
**SENATE COMMITTEE ON ENERGY, UTILITIES AND
COMMUNICATIONS**
Senator Ben Hueso, Chair
2019 - 2020 Regular

Bill No: AB 2788 **Hearing Date:** 8/3/2020
Author: Gloria
Version: 2/20/2020 Introduced
Urgency: No **Fiscal:** No
Consultant: Nidia Bautista

SUBJECT: Public utilities: cooperation with immigration authorities

DIGEST: This bill would prohibit an electrical corporation, gas corporation, or local publicly owned electric utility from sharing, disclosing, or otherwise making accessible to any immigration authority a customer's electrical or gas consumption data without a court-ordered subpoena or judicial warrant.

Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than one committee as a typical timeline would allow. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the Senate Committee on Judiciary.

ANALYSIS:

Existing law:

- 1) Provides that all people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy. (California Constitution Article I, §1)
- 2) Establishes the California Public Utilities Commission (CPUC) with regulatory authority over public utilities, including electrical corporations and gas corporations. Local publicly owned electric utilities are under the direction of their governing boards. (California Constitution Article XII)
- 3) Prohibits an electrical corporation or gas corporation from sharing, disclosing, or otherwise making accessible to any third party a customer's electrical or gas consumption data, as defined, except as specified. (Public Utilities Code §8380)

- 4) Prohibits a local publicly owned electrical utility from sharing, disclosing, or otherwise making accessible to any third party a customer's electrical consumption data, as defined, except as specified. (Public Utilities Code §8381)
- 5) Defines immigration authority to include any federal, state, or local officer, employee, or person performing immigration enforcement functions. (Government Code §7284.4)
- 6) Finds and declares that immigrants are valuable and essential members of the California community, among other findings. (Government Code §7284)

This bill would prohibit an electrical corporation, gas corporation, or local publicly owned electric utility from sharing, disclosing, or otherwise making accessible to any immigration authority a customer's electrical or gas consumption data without a court-ordered subpoena or judicial warrant.

Background

Privacy of customer data. Public Utilities Codes §§8380 and 8381 mandate the privacy of electric and gas utility customers' data. Consistent with that mandate, the CPUC rules prohibit electric and gas utilities from releasing advanced metering (smart meter) usage data collected 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 Public Utilities Code §8381.

CPUC disclosure rules. The CPUC has established disclosure rules prohibit CPUC-jurisdictional electrical and gas utilities and entities from disclosing covered information, except pursuant to a warrant or other court order naming the customer and specific information that is sought or except as otherwise provided or expressly authorized by state or federal law or by order of the CPUC. The disclosure rules further require each electrical and gas corporation and entity to 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 CPUC. 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.

Annual report to CPUC. As noted above, CPUC rules require electric and gas utilities under the CPUC's jurisdiction to annually report 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) and other agencies are 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. In most instances, these requests were based on administrative subpoenas issued by the agency seeking the data, not by a court order.

Comments from Senate Committee on Judiciary. This privacy measure falls within the jurisdiction of the Senate Committee on Judiciary. Article I Section 1 of the California Constitution explicitly grants Californians an inalienable right to privacy. Historically, the goal for the Senate Committee on Judiciary has been to ensure that consumers' privacy is respected and that their personal information is protected. Any access to such information should only be granted under appropriate and clearly delineated circumstances. This bill further effectuates Californians' privacy rights by ensuring that consumers' utility data will not be made accessible without proper legal documentation from a court of law, namely a court-ordered subpoena or judicial warrant.

Utility data can reveal personal information. Electricity usage data can provide many benefits to the operation of the electric grid and its customers. However, privacy concerns can become issues when personal information is shared. For example, utility usage 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 has authority to regulate utility customer information and it is not a direct infringement on immigration enforcement activities.

AB 2788. This bill 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 bill further protects customer's private electrical and gas consumption data.

Prior/Related Legislation

SB 1476, (Padilla, Chapter 497 of 2010) requires an investor-owned utility (IOU) or publicly owned utility (POU) using advanced metering (smart meters) to protect consumers' energy usage data from an unauthorized access or disclosure, and prohibits electric and gas IOUs and electric POUs from certain activities.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT:

The Utility Reform Network (Sponsor)
American Civil Liberties Union of California
California Immigrant Policy Center
Consumer Federation of California
National Association of Social Workers, California Chapter
Oakland Privacy
Santa Barbara Women's Political Committee

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: According to the author:

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 obtain the data through an administrative subpoena process. Undocumented immigrants are especially vulnerable to these disclosures, 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.

-- END --