



ADVANCED  
ENERGY  
ECONOMY



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July 25, 2022

VIA ELECTRONIC MAIL

Hon. Michelle L. Phillips  
New York Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223-1350

RE: Case No. 18-M-0376 – Proceeding on Motion of the Commission Regarding  
Cyber Security Protocols and Protections in the Energy Market Place.  
Case No. 20-M-0082 – Proceeding on Motion of the Commission Regarding  
Strategic Use of Energy Related Data

Dear Secretary Phillips:

Advanced Energy Management Alliance, on behalf of Advanced Energy Economy, and the Alliance for Clean Energy New York, submit the attached comments pursuant to the New York State Public Service Commission's ("Commission" or "PSC") May 25, 2022, notice<sup>1</sup> in the New York State Register, Notice No. PSC-21-22-00008-P and the above referenced Case Numbers. The attached document includes a summary and explanation of our recommendations.

We appreciate your consideration of these comments. Please do not hesitate to contact the undersigned should you have any questions or require additional information regarding this filing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Katherine Hamilton".

Katherine Hamilton  
Executive Director, AEMA

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<sup>1</sup> <https://dos.ny.gov/system/files/documents/2022/05/052522.pdf>.

/s/ Danny Waggoner  
Policy Principal  
Advanced Energy Economy

/s/ Deb Peck Kelleher  
Director, Policy Analysis and Operations  
The Alliance for Clean Energy New York

Cc: Parties to Case

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NEW YORK**

**Proceeding on Motion of the Commission )  
Regarding Cyber Security Protocols and )  
Protections in the Energy Market Place )**

**Case No. 18-M-0376**

**Proceeding on Motion of the Commission )  
Regarding Strategic Use of Energy )  
Related Data )**

**Case No. 20-M-0082**

**Comments of Advanced Energy Management Alliance, Advanced Energy Economy,  
and Alliance for Clean Energy New York on the Joint Utilities Petition to Modify  
the Data Security Agreement Self-Attestation Requirements and Implement a  
Governance Review Process for Regular Self-Attestation Updates**

Pursuant to the State Administrative Procedure Act Notice in the New York State Register, published on May 25, 2022,<sup>2</sup> Advanced Energy Management Alliance (“AEMA”),<sup>3</sup> Advanced Energy Economy (“AEE”),<sup>4</sup> and Alliance for Clean Energy New

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<sup>2</sup> See New York State Register (May 25, 2022), page 16, available at <https://dos.ny.gov/system/files/documents/2022/05/052522.pdf>.

<sup>3</sup> AEMA is a trade association under Section 501(c)(6) of the federal tax code whose members include national distributed energy resource companies and advanced energy management service and technology providers, including demand response (“DR”) providers, as well as some of the nation’s largest demand response and distributed energy resources. AEMA members support the beneficial incorporation of distributed energy resources (“DERs”) into wholesale markets for purposes of achieving electricity cost savings for consumers, contributing to system reliability, and ensuring balanced price formation. This filing represents the collective consensus of AEMA as an organization, although it does not necessarily represent the individual positions of the full diversity of AEMA member companies.

<sup>4</sup> AEE is a national association of businesses that are making the energy we use secure, clean, and affordable. We work to accelerate the move to 100% clean energy and electrified transportation in the U.S. Advanced energy encompasses a broad range of products and services that constitute the best available technologies for meeting our energy needs today and tomorrow. These include energy efficiency, demand response, energy storage, solar, wind, hydro, nuclear, electric vehicles, and the smart grid. AEE represents more than 100 companies in the \$238 billion U.S. advanced energy industry.

York (“ACE NY”)<sup>5</sup> (herein referred to jointly as the “Advanced Energy Companies”, “we”, or “our”) respectfully submit the following comments on the Joint Utilities<sup>6</sup> Petition to Modify the Data Security Agreement Self-Attestation Requirements and Implement a Governance Review Process for Regular Self-Attestation Updates.<sup>7</sup>

## **I. General Comments**

The Advanced Energy Companies strongly support the efforts of the New York Public Service Commission (herein referred to as “PSC” or “Commission”) and the Joint Utilities to maintain appropriate cyber security controls to ensure the protection and confidentiality of sensitive customer and utility system data shared with Energy Service Entities (“ESE”).<sup>8</sup> Access to data is key to innovation and ongoing support of products, services, and technologies developed and offered by ESEs that provide value to the grid, all customers, and support the development of new products and services that will help New York State achieve its goals within the Climate Leadership and Community

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<sup>5</sup> ACE NY is a member-based organization with a mission of promoting the use of clean, renewable electricity technologies, transportation electrification and energy efficiency in New York State to increase energy diversity and security, boost economic development, improve public health, and reduce air pollution. Our diverse membership includes companies engaged in the full range of clean energy technologies as well as consultants, academic and financial institutions, and not-for-profit organizations interested in our mission.

<sup>6</sup> The Joint Utilities include Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, KeySpan Gas East Corporation d/b/a National Grid and The Brooklyn Union Gas Company d/b/a National Grid NY, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

<sup>7</sup> Case 18-M-0376 et al., Joint Utilities Petition to Modify the Data Security Agreement Self-Attestation Requirements and Implement a Governance Review Process for Regular Self-Attestation Updates (May 3, 2022). (Herein referred to as the “Petition”).

<sup>8</sup> The ESE term refers to energy service companies (ESCOs), distributed energy resources (DER) suppliers, direct customers, governmental agencies, and other entities as defined in the Data Security Agreement.

Protection Act. Cyber security and data privacy will continue to remain a high priority item that will continue to evolve over time.

However, we urge the Commission not to approve the Joint Utilities Petition as proposed. The Advanced Energy Companies believe that the proposed cyber security and encryption requirements (typically needed for highly sensitive data at the highest levels of control) may be overly burdensome to ESEs and customers and may erect unnecessary barriers to competition.

Additionally, we have concerns regarding the lack of details in the Joint Utilities implementation plan since the proposed changes, if the Commission approves the Petition as filed, would require comprehensive review of the ESEs IT systems. Therefore, sufficient time should be allowed to comply with any new cyber security and data privacy protocols.

Further, we have concerns regarding the proposed composition, and long-term role, of the Governance Committee described in these comments.

## **II. Comments on Proposed Self-Attestation Modifications**

The Advanced Energy Companies do not support the Joint Utilities' proposed modifications to the Self-Attestation ("SA") portion of the Data Security Agreements ("DSA") detailed in the Petition. These policies, controls, and procedures (as outlined in item numbers 3, 7, and 8 in the Petition) are issued by the United States Department of Commerce National Institute of Standards and Technology ("NIST") and generally are not widely accepted in the energy industry, despite the Joint Utilities' statement that they are

considered “current minimum protections and best practices.”<sup>9</sup> Normally, NIST standards are used to protect and secure highly sensitive information from breaches or malicious actors. And while some types of data exchanged between ESEs, utilities, and customers may qualify as highly sensitive, other do not. For example, confidential customer information such as mailing address, account number, and energy usage do not present risks to utility operations, and therefore, high-level encryption when customer energy account information is emailed is not necessary to adequately protect the customer or the utility grid. Unfortunately, the Petition does not recognize this difference and instead requires high-level of encryption **across the board**. Moreover, the Petition lacks details on proposed requirements. Changes to Item #7 and Item #8 call for “methods compliant with NIST cryptographic standards and guidelines.”<sup>10</sup> However, NIST provides eleven cryptographic standards<sup>11</sup> that depend on situation-specific circumstances, and it would be impossible – without specificity – for ESEs to identify which standards and guidelines should or should not be applied to be in compliance.

The Advanced Energy Companies strongly support cyber security and data protection and believe that the data security methods should be based on the sensitivity of the data and that any potential cyber security protocol **should include risk-based assessments**, as the Commission previously affirmed.<sup>12</sup> As appears evident from the Petition, no risk-based analysis was performed by Joint Utilities and instead Joint

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<sup>9</sup> Petition, page 6.

<sup>10</sup> Petition, page 8.

<sup>11</sup> The NIST list of cryptographic standards and guidelines are available at <https://csrc.nist.gov/Projects/cryptographic-standards-and-guidelines>

<sup>12</sup> Case 20-M-0082, Order Denying Rehearing, Providing Clarification, and Confirming Tariff Modifications (November 18, 2021), page 10.

Utilities unilaterally call for rigid standards that are burdensome and may be costly to implement, and do not meet energy industry data security requirements and needs.

The Advanced Energy Companies also are concerned about the timeline by when the Joint Utilities intend to require ESEs to implement the controls and procedures necessary to comply with these modifications, as this detail was not provided in the Petition. The Joint Utilities requested that the Commission act upon the Petition by September 15, 2022, but did not include any detail as to when or how it would intend to roll out the updated SA to ESEs or by when ESEs must make updates to be able to attest to compliance with the updated requirements. The Joint Utilities and the Commission should recognize that it can take time for ESE companies to implement the controls and procedures to comply with the modified requirements. We are concerned that if sufficient time following approval by the Commission's and Joint Utilities' roll out is not afforded to ESEs that may need to make updates, there is risk that those ESEs may lose access to data that is critical to support their businesses.

We respectfully request that the Commission, should it act to approve the Petition, do so with modifications that address the concerns laid out above, and direct the Joint Utilities to provide further detail on when it intends to provide the modified SA to ESEs, the date by when ESEs must execute the SA, and allow adequate time for ESEs to evaluate and develop their plans to complete any necessary updates in order to comply.

### **III. Comments on Proposed Governance Committee**

The Joint Utilities proposed the formation of a Governance Committee (“Committee”) that would oversee recommendations to future DSA/SA updates prior to the implementation of the Data Ready Certification (“DRC”) process that will supplant the current DSA/SA framework directed by the PSC.<sup>13</sup> Our comments here address concerns with to proposed composition of the Committee and lack of representation of the ESE community, and the proposed continuation of the Committee following implementation of the DRC process.

#### **a. Governance Committee Composition**

The Joint Utilities propose that the Committee would be comprised of, “up to five Joint Utilities members and up to five [New York Department of Public Service] Staff members, all of whom are cyber security subject matter experts.”<sup>14</sup> The Petition also details that the Committee would, “[e]stablish an Advisory Working group, including, at a minimum, ESEs and NYSERDA...who would provide the Governance Committee with suggestions and recommendations as well as provide feedback on proposed recommendations for further updates to the SA.”<sup>15</sup>

The Advanced Energy Companies appreciate the planned stakeholder engagement proposed through the Committee’s future formation of an Advisory Working Group (“AWG”) as a forum to obtain input from the ESE community on proposed updates to

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<sup>13</sup> See, Case 20-M-0082, Order Adopting a Data Access Framework and Establishing Further Process (April 15, 2021).

<sup>14</sup> Petition, page 10.

<sup>15</sup> *Ibid.*



SA requirements. However, as proposed, we are concerned with the lack of ESE industry representation in the Committee membership for several reasons. First, it is not clear how receptive the Committee will be with regards to input provided by the AWG. In the proposed charter for the Committee, while the AWG, “can explain their positions to the Committee but the Committee itself remains the deciding group for issuing recommendations...”<sup>16</sup> to the Commission. While there would be opportunities for stakeholders to provide comments to the Commission on recommendations made by the Committee, if there are only Joint Utility and New York Department of Public Service (“DPS”) Staff on the Committee, we are wary of both the lack of industry representation and any potential sway on the Commission that DPS Staffs’ implicit endorsement of any recommendations may have in the decision-making process.

We recommend that the Commission direct the Joint Utilities to revise its proposed charter to include in the Committee’s membership up to five ESE industry representatives with cyber security subject matter expertise and define a process through which the ESE industry can select the individuals to serve on the Committee.

#### **b. Committee’s Role Post-Data Ready Certification Implementation**

The Joint Utilities also propose that the Committee shall remain in place once the DRC process is implemented to oversee the DRC process, the DRC provider, ESEs, and other third parties as well as other data access initiatives.<sup>17</sup> We believe that the Commission should provide further guidance on the roles and responsibilities of the

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<sup>16</sup> Petition, Appendix B, page 3.

<sup>17</sup> *Id.*, page 1.

Committee. Additionally, if the Committee is approved to continue past the DRC implementation, we further stress the importance of the recommendation to include ESE industry representation on the Committee.

#### **IV. Conclusion**

The Advanced Energy Companies thank the Commission for their consideration of these comments. We welcome any discussion or questions, and encourage you to contact Katherine Hamilton, Executive Director of AEMA, at 202-524-8832 or [Katherine@aem-alliance.org](mailto:Katherine@aem-alliance.org) should you wish to meet with representatives of the Advanced Energy Companies.

Respectfully Submitted,



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