b>D. Parties’ Arguments and Evidence about the Contested Issue.....</b>	<b>7</b>
<b>1. Agreeing Parties’ Arguments and Evidence .....</b>	<b>7</b>
<b>a. Customer Protection.....</b>	<b>8</b>
<b>b. Unregulated Status of CSPs .....</b>	<b>9</b>
<b>c. SMT’s Limited Ability to Protect Customers .....</b>	<b>10</b>
<b>d. Convenient Access to SMT Data .....</b>	<b>11</b>
<b>2. BEEC’s Arguments and Evidence .....</b>	<b>12</b>
<b>a. Statutory Scheme .....</b>	<b>12</b>
<b>b. Customer Protection.....</b>	<b>13</b>
<b>c. Treating CSPs Differently from REPs.....</b>	<b>15</b>
<b>d. Convenient Access to SMT Data .....</b>	<b>15</b>
<b>E. ALJ’s Analysis and Recommendation.....</b>	<b>16</b>
<b>IV. FINDINGS OF FACT .....</b>	<b>17</b>
<b>V. CONCLUSIONS OF LAW .....</b>	<b>26</b>
<b>VI. PROPOSED ORDERING PARAGRAPHS .....</b>	<b>28</b>

**SOAH DOCKET NO. 473-18-0708  
PUC DOCKET NO. 47472**

<b>COMMISSION STAFF’S PETITION TO</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>DETERMINE REQUIREMENTS FOR</b>	<b>§</b>	<b>OF</b>
<b>SMART METER TEXAS</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**LIST OF ACRONYMS AND ABBREVIATIONS**

Agreeing Parties	All Signatories to the Stipulation except BEEC
ALJ	Administrative Law Judge
ARM	Alliance for Retail Markets
BEEC	Brasovan Energy’s Electricity Users Group
Cities	Steering Committee of Cities Served by Oncor
Commission	Public Utility Commission of Texas
CSP	Competitive Services Provider
EnerNOC	EnerNOC, Inc.
ERCOT	Electric Reliability Council of Texas
ESI ID	Electric Service Identifier
IP	Internet Protocol
Joint TDUs	AEP Texas, Inc.; CenterPoint Energy Houston Electric, LLC; Oncor; Texas-New Mexico Power Company
kW	Kilowatts
kWh	Kilowatt-hours
Large Commercial Customer	Commercial customer whose maximum monthly kWh consumption for the previous 12 months equaled or exceeded 15,000 kWh
Limit	Maximum time period a Small Customer may grant a CSP access to the customer's SMT data without affirmative renewal by the customer

Mission:data	Mission:data Coalition, Inc.
MP2T	MP2 Energy Texas, LLC
Oncor	Oncor Electric Delivery Company LLC
OPUC	Office of Public Utility Counsel
Orcutt	Orcutt Enterprises, LLC
PFD	Proposal for Decision
PURA	Public Utility Regulatory Act
REP	Retail electric provider
ROR	REP of record
Small Customers	Residential Customers and Smaller Commercial Customers
Smaller Commercial Customer	Commercial customer whose maximum monthly kWh consumption for the previous 12 months was 15,000 kWh or less
SMT	Smart Meter Texas™
SMT 1.0	Current SMT Business Requirements
SMT 2.0	SMT Business Requirements that will result from this case
Signatories	All parties except Orcutt
SOAH	State Office of Administrative Hearings
Staff	Commission staff
TAC	Texas Administrative Code
TDU	Transmission and distribution utility
TEAM	Texas Energy Association for Marketers
TEPA	The Energy Professionals Association

**SOAH DOCKET NO. 473-18-0708**  
**PUC DOCKET NO. 47472**

<b>COMMISSION STAFF’S PETITION TO</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>DETERMINE REQUIREMENTS FOR</b>	<b>§</b>	<b>OF</b>
<b>SMART METER TEXAS</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

In this case, all issues except one were resolved by a Stipulation. Regarding the contested issue, the Administrative Law Judge (ALJ) recommends the outcome supported by all Signatories to the Stipulation except Brasovan Energy’s Electricity Users Group (BEEC).<sup>1</sup> The contested issue relates to the maximum time period that Residential Customers and Smaller Commercial Customers (collectively, Small Customers) may grant a Competitive Services Provider (CSP) access to the customer’s data maintained by Smart Meter Texas™ (SMT) without the customer affirmatively renewing the data access (Limit). BEEC proposes changing the Limit to 36 months; the other Signatories (Agreeing Parties) support retaining the current 12-month Limit.<sup>2</sup> The ALJ recommends that the Limit remain 12 months.

**I. BACKGROUND**

In implementing Public Utility Regulatory Act (PURA) provisions relevant to advanced electric metering data, the Public Utility Commission of Texas (Commission) established a stakeholder process, subject to Commission approval, to determine when and how those data are made available on a transmission and distribution utility’s (TDU) web portal.<sup>3</sup> The stakeholder process led to the creation of SMT. SMT is a common web portal and electric-usage data repository jointly owned and operated by four TDUs (Joint TDUs), which have deployed advanced metering systems in competitive areas of the Electric Reliability Council of Texas (ERCOT) region. Among other things, SMT stores electric-usage data in 15-minute intervals for customer premises with advanced meters and, through user interfaces, provides secure access to

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<sup>1</sup> The only party that is not a Signatory is Orcutt Enterprises, LLC (Orcutt). To the ALJ’s knowledge, Orcutt has taken no action in this case since filing its unopposed October 30, 2017 motion to intervene, which was granted.

<sup>2</sup> Like the parties, the ALJ uses the term “Agreeing Parties” to refer to all Signatories except BEEC.

<sup>3</sup> Public Utility Regulatory Act, Tex. Util. Code tit. 2 (PURA), § 39.107; 16 Tex. Admin. Code (TAC) § 25.130(g)(1)(E)(ii).

a customer's confidential SMT data to the customer, the customer's retail electric provider (REP) of record (ROR), ERCOT, and third parties the customer authorizes to have access to the customer's data. For example, a retail customer may enter into an agreement with a CSP, authorizing it to have access to the customer's data in order to help manage the customer's energy usage and costs.<sup>4</sup>

This proceeding began when Commission staff (Staff) filed a petition asking the Commission to determine what changes, if any, should be made to the SMT business requirements. This is the first contested case in which the Commission has been asked to rule on those requirements. The current business requirements, SMT 1.0, resulted from the stakeholder process. SMT 2.0 is the version expected to result from this case.<sup>5</sup>

After an evidentiary hearing, the parties filed a motion (Joint Motion) requesting: (1) admission into evidence of the Stipulation, proof of notice, and supporting testimony; (2) a decision on the remaining contested issue; and (3) approval of a Proposed Final Order consistent with the Stipulation.<sup>6</sup> Attached to the Stipulation are SMT 2.0 Business Requirements and a Proposed Final Order. The Stipulation and the Joint Motion are unopposed. All parties except one (Signatories) signed the Stipulation and all Signatories agreed to the Joint Motion.

In this Proposal for Decision (PFD), the ALJ addresses on the merits only the contested issue. The ALJ is simultaneously issuing an order granting the Joint Motion's requests to admit additional documents in evidence and to remand the settled issues to the Commission.<sup>7</sup> The Signatories have asked that the Commission consider the Stipulation and the PFD at the same

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<sup>4</sup> See generally Joint TDU Ex. 1 (Helm Dir.) at 3-4; ARM/TEAM Ex. 1 (Schatz Dir.) at 5-7. CSPs include aggregators, brokers, consultants, and REPs that are not the ROR (*i.e.*, REPs acting as a third-party provider of competitive energy services, rather than a provider of retail electric service, to the customer). Joint Ex. A (Stipulation) at 2, ¶ I.B, and Att. 1, Business Requirement 1.

<sup>5</sup> ARM/TEAM Ex. 1 (Schatz Dir.) at 7; Tr. at 320-21.

<sup>6</sup> Joint Motion to Admit Stipulation, Affidavit of Notice, and Supporting Testimony into Evidence; Request for Decision on Remaining Unresolved Issue; and Joint Motion for Approval of Proposed Order (Jan. 29, 2018). Joint Motion Exhibits A-H are the Stipulation, the notice affidavit, and the supporting testimony.

<sup>7</sup> Joint Motion at 4-6. The Signatories asked that the ALJ "remand the case to the Commission for consideration of the Stipulation and the PFD." Joint Motion at 5. Because the State Office of Administrative Hearings (SOAH) does not remand contested issues addressed in a PFD, the ALJ's order remands only the settled issues.

open meeting, currently set for April 12, 2018.<sup>8</sup> After the Commission issues its final order, the Joint TDUs will prepare and submit a compliance filing that includes SMT 2.0 Business Requirements incorporating the Commission decision on the contested issue.<sup>9</sup>

## II. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The 17 parties to this case are listed below:<sup>10</sup>

Type	Party
Joint TDUs	AEP Texas, Inc. CenterPoint Energy Houston Electric, LLC Oncor Electric Delivery Company LLC (Oncor) Texas-New Mexico Power Company
REPs or REP groups <sup>11</sup>	Alliance for Retail Markets (ARM) Texas Energy Association for Marketers (TEAM)
CSPs or CSP groups	Brasovan Energy's Electricity Users Group (BEEC) EnerNOC, Inc. (EnerNOC) Engie Resources, LLC Mission:data Coalition, Inc. (Mission:data) MP2 Energy Texas, LLC (MP2T) Orcutt Enterprises, LLC (Orcutt) Texas Advanced Energy Business Alliance The Energy Professionals Association (TEPA)
Governmental parties	Steering Committee of Cities Served by Oncor (Cities) Office of Public Utility Counsel (OPUC) Commission Staff

<sup>8</sup> Letter to the ALJ (Jan. 5, 2018); letter to the ALJ (Jan. 11, 2018).

<sup>9</sup> Joint Ex. A (Stipulation) at 8.

<sup>10</sup> The table lists the party names stated in the Stipulation. Joint Ex. A (Stipulation) at 1. A few of those names differ slightly from the name stated in the party's motion to intervene.

<sup>11</sup> ARM members participating in this case are: Direct Energy, LP; NRG Retail Companies; and TXU Energy Retail Company LLC. TEAM members participating in this case 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. ARM and TEAM filed joint testimony and briefs. When discussing their joint filings and positions, the PFD refers to them as ARM/TEAM.



Staff filed its petition on August 16, 2017. On October 26, 2017, the Commission referred this case to the State Office of Administrative Hearings (SOAH) and requested that SOAH assign an ALJ to conduct a hearing and to issue a PFD if necessary to resolve any issues contested by the parties.<sup>12</sup> The hearing was held on December 4-5, 2017. On January 29, 2018, the Joint Motion (including the Stipulation and other attachments) was filed. All parties except Orcutt support the Joint Motion and signed the Stipulation; Orcutt has not taken a position on them.<sup>13</sup> Regarding the contested issue, BEEC and several of the 15 Agreeing Parties—ARM/TEAM, Cities, OPUC, and Staff—filed initial briefs, and BEEC, ARM/TEAM, Cities, and OPUC filed reply briefs.<sup>14</sup> The record closed February 8, 2018, when BEEC filed its reply brief.

Notice and jurisdiction are not contested and are addressed only in the findings of fact and conclusions of law.

### III. THE CONTESTED ISSUE

#### A. Relationship between the Stipulation and the Contested Issue

Briefs about the contested issue cite the Stipulation (including the SMT 2.0 Business Requirements and Proposed Final Order) and supporting testimony, which were admitted in evidence without objection. No party objected to using this evidence for that purpose. In this PFD, the ALJ considered all evidence relevant to the contested issue, including the Stipulation and supporting testimony.

The Stipulation provides: “The Signatories further stipulate to the facts contained in the proposed Order attached hereto as Attachment 2.”<sup>15</sup> A finding of fact in the Proposed Final Order states: “Attachment 2 to the Stipulation includes the same SMT 2.0 Business

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<sup>12</sup> Order of Referral (Oct. 26, 2017) at 1.

<sup>13</sup> Joint Motion at 1.

<sup>14</sup> BEEC was represented in this case by its President, Mike Brasovan, who is not an attorney. BEEC’s initial brief was labeled and formatted as testimony but was not offered or admitted in evidence. The ALJ has treated all briefs as legal argument, not evidence, and disregarded any factual statements in them that are not in evidence. Tex. Gov’t Code § 2001.141(c); SOAH Order No. 3 (Dec. 8, 2017); SOAH Order No. 5 (Jan. 9, 2018).

<sup>15</sup> Joint Ex. A (Stipulation) at 8, ¶ III.

Requirements that were agreed upon by the Signatories.”<sup>16</sup> Because all parties who presented evidence or argument on the contested issue are Signatories, and no party opposed the Stipulation, the ALJ has treated statements and positions taken in the Stipulation (including the SMT 2.0 Business Requirements and the Proposed Final Order) as uncontested stipulations by all Signatories, including BEEC.

For example, in reply briefs the Agreeing Parties object that in its initial brief, BEEC frames the contested issue differently than, and takes positions beyond the scope of, the statement of the contested issue agreed to by all Signatories, including BEEC. The ALJ concludes that all Signatories agreed to the following statement of the contested issue:

81. The single issue that was not resolved by the Signatories as part of this Stipulation was the maximum length of time that a Residential Customer or a Smaller Commercial Customer (identified as a commercial customer whose maximum monthly kWh [kilowatt-hours] for the prior 12 months is less than 15,000 kWh) can grant a CSP access to the customer’s SMT data before the customer will be required to affirmatively renew the grant of access to the CSP.
82. All but one of the Signatories took the position that a Residential Customer or Smaller Commercial Customer should be permitted to grant a CSP access to the customer’s SMT data for a term not to exceed 12 months before the customer will be required to affirmatively renew the data sharing agreement.
83. The one remaining party—BEEC—has taken the position that a Residential Customer or Smaller Commercial Customer should be permitted to grant a CSP access to the customer’s SMT data for a term not to exceed 36 months before the customer will be required to affirmatively renew the data sharing agreement.<sup>17</sup>

The ALJ has disregarded briefing outside the agreed scope of the contested issue stated above.

The Stipulation caused some Signatories to modify their positions on the contested issue. For example, EnerNOC witness Mona Tierney-Lloyd stated that, although she would have preferred a 36-month Limit for Small Customers, EnerNOC agreed to the 12-month Limit as part

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<sup>16</sup> Joint Ex. A, Att. 2 (Proposed Final Order), Finding of Fact No. 47.

<sup>17</sup> Joint Ex. A, Att. 2 (Proposed Final Order), Finding of Fact Nos. 81-83. *See also* Joint Ex. A (Stipulation) at 8.

of the compromise reached in the Stipulation.<sup>18</sup> In its brief, Staff states that while it “may or may not have supported BEEC’s position in a fully litigated proceeding,” Staff “supports the compromise reached among the Agreeing Parties.”<sup>19</sup>

## **B. Burden of Proof**

As the parties agreed at the hearing, given the nature of this case, the burden of proof is on any party that supports making a change to the current SMT business requirements, with respect to that change.<sup>20</sup> The current Limit is 12 months for all customers.<sup>21</sup> The Stipulation will modify that, but only for Large Commercial Customers, for whom the Limit will be 36 months.<sup>22</sup> Regarding the contested issue, therefore, the Agreeing Parties’ position would not change the 12-month Limit currently applicable to Small Customers, whereas BEEC supports changing it to 36 months. BEEC thus has the burden of proof regarding the contested issue.

## **C. Applicable Law**

PURA § 39.107(i) expresses legislative intent that advanced meter information networks be deployed as rapidly as possible to allow customers to better manage energy use and control costs, and to facilitate demand response initiatives. Under PURA §§ 17.004(a)(6) and 39.101(a)(2), a customer has a right to maintain the customer’s electric consumption information as private. PURA § 39.107(b) provides that:

- Commission customer protection rules govern metering services provided to residential customers.
- All meter data—including all data made available by advanced meters and meter information networks—including data used to calculate charges for service, historical load data, and any other proprietary customer information, belong to the customer.

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<sup>18</sup> Joint Ex. F (Tierney-Lloyd Supp. Dir.) at 4.

<sup>19</sup> Commission Staff’s Initial Brief (Jan. 29, 2018) at 1.

<sup>20</sup> Tr. at 12; 1 TAC § 155.427.

<sup>21</sup> Joint Ex. D (Gregg Supp. Dir.) at 9.

<sup>22</sup> Joint Ex. D (Gregg Supp. Dir.) at 9; Joint Ex. A (Stipulation) at 3-4, ¶ I.E.5.c.

- A customer may authorize its data to be provided to one or more REPs under Commission rules.

PURA § 39.107(k) prohibits TDUs from selling, sharing, or disclosing advanced meter data but requires TDUs to share a customer's meter data with a third party (such as a CSP) for the purpose of providing customer-approved services to the customer.

16 TAC § 25.130(j) states:

- (1) An electric utility shall provide a customer, the customer's REP, and other entities authorized by the customer read-only access to the customer's advanced meter data, including meter data used to calculate charges for service, historical load data, and any other proprietary customer information. The access shall be convenient and secure . . .  
...
- (3) An electric utility shall use industry standards and methods for providing secure customer and REP access to the meter data. . . .  
...
- (5) A customer may authorize its data to be available to an entity other than its REP.

#### **D. Parties' Arguments and Evidence about the Contested Issue**

The dispute over the contested issue focuses on whether a Limit of 12 months or 36 months for Small Customers better effectuates legislative intent and balances policy considerations such as customer protection and customers' ability to share their SMT data with CSPs in a convenient way. As discussed below, some Stipulation provisions that also address those policy considerations are relevant to the contested issue.

##### **1. Agreeing Parties' Arguments and Evidence**

The Agreeing Parties seek approval of proposed Business Requirement 91:

91. Ability for SMT to allow a Residential Customer or Business Customer that is not on the Large Commercial Customer List to enter into a usage data sharing agreement with a CSP for a term not to exceed 12 months (a

“Small Customer Data Sharing Agreement”). Note: The Residential Customer or Business Customer is not required to create an SMT account for itself.<sup>23</sup>

The Agreeing Parties’ arguments and evidence on the contested issue are summarized below.

**a. Customer Protection**

The Agreeing Parties note that, as discussed above, a customer’s electric-usage information is confidential by law.<sup>24</sup> They urge that a shorter Limit is warranted to protect Small Customers, who need, and under law are required to receive, a higher level of customer protection than do larger customers.

The Stipulation defines “Large Commercial Customer” as a commercial customer whose maximum monthly kWh consumption during the previous 12 months equaled or exceeded 15,000 kWh.<sup>25</sup> In framing the contested issue, the Stipulation uses but does not define the term “Smaller Commercial Customer.”<sup>26</sup> Consistent with the Stipulation, this PFD uses “Smaller Commercial Customer” to mean a commercial customer whose maximum monthly kWh for the previous 12 months was less than 15,000 kWh. The Commission’s customer protection rules define “small commercial customer” as a non-residential customer with a peak demand of less than 50 kilowatts (kW) during any 12-month period.<sup>27</sup> Because SMT records energy rather than demand, the Signatories agreed the term “Smaller Commercial Customer” described above is a reasonable proxy for “small commercial customer” as defined in the customer protection rules.<sup>28</sup>

The Commission’s customer protection rules allow all customers except residential and small commercial customers to agree to retail electric terms of service that reflect a lower level

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<sup>23</sup> Joint Ex. A, Att. 1, Business Requirement 91. A footnote acknowledges that BEEC does not “agree with this 12-month maximum term length.” Joint Ex. A, Att. 1 at 11, n. 2.

<sup>24</sup> PURA §§ 17.004(a)(6), 39.101(a)(2).

<sup>25</sup> Joint Ex. A (Stipulation) at 3-4, ¶ I.E.5.c. The Stipulation documents refer to “Commercial Customer” and “Business Customer” interchangeably. The PFD uses “Commercial Customer.”

<sup>26</sup> See, e.g., Joint Ex. A, Att. 2 (Proposed Final Order), Finding of Fact Nos. 81-85.

<sup>27</sup> 16 TAC § 25.471(d)(11). The customer protection rules are 16 TAC §§ 25.471-.500.

<sup>28</sup> Joint Ex. D (Gregg Supp. Dir.) at 9; see also Joint Ex. F (Tierney-Lloyd Supp. Dir.) at 5.

of customer protection than the rules otherwise require.<sup>29</sup> The Agreeing Parties argue that similarly, Small Customers merit a higher level of customer protection regarding disclosure of their SMT data to CSPs than do Large Commercial Customers. OPUC witness Michele Gregg testified that, compared to Small Customers, Large Commercial Customers:

- Are more likely to have energy managers overseeing and managing their electric usage and to bid into ERCOT's wholesale electric market;
- Typically have contracts of three to five years, compared to 12 months or less for Residential Customers;
- Are less likely to misunderstand data sharing agreements or to be subject to one that is fraudulent; and
- Are more likely to have the financial ability and technical expertise to pursue legal actions to protect their interests.<sup>30</sup>

EnerNOC witness Ms. Tierney-Lloyd testified that EnerNOC tends to enter into longer-term service agreements with Large Commercial Customers because they are more sophisticated and experienced at making commercial decisions consistent with the needs of their businesses.<sup>31</sup>

#### **b. Unregulated Status of CSPs**

As discussed later, one of BEEC's objections to a 12-month Limit for Small Customers is that they can authorize their ROR to have access to their SMT data for years without any affirmative renewal. BEEC regards that distinction between RORs and CSPs as unreasonable. The Agreeing Parties respond that REPs must hold a certificate from the Commission; aggregators must be registered with the Commission; and if a REP or aggregator violates PURA or Commission rules, the Commission can impose sanctions such as administrative penalties or revocation of the certificate or registration.<sup>32</sup> In contrast, a CSP that is a broker or consultant is not subject to customer protection requirements in PURA and Commission rules.<sup>33</sup> A CSP is not

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<sup>29</sup> Joint Ex. D (Gregg Supp. Dir.) at 9-10; 16 TAC § 25.471(a)(3).

<sup>30</sup> Joint Ex. D (Gregg Supp. Dir.) at 10 and n. 1.

<sup>31</sup> Joint Ex. F (Tierney-Lloyd Supp. Dir.) at 5.

<sup>32</sup> Joint Ex. C (Harris Supp. Dir.) at 9; 16 TAC §§ 25.107(a) and (j), 25.111(a) and (j).

<sup>33</sup> PURA § 39.101; 16 TAC § 25.471(a).

required to disclose in its privacy policy how it uses the data.<sup>34</sup> The Commission lacks authority to enforce a CSP's data sharing agreement with a customer if the CSP violates it.<sup>35</sup> OPUC witness Ms. Gregg testified that if unauthorized disclosure or misuse of SMT data occurs, the customer must seek recourse through the courts, which is cost-prohibitive for most Residential Customers.<sup>36</sup> A REP that is not the customer's ROR must meet the same requirements as any other CSP before accessing a customer's data through SMT.<sup>37</sup>

**c. SMT's Limited Ability to Protect Customers**

Because TDUs in the ERCOT region are prohibited from having a billing relationship with a retail customer, they do not maintain the customer's name or billing address.<sup>38</sup> For that reason, SMT can use only three unique customer identifiers to verify that a customer has authorized sharing SMT data: the customer meter number; the Electric Service Identifier (ESI ID); and the customer's ROR.<sup>39</sup> Consequently, SMT cannot establish with 100% certainty that a customer originated a request for permission to share the customer's SMT data.<sup>40</sup>

SMT does not control data sharing agreements or investigate CSPs before they enter into such agreements with customers; instead, SMT encourages customers to do their own investigations.<sup>41</sup> SMT's ability to protect the privacy of a customer's data ends once a customer agrees to share those data with a CSP.<sup>42</sup>

Joint TDU witness Donny R. Helm testified that some third parties—including some with internet protocol (IP) addresses originating outside the continental United States—have

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<sup>34</sup> OPUC Ex. 1 (Gregg Dir.) at 11.

<sup>35</sup> Tr. at 330-31; OPUC Ex. 1 (Gregg Dir.) at 11.

<sup>36</sup> OPUC Ex. 2 (Gregg Reb.) at 11-12.

<sup>37</sup> Tr. at 28-30, 279.

<sup>38</sup> OPUC Ex. 2 (Gregg Reb.) at 8.

<sup>39</sup> ARM/TEAM Ex. 2 (Schatz Reb.) at 7-8. *See also* Joint Ex. A (Stipulation) at 3, ¶ I.E.2.

<sup>40</sup> Tr. at 115-16, 212-13.

<sup>41</sup> Tr. at 300-01.

<sup>42</sup> OPUC Ex. 1 (Gregg Dir.) at 11.

circumvented the current SMT verification/confirmation protocols for accessing customer data. The Joint TDUs have no ability to bring an enforcement or correction action against those entities, and SMT has never revoked or suspended an SMT user's right to access data.<sup>43</sup>

When a customer ends a relationship with a ROR, such as by moving premises, SMT automatically records a transaction that terminates the former ROR's access to the customer's data through SMT.<sup>44</sup> If, however, the ESI ID, meter number, and ROR do not change, a CSP can maintain access to SMT data for a customer premises after the customer who consented to such access moves out. The new occupant might not know about the CSP's access to the data.<sup>45</sup>

Given the constraints on SMT's ability to protect customers, the Agreeing Parties contend the Limit should be 12 months, not 36 months. The shorter Limit provides Small Customers a quicker opportunity to re-review the terms and conditions of the data sharing agreement between them and the CSP; the CSP's current privacy policies, if any; and customer disclosures that SMT will email to the customer in connection with renewal.

**d. Convenient Access to SMT Data**

As noted previously, 16 TAC § 25.130(j) requires that CSPs have convenient, secure access to advanced meter data of customers who authorize such access. As all Signatories agree, the Stipulation will make it more convenient for customers to share their data. The Agreeing Parties argue that, combined with the Stipulation, a 12-month Limit strikes a reasonable balance between protecting Small Customers and providing a convenient way for them to share their data with CSPs.

Under the Stipulation, customers will no longer be required to create an account on the SMT portal before entering into a data sharing agreement with a CSP. Instead, they can initiate an agreement with a CSP independently from SMT, either directly or through the CSP's

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<sup>43</sup> Tr. at 209-11, 348.

<sup>44</sup> Tr. at 285-86.

<sup>45</sup> Joint TDU Ex. 2 (Helm Reb.) at 14-15; Tr. at 161-62.



website.<sup>46</sup> SMT will send an email asking the customer to affirm the customer's initial agreement to share data with the CSP for a specified term (which takes one click) and acknowledgements about SMT customer disclosures.<sup>47</sup> SMT will send the customer a renewal email 30 days before the data sharing agreement expires and, if the customer has not responded, another email 15 days before the agreement expires.<sup>48</sup>

Witnesses for two CSPs that are Agreeing Parties, Ms. Tierney-Lloyd with EnerNOC and Kevin Boudreaux with MP2T, testified that compared to the current process, it will be much easier under the Stipulation for customers to share their SMT data with a CSP and receive services from a CSP. The new process will help customers better manage their energy consumption, choose more cost-effective plans for electric service, or obtain other services that benefit them.<sup>49</sup>

## **2. BEEC's Arguments and Evidence**

BEEC asks that the Commission approve a 36-month Limit for Small Customers. BEEC would not object to sending an annual email reminding the customer about the data sharing agreement with the CSP and allowing the customer to cancel the agreement through a click on a mouse.

### **a. Statutory Scheme**

BEEC questions Commission authority to impose a 12-month Limit for Small Customers. As discussed previously, PURA § 39.107(b) provides that all meter data belong to the customer. PURA does not restrict the length of data access for which a customer can contract with a CSP.

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<sup>46</sup> Joint Ex. D (Gregg Dir.) at 5; Joint Ex. E (Helm Dir.) at 3; Joint Ex. G (Boudreaux Dir.) at 2.

<sup>47</sup> Joint Ex. C (Harris Supp. Dir.) at 8; Joint Ex. F (Tierney-Lloyd Supp. Dir.) at 4; Joint Ex. G (Boudreaux Dir.) at 2; Joint Ex. A (Stipulation) at 3-4, ¶¶ I.E.4 and I.E.5 and Att. 1, Business Requirements 179-180.

<sup>48</sup> See Joint Ex. F (Tierney-Lloyd Supp. Dir.) at 4; Joint Ex. A (Stipulation) at 3-4, ¶¶ I.E.4 and Att. 1, Business Requirement 179.

<sup>49</sup> Joint Ex. F (Tierney-Lloyd Supp. Dir.) at 2-4; Joint Ex. G (Boudreaux Supp. Dir.) at 1-2. See also Joint Ex. E (Helm Supp. Dir.) at 3-4, 8.

BEEC urges that the 12-month Limit unreasonably interferes with a contract between two private parties that, in many cases, are not regulated by the Commission.<sup>50</sup>

**b. Customer Protection**

BEEC contends that the 12-month Limit is unwarranted given other customer protections under the Stipulation. As Staff witness Therese Harris and OPUC witness Ms. Gregg testified, those protections include:

- ***CSP registration requirements.*** Among other things, the CSP must acknowledge the SMT Management Committee's authority to suspend or revoke a CSP's access to SMT data under certain conditions.<sup>51</sup>
- ***Customer authentication process.*** A data access authorization request must include the customer's ESI ID, meter number, and ROR certificate number. Each of those three pieces of information is customer-specific, and they must all be consistent with SMT's records for that customer or SMT will not approve the request.<sup>52</sup> Although a customer's meter number and ESI ID might be publicly available, the identity of a customer's ROR is not.
- ***Customer authorization of CSP access to the customer's data.*** An authorization request must also include the customer's valid email address and the length of time the customer has authorized the CSP to access the customer's SMT data. Once SMT confirms that this information matches the information SMT has on file for that customer, an email will be sent asking the customer to affirmatively acknowledge that the customer chose to share the data with the CSP for the length of time indicated in the authorization request. The customer must affirmatively agree before SMT will grant the CSP access to the customer's data. If the customer declines the request, or does not respond to the email within a certain period of time, the request will be rejected. The email will be encrypted in transit and subject to machine language protection technology to ensure the email is answered by a real person rather than by bots.

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<sup>50</sup> See generally BEEC Ex. 2 (Brasovan Reb.) at 6.

<sup>51</sup> The Joint TDUs formed the SMT Management Committee to manage SMT design, operations, and costs on behalf of the Joint TDUs. Joint Ex. A, Att. 2 (Proposed Order), n. 1.

<sup>52</sup> The required disclosures will be filed in a compliance proceeding subject to Commission approval. Joint Ex. D (Gregg Supp. Dir.) at 7.

- ***Customer disclosures.*** If SMT receives the affirmative agreement from the customer, a confirmation email will be sent to the customer. Together, the emails will inform the customer that the customer has the sole responsibility to review the CSP's privacy policy, and will explain the methods for terminating CSP access to the customer's data.
- ***Customer complaints.*** The SMT Management Committee, the Joint TDUs, OPUC, Staff, and the CSP will work together to resolve customer complaints.
- ***SMT monitoring.*** Criteria intended to thwart unauthorized access to customer data and to identify potentially inappropriate behavior by a CSP will be established. The criteria will include monitoring unique IP addresses to eliminate mass enrollments and acknowledgements, and monitoring CSP attempts to authenticate customer information.
- ***SMT Management Committee's ability to suspend or revoke access to SMT data.*** If certain Commission-approved "red flag" behaviors are observed, the SMT Management Committee will immediately suspend or revoke CSP access to customer data. A CSP may appeal that action to the Commission. If the Commission reverses that action, SMT will restore the CSP's authorized data access. After notice and appropriate process, the Commission may also direct the SMT Management Committee to suspend or revoke access. Potential "red flag" behaviors include: interfering with or falsifying customer affirmation; receiving customer data not authorized by the customer; falsifying IP addresses; failing to terminate data access when directed or terminated by the customer; sharing, selling, or distributing customer data without customer authorization; and modifying or altering customer data.<sup>53</sup>
- ***Termination of Access under the Data Sharing Agreement.*** SMT will terminate access to the data when the data sharing agreement term expires.
- ***Customer Termination of Data Sharing.*** A customer may also terminate data sharing at any time by contacting the CSP to request termination or by creating an SMT account to terminate the data sharing.<sup>54</sup>

BEEC witness Mr. Brasovan testified that requiring a customer to reaffirm that a CSP is authorized to access the customer's SMT data does little to protect customer privacy and data security.<sup>55</sup> In that regard, BEEC argues that:

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<sup>53</sup> Every SMT user must also agree to abide by SMT's Terms and Conditions, which include appropriate use of SMT and remedies for noncompliance. Joint Ex. C (Harris Supp. Dir.) at 9, n. 9.

<sup>54</sup> Joint Ex. C (Harris Supp. Dir.) at 7-14; Joint Ex. D (Gregg Supp. Dir.) at 5-8; Joint Ex. F (Tierney-Lloyd Supp. Dir.) at 6-8; Joint Ex. G (Boudreaux Supp. Dir.) at 2-3.

<sup>55</sup> BEEC Ex. 2 (Brasovan Reb.) at 6.

- After 15 years of participating in ERCOT's deregulated market, even Small Customers are informed decision-makers and many use third-party representation to contract with a REP.<sup>56</sup>
- There is no quantitative evidence that using a Limit of 36 months instead of 12 months would make a significant difference.
- If customer protections are sufficient to protect SMT data for 12 months without affirmative renewal, they should be considered sufficient to protect the data for a longer period of time. If a bad actor falsified the initial affirmation that a customer granted data access, the bad actor could also falsify the renewal affirmation.
- It is unclear why a bad actor would want a customer's SMT data. For instance, a burglar has much less laborious ways to determine whether a customer premises is empty than to hack into and analyze an individual customer's SMT data.
- Small Customers share much more sensitive data with third parties, such as social media, banks, and credit card companies, every day. In those instances, customers rely on terms of disclosure, any applicable federal or state laws, and recourse to the courts to provide any necessary protections.

**c. Treating CSPs Differently from REPs**

A customer's ROR does not need a separate data sharing agreement to obtain access to the customer's SMT data; it has access to those data as long as it remains the customer's ROR.<sup>57</sup> BEEC objects to imposing a 12-month Limit on CSPs but not on RORs.

**d. Convenient Access to SMT Data**

Small Customers and their CSPs have made little use of SMT to date. There are 100,695 residential accounts, representing approximately 1.4% of active meters in SMT, and approximately 5,260 small commercial accounts, representing approximately .007% of active meters in SMT.<sup>58</sup> BEEC agrees that the Stipulation's simpler process should improve a CSP's

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<sup>56</sup> TEPA Ex. 1 (Fox Dir.) at 4-5 (citing data indicating that in 2016, 33% of residential sales and 70% of non-residential sales are contracted for by retail electric customers using aggregators, brokers, and consultants).

<sup>57</sup> Tr. at 29, 276.

<sup>58</sup> OPUC Ex. 1 (Gregg Dir.) at 6.

ability to access a customer's SMT data and improve the competitiveness of the energy services market. Mr. Brasovan cautioned, however, that a common complaint currently is that CSP access to SMT data requires constant reaffirmation with each customer. He testified that the reaffirmation requirement constrains the usefulness of customer and CSP access to the data and unnecessarily increases costs.<sup>59</sup> BEEC argues that using a 12-month Limit for Small Customers does not provide convenient access to customer data, as required by 16 TAC § 25.130(j).

#### **E. ALJ's Analysis and Recommendation**

The ALJ finds unpersuasive BEEC's argument that approving a 12-month Limit for Small Customers exceeds the Commission's authority or otherwise conflicts with PURA. A CSP is free to contract with a Small Customer for a longer term. That does not affect the Commission's ability to approve an SMT business requirement that a Small Customer annually reaffirm consent before CSP access to the customer's SMT data can continue. Pursuant to 16 TAC § 25.130, SMT was created through a stakeholder process subject to Commission approval. The Joint TDUs that jointly own and operate SMT are regulated utilities.<sup>60</sup> The Commission has authority to continue the 12-month Limit as part of implementing PURA provisions that a customer has a right to maintain the customer's electric consumption information as private and that customer approval is required for TDUs to share or disclose a customer's advanced meter data with a CSP.<sup>61</sup>

BEEC did not meet its burden to prove that the 12-month Limit for Small Customers should be changed to 36 months. The evidence indicates that the 12-month Limit, combined with the Stipulation, if approved, will provide convenient and secure access to SMT data as required by 16 TAC § 25.130(j)(1). Consistent with the Commission's customer protection rules, and for factual reasons shown in the evidence, Small Customers need a higher level of customer protection than do larger customers. Past violations by third parties involving access to SMT data indicate such data have sufficient value to hackers to pose a risk to customers. BEEC

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<sup>59</sup> BEEC Ex. 2 (Brasovan Reb.) at 6.

<sup>60</sup> PURA §§ 14.001, 31.002(6).

<sup>61</sup> PURA §§ 17.004(a)(6), 39.101(a)(2), 39.107(b) and (k).

did not show that lengthening the Limit to 36 months is necessary for SMT data access to be convenient, or that customer protections under the Stipulation will be sufficient to drop the annual reaffirmation requirement for Small Customers. BEEC did not explain its assertions that the 12-month Limit is inconvenient or costly and did not quantify any such impacts. Under the Stipulation, a customer will be able to reaffirm the data sharing authorization annually by a single click in an email. Given the statutory scheme, and constraints on the ability of SMT and the Commission to protect customers from data abuse by CSPs, the 12-month Limit is a reasonable safeguard to ensure Small Customers know that a CSP can access their premises' data, remind them to review current information relating to that access, and make a convenient informed choice about it. Finally, given the Commission's regulatory and enforcement authority over a REP that commits a violation involving SMT data access, BEEC did not show it is unreasonable to impose a 12-month Limit on CSPs but not on RORs.

The findings of fact, conclusions of law, and proposed ordering paragraphs below are limited to the procedural history, the contested issue, and Stipulation provisions relevant to the contested issue. Most of them are based on the uncontested findings, conclusions, and ordering paragraphs in the Proposed Final Order,<sup>62</sup> with some additions and modifications by the ALJ.

#### IV. FINDINGS OF FACT

##### Introduction and Procedural History

1. Smart Meter Texas<sup>TM</sup> (SMT) is an interoperable, web-based information system that, among other things: stores retail customers' electric-usage data in increments of 15-minute intervals recorded by advanced meters; and, via various user interfaces, provides secure access to those data to retail customers, retail electric providers (REPs) of record (RORs), other parties that retail customers authorize to have access to their electric-usage data, and the Electric Reliability Council of Texas (ERCOT).
2. SMT was jointly established and is jointly maintained by four transmission and distribution utilities (Joint TDUs): AEP Texas, Inc. (AEP Texas); CenterPoint Energy Houston Electric, LLC (CenterPoint); Oncor Electric Delivery Company LLC (Oncor); and Texas-New Mexico Power Company (TNMP).

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<sup>62</sup> Joint Ex. A, Att. 2 (Proposed Final Order).

3. The Joint TDUs entered into a Joint Development and Operations Agreement (JDOA) dated December 31, 2008, to govern the development and use of SMT.
4. On August 16, 2017, the staff (Staff) of the Public Utility Commission of Texas (Commission) filed the petition that initiated this proceeding. The petition requested that the Commission determine what changes, if any, should be made to the requirements for the continued operation of SMT under the JDOA.
5. On August 18, 2017, a Commission Administrative Law Judge (ALJ) issued Order No. 1 approving Staff's method of notice and setting an intervention deadline of September 15, 2017.
6. On August 22, 2017, Staff filed its proof of notice attesting to the provision of notice of Staff's petition by mail on each party that participated in Project Nos. 46204, *Rulemaking Regarding Third Party Authorization to Access Smart Meter Data*, and 46206, *Rulemaking Regarding Governance, Performance, and Funding of Smart Meter Texas*.
7. On September 13, 2017, a Commission ALJ issued Order No. 2 granting the following parties intervention: Texas Energy Association for Marketers (TEAM); Steering Committee of Cities Served by Oncor (Cities); Oncor; TNMP; and Office of Public Utility Counsel (OPUC).
8. On September 25, 2017, a Commission ALJ issued Order No. 3 granting the following parties intervention: AEP Texas; The Energy Professional Association (TEPA); CenterPoint; Texas Advanced Energy Business Alliance (TAEBA); Alliance for Retail Markets (ARM); EnerNOC, Inc. (EnerNOC); MP2 Energy Texas, LLC (MP2T); Engie Resources, LLC (Engie); Mission:data Coalition, Inc. (Mission:data); and Brasovan Energy's Electricity Users Group (BEEC).
9. On September 29, 2017, a Commission ALJ issued Order No. 4 requiring the parties to file a joint proposed procedural schedule on or before October 13, 2017.
10. On September 29, 2017, Staff filed an agreed proposed procedural schedule, agreed motion for protective order, and agreements regarding procedural and discovery matters on behalf of all parties to the proceeding.
11. On September 29, 2017, Commission Advising and Docket Management filed an order requesting that Staff and any interested party file with the Commission a list of issues to be addressed in this docket by October 13, 2017.
12. On October 9, 2017, a Commission ALJ issued Order No. 5 providing a protective order to govern the use of confidential materials in this docket.
13. The first technical conference among the parties was held on October 12, 2017. Prior to that date, several parties pre-filed lists of questions to be discussed at the first technical conference.
14. On October 13, 2017, proposed lists of issues were filed by the following parties: OPUC, Joint TDUs, Mission:data, ARM, and Staff.

15. On October 13, 2017, Staff filed an agreed notification regarding the proposed procedural schedule and regarding procedural and discovery matters on behalf of all parties to the proceeding.
16. On October 18, 2017, a Commission ALJ issued Order No. 6 adopting certain agreements, proposed by Staff on behalf of all parties in Staff's September 29, 2017 and October 13, 2017 filings, and establishing a procedural schedule.
17. On October 19, 2017, direct testimony was filed by the following parties: TEPA, OPUC, EnerNOC, MP2T, Mission:data, Joint TDUs, ARM and TEAM jointly (ARM/TEAM), and Engie.
18. On October 19, 2017, TAEBA filed a statement of position, and Oncor filed a statement of position and request for good cause exception.
19. On October 20, 2017, AEP Texas filed a motion to amend the hearing date adopted in Order No. 6, requesting that the hearing be set on December 4-5, 2017.
20. A second technical conference among the parties was conducted telephonically on October 23, 2017.
21. A third technical conference among the parties was held on October 26, 2017.
22. On October 26, 2017, this proceeding was referred to the State Office of Administrative Hearings (SOAH).
23. On October 26, 2017, the Commission issued a preliminary order setting forth the issues to be addressed in this docket.
24. On October 27, 2017, SOAH Order No. 1 was issued, containing a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted.
25. On October 30, 2017, Orcutt Enterprises, LLC (Orcutt) filed a motion to intervene.
26. On October 31, 2017, BEEC filed direct testimony, and Staff filed a statement of position in lieu of direct testimony.
27. On November 13, 2017, SOAH Order No. 2 was issued granting Orcutt's motion to intervene.
28. On November 14, 2017, the following parties filed rebuttal testimony: OPUC, MP2T, Mission:data, Joint TDUs, TEPA, ARM/TEAM, and EnerNOC.
29. On November 14, 2017, Cities and Staff filed statements of position, and TNMP filed a statement of position and a request for good cause exception.
30. On November 15, 2017, BEEC filed rebuttal testimony.



31. On November 21, 2017, Staff filed a notice that the parties had begun settlement discussions and expected that it would be possible to reach an agreement regarding all issues in this proceeding or, at a minimum, reducing the number of contested issues to be addressed at the hearing on the merits in this proceeding. The notice stated that the parties intended to meet for further settlement discussions on November 27, 2017, and December 1, 2017.
32. On December 4-5, 2017, the hearing on the merits was held before the SOAH ALJ.
33. On December 11, 2017, SOAH Order No. 3 was issued setting forth post-hearing filing deadlines and requirements and setting forth the record close date of January 19, 2018.
34. On December 28, 2017, the parties except Orcutt (Signatories) filed a letter stating that the Signatories had reached an uncontested agreement resolving all but one issue in this docket. The letter requested that the SOAH ALJ issue an order suspending the briefing deadlines contained in SOAH Order No. 3 and set the date by which the parties were to file a revised briefing schedule for the one remaining issue not resolved by the agreement (contested issue).
35. On December 28, 2017, SOAH Order No. 4 was issued suspending the post-hearing briefing deadlines contained in SOAH Order No. 3 and setting January 5, 2018, as the date by which the parties were to file a proposed revised briefing schedule for the contested issue.
36. On January 5, 2018, the Signatories filed a letter proposing a briefing schedule for the contested issue. The letter proposed that initial briefs be due on January 29, 2018, and that reply briefs be due on February 7, 2018.
37. On January 9, 2018, SOAH Order No. 5 was issued adopting the Signatories' proposed briefing schedule filed on January 5, 2018, for the contested issue; setting January 31, 2018 as the deadline to file Redlined Decision Point Lists and Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs regarding that contested issue; and setting February 7, 2018, as the record close date.
38. On January 11, 2018, the parties submitted a letter indicating their intent to file a Stipulation and testimony supporting the Stipulation no later than January 29, 2018, and confirming their understanding that the requirement in SOAH Order No. 5 to file Redlined Decision Point Lists and Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs by January 31, 2018, pertained solely to the contested issue.
39. A Joint Motion to Admit Stipulation, Affidavit of Notice, and Supporting Testimony into Evidence, Request for Decision on Remaining Unresolved Issue, and Joint Motion for Approval of Proposed Order (Joint Motion) was filed on January 29, 2018. The Stipulation, Affidavit of Notice, and Supporting Testimony were attached to the Joint Motion. The Signatories signed the Stipulation and supported the Joint Motion. Orcutt has not taken a position on the Joint Motion or the Stipulation.

40. SOAH Order No. 6, issued the same day as the SOAH ALJ's proposal for decision, admitted into evidence the following: (a) the Stipulation, filed January 29, 2018; (b) Staff's Affidavit Attesting to the Provision of Notice (including attachments), filed August 22, 2017; (c) the Direct Testimony in Support of Stipulation of Therese Harris, filed January 29, 2018; (d) the Supplemental Direct Testimony in Support of Stipulation of Michele Gregg, filed January 29, 2018; (e) the Supplemental Direct Testimony in Support of Stipulation of Donny R. Helm, filed January 29, 2018; (f) the Supplemental Direct Testimony in Support of Stipulation of Mona Tierney-Lloyd, filed January 29, 2018; (g) the Supplemental Direct Testimony in Support of Stipulation of Kevin Boudreaux, filed January 29, 2018; and (h) the Supplemental Direct Testimony in Support of Stipulation of John Schatz, filed January 29, 2018.
41. SOAH Order No. 6 also remanded to the Commission the settled issues that the Stipulation would resolve.
42. The contested issue is the maximum length of time that a Residential Customer or a Smaller Commercial Customer (identified as a Commercial Customer whose maximum monthly kilowatt-hours (kWh) for the prior 12 months is less than 15,000 kWh) can grant a CSP access to the customer's SMT data, before an affirmative renewal by the customer of the grant of access by the CSP to those data would be required for the CSP to continue having access to those data.
43. Initial briefs on the contested issue were filed on January 29, 2018, by Oncor, Cities, OPUC, and Staff, and on January 30, 2018, by BEEC. The parties except Orcutt and BEEC filed a Joint Decision Point List and Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs regarding the contested issue on January 31, 2018. Reply briefs on the contested issue were filed by ARM/TEAM, Cities, and OPUC on February 7, 2018, and by BEEC on February 8, 2018. The record closed February 8, 2018.

**Stipulation Provisions Relevant to the Contested Issue**

44. The provisions of the Stipulation apply to SMT and to all users of SMT, including all Competitive Service Providers (CSPs).
45. CSPs are third parties that a retail customer may authorize to have access to that customer's electric-usage data, such as to help manage the customer's electric usage and costs. CSPs include aggregators, brokers, consultants, and REPs that are not the ROR but rather provide third party energy services to the customer.
46. The SMT Management Committee was formed by the Joint TDUs to manage SMT design, operations, and costs on behalf of the Joint TDUs.
47. CSP registration requirements with SMT include the following:
  - a. The CSP provides its data universal numbering system (DUNS) number and contact information to SMT; and

- b. The CSP agrees to provide to SMT terms of service, including (i) an acknowledgement that the CSP shall promptly terminate a data access agreement with SMT after the termination or expiration of any contract upon which access to data was granted by the customer, with access to the customer's prospective meter data ending no later than two weekdays after the termination or expiration of the contract and access to historical meter data, including re-versioned historical meter data, ending 45 days after such termination or expiration date (failure to do so shall be considered a "red flag" behavior), and (ii) an acknowledgement of the SMT Management Committee's authority to immediately suspend or revoke access to SMT data based on the behavioral thresholds and security threats defined in the SMT's Website Terms and Conditions.
- 48. Required customer authentication information for CSP access and/or customer account creation include the Electric Service Identifier ID (ESI ID), meter number, and ROR certificate number. The required ROR certificate number and name will be provided in a drop-down list for customers and CSPs on the Graphical User Interface (GUI).
- 49. A CSP seeking access to customer data must send the authentication information specified above to SMT, and SMT will then authenticate the premises based on the information provided.
- 50. The CSP must provide the email address of the customer to SMT for initial customer affirmation of a data sharing agreement between the customer and the CSP and for renewals of that agreement.
  - a. For renewals, SMT will send two renewal emails prior to the expiration of that agreement:
    - i. One email will be sent 30 days prior to expiration of the agreement with the CSP, and
    - ii. A second email will be sent 15 days prior to expiration of the agreement with the CSP if the customer has not responded to the first email.
  - b. The CSP will receive a separate email at the same time that the customer receives the initial and renewal emails.
- 51. The customer affirmation process is as follows:
  - a. The customer will receive an email from SMT with a request to share data with a CSP for a specified term. The email will be sent within a specific period of time and measured for performance metrics.
  - b. The customer shall acknowledge the required SMT customer disclosures.
  - c. Large Commercial Customers (identified as commercial customers whose maximum monthly kWh for the prior 12 months meets or exceeds 15,000 kWh) may agree to a term for data sharing up to 36 months, which shall be renewable for an additional term equal to the original term (renewal to occur via an

- affirmative email consent accomplished through one click by the customer, with no additional verification required).
- d. All customers shall affirmatively opt-in to sharing data with a CSP.
  - e. The customer shall have the option to opt-out or report the email as spam.
  - f. The customer affirmation email link shall time out in five weekdays.
  - g. The opt-in email confirmation shall be subject to machine language protection technology.
52. The customer will not be required to establish an SMT account in order to authorize CSP data sharing. The customer may create an account on SMT to access its own data or to terminate an agreement with a CSP.
53. The data contained in the authorization request emails will be subject to encryption in transit, such as HTTP/TLS.
54. The process for providing notice to the customer about (i) the revocation process for a data sharing agreement with a CSP and (ii) the customer's acknowledgement of risk will be as follows:
- a. Upon acceptance of the customer affirmation email, SMT will send a follow-up email notice to the customer, including:
    - i. Required SMT customer disclosures,
    - ii. Information on the ability for the Residential Customer or Business Customer, independent of the CSP, to terminate the agreement between the Residential Customer or Business Customer and the CSP by creating an SMT account or contacting SMT Customer Support for assistance in creating an SMT account, and
    - iii. Notice that the Residential Customer or Business Customer can terminate the agreement between the Residential Customer or Business Customer and the CSP by contacting the CSP and directing them to terminate the agreement.
  - b. The CSP will receive notice from SMT, via a separate email, of the customer's acceptance or rejection of the CSP's request to access the customer's usage data.
55. A move-out transaction ends all data sharing for the premises. A CSP's or ROR's access to prospective meter data shall end immediately upon a move-out transaction. Access to historical meter data, including re-versioned historical meter data, shall end 45 days after a move-out transaction.
56. Required SMT customer disclosures shall be submitted by the Signatories in a compliance filing within 60 days after the issuance of the Commission's final order. The

required SMT customer disclosures will be provided to the customer each time (i) the customer is sent an email by SMT requesting the customer to affirm or reject that the customer authorizes SMT to share data with a CSP for a specified term or to report the email as spam, and (ii) the customer is sent a follow-up email notice by SMT after the customer has authorized SMT to share data with a CSP for a specified term.

57. SMT shall authenticate required customer information and retain records of all customer affirmations.
58. Criteria shall be established for monitoring CSP agreements, including, at a minimum:
  - a. Monitoring unique internet protocol (IP) addresses to eliminate mass enrollments/acknowledgements by a CSP;
  - b. Monitoring rejections, including differentiating between a customer's failure to acknowledge an authorization and a customer affirmatively rejecting authorization;
  - c. Ongoing controls regarding inappropriate behavior; and
  - d. Monitoring attempts by CSPs to authenticate customer information.
59. The SMT Management Committee shall immediately suspend or revoke data access based upon Commission-approved standards of "red flag" behaviors. The SMT Management Committee shall notify a CSP of its suspension, but not revocation, based on information provided in the CSP's registration with SMT. Examples of potential "red flag" behaviors include, but are not limited to, the following:
  - a. Interfering with or falsifying customer affirmation;
  - b. Receiving customer data that has not been authorized by the customer;
  - c. Falsifying IP addresses;
  - d. Failure to terminate data access at customer direction or customer termination;
  - e. Sharing, selling, or distributing customer data without customer authorization; and
  - f. Modifying or altering customer data.
60. The Commission may direct the SMT Management Committee by and through Oncor, CenterPoint, AEP Texas, or TNMP to suspend or terminate a CSP's access to SMT after notice and appropriate Commission procedure.
  - a. In order to be able to restore a CSP's access to SMT if the Commission orders the restoration of a CSP's access to SMT, SMT will maintain the most recent customer authorizations for a CSP.

- b. Customarily, SMT will be able to restore the CSP's authorizations within three weekdays and issue renewal notices within five weekdays to those authorizing customers whose prior authorization expired during the period of suspension or termination.
- 61. The SMT Management Committee shall work with Staff and/or OPUC regarding any customer complaints based on information from SMT. Staff shall in good faith attempt to consult with the CSP.
- 62. A CSP will receive notification of all emails that SMT sends to the CSP's customers regarding data sharing. In addition, some notifications may, upon request, be coalesced into a daily digest email.

**The Contested Issue: Length of CSP Access to Data for Residential Customers or Smaller Commercial Customers**

- 63. The contested issue is whether the length of time a CSP can have access to SMT data for a Residential Customer or a Smaller Commercial Customer without affirmative renewal by the customer (Limit) should be 12 months or 36 months. The current Limit is 12 months.
- 64. Because the Signatories did not reach an agreement on the contested issue, they requested that the Commission decide the Limit as part of a final order issued in this case.
- 65. Compared to Residential and Smaller Commercial Customers, larger customers are more likely to have energy managers overseeing and managing their electric usage, to understand advanced meter data sharing agreements, and to have the financial and technical ability to pursue legal actions to protect their interests if such agreements are violated.
- 66. Larger customers typically have energy service contracts with terms of three to five years, compared to 12 months or less for Residential Customers.
- 67. Residential and Smaller Commercial Customers require a higher level of customer protection than do larger customers.
- 68. TDUs do not maintain a retail customer's name or billing address.
- 69. SMT can use only three unique customer identifiers to verify that a customer has authorized sharing the customer's SMT data: the customer's meter number; the ESI ID; and the customer's ROR.
- 70. Due to a lack of reliable information, it is difficult for SMT to be certain a customer originated a request for permission to share the customer's SMT data.
- 71. Some third parties, including some with IP addresses originating outside the continental United States, have circumvented the current SMT verification/confirmation protocols for accessing customer data.

72. Past violations by third parties involving access to SMT data indicate such data have sufficient value to hackers to pose a risk to customers.
73. SMT has never revoked or suspended an SMT user's right to access data.
74. SMT does not control data sharing agreements or investigate CSPs before they enter into such agreements with customers; instead, SMT encourages customers to do their own investigation.
75. If the ESI ID, meter number, and ROR do not change, a CSP can maintain access to SMT data for a customer premises after the customer who consented to such access moves out. The new occupant might not know about the CSP's access to the data.
76. A customer's ROR does not need a separate data sharing agreement to obtain access to the customer's SMT data; it has access to those data as long as it remains the customer's ROR.
77. When a customer ends a relationship with an ROR, SMT automatically records a transaction that terminates the former ROR's access to the customer's data through SMT.
78. A REP that is not the customer's ROR must meet the same requirements as any other CSP before accessing a customer's data through SMT.
79. A 12-month Limit provides Residential Customers and Smaller Commercial Customers a quicker opportunity to re-review the terms and conditions of their data sharing agreement with a CSP; the CSP's current privacy policies, if any; and customer disclosures SMT will email to the customer in connection with renewal.
80. Under the SMT 2.0 Business Requirements, Residential Customers and Smaller Commercial Customers will be able annually to reaffirm their authorization to share their SMT data with a CSP by a single click in an email.
81. Combined with other SMT 2.0 Business Requirements, the 12-month Limit strikes a reasonable balance between protecting Residential and Smaller Commercial Customers and providing a convenient way for them to share their data with CSPs.
82. The Limit for a Residential Customer or a Smaller Commercial Customer should be 12 months.

## V. CONCLUSIONS OF LAW

1. Each of the Joint TDUs is an electric utility as defined by the Public Utility Regulatory Act, Tex. Util. Code tit. 2 (PURA), § 31.002(6).
2. The Commission has jurisdiction over the Joint TDUs and the subject matter of this case. PURA §§ 14.001 and 39.107.


3. SOAH has jurisdiction over matters related to the hearing, including preparation of a proposal for decision with findings of fact and conclusions of law. PURA § 14.053; Tex. Gov't Code § 2003.049.
4. Staff's provision of notice in this proceeding complies with 16 Texas Administrative Code (TAC) § 22.55.
5. Notice of the hearing was provided consistent with Texas Government Code §§ 2001.051-052 and 16 TAC chapter 22.
6. This docket was processed in accordance with the requirements of PURA, Texas Government Code chapter 2001, and 16 TAC chapters 22 and 25.
7. As the party proposing a change to the SMT 1.0 Business Requirements, BEEC bears the burden of proof. 1 TAC § 155.427.
8. A customer owns and has a right to maintain as private the customer's advanced meter data. PURA §§ 17.004(a)(6), 39.101(a)(2), 39.107(b).
9. TDUs are prohibited from selling, sharing, or disclosing advanced meter data but are required to share a customer's advanced meter data with a third party for the purpose of providing customer-approved services to the customer. PURA § 39.107(k).
10. TDUs are required to provide a customer, the customer's REP, and other entities authorized by the customer convenient, secure, read-only access to the customer's advanced meter data, including meter data used to calculate charges for service, historical load data, and any other proprietary customer information. 16 TAC § 25.130(j).
11. REPs must hold a certificate from the Commission; aggregators must be registered with the Commission; and if a REP or aggregator violates PURA or Commission rules, the Commission can impose sanctions such as administrative penalties or revocation of the certificate or registration. 16 TAC §§ 25.107(a) and (j), 25.111(a) and (j).
12. A CSP that is a broker or a consultant is not subject to customer protection requirements in PURA and Commission rules. PURA § 39.101; 16 TAC § 25.471(a).
13. The Commission has authority to approve an SMT business requirement that establishes a 12-month Limit for Residential and Smaller Commercial Customers. PURA §§ 14.001, 17.004(a)(6), 39.101(a)(2), and 39.107.
14. Combined with other SMT 2.0 Business Requirements, the 12-month Limit for Residential Customers and Small Customers provides convenient and secure access to SMT data. 16 TAC § 25.130(j)(1).
15. BEEC did not meet its burden to prove that the limit on how long a CSP can access SMT data of a Residential Customer or a Smaller Commercial Customer without affirmative renewal by the customer should be changed from 12 months to 36 months. PURA § 39.107; 16 TAC § 25.130; 1 TAC § 155.427.



**VI. PROPOSED ORDERING PARAGRAPHS**

1. The Joint TDUs shall submit an updated list of business requirements for SMT 2.0 reflecting the Commission's decision in Finding of Fact No. 82 within 60 days of the date of this Order.
2. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or special relief, if not expressly granted, are denied.

**SIGNED March 14, 2018.**

  
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**ELIZABETH DREWS**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**STYLE/CASE:** COMMISSION STAFF'S PETITION TO DETERMINE  
REQUIREMENTS FOR SMART METER TEXAS (47472)  
**SOAH DOCKET NUMBER:** 473-18-0708  
**REFERRING AGENCY CASE:** 47472

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

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**ADMINISTRATIVE LAW JUDGE  
ALJ ELIZABETH DREWS**

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