

Meeting Minutes

Tuesday, February 26, 2013

9:30am – 4:30 pm

Federal Energy Regulatory Commission

888 First Street, NE

Washington, DC 20426

These meeting minutes are a general record of the participants' discussions during the meeting. The notes follow the order of the meeting agenda and use some paraphrasing. For more details of the discussions, please visit the webcast website at <http://capitolconnection.net/capcon/DOE/vcc022613.htm>.

Welcome and VCC Introduction

Eric Lightner, Department of Energy Office of Electricity Delivery and Energy Reliability, Director, Federal Smart Grid Task Force

Mr. Eric Lightner welcomed participants and provided house rules for the meeting room and announced to webcast participants that phone lines would be open at 10:15 for the interactive sessions of the day.

Mr. Lightner introduced Mr. Ryan Panchadsaram, a Senior Advisor and Chief Technology Officer at the White House, who focuses on innovation and open data and has served as a coordinator for healthcare information technology and Department of Veterans Affairs on the Blue Button for America, the "mother" to Green Button. The Blue Button will spread the ability of Americans to easily and securely download their health information electronically to improve health, decision making, increase accuracy and power an ecosystem of applications. Smart grid, using the Green Button, has many similar opportunities.

Opening Remarks

Ryan Panchadsaram, Office of Science and Technology Policy

- Mr. Panchadsaram explained that open data (e.g., GPS, weather satellite) is a very important part of our strategy and has a lot of potential and promise, but it is only one type of category that exists. I spend a lot of time on my data, my health records, my energy usage, my tax information, that data is different and special because it's mine. There are a lot of things to consider when it comes to privacy and the security of it and how companies use it.
- To share a parallel, this data is so powerful, if I gained access to my health data and gave it to a third party, they could help me manage my medications better or care coordinate better with my providers, there's a lot of potential to save lives, money, and so forth. But the problem is this data is so incredibly sensitive. It's the most personal data about myself, so we have things like HIPPA that protects how this information is used by third parties, but there is also another element that comes into play for the third parties that are not part of the covered entity world, such as providers, health insurance plans, called a model privacy notice. A model privacy notice can tell patients exactly what will happen to their data, ensuring transparency and allowing them to make their own decisions
- This concept could be very powerful when applied to a smart grid by allowing consumers to see what happens from the producers to the users. Customers can save money on their bills by better understanding their energy usage patterns to improve their overall energy efficiency.
- The White House *Data Privacy in a Networked World* is an evolution of how we do privacy today, which has evolved quite a bit over the past 25 years. The white paper affirms what consumers should expect

from companies, as well as a set of consumer rights and recognizes that consumers have a set of responsibilities. Responsibilities go both ways. The paper emphasizes the importance of context.

- The meeting today is to stress the importance of context for energy. For example, if I give an e-commerce site my mailing address, it's alright for them to share it with the postal service or the person who is delivering the mail. But if I give my address to a doctor, I sure hope they don't use it for someone to sell something to me, putting me on mailing lists and sending me free things. You're here to define that context. Much work has been underway over the past few months to get here. This process is completely voluntary, both developing the code and using it. There is a lot of potential for us to work together in doing this, bringing together different viewpoints and emphasize with each other and recognize what is at stake.

Mr. Lightner provided an overview of the DOE and Federal Smart Grid Task Force (SGTF) perspective of this effort: why we are doing this and how we got here.

- The White House *Data Privacy in a Networked World* white paper, released a year ago, challenges different industries to implement a consumer bill of rights in a way that makes sense from a business context. The Federal Smart Grid Task Force (SGTF) started thinking about this concept prior to the release of the white paper, and following the release, began engaging with lots of stakeholders.
- The main driver for this is engaging the customer: how do we give the customer more choices, how do we engage them in different activities to benefit them in the long run. We're looking to empower the consumer. Along with that, it raises issues about data, privacy, exchanging information, etc.
- Because of these two things, the administration is looking to develop a code across all industries, and the rise of the technological capabilities to make this type of information readily available, the SGTF saw this effort as a good role for them.
- It's been a long process to getting here. The SGTF has been engaging with stakeholders over the past several months in order to determine the "what" and the "how" of a VCC.
- We're not starting from ground zero. A draft VCC outline of elements was developed by the stakeholders and a context setting framework was developed by the SGTF. These documents serve as a starting point for this meeting and for the overall engagement with stakeholders in order to facilitate the development of a VCC.
- The documents prepared for this meeting are to help begin the process and move us forward, it will be an open process, and this process should be actively owned by the stakeholders.
- Today we seek to establish a level playing field, what the VCC should look like, the process for getting there, and the process for moving forward.
- There will be several issues we can easily agree upon, there will others that are a lot more challenging and will require additional discussions in smaller groups to come up with clever ideas to present to the larger group for discussion.
- A common issue that came up during these discussions was the role of the FTC in enforcement.
- Ms. Ruth Yodaiken from the FTC is here to provide an overview of the FTC perspective.

FTC Perspective

Ruth Yodaiken, Federal Trade Commission, Federal Smart Grid Task Force

Mr. Lightner introduced Ms. Ruth Yodaiken, an attorney at the Federal Trade Commission (FTC), who is involved in privacy and data security law enforcement. She has also worked on fraud cases involving the intersections of consumers and communications law. Ms. Yodaiken also represents the FTC on the SGTF.

- Ms. Yodaiken explained that the views she is expressing today are her personal views and do not necessarily represent the views of the commission or a commissioner.
- The FTC is primarily a law enforcement agency that protects consumers from unfair or deceptive practices. FTC's jurisdiction covers a wide range of companies in different areas throughout the country. Very often states have similar authorities that come directly from the state attorney general offices. However, in some states, state utility commissions have sole authority over utilities. I mention this because the White House document mentions state authorities.
- When talking about privacy and data security, it's about what companies collect about consumers, how they handle that information, whether they share that information, or how they secure it.
- The FTC law enforcement handles two types of cases. First is the area of deceptive practices, focusing on what a company says, implies, or fails to say about the data it collects, how it handles the data, and whether or not it shares the data. The FTC wants to know if this is something that would have mattered to the consumer. Example, the utility gathers certain data to provide a service, and then decides to share with an unrelated company that wants to market and sell that data to other services, the FTC wants to be clear to the consumer so that they understand and have control over their data.
- In addition, the FTC looks at how a company shares data—in particular sensitive data, such as financial data from billing or other types—as smart grid shares data there may be other information that comes up that can be gathered from the data. This is something that has come up within this context. The main thing that the FTC will want to know is if a company has taken reasonable steps to secure the data by considering how a company handles consumer data and whether or not that data is considered sensitive.
- The FTC has been involved in privacy for 30 years and provides guidance to businesses and consumers about best practices. Last year, the FTC issued a privacy report with various recommendations for businesses across the board to think about privacy from the get go (in the design phase), for being transparent about their practices to consumers, and to make it easier for the consumer to make a choice about what can be done with their data.
- The White House paper recommended that different industries have stakeholders come together to see if it's worthwhile to put forward a VCC and the conduct would be enforced by the states and the FTC. Furthermore, the FTC should consider a VCC favorably.
- Last year in our privacy report, the FTC agreed that it would consider the VCC favorably when doing law enforcement actions if the codes are strong. What I mean by strong is these are codes that are significant, they say more than 'we will try to be good with our consumer data' and they have buy-in from a wide area of stakeholders in that particular industry.

Meeting Context and Overview

Ron Binz, Public Policy Consulting Meeting Facilitator

Mr. Lightner welcomed Mr. Ron Binz, a Principal at Public Policy Consulting, who was tasked with facilitating this meeting. Mr. Binz served as a Senior Advisor at Colorado State University and as a chairman for the Colorado Public Utilities Commission (PUC). As PUC chairman, Mr. Binz led many policy changes that were championed by Colorado's governor and was also an active member of National Association of Regulatory Utility Commissioners (NARUC), serving as Chair of NARUC's Task Force on Climate Policy. Additionally, Mr. Binz served as President of the National Association of State Utility Consumer Advocates while Director of the Colorado's Office of Consumer Counsel.

- Mr. Binz began the discussion by stating that he was assuming participants were at the meeting because they wanted to know more about or contribute to the development of a VCC.

- Mr. Binz explained that although work has been done to this point by a group of stakeholder volunteers, this meeting will begin the work on developing a VCC product.
- The VCC product will be a code or set of principles that an entity (e.g. utility, vendor, manufacturer) can voluntarily agree to in order to express their commitment to customer privacy in smart grid, and the entity is representing that the VCC is the entity's policy.
- The FTC wants the representation to be genuine and honest so the FTC will take into consideration the fact that the entity said they would follow the code when the FTC looks into what was done. This is how the code can be simultaneously enforceable and voluntary.
- The VCC will be written by participants in this process.
- Prior to this meeting a small group of stakeholders put together some ideas for consideration during this meeting that will be discussed in later sessions.
- Mr. Binz reviewed the instructions for remote participation and the agenda for the day.

Proposed Procedural Principles Discussion and Adoption

Presenter: Eric Ackerman, Edison Electric Institute Discussion

Facilitator: Ron Binz, Public Policy Consulting

Mr. Binz introduced Mr. Ackerman with Edison Electric Institute to present a proposed procedural process for the VCC development

- Mr. Ackerman explained that in development of the principles, he started from the point of view that the process is important. When going through a public process, for the product to be useful, it has to be truly a product that is shared and represents consensus among stakeholders.
- All points of view should be heard and the process should be considered fair by all participants to encourage broad participation. Want to have set of principles so that no one feels that anyone else will rule the roost and no agendas are being foisted on anyone.
- The procedural principles that were distributed prior to this meeting are based on EEI's experience from the NAESB process.
- Mr. Ackerman explained key provisions of the procedural principles. One key provision is a mission statement in order to have a clear understanding of why we are here. EEI has drafted one that will be proposed later today.
- In terms of protocol for the meetings, there should be adequate notice of meetings and sufficient time to review the relevant documents. Need to support remote participation, document the minutes and record any votes.

Mr. Binz asked participants if there were any objections or comments to the proposed procedural principles. With no objections from participants, the principles were considered accepted.

Scope and Purpose Discussion

Mr. Binz introduced the next discussion, which is being termed the existential question, and explained that the hope is to cover the following types of questions that will provide the foundation:

- Who should the code be aimed at? What set of players would most profit from having the code available?
- How detailed is it? Is it an encyclopedia of best practices or is it more general – a list of items that an entity should do to comply – or is it a mix of the two?
- How does it persist over time? Who is the keeper of it? How is it modified over time?

Stakeholder Perspective

Paula Carmody, People's Counsel, Maryland Office of People's Counsel

Mark Hollis, Duke Energy

Jules Polonetsky, Future of Privacy Forum

Mr. Binz welcomed Ms. Paula Carmody of the Maryland Office of People's Counsel, Mr. Mark Hollis of Duke Energy, and Mr. Jules Polonetsky of the Future of Privacy Forum to provide an overview of their perspective of the VCC.

Ms. Carmody is Director of the People's Counsel at the Maryland Office of People's Counsel.

- Ms. Carmody explained that she will be providing a stakeholder perspective from the perspective of the consumer and is speaking in her capacity at the state level.
- Due to previous experience Ms. Carmody has perspective in both in the regulated and unregulated arena.
- She noted that consumers believe data privacy is important and she has been in other arenas where this premise is questioned, but believes meeting participants are here because they agree that customer data privacy is important.
- It is important to recognize that customers have been working with regulated utilities for decades and have gotten accustomed to a certain sense of security with regard to data storage and retention, and this is the backdrop of where customers are.
- Smart meters and the overall smart grid have changed things and have heightened 3rd party interest in customer data, but customers are also interested in how they can use the data as smart meters are deployed. There is also concern over the security of data.
- Customer concerns: data security – Consumers want to know who has access to the data and they want to give knowing access or permission. Consumers also want access to their data.
- It is important to set out rules in the regulated arena, but also have a responsibility to figure out rules for that work in the unregulated space (for third parties) and this is where a VCC can help.
- A VCC may have value in the regulated sphere as suggestions and guidelines. As we go along, we may be able to address the differences and similarities that exist between the regulated and non-regulated arenas.
- Mr. Carmody noted that it is necessary to look at who the rules apply to and how they should be addressed, as well as who should be responsible for establishing those rules and who should enforce it. In the regulated arena, that will be the state utility commissions; in the unregulated space that will be the FTC with regard to unfair and deceptive business practices and this is where a VCC would come in. She underscored that in the unregulated arena, states could have a strong role through the State Attorney Generals offices.
- The current president of the National Association of State Attorney General, who is also the Maryland Attorney General, has made privacy in the digital area the association's initiative for this year and has set up a data privacy unit in Maryland. State and federal oversight will exist over the VCC actions by companies.
- Ms. Carmody noted that a VCC has real value and is very happy to participate in the process.

Mark Hollis manages the state regulatory function and data privacy program at Duke Energy.

- Mr. Hollis explained that Duke believes a VCC would be beneficial. The bigger question is if a common understanding of what a broad VCC would be can be agreed upon.

- Regulated utilities have many rules, but don't have rules around the nonregulated piece; therefore, when access to data is allowed, the regulatory role stops. Many utilities have a big question mark regarding this aspect.
- Mr. Hollis anticipates that a VCC would help educate other parties as well as regulated utilities. It could also help provide a foundation in the regulatory space.
- It is worth noting that most rules pertaining to utilities were developed prior to the internet.
- Many of the questions that Duke Energy deals with are focused on how to access the data, who has access, who pays the cost of sharing, what format the data should be in, and does it need to be a secure download.
- Duke sees requests for data – not just smart grid data but also legacy data – so Duke is focused not just on smart grid data but on the collective suite of data that Duke collects.
- There are many uses for the data, but it is still unclear: what are all of the uses, who benefits from them, are they more beneficial than bad?
- Mr. Hollis' hope is that the process will result in a collaboration that allows for everyone to have a voice.
- Duke believes the voluntary code is voluntary, but not sure whether the VCC will be one size fits all or whether parties will be able to adopt only portions. That question remains to be answered.
- Don't see VCC preempting any state regulations.
- A collaborative, open transparent process will have benefits for all. If we are not able to develop a strong code, we should all go home. Hope we can develop a strong code that will have value. A collaborative, open, and transparent forum will be beneficial to all parties
- While we live in an advanced world with plenty of technology, there is an obligation to protect those that we serve.

Mr. Polonetsky, Executive Director of the Future of Privacy Forum (FPF), explained that he comes from a mixed background in state regulations and consumer affairs.

- Mr. Polonetsky explained that FPF, in coordination with various companies and policy makers, has rolled out a seal program to help incorporate Privacy by Design, and a number of companies – one being SDG&E - are displaying the seal to allow data downloads and activate various services.
- This is an ecosystem where we can learn from other areas and other regulated entities, such as established rules of engagement for websites, cell phone carriers, TV and cable, and instant streaming. For example, on the web now third parties often dictate to first parties what will happen. Mr. Polonetsky is not sure that want that to be common practice in this instance.
- Although industry is at the ground floor today and it is easy to say that the utility industry will be different, when there is data, innovative companies will come up with creative and interesting stuff. No one in the room can anticipate what that will be.
- Mr. Polonetsky noted that it is important to determine a framework that covers the ecosystem but that does not squash innovation or let the need for innovation be an excuse.
- Focus needs to be primarily on non-regulated entities, but recognize that these entities operate in an ecosystem so tightly tied to the world of utilities that we need to recognize it as an ecosystem.
- Key thing to accomplish here is to learn from the work that has been done to develop something that is accountable, adopted and, therefore, enforced.
- There are lessons to be learned from the FTC and attorney general jurisdictions that can shape this and help make it more transparent.
- This is not just about consumer education, but developing something that can actually be adopted and by adopting it the entity is accountable.

- By focusing on transparency and helping outline what entities explain what they do so that they are held accountable, a great deal will be accomplished.
- Mr. Polonetsky emphasized that it is important to focus on flexibility, over-indexing on transparency, to ideally come up with something that is enforceable.

Why is the VCC Important and What Should it Cover?

Discussion Facilitator: Ron Binz, Public Policy Consulting

Mr. Binz invited participants to provide high level thoughts and considerations on some fundamental questions regarding a VCC, including:

- Is the VCC a good idea to pursue?
- Is the VCC necessary?
 - If a VCC is not necessary, then why not?
 - If a VCC is necessary, then to whom should it apply?
- What level of detail should be included in the VCC (2 pages versus 22 pages)?
- Who should manage the VCC in the future?
- How will the VCC be enforced?

Participants provided the following feedback:

- The VCC should be realistic and consider the appropriate balance of experience by the multi-stakeholder community.
- The VCC should be sufficiently defined to allow flexibility in how the guidelines are met.
- The type of data that the VCC should cover needs to be addressed (i.e., smart meter data, all consumer data, or someplace in between)
- As a point of clarification, regardless of if a company adopts the VCC, the FTC can still enforce action if they have jurisdiction over the company. However, the FTC will consider any representation that the company has made or anything the company failed to say. Adoption of the VCC could show that the company has made efforts to handle sensitive data and might be considered favorably.
- Consider whether or not the VCC can only be adopted as a whole or if components of the VCC can be adopted.
- Consider that stakeholder groups have different sizes/shapes, and a one size fits all approach may not be feasible.
- Acknowledge different practices and approaches at the state and local government level.
- Define the resolution of data that is appropriate to ensure that information is anonymous and useful.
- This is a great opportunity to provide guidance for utilities who may not know what data they can share with 3rd parties.
- This may be very beneficial to regions that have a high energy burden.
- Acknowledge that there are uses for this data beyond 3rd parties.
- Ensure that this effort does not duplicate the privacy efforts of NIST's SGIP subgroups
 - A NIST subgroup representative commented that there are not currently any plans to delve into third party data usage through SGIP 2.0.
- Keeping the VCC to a high level will help it to be more applicable to a wide variety of stakeholders.
- Do not limit the VCC to the type of technology, i.e. smart meters.
- Understand the basic expectations that consumers have in regards to their data.
- The VCC can fill in the gap for companies that are using consumer data outside of the regulated sphere.

- Define the level of aggregation that ensures the data is sufficiently anonymized.
- Define the goals that can be accomplished by having access to this data.
- Define the level of responsibility for utilities.
- Ensure that customer consent rules are defined.
 - Consent rules may require further exploration.
 - Access to individual consumer data may be helpful in some contexts, such as severe storms.
- Regarding concern that this effort may duplicate other efforts made by NIST, NAESB, and states, some of those documents are not in a format that is ready for companies to post on their website and indicate how they are addressing privacy.
 - The VCC can go a little further than only providing rules and guidance to providing a baseline for how privacy should be addressed.
 - This should enable a self-regulating process.
- Should define how the VCC will get updated.
- Regarding data aggregation, should draw a reasonable line for what is good enough to be anonymized while ensuring practicality and usability of the data.
- Attention should be focused on what is being done at the state level.
- Ensuring data is anonymous is very important. If the VCC addressed nothing but that, then it would be very successful.
- Should ensure that the VCC does not unnecessarily hamper innovation.
- Should ensure that the VCC does not attempt the change existing state laws.
- The VCC should not attempt to expand the FTCs role or supersede existing state laws.
- Should encourage greater uniformity across the states.
- Ability of states to tailor policy to their citizens should not be entrenched upon.
- A model set of suggested practices could be useful for states.
- This process should be recognizable and defensible enough to get the point that this is something industry can sign on to.
- Should come to a consensus on whether this will be a best practices document or a policy setting document.
- Should consider what principles might be considered “trump cards” in this process. For example, consumers ability to choose.
- Should consider lessons learned from international privacy activities.
- Should ensure the VCC is a predictable and uniform experience for utilities and third parties, but also be discrete enough to explain who it applies to.
- Should ensure that policies are meaningful for different states that have different cultural, technical, and geographical dimensions.
- Should address whether this effort is focused on customer energy usage data or personally identifiable information (PII).
- This process should not become too prescriptive. It should be adoptable, but appeal across a variety of different operating environments.
- If the VCC process is not flexible enough to allow components of the VCC to be adopted, it may not be adopted at all.
- Should be forward thinking through this process in order to promote innovation. Ensure that the process is not inhibited by what is not done.
- Should ensure that the VCC is high level so the devil in the details does not drag it down.
- Should ensure that the VCC makes sense to customers.

- Should be clear on the type of data the VCC addressed (consumer data vs. utility data).
- Should take standards that already exist from NAESB and NIST and present them in a customer friendly way.
- Should distinguish the types of third parties.
- Should ensure that future meetings and proceeding allow for remote participation.
- Regarding other efforts by NAESB and NIST, should point out that consumers have not been part of those processes. This process should ensure that it does not duplicate those efforts but also that consumers feel they can trust it. Should ensure the VCC is more consumer friendly.

Development of a Mission Statement

Discussion Facilitator: Ron Binz, Public Policy Consulting

Mr. Binz presented a proposed mission statement that was drafted and put forward by Eric Ackerman with Edison Electric Institute. The proposed mission statement is: To define requirements for policies and practices that 1) Protect the privacy of customers' energy usage data (CEUD), 2) Provide customers with access to their own CEUD, and 3) Disclose customers' CEUD to duly authorized third parties seeking to use such data to provide legitimate services.

Mr. Binz invited Mr. Ackerman to provide additional comments regarding the proposed mission statement:

- Note that the scope of our activity by this mission statement is limited to CEUD, and does not incorporate Personally Identifiable Information (PII). Our view is to limit the scope to CEUD since issues of PII have been around since before the smart grid and I assume that utilities have policies based on that and we don't need to address that.

Mr. Binz invited participants to provide comments and feedback on the proposed mission statement:

- The third item starts with "disclose" with the implication of the mission being to disclose the data, as opposed to protecting the data. The focus should be on data protection. We might want to add a few words before disclose.
- The administration's view is that we need to release the data to stimulate innovation, so there is a countervailing policy objective here.
- This is a great start, and it hits the key points. From my perspective, one of the outcomes is to enable transactions; there are new transactional uses for information that the market is driving. The speed, context, manner, and permissions all need to be addressed. The key is to enable disclosure so that transactions may occur.
- There are a couple of qualifiers on the gateway function. What constitutes a "legitimate" purpose, and who would be making that distinction?
- I think this is a really fine start. We might want to consider choices, there are customers that don't want their information to be shared, and there are some customers that are very comfortable with it. Perhaps customer choice should be included as a bullet.
- Do you like the notion of customer empowerment? Would that be consonant with your suggestions?
- In California, the term of use is choice.
- This is a great start and it puts us well on our way to a good all encompassing mission statement. The third bullet should be phrased in a more neutral way to "address the potential disclosure of CEUD to duly authorized third parties seeking to use such data." That way we are defining the policies and practices that would address the potential disclosure and the rest address the in the weeds detail.

- The word “requirements” at the beginning is contentious. This is voluntary, and that should be reflected in the mission statement. “To define voluntary practices” or “voluntary standards for policies and practices” in that statement.
 - Eric, would “elements” work instead of requirements?
 - It might change the meaning a little. We don’t want to define specific practices, so the thought was that when you develop certain functional requirements. These are critical aspects of a privacy policy.
 - So, it means more inclusion of the essential ingredients into a privacy policy.
- In California, CEUD is considered private information, so that data is considered private.
 - Disclosure is fine, but there has to be an element of protecting the data; not just how do we disclose the data, but how do we disclose it in such a manner that protects the privacy of the consumer, but also enables the development of smart grid products.
 - “Requirements” could be referred to as protocols or procedures instead of defining them; it would be development of protocols or procedures as opposed to defining practices.
- You said that CEUD is private, but I think Eric’s point was that PII is not CEUD, he was going the other direction.
- In the literature, Personally Identifiable Information, are things like your social security number, your bank account number is different in scope from the users’ CEUD.
- It clarifies, but I disagree with that statement, because in California CEUD is considered PII.
- Social security number is not considered CEUD in California, correct?
- Correct.
- In your second point, were you talking about the security of the data and storage of it?
- I was agreeing that we are not simply talking about disclosure of data, that privacy is built in in front of the disclosure of the data.
- Defining protocols for policies and practices, you can either have a placeholder of stakeholders or you can have utilities and third parties who may voluntarily adopt or may consider adopting. Because we are getting into adoption here by the relevant parties, and I do think the word voluntary needs to be in there at some point.
- Maybe we need to step back and start the sentence in a different place “to develop a voluntary code of conduct that does these things”, so I think we can accommodate everything that we just heard.
- Going back to number one, I would have a difference of opinion about limiting it to energy usage data. I would like that conversation to stay open about having a broader protective policy.
 - You are setting up a scenario where people are adopting a code of conduct for energy usage data and not addressing the other piece of it concerning PII. How do consumers interpret that? It could be confusing for consumers.
 - There seems to be a number of connections between the two types of information. I would like further consideration of that extension.
- Think about that question of scope. It’s come up in 3 or 4 different comments so far.
- Suggestions for 2 and 3 that might fix some of the grammatical confusion
 - #2, I would suggest saying “Affirm the customers’ right of access to its own CEUD”
 - “Enable the customer’s choice to release CEUD to duly authorized third party...”
 - I caution about the discussion of PII – we need to look at where there is a gap, where the VCC can provide some helpful guidance, but not add another layer of regulation to an already thoroughly regulated topic.
- There were many people nodding their heads in agreement with that last statement. I’d like to get a sense of the room on this. There are a lot of regulations and protection regarding sharing birthdates,

social security, etc. Query: do we want to add to that set of requirements on this or are we looking at data which is not otherwise covered, and if that's true, can we draw a line to separate these things? Does anyone want to speak to that?

- I agree. There is a large body of work, and I think it complicates the work. There is a big lift to get this done anyway, but it should be specific to the customers' energy usage data. There is a lot of information that comes out of the smart grid that is not customer specific, but I would argue that we define it as customer specific energy usage. Smart meter data compared to customer usage data, there is a nuance. I always err on the side that the customer has to release the information to an authorized third party.
- You said that from the perspective of a utility that receives smart grid data. Can you elucidate your comment that not all data is smart grid data?
- When I used the term "smart meter data", I was referring to monitoring and control data from the distribution side, which is smart grid data, but is not customer specific.
- There are interesting scope issues where in the ideal world with unlimited time and energy we could deal with here, but we are doing something somewhat new and novel, and if we can define very clearly a very specific and important set of customer energy usage data, which will be even broader than anyone of us think, because of the different issues such as building owners, etc., and there are other interesting issues including marketing data? That would be a whole other different audience.
 - In this first phase, we should keep it narrow.
 - A second phase we might want to consider after phase one is what about energy data that doesn't directly come from a utility? Some could come from a meter, some could come from a consumer... Should it have a radically different set of rules if I activate it here as opposed to wifi?
 - We should keep our scope to the traditional energy data that we are familiar with presently.
- Who is making these voluntary commitments? There is a very important need for guidance to states and PUCs and utilities, to clarify the guidance...we can't drift away from thinking about third parties such as vendors and manufacturers and their obligations.
- I understand the points being made, and what's driving them, but I was envisioning an asterisk or separate code of conduct because the utility holds the information, and when we start talking about the third party, that is where privacy issues are more prominent. Guidance for utilities is an area that should be fleshed out and made clear.
- There is an example in MD with privacy because of the smart meter information, and the utility was required to release the names and address to suppliers on an opt-out basis. You need to be clear and explicit in what the policy is and what it covers.
- Are people going to be confused into thinking that this policy covers things that it doesn't cover? I think that is a legitimate point. I think this would require some lead in to discuss what the VCC applies to and what it doesn't apply to.
- I hear people talk about meter data, which is a limited set of data that does not include any social security numbers or other personally identifiable data, but limiting this topic to just meter data is not enough. I think that we need to go a little bit further than kilowatt- hours. I want to make sure that we define whatever those boundaries are rather than just putting CEUD up there and letting people think what they want about what that entails. It needs to be defined.
- Listening to this discussion, I wonder if what I am going to propose will just make life more difficult, or might be a way to give that context. I think we should include 3 or 4 whereas clauses, which might be utilities have, and increasingly have, extensive data about customers energy usage; new products and services can be provided using customer data. I'm less clear on how we might phrase the state legislation whereas might go.

- I think something like that may help soften the entry of the mission statement and the whole VCC project.
- I am confused in terms of the comments, where are we going with the types of entities that would be covered under this voluntary code of conduct. If you could summarize that would be helpful.
- I think there is the general notion that utilities, regulated by PUCs, may be least in need of this because of state laws, and the other side of the spectrum, third party vendors seem to be most in need, or society might be best off if something like this were to exist.
 - It is going to sit out there, and anyone who is interested in it may use it.
 - Object here is to make it attractive enough to get sign on, and entities may appear friendlier to customers for having signed on.
 - At some point it would be helpful to write up some case studies about various entities, utilities, platform providers, energy service companies, and we also have manufacturers. SO the challenge is to come up with something that is attractive to that broad group. What this might do is provide some guidance for what PUCs might want to do.

Mr. Binz wrapped up the discussion and noted that a possible workgroup on the mission statement would be useful thing. A leader and members of that group would be needed. Mr. Binz explained that these items will be addressed later in the day.

Overview of Proposed VCC Elements

Presentation of Elements

Paula Carmody, People's Counsel, Maryland Office of People's Counsel

Philip Henderson, Natural Resources Defense Council

Megan Hertzler, Xcel Energy

Mr. Binz explained that the subgroup of stakeholders developed a set of proposed elements to serve as a starting point and framework for the VCC. He welcomed Ms. Paula Carmody of the Maryland Office of People's Counsel, Mr. Phil Henderson of the Natural Resources Defense Council, and Ms. Megan Hertzler of Xcel Energy to share the proposed elements. The proposed elements are as follows and the full document can be found in the meeting documents section at www.smartgrid.gov/privacy:

1. **MANAGEMENT AND ACCOUNTABILITY – Elements that relate to the credibility of the utility and/or third party's privacy function.**
 - How does an organization ensure that customers' privacy is protected? Is an organization building privacy and protection into its internal structure?
 - Should we streamline the sub elements so that there is not so much redundancy?
 - Identifying a privacy officer is fairly core; doing a risk assessment.
 - Addressing employee access and training.
 - How do you want to communicate privacy policies?
2. **NOTICE AND PURPOSE – Elements that relate to communicating applicable policies, and related choices, to customers.**
 - This goes to the end of the process, how would you communicate a voluntary code of conduct to people?
 - What does this apply to and what does it not apply to?

- How do people find out about it, websites, etc.
 - What does this policy apply to?
 - Customers are told about how to register a complaint.
3. **CHOICE AND CONSENT – Elements that relate to the customer’s granting of authorization for the release/sharing of his or her data.**
- How does customer grant permission for the release of the data.
 - At what point in the process do you obtain permissions?
 - What is the time period?
 - Who has access?
 - Can it be released with affiliates?
 - Can you cancel your consent? What are the elements for doing that?
 - How will the data be used?
 - Who has the responsibility for validating the consent?
 - Can it be released without consent to affiliates, agents or subsidiaries?
 - These are things that should be walked through.
4. **COLLECTION AND SCOPE – Elements that relate to the scope of customer data that is collected, and potentially shared.**
- This is not the entire scope, these are things that came up within the DOEs discussions, and that is why it is important to have this kind of multistakeholder process.
 - Thinking in terms of primary collection, do you need explicit consent?
 - Utilities collect energy usage data and use it to bill, load forecast, rate design...If we were required to get consent, our business would stop. When is consent required?
 - What are the requirements when you get to that secondary purpose? If you start collecting more data, what is the scope of that sharing?
 - Should the data collected be limited to only what is necessary to accomplish the primary purpose?
 - Who has access? What is the scope of the sharing of that data?
 - Both transparency and choice for the individual need to be balanced with business operation and innovation.
5. **USE AND RETENTION – Elements that relate to how long customer data should be kept, and when it should be destroyed.**
- What elements are kept, and for how long?
 - What is required in disposing data?
 - If it was shared, do you need to retrieve it?
 - You should only keep the data for as long as you need to.
 - How is it treated in the case of a merger or sale?
 - Is it considered an asset?
 - If so, is the asset transferable?
 - Who would have access without the consent? Contracted agents? Law enforcement and government access to that data.
 - Is there any additional steps or due diligence required?
6. **INDIVIDUAL ACCESS – Elements that relate to the customer accessing his or her own data.**
- Individuals should have access to their own data.

- What does that look like?

7. **DISCLOSURE AND LIMITING USE – Elements that relate to how customer data is shared with third parties**

- What is the scope of sharing information with contracting agents?
- If we are aggregating data, what is anonymous, what is aggregated?
 - Whole building data
 - Are privacy principles different in the pursuit of pursuing state or federal energy goals?

8. **SECURITY AND SAFEGUARDS – Elements that relate to how customer data should be protected from unauthorized disclosure.**

- How you transmit the data, how much protection do the servers have?
 - Many of the users of this data may be subject to other requirements.
 - A lender asking a customer for information, for example
- Essential element is telling the customer what happens in the case of a breach.

9. **ACCURACY AND QUALITY – Elements that relate to the maintenance of accurate and complete customer data.**

- Commitment to maintain a process for data accuracy.
- How do third party users of energy data do that?
 - Maintaining a process to correct errors is very important.

10. **OPENNESS, MONITORING, AND CHALLENGING COMPLIANCE – Elements that relate to customer EDUCATION AND COMPLAINTS.**

- Giving the customer the ability to understand the scope of information being held, the terms, and the process for making complaints.
- Contractor committing to maintain a process, complying with reasonable requirements.

11. **ENFORCEMENT MECHANISMS**

- This is a full subject that requires a lot more attention than we can give it today.
- It is not clear to me how it would be expressed in a customer facing document.
 - Illustrating that the adopters would subject themselves to enforcement actions by potentially FTC, state attorneys general and there might be private rights of action.
- How will this be explained in a customer facing document?

12. **POTENTIAL GLOSSARY/DEFINITIONS**

Audience Discussion of VCC Elements

Discussion Facilitator: Ron Binz, Public Policy Consulting

Mr. Binz asked participants that may be interested in participating on a task force to provide him with their contact information before the end of the day. Potential task forces could be focused on the mission statement, the issue of anonymizing and aggregating data, other proposed VCC elements, or a writing group focused on the management of the written document.

Mr. Binz invited participants to provide feedback and comments on the proposed VCC elements. Participants provided the following feedback:

- I have a comment about an issue referred to as “the primary purpose” and contractors, affiliates, agents that perform core utility services, and they have some amount of customer information. This issue pops up in a couple of different sections, and I was wondering if we can address it as either a global or combine the issue. If this is getting too far down into the weeds, I can table it. Examples of the entities are data service provider – collects, maintains, slices and dices data for the utilities. Operation maintenance providers, outage support, reliability. These are core utility services, and a lot of co-ops don’t have the money and resources to perform these services all on their own. These entities are under contract to the co-ops and are performing those core services in place of the coop. This issue comes up and Paula noted it under number 3-choice and consent-and it is bullet number 4-define disclosure practices-and it asks who will have access to the data. The issue also comes up under collection and scope in regard to primary purpose entities and how do you separate them out from third parties that want to provide new services to consumers. Finally the same issue comes up in number 5 bullet 3-define who has access without consent-agents, contractors, law enforcement. It would make things easier if we could find a common fix for this. In the mission statement or preamble, we can address just what we are talking about in terms of activities or third parties who might follow the code of conduct; you could define third parties to specifically deal with the kinds of activities that provide primary purpose or core services. You could add the definition in the back for a contracted agent.
- So I can imagine some extensions for what you are saying, if there is a third party rendering bills, would it be your point that that is a traditional function of the utility that should not be implicated in all of this?
 - Yes.
- What governs the security use disposition, a contract between your member and a hypothetical third party?
 - Yes.
- If they are acting on behalf of the regulated utility under contract they are obliged to the same rules. If they are doing a non-core utility function that is a whole different subject.
 - Core functions: Billing, meter reading,
 - Non core functions: Surge protection, home wiring warranties. Efficiency could be core, could not be a core function.
- If this organization is an agent of the utility doing work for the utility, it should follow the utility’s policies, and that should be in the contract. That is for the utility to make sure. However, the world is changing and if we look ahead, core functions are likely to change.
- The use of the term customer and the use of the term consumer seems interchangeable in the elements, but I think there is a difference. A consumer is a facility or building and a customer is a person who pays for a product. We need to be very clear about definitions in the glossary. They could be a customer of the third party, or of the utility.
- On number 2 under notice it says to explicitly state what data is being shared, it should also say with whom the data is being shared i.e. type of entity.
- On number 3 under Choice and Consent, there is a section about who gets data with consent and you might want to add who gets data without consent i.e. under a legislatively directed mandate.
- Why should a customer give reason for cancellation? If the utility is seeking to cancel something with a third party, perhaps.
- We need to do some definition in what we mean by primary versus secondary (examples under California law and NAESB rule utility versus third party)
- Still uncomfortable under number 7-Disclosure and Limiting use-with the third party commitment to not reverse engineer data. I don’t think that there should be a requirement, if the data has been sufficiently anonymized and aggregated, it shouldn’t be a problem.

- This gets into the enforcement mechanism; who would provide liability protection for an entity that adopts the VCC, what if the third party violates is the primary liable? Who decides the liability? Who determines if the primary acted in good faith?
 - Example: If company A is the VCC signer, and signs a contract with company B, and B violates, is company A liable? And who decides?
 - I am not sure why that was included, and that is a good point.
- I just wanted to comment on the requirement. One of the reasons why that was done is it may be that the output of a code is to treat data that is going to be released publicly should be extremely de-identified to eliminate every possible risk or attack. There may be data that is pretty well de-identified. Multiple levels of de-identification might be worth some future discussion.
- There may be good reasons for doing it, but is this the right place for it to be put in? Who is going to monitor that? What would the effect be on the marketplace for third parties?
 - You think this might have a chilling effect on entities signing the VCC?
 - Yes, there is a high demand for aggregated anonymized data, and it could prevent some entities from signing.
- One issue that was not addressed is cost recovery, who is going to pay for it? Privacy use cases, assessments, it requires effort and therefore requires resources. It may not be right for this scope, but it needs to be considered. Individual requests for information should be paid by those who are driving the cost. On number 2, I agree that core utility services shouldn't need required consent, I would extend that also to any work that is required by the state; demand response etc. I would not extend that to an unregulated subsidiary.
- On number 5, regarding who else would get access without consent; we might want to add public service commissions, they often have that already, and social service agencies for lighting and heating programs, low income programs.
- On number 8, on data security, it is an important element, but I don't think it is our place to tackle
- There should be an opt-out for customers on aggregated data, pricing concerns for individuals might come up. We should weigh the benefits of aggregated data against the privacy rights of individuals. As a group and society we will have to struggle with that.
- I am going to suggest that this is something that this VCC would instruct the signer to develop, disclose, and describe to consumers, and I agree that we can't get into that level of specificity of detail.
- It is a bit problematic to tease out the elements that would apply to a load serving utility versus those that apply to a third party. What we are trying to do is close the gap of protection of CEUD data that is shared with third parties. If this goes out and is applied to all stakeholders and someone wants to adopt it, what elements are you trying to use or not use as it applies to the utility? We strongly support unfettered access to this information to customers; if you try to apply this to all those other situations that are already regulated I think it becomes problematic. I think we need to focus on the gap that we are trying to close in regard to the protection of CEUD data.
- I think we are on the same page, I was not suggesting that the VCC would apply to the contracted agents, to the contrary, I was suggesting that for those services that they are not put in the same position as the third parties.
- We were looking at the placement of those terms, agents or contracted agents, in various places in the outline, and seeing if we could wrap those into one in one fell swoop so that core extensions of the utility don't come under this; there has been some difficulty in determining where that line is, so that concern has been registered.

- One useful reference is the NAESB definition of third party of how we define third party, which could help us focus on where the gaps are. Privacy versus security, also a useful point, trying to tackle that would be challenging and quickly outdated. High level general principals would serve us best.
- On number 11-enforcement mechanisms-perhaps I don't understand the intention of the language, but I am wondering if we need this in the elements. All of the entities will have their own enforcement mechanisms for non-compliance. I wonder if it is necessary for us to proscribe enforcement.
- I think you raise a good point and it merits discussion here, and it is complicated. Whether there is enforcement or investigation would depend on lots of factors.
- There has never been any discussion of the group that there would be a VCC cop funded by this initiative.
- The elements in general – did this come from an already accepted group of privacy principals, are we recreating a wheel here?
 - The original document, this is a second generation, was a consolidation of the issues that the group derived. If you go to the last page you'll see footnotes to 8 documents that we culled from. That got rearranged into the 10 categories plus eleven, so that is the origin of this document, it is proposed to be the basis for the VCC. It is a new effort that recognizes everything that came before. This is no more than a starting point. It is probably more comprehensive than it had to be.
 - Maybe there are some already formed principals that suit our needs that we can use. DHS FIPS exist already. I think we should leverage standards that already exist. It will be difficult to convince my management to follow a third set of principles to ensure that we are assuring privacy.
- Question of clarification; what are we trying to define in terms of core functions and non core functions? With utilities there are probably new services and offerings that sit in the regulated or unregulated side. An example is seeing that based on usage patterns there is something wrong with your heat pump, and letting you know that there is something wrong with the facility. Are we trying to define who has access to this information and the right to use this data or is that completely separate? I don't think we should address it in this.
- On number 5-use and retention-regarding how long CEUD information should be retained. We discussed that for a very long time, and came to the decision that we aren't the body to define that, it should be the regulators. We are using a NAESB model process and NAESB standard as an outline, our standards are constantly being modified and updated. Is the intention that NAESB will take this VCC back and incorporate it into the standard?
- That option has not come up in discussion.
- It strikes me that this dialog relates to who is going to maintain this, and NAESB might be a good option.
- One thing that we are aware of is trying not to set policy with NAESB, we are releasing some guidance and best practices. This voluntary code of conduct may be different. Do we want to make policy, or do we keep it flexible enough to allow the states to do that.
- You pointed out again that NAESB didn't have an answer to this, and we may end up in a similar place. This is going to be about third party entities for whom commission jurisdiction does not reach. Part of this project is to begin instilling confidence that all this stuff that is going on is going to be okay, and having entities step up and say that this is how we are going to perform goes a long way toward that. The impact of all of this is going to be different with utilities as opposed to the industry, which will grow up around all of this information.
- Who is this document reaching? How is it going to relate to other codes that exist? There are a lot of things in this document that apply more to utilities, some to third parties, and some that are unclear

where it is meant to apply. I hope that number 3-choice and consent-will be made clear as to obligations of different entities, and how will this apply to an actual transaction to a user. There's a lot in here and a lot to absorb. Hopefully the ongoing process is to move to a higher level, or move to a more detailed process.

- This activity to get into policy, as I described this morning, we seek to avoid creating policy, but to focus on practices to avoid creating policies.
- I suggested earlier several ideas for working groups to tackle this. We mentioned Mission Statement, de-identification of data, the jockey to put together the pieces? Can you see any other potential groups?
- Prior to the finalization of mission statements, a group to look at use cases. A use case for an IOU where you have a data repository, the distribution companies would put data there, then you would have third parties that are able to access it, and customers that would like to see it.
- How many of you would be interested in working on a virtual working group? I think that the group that formed at Eric's request can come back to everyone on candidates for working group members. Have I suppressed any comments? Anything anyone has to say before we adjourn?
- It would be helpful if we could have a sense of how DOE sees the issue proceeding? Would we have an opportunity as a larger group to comment?
 - There will be no resolution of any issue except in the plenary environment. The working groups will come up with proposals. You will not give up any rights by selecting one working group over the other. There will be many opportunities to contribute.
- In terms of logistics, it would be preferable to have our next meeting where there is both coffee and wifi available. Since a lot of us are trying to juggle external things, it would be helpful to have internet service.

Next Steps

Discussion Facilitator: Ron Binz, Public Policy Consulting

Mr. Binz proposed a set of next steps for the VCC process:

- For the process going forward, we want to identify leaders for the working groups. The groups will work together to come up with a schedule of calls and meetings to meet their proposed deliverables.
- Next in person meeting will be in 6 weeks to 8 weeks, giving time for working groups to form and get some work done that will be presented at the next meeting.
- Mr. Binz asked participants to let him know if they feel the larger meetings are necessary, and whether a particular organization is available to host one of the larger meetings.
- The webcast will be posted on smartgrid.gov following this meeting and notes will be distributed in approximately two weeks along with information about the working groups.

Adjourn

The meeting adjourned at approximately 4:30 pm.