

Date of Hearing: May 28, 2020

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Chris Holden, Chair

AB 2788 (Gloria) – As Introduced February 20, 2020

**SUBJECT:** Public utilities: cooperation with immigration authorities

**SUMMARY:** This measure requires immigration authorities to obtain a court-ordered subpoena or judicial warrant to gain access to a customer's electrical and gas consumption data.

Specifically, this bill mandates that electrical corporations, gas corporations and local publicly owned electric utility shall not share, disclose, or otherwise make accessible to any immigration authority a customer's electrical or gas consumption data without a court-ordered subpoena or judicial warrant.

**EXISTING LAW:**

- 1) Provides mandatory privacy protections for a customer's electrical or gas consumption data. An electrical corporation or gas corporation shall not share, disclose, or otherwise make accessible to any third party a customer's electrical or gas consumption data, except as provided in law or upon the consent of the customer. (PUC §8380)
- 2) Provides mandatory privacy protections for a customer's electrical or gas consumption data. A local publicly owned electric utility shall not share, disclose, or otherwise make accessible to any third party a customer's electrical or gas consumption data, except as provided in law or upon the consent of the customer. (PUC §8381)
- 3) Provides general provisions and definitions that among other things define electrical corporation to include every corporation or person owning, controlling, operating, or managing any electric plant for compensation within the state. (PUC §218)
- 4) Provides general provisions and definitions that define a gas corporation to include every corporation or person owning, controlling, operating, or managing any gas plant for compensation, except where gas is made or produced on and distributed by the maker or producer through private property alone solely for their use or that of a tenant and not for sale to others. (PUC §222)
- 5) Defines local publicly owned electric utility to mean a municipality or municipal corporation operating as a public utility. (PUC §224.3)
- 6) Defines the entities associated with cooperation with immigration authorities. (GOV §7284.4)
- 7) Does not preclude an electrical corporation or gas corporation from disclosing electrical or gas consumption data as required or permitted under state or federal law or by an order of the commission. (PUC §8380)

- 8) Defines “Immigration authority” as any federal, state, or local officer, employee, or person performing immigration enforcement functions. (GOV §7284.4 (d))
- 9) Provides the United States Attorney General and any federal immigration officer with the power to require by subpoena the attendance and testimony of witnesses before immigration officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States. These provisions also apply to any matter which is material and relevant to the enforcement of this chapter and the administration of the Service and to that end may invoke the aid of any court of the United States. (U.S. Code §1125 (d)(4)(A))

**FISCAL EFFECT:** This measure is not keyed fiscal.

**BACKGROUND:**

*Utility Data:* In 2011, the California Public Utilities Commission (CPUC's) smart meter proceedings created rules regarding the steps utilities must take to protect customers' privacy. The rules prohibit PG&E, Southern California Edison, SoCal Gas, and SDG&E, as well as third party contractors, from releasing smart meter usage data collected online to any third party without the affirmative and separate consent of the customer for each request, unless the party making the request possesses a subpoena issued by a court. CPUC rules also require utilities to release transparency reports that specify the number of legal requests for customer data that they receive annually and the number of customers whose records are disclosed.

*Existing CPUC Disclosure Rules:* Existing CPUC disclosure rules provide that, except as otherwise provided or expressly authorized by state or federal law or by order of the Commission, utilities under the jurisdiction of the CPUC shall not disclose covered information, except pursuant to a warrant or other court order naming the customer and specific information that is sought. Utilities under the CPUC's jurisdiction must annually report to the CPUC the number of demands received for disclosure of customer data pursuant to a legal process and the number of customers whose records were disclosed. The CPUC may make the reports publicly available without identifying the affected customer unless making such reports public is prohibited by state or federal law or by order of the Commission. Entities that are covered within the CPUC's rules include: electric service providers, electrical corporations, gas corporations, community choice aggregators, and any third party that collects, stores, uses or discloses covered information.

*United States v. California, 9<sup>th</sup> Circuit:* In 2019, the 9th Circuit case ([\*United States v. California, 9th Cir. 2019\*](#)) allowed the state to restrict access to information as long as it is not immigration status information. Utility ratepayer information, like consumption data, is not direct evidence of a customer's immigration status. Further, this decision also left intact the provisions of SB 54 (De Leon), which relate to restrictions on law enforcement sharing information with immigration authorities. In that case, the court held that: “With respect to SB 54, which limits the cooperation between state and local law enforcement and federal immigration authorities, the panel affirmed the district court's denial of a preliminary injunction. The panel rejected the United States' argument that the provisions violate the doctrine of obstacle preemption and the doctrine of intergovernmental immunity, concluding that the district

court did not abuse its discretion when it concluded that any obstruction caused by SB 54 is consistent with California's prerogatives under the Tenth Amendment and the anticommandeering rule."

## COMMENTS:

Author's Statement: "AB 2788 increases privacy protections for customer electric and gas consumption data. Smart meters give customers, and utilities, a snapshot of their energy usage throughout the day. They allow customers to have greater control of their usage and allow utilities to incentivize different energy behavior via time of day energy rates. Smart meters typically take hourly recordings of energy usage that is communicated to the utility who can then share it with their customers. This data could be used to determine where a person lives, the number of people in a household, and their comings and goings. The disclosure reports from large energy utilities have shown disturbing trends in the release of private meter data. Immigration and Customs Enforcement (ICE) has made significant requests for account information and has obtained the data through an administrative subpoena process. Undocumented immigrants are especially vulnerable to these disclosures, since through them ICE can learn a person's typical routine. Strengthening privacy protections for smart meter data builds on California's commitment to protecting our immigrant communities."

Privacy of Customer Utility Data : State law mandates the privacy of utility customers data. Consistent with that mandate, the CPUC rules prohibit PG&E, Southern California Edison, SoCal Gas, and SDG&E, as well as third party contractors, from releasing smart meter usage data collected online to any third party without the affirmative and separate consent of the customer for each request, unless the party making the request possesses a subpoena issued by a court. Electrical or gas corporations are mandated to use reasonable security procedures and practices to protect a customer's unencrypted utility data from unauthorized access, destruction, use, modification or disclosure. Customer consent may be verified through an electronic signature authorization process pursuant to the Uniform Electronic Transactions Act of California. Local publicly owned electric utilities are also subject to the limitations associated with the release of their customer's utility data as provided in existing law and under the provisions of this measure.

Annual Report: Utilities under the CPUC's jurisdiction must annually report to the CPUC the number of demands received for disclosure of customer data pursuant to a legal process and the number of customers whose records were disclosed. These transparency reports have revealed that Immigration and Customs Enforcement (ICE) is requesting and receiving utility data from a large number of customers. Upon reviewing these transparency reports, the American Civil Liberties Union (ACLU) highlighted that a single utility received the largest number of data demands by far and handed over the records of 4,062 customers in a single year. Under existing law, ICE may issue their own administrative subpoenas to gain access to utility data without securing judicial or court order subpoenas.

Utility Data: Utility data can reveal where a person lives, the number of people in a household, and when individuals are home. Yet, there is nothing inherent in a utility customer's information that indicates their immigration status. Therefore, the state is allowed to regulate utility customer information and it is not a direct infringement on immigration enforcement activities. This measure establishes the requirement that immigration authorities must have a court-ordered

subpoena or judicial warrant in order to receive a customer's electrical or gas consumption data. AB 2788 does not prohibit access to utility data, rather it allows immigration officials access to this data via judicial warrant or court ordered subpoena. In so doing, this measure further protects customer's private electrical and gas consumption data

**Relevant Legislation:**

SB 54, (de León, Chapter 495 of 2017) Law enforcement: sharing data.

SB 31, (Lara, Chapter 826 of 2017) California Religious Freedom Act: state agencies: disclosure of religious affiliation information.

AB 699 (O'Donnell, Chapter 493 of 2017) Educational equity: immigration and citizenship status.

AB 4 (Ammiano, Chapter 570 of 2013) State government: federal immigration policy enforcement.

AB 2792 (Bonta, Chapter 768 of 2016) Local law enforcement agencies: federal immigration policy enforcement: ICE access.

SB 1476, (Padilla, Chapter 497 of 2010) Public utilities: customer privacy: advanced metering infrastructure.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American Civil Liberties Union/northern California/southern California/San Diego and Imperial Counties

California Immigrant Policy Center

National Association of Social Workers, California Chapter

Oakland Privacy

Santa Barbara Women's Political Committee

The Utility Reform Network

**Opposition**

None on file.

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