

**TO: Electric Utility Commission**

**FROM: Paul Robbins, 447-8712**

**DATE: January 15, 2011**

**SUBJECT: Privacy and Electric Consumption Information**

Dear Commissioners,

During the whole discussion process about transparency of information at Austin Energy (the Competitive Matters Resolution or CMR), I have advocated for public access to consumption information by address. This is a vital tool in creating programs to increase effective programs for energy efficiency and decentralized clean energy generation.

At your December meeting, the Commission decided to split the issue of billing records and their relation to privacy out of the rest of the CMR. Since you will be taking this matter up at your January meeting, I wanted to give you information and opinions relevant to this in advance.

There are at least six points of policy related to disclosure of billing information that I am asking you to consider.

1. Relationship of Consumption to CMR – At the December meeting, Austin Energy stated that their policy to withhold consumption information for customers was related to privacy, not competitiveness. While I agree with AE that this is not a competitive matter, the utility's statement has been a very recent change from past positions.

AE has argued for years that consumption information was proprietary. When I countered that AE was not in retail competition, it did not change the utility's position, because AE said it might be in retail competition at some point in the future.

While I am glad the utility has partially adopted my position on this, I need to remind EUC that the reason customer billing information was originally discussed within in the context of the CMR was because Austin Energy wanted it to be.

2. Disclosure of Consumption by Block – Austin Energy currently employs zip code blocks (zip + 4) in its mailing of monthly bills, and this seems to be an easy way to aggregate bills for current information without divulging individual building consumption. There will likely be rare instances where an address will be the only one in a zip-code block. My suggestion would be to aggregate it with at least two other addresses in the area.

3. Disclosure of Consumption Information that is Dated – I have discussed this numerous times. However, since we are bringing all issues up for discussion again, I repeat my contention. There is no sunset on when consumption information is available.

At what point does disclosing old information infringe on privacy? One year? 114 years? I believe this to be a judgment call. I disagree with Andy Perny that the law prohibits disclosure. He stated at an earlier EUC meeting that there is no legal precedent on restricting dated information.

I believe two years is sufficient to protect privacy. If EUC disagrees, then establish another benchmark. Restricting information that is more than century-old from disclosure is absurd.

4. Disclosure of Average Consumption for Sale or Lease – As I have said in the past, both the utilities of Seattle and the Turlock Irrigation District have policies that allow giving summary information for average use, peak use and low use by an address. This consumption information is typically used by people considering the purchase or leasing of a building.

I disagree with Austin Energy's position that this information, as described, must be kept private under Texas law. Again, there are no established legal precedents I am aware of. This is a judgment call. Blurring the information in the way I described is a balance that protects specific information while still allowing consumers a relative idea of energy use in the property they are interested in.

5. Non-Disclosure Agreements (NDAs) – An alternative that at least two EUC Commissioners have brought up in discussions concerns NDAs that prohibits the receiver of consumption information otherwise deemed private from sharing it with others. Any violation can bring legal sanctions.

I am not opposed to this concept in principle. However, there are two things that concern me about the idea. The first is that Austin Energy has heretofore been opposed to it, so even if I could accept the idea, AE might not. The second is that NDAs may be used as a substitute for other alternatives discussed above.

Should an NDA be used as a substitute for zip code block aggregation that compromises no one's privacy in any way? Should NDAs be used instead of releasing information 114 years old?

There may be a place for NDAs. But the strategy should be part of a broader policy, and not an answer in itself.

6. Real Privacy Reform – There are several conflicts in law that deter customer privacy. The City of Austin may want to consider changing state laws to establish its preferred privacy policy.

A. It is possible to obtain individual consumption information for customers using other Austin utilities, including water, wastewater, solid waste, and drainage. If consistency means anything, either consumption for all utilities should be available, or none of it should be.

B. It is possible for a person seeking the identity of a person at a certain address in the City of Austin to obtain this through utility bills. While customer privacy is protected, for example, on water bills, the name of a person can still be found by requesting the bill payer for the drainage utility. This is the same name as the person paying the water bill. However, drainage utilities are not covered by the same privacy laws.

C. My understanding of the law governing electric utility privacy is that the definition of an electric utility customer is a person or a business. A customer is not an address, and consumption by address is what is needed to plan new programs.

In conclusion, I hope this brief description of the issues will help clarify the discussion of this item at your next meeting.