

# **Making Better Use of Energy Usage Information: Lessons from the Credit Reporting Industry**

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## **ABSTRACT**

Market demand is growing among electric utility customers for products and services that use a customer's energy usage information, such as benchmarking tools that compare energy use in a building to a peer set, continuous commissioning services that diagnose faults in building systems, and tools that estimate expected savings from upgrades. A utility can use customer information to deliver these kinds of services to its customers directly, but most utilities today do not enable outside companies to obtain a customer's energy usage information in a systematic way to deliver services to the customer, even if the customer has given permission.

This paper reviews how customer account information is shared in the consumer credit industry – banks routinely share customer information, such as account balances and payment history, with the customer's permission, with companies that will use that information to deliver products and services to the customer. Credit reporting agencies (or “credit bureaus”) make this system work. The system has enabled growth and innovation in the consumer credit industry for over 50 years. This experience strongly suggests better access to customer energy usage information could trigger growth and innovation among companies that provide energy-related products and services. To enable innovation, the process of sharing customer information with customer permission must be *systematic and automated*. While the credit reporting system is not without flaws, lessons can be learned from the methods that enable fast, secure credit-related transactions.

One of the defining features of the credit reporting system is the regulatory certainty banks, reporting agencies, and report users obtain under the Fair Credit Reporting Act. Utilities, in contrast, face substantial regulatory uncertainty when considering how to share customer information, even with customer permission, in an automated manner. I conclude in this paper that regulators and policymakers could encourage innovation and a more robust marketplace by providing utilities with express authority to automate the information delivery and to outsource to a specialized vendor the function of managing and fulfilling requests for customer information.

## **Landscape for Sharing Consumer Credit Information**

Credit reporting institutions in the U.S. evolved from the 1930s to the 1960s as small, local institutions. Companies gathered and collected paper files on individuals with delinquency information from local merchants, bankruptcy filings from newspapers or courthouses, home purchase, sale, and foreclosure information from property records, and clippings from newspapers on lawsuits. Computers transformed credit reporting companies, enabling systematic gathering and distribution of information. According to a Federal Reserve report, over 2 billion items of information are added to these files every month, and over 2 million credit reports are issued every day – over 600 million reports per year. There are today hundreds of

credit reporting firms, but since 1970 three firms have been dominant in the industry – Equifax, Experian, and Transunion.<sup>1</sup>

Consumer credit in the U.S. grew in the second half of the twentieth century at a remarkable rate. According to Federal Reserve reports, total outstanding consumer debt grew from about \$43 billion in 1955 to about \$1.5 trillion in 2001. Revolving unsecured debt grew from \$4 billion in 1970, to \$54 billion by 1980, to over \$600 billion in 2000.<sup>2</sup> Consumer credit during this period shifted from retailers financing purchase of their own goods to specialized lenders.

Many economists identify an effective credit reporting system as an essential ingredient for well-functioning financial markets because of multiple benefits: 1) Credit reporting agencies (CRAs) make symmetrical information available to all lenders, enabling better competition. Without CRAs, a lender would have only information on its own interaction with its own customers and information it could gather from public records. 2) Credit history on prospective customers is available to a company by working with a single credit bureau, not maintaining connections with thousands of lenders. 3) To enable its customers to obtain products and services from vendors that need credit information, each bank works with a credit bureau and does not have to build and maintain duplicative systems for managing the customer request, verifying permission, and distributing the information.<sup>3</sup> 4) The fact that negative payment history will affect future access to credit gives consumers an added inducement to pay debts. And, 5) the CRAs serve as data repositories for regulators, research, and new product development.

In the wake of the mortgage crisis of 2008 praise of the credit reporting system based on enabling growth in the consumer credit can ring hollow or unreasonably academic. To a large extent, the jury is still out on whether the use of credit scoring models contributed to poor lender underwriting and whether the reliability of scoring models in the eyes of investors has been diminished. It is worth noting that substantial growth facilitated by the credit reporting system occurred in the four decades prior to the events precipitating the recent mortgage crisis, and during the recession that followed, investors continued to fund both secured and unsecured consumer credit in reliance on credit reporting information.<sup>4</sup> While there have been negative ramifications from growth of consumer credit, the advantages to a network of systematic information sharing remain instructive.

## Regulatory Structure

Until the 1960s, the credit reporting industry was largely unregulated – there were few laws of general application regulating how a company collected and shared information about individuals. A patchwork of local and state laws arose in response to the important consumer rights involved and the need to ensure the integrity of information used by regulated lenders.

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<sup>1</sup> Companies such as Dun & Bradstreet offer similar services for commercial firms. This paper is limited to consumer sector.

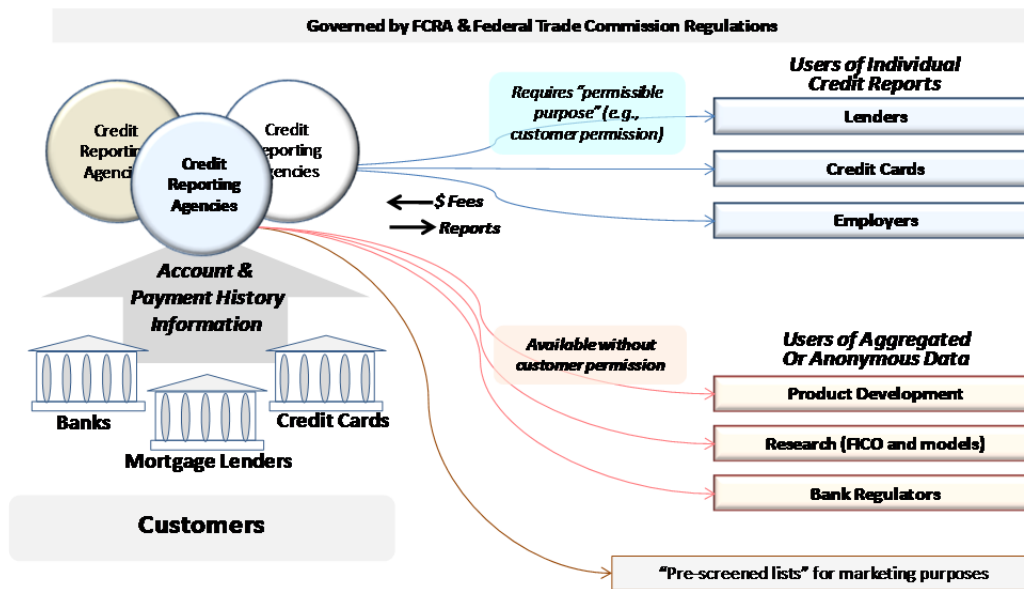
<sup>2</sup> This data is drawn from the charts in Federal Reserve's Series G.19 (Consumer Credit) reports showing current dollars, not seasonally adjusted.

<sup>3</sup> Lenders in the U.S. today typically provide customer account information to more than one credit reporting agency. Users of credit reports have many choices of providers with variations in service levels, price, and products. There are a few standard data protocols that appear to be used widely.

<sup>4</sup> Credit scores are typically understood to predict relative performance among a set of customers, not absolute performance. That is, a person with 800 is a certain percentage more likely to perform as obligated than a person with a lower score.

Congress enacted the Fair Credit Reporting Act (FCRA) in 1970. The FCRA expressly permits lenders to share customer account information with “credit reporting agencies” (CRAs), and CRAs may share the information with requesters that have a “permissible purpose,” such as customer permission or an existing loan with the individual. The FCRA preempts certain state and local laws relating to the use and sharing of credit information.<sup>5</sup>

**Figure 1.** Under the Fair Credit Reporting Act, lenders share consumer account information with reporting agencies which in turn create reports and verify recipients are authorized to receive the information.



Lenders, CRAs, and users of credit reports operate with substantial regulatory certainty under the FCRA – not just for the right to exchange and obtain customer information, but for how the information is exchanged. The FCRA makes the reporting agency responsible for assuring that any recipient of a customer’s credit information has a “permissible purpose,” and any person or company that obtains information without a permissible purpose could be liable for severe penalties. Lenders that contribute customer information to a CRA are generally safe from liability if the agency shares information with an entity that does not have a permissible purpose. The FCRA does not dictate how the CRA must verify the permissible purpose, does not require any specific forms or signatures.

A CRA may allow use of credit information without a permissible purpose, such as for research or product development, if the information does not reveal a specific customer’s identify – such information is not a “credit report” under the statute.<sup>6</sup>

The FCRA has been corrected several times by Congress, notably with amendments in 1996 and in 2003. But the Act remains subject to important criticisms that require correction. A prominent problem is the ability to share and use credit reporting information for marketing

<sup>5</sup> The extent to which FCRA preempts state law that might apply to a transaction that is governed by the FCRA has been the subject of litigation. See 8 A.L.R. Fed. 2d 233, *Preemption of State Law by Fair Credit Reporting Act*.

<sup>6</sup> Even limited information about a specific person, such as whether he or she has an open mortgage account, could be defined as a “credit report” triggering requirements of the Act.

purposes through “pre-screened lists,”<sup>7</sup> and it is persistently difficult for consumers to correct errors in reports.

The credit reporting system in place today has been shaped over the years by the push and pull of markets, consumer advocacy, private litigation, regulatory oversight, enforcement action. In each case there appears to be general acknowledgement of multiple objectives – increasing access to credit, ensuring customer privacy, and insuring integrity in lending.

A 2002 report to the Federal Trade Commission summarized the industry in this way: “*All of the relevant economic analyses, case studies....[and] reports provide a remarkably consistent response.... They demonstrate that the voluntary national credit reporting system that has evolved under FCRA has generated extraordinary benefits for individual consumers and the nation as a whole. National credit reporting has helped to make the United States the world leader in the development of competitive consumer and mortgage credit markets.*”<sup>8</sup>

## Landscape for Sharing Utility Information

Many stakeholders in the utility sector have identified better access to energy usage information as an important objective to enable better access to energy services, to facilitate efficiency programs, and to promote market transformation by enabling companies to provide new products and service using the customer information that is currently difficult to obtain.<sup>9</sup> While many advocates emphasize that better availability of information will prompt innovation, the need to improve access to data is supported by current market demand for existing products and services.

One example can be seen in the many companies that today offer services that use meter data for intelligence and diagnostics of building systems – a service often called “continuous commissioning.” Most appear to rely on the building owner to install submeter devices as the primary source of information. Research suggests information from smart meters, millions of which are in place today, could provide diagnostics for customers without the need to install new hardware.<sup>10</sup>

Another important example is seen in the initiatives of many utilities to deliver better information to customers on energy use, including benchmarking information. One prominent company, OPower, has received considerable attention for producing efficiency gains. These initiatives have in a short time produced compelling evidence that better information can enable customers to better manage energy use.<sup>11</sup> These are first-generation tools that are likely to

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<sup>7</sup> The pre-screened list exception permits a company to purchase a list of people with certain credit attributes so long as a “firm offer of credit” is made.

<sup>8</sup> Staten & Cate, report to the Federal Trade Commission, 2002.

<sup>9</sup> For a discussion of the benefits of better access to meter data, see Dept. of Energy, *Data Access and Privacy Issues Related to Smart Grid Technologies*, Oct., 2010. For a discussion of how access to usage can inform financing decisions, See *Recognizing the Benefits of Energy Efficiency in Multifamily Underwriting* Report from Deutsche Bank and Living Cities, Jan. 2012. For a discussion of services that deliver actionable efficiency advice based on smart meter data, See Kolter and Johnson, “*REDD: A Public Data Set for Energy Disaggregation Research*,” located at [redd.csail.mit.edu/kolter-kddsust11.pdf](http://redd.csail.mit.edu/kolter-kddsust11.pdf).

<sup>10</sup> Prof. Carrie Armel provides a good discussion of the potential for diagnostics from smart meter data in her presentation found here: [www.ccst.us/meetings/speakers/presentations/2012/Feb/020812Armel](http://www.ccst.us/meetings/speakers/presentations/2012/Feb/020812Armel).

<sup>11</sup> Utilities such as PG&E, Centerpoint, Xcel, among others, deserve credit for their leadership in deploying such tools and services, either through vendors such as OPower or on their own. For a good description of M&V methodology use and results of one implementation see Cooney, Kevin, *Evaluation Report: OPower SMUD Pilot Year 2*, Navigant Consulting, February, 2011 (found on the CPUC website [www.cpuc.ca.gov](http://www.cpuc.ca.gov)).

improve with feedback cycles and development. Some utilities have recently begun to make meter data available in a “downloadable” form in addition to the traditional bill.<sup>12</sup>

Efficiency programs will likely find valuable uses for customer energy use data if it is more accessible. For example, financing programs offered by non-utilities to support investment in efficiency improvements often seek to correlate energy expense changes with improvements made and loan results, but doing so can be difficult without systematic access to data.<sup>13</sup>

## Utilities Burdened by Regulatory Uncertainty

For most utilities, a highly uncertain regulatory landscape presents obstacles to establishing a regular, systematic process to share customer information with service providers that have the customer’s permission.

To enter an arrangement or establish processes to share customer usage information with a third-party, with the customer’s permission, a utility must assess multiple federal statutes and applicable state law – not just for the general “right” to share the information, but for how to fulfill the request in terms of documenting permission, validating identity of the account holder, whether a signature is required, record retention, validating the identity of the recipient, confirming the recipient’s commitment to use the data in accordance with policy, and so on.<sup>14</sup>

Central to the federal privacy regime is the Gramm Leach Bliley Act (GLB).<sup>15</sup> GLB requires “financial institutions” to provide customers with a privacy policy and disclosures that define how the institution will and will not share nonpublic personal financial information about a customer with other companies or individuals. A “financial institution” is defined broadly as a business that is “significantly engaged” in “financial activities” including lending money and collecting debts.<sup>16</sup> GLB requires financial institutions to provide customers with the ability to “opt out” of any information sharing arrangement.<sup>17</sup> While sharing information upon the request of the customer arguably would satisfy an opt-out requirements, it raises questions about the mechanics of obtaining and documenting the permission and the utility’s privacy policy.

A utility proposing to share a customer’s energy usage information must also examine whether it becomes a Consumer Reporting Agency under the Fair Credit Reporting Act (FCRA). A “consumer report” means “information...bearing on a consumer’s credit worthiness, credit

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<sup>12</sup> PG&E’s implementation of “Green Button Initiative” is described on their website: [www.pge.com](http://www.pge.com).

<sup>13</sup> A recent Cal. PUC decision recommends creating a new “database” to attempt to combing information from financing programs with energy usage data. See Rulemaking 09-11-014, *Decision Providing Guidance on 2013-2014 Energy Efficiency Portfolios and 2012 Marketing, Education, and Outreach*, 05-10-2012.

<sup>14</sup> This is not intended as a legal analysis of the specific question, but rather to illustrate the uncertainty attendant to the practice. Any company seeking to share customer information at scale must review multiple federal statutory regimes for possible application, including the Health Insurance Portability and Accountability Act (“HIPAA”), the Children’s Internet Protection Act (CIPA), The Electronic Communications Privacy Act (ECPA), Securities and Exchange Commission regulations on disclosure of material non-public information, the Gramm Leach Bliley Act, the Fair Credit Reporting Act, the USA PATRIOT Act, the Americans with Disabilities Act (ADA), and more.

<sup>15</sup> Gramm Leach Bliley Act. Pub. L. 106-102, codified at 15 U.S.C. 6801 *et seq.*

<sup>16</sup> The Bank Holding Company Act and Federal Reserve Board regulations do not address utility companies, “financial activities” include: (i) lending money or securities, (ii) providing financial, investment or economic advisory services, (iii) debt collecting, and (iv) providing real estate settlement services.

<sup>17</sup> Note that when GLB was passed in 1996, Congress expressly considered and rejected an “opt-in” regime, requiring an express consent in order to share a customer’s information. Under the “opt out” regime that was implemented, companies may make consent to the information sharing policy a condition of receiving their services. Also note 502(b) of GLB creates an exception to the opt out rules for sharing information with a company to perform services for or functions on behalf of the sharing party (a financial institution).

standing, credit capacity, character, general reputation, personal characteristics, or mode of living.” A utility delivering information about a customer’s energy usage would likely want to avoid creating risk it would be deemed a credit reporting agency under the FCRA.<sup>18</sup>

Most states have laws of general application that govern whether a company may share customer information with any other entity. Many states also have statutes or PUC regulations specifically addressing whether and how a utility may share customer information with another commercial firm. California and Colorado recently implemented requirements prompted by implementation of smart meters that are instructive.

In California, “[a]n 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 aggregated data] or upon the consent of the customer.”<sup>19</sup> The California PUC in 2011 adopted rules that permit a utility to disclose energy usage information only with the permission of the customer and with utility service providers to perform ordinary business functions. The PUC rules also do not detail how a utility should receive, document, process any customer requests for information and in what time period. The rules do not expressly authorize a utility, or multiple utilities, to engage a vendor to manage the permission process and fulfill consumer requests.<sup>20</sup> California statutes generally allow electronic permissions in certain cases in which written permission is otherwise required.

The Colorado PUC also has addressed this subject. In 2011 the Colorado PUC implemented new regulations stating: “A utility *shall* provide [energy usage information] to any third-party recipient to whom the customer has authorized disclosure...” (emphasis added). There is no reference to time period or mechanism to fulfill any customer request. Colorado regulations also require that the disclosure be made free of charge to the customer or another recipient, and that the utility offer to deliver the information “in electronic machine-readable form.” Section 3028 requires utilities to use a specific customer consent form that requires both the customer and the proposed recipient to complete sections for each transaction.<sup>21</sup>

Section 3031 permits Colorado utilities to provide “aggregated reports” without customer consent so long as personally identifiable information is removed. The provision is not clear whether this reporting function is discretionary for the utility or if a covered utility is required to provide such reports upon request, or if researchers may be provided access.

In many states, publicly owned and operated utilities may be subject to requirements applicable to governmental entities, which generally impose higher level of strictness with regard to sharing personally identifiable information with any commercial firm.<sup>22</sup>

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<sup>18</sup> I do not attempt to address here why many utilities do not currently deliver customer payment information (i.e., delinquencies) to credit reporting agencies.

<sup>19</sup> Sections 8380 and 8381 (enacted in 2010 as SB 1476, and amended in 2011 by SB674). See Cal. Pub. Util. Code Section 8380, et. seq.

<sup>20</sup> The PUC rules also do not expressly address whether a utility’s compliance with Section 8380 and the PUC rules would necessarily satisfy other state law requirements related to customer privacy, such as the California Information Privacy Act, which requires all businesses to follow certain confidentiality practices for customer information. Cal. Civ. Code Section 1797.81, et. seq. The California Financial Information Privacy Act also requires certain disclosures and consumer “opt in” to the data sharing practices of companies subject to the Act, which applies to “financial institutions” using a definition similar to that used in GLB.

<sup>21</sup> Consent form provided by the Colorado PUC can be seen on their website: [www.dora.state.co.us/puc/rules/723-3\\_ConsentToDiscloseUtilityCustomerData.pdf](http://www.dora.state.co.us/puc/rules/723-3_ConsentToDiscloseUtilityCustomerData.pdf)

<sup>22</sup> I do not address questions of law enforcement inquiries or state action related to energy usage data and whether such access to energy usage information raises questions under the Fourth Amendment to the US Constitution or

## Analysis and Key Findings

A utility today could deliver to its customers, on its own or through vendors, products and services that make use of customer meter information. The experience of the consumer credit industry strongly suggests that the market is more likely flourish if multiple competing companies have symmetrical access to the essential data, rather than being dependant on a bank, or a utility, as the case may be, to permit access to the essential information and to select the services its entire customer base should have the option to receive.

To draw a comparison, imagine a large bank with a policy to not share any customer credit history with any automobile lenders, or a policy to only share customer credit history with only one select auto lender. The market for auto loans is more likely to be robust and active if bank policy is to uniformly make customer credit history available to the auto lender the customer selects.

Policymakers analyzing how to encourage access to services that make use of energy usage information have frequently focused on the utility customer's right to privacy – the need for limitations on any third-party obtaining utility information without the customer's permission – and on the customer's "ownership" of energy information or right to obtain it from the utility. While those fundamental matters are important, it is critical to first establish how a utility would share a customer's energy usage information with a company that has the customer's permission – that is, what is the process used for the most common situation?

In a market with automated, scalable tools that rely on standard data sets, process is equal to the substantive right. That is, a customer's right to obtain information will not have much practical value if it is slow or difficult to obtain, or is only delivered on paper, or cannot be automated because the utility requires a paper form or a wet-signature. Companies will not be in a position to offer products and services that depend upon use of the data. A slow, paper-laden process prevents companies from building tools that use the information, and that is then seen as lack of market demand which is cited to justify not investing in a systematic process.

The experience of the consumer credit sector suggests utilities, regulators, consumer advocates, and other stakeholders should focus on a workable process related to energy usage data in order to encourage a more efficient, effective marketplace.

Some advocates argue that there will be utilities unwilling to share customer information with a vendor that has a customer's permission. I do not attempt in this paper to address that argument. Demonstrating a process that works, even if only in a narrow set of transactions or in a handful of "use cases," can be a powerful inducement to other market participants.

### Specific Considerations to Encourage Innovation

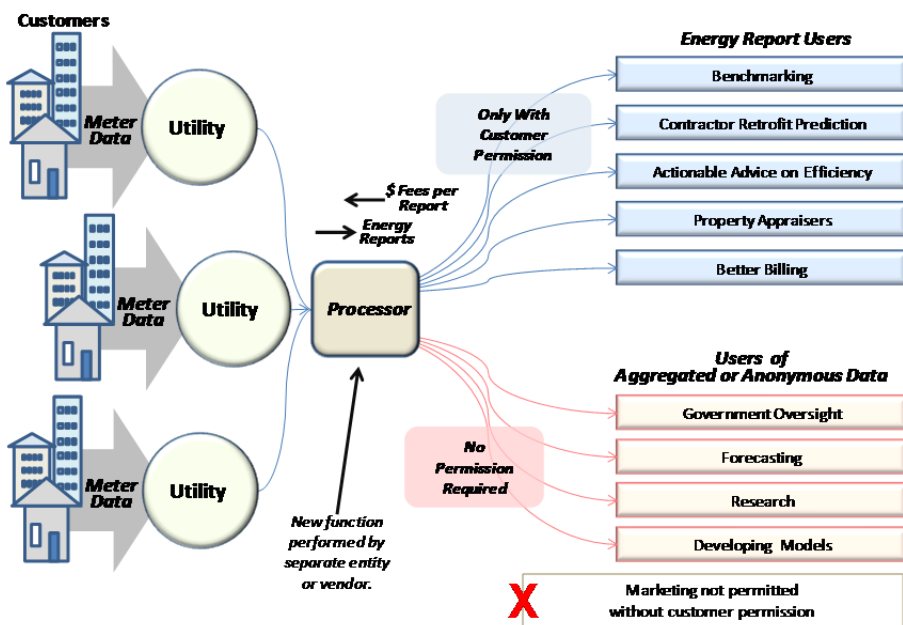
Regulators and policymakers are in a position to assist utilities to implement systematic processes to support modern transactions. Utilities today face a complicated legal and regulatory landscape when considering proposals to share customer usage information with users, even with the customer's permission. The regulatory uncertainty prevents innovation and exploration of

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personal rights to privacy. For a full discussion of those issues, See Stanford Technology Law Review, *Taking the Long View on the Fourth Amendment: Stored Records and Sanctity*, February 2, 2008.

possible solutions. Reducing this uncertainty can help forward-leaning utilities and innovative vendors to implement processes that work.

Figure 2. Model to consider with utilities outsourcing processing function to a vendor



Specific actions to consider based on lessons learned in the consumer credit industry:

**Expressly authorize utilities to automate the permission and fulfillment process.** Utilities and prospective vendors will be in the best position to determine how best to manage customer requests for data and to fulfill them, and methods will depend on many local factors. It is useful to consider the process used by credit reporting agencies and lenders. The CRAs maintain a rigorous approval process for on-boarding companies that wish to obtain credit reports. In exchange requesting reports at the point of sale is fast and automated. A company, such as a consumer lender, will not be able to make a request for consumer reports without clearing the CRA’s on-boarding process. The lender must attest and guarantee that it will only make a request if it has a “permissible purpose.” The CRA will certify that the lender does generally have a permissible purpose. The lender must show reasonable safeguards against improper disclosure, a clean regulatory compliance record, demonstrate record retention practices, and in some cases post a bond against potential liability for non-compliance.

Only upon certification may a user build a data integration to the reporting agency. The user reports customer identification information and may obtain reports. This eliminates the need for a manual review of each permission or manual work to distribute the requested records to the recipient. It enables a fast process with high standards for data integrity, which fits with customer expectations and market requirements. To work, this process requires substantial quality assurance programs, serious regulatory enforcement, policing improper access, and substantial penalties for non-compliance.

**Authorize utilities to use service providers to manage permission and fulfillment.** Managing permissions, data integrations, creating standard reports, and fulfilling thousands or even



millions of requests for customer information would be a burdensome process for a bank or a utility. Lenders are able to essentially delegate this function to credit reporting agencies. This unburdens thousands of lenders from each developing redundant systems and processes. It makes business more efficient for report users, avoiding integration to and tracking of unique procedures for thousands of different banks.

Permitting utilities to outsource this function appears to make sense. See Figure 2 above. Rather than have each utility build duplicative systems and processes for tracking permissions, utilities could engage a vendor to manage the permission-based sharing process. An express condition for such an arrangement would be that the vendor could only share a customer's energy usage information with a third-party under the same conditions that would apply to the utility – in most states, this will be if customer permission is granted. And, each utility could manage customer-facing branding arrangements with the vendor.

Multiple companies could potentially compete on service levels and other attributes with both utilities and the market of potential users of “building energy reports.”

It is possible that a utility under existing law could engage a vendor to perform the functions described here. Making clear that it is permitted would give the utility and vendor additional certainty to invest in the systems required to implement it.

**Encourage access to data for research and modeling.** Important developments in the consumer credit sector resulted from analysis of patterns across populations of consumers. Credit scoring, for example, requires examining patterns across large numbers of consumers over time – first using lenders' data on their own customers, then using the much larger databases of credit bureaus. The models are statistically robust. This engenders confidence in credit decisions by lenders and investors – not that the outcome of a specific credit decision can be predicted, but that over a pool of thousands of consumers, the distribution of outcomes is likely to conform to the distribution of the model. Fair Issac, Co. and other could not have developed reliable scoring models by relying on individual customers to “opt-in” to allow use of their credit history for the modeling exercise.

Utilities, or vendors with access to customer data, should be expressly authorized to permit companies to access central data repositories without customer permission so long as the information is aggregated or anonymized. But it is important to enable management of the systems in a way that retains the ability to match across data sets by individual.<sup>23</sup> Information at the address level can be identified with unique labels before stripping the personally identifiable information, such as address, from the results.

Innovation in the utility sector would be encouraged with this type of access, and utilities should be authorized and encouraged to permit such access so long as the data is sufficiently anonymous or aggregated. Once again, delivering this function a scale could be burdensome to a utility, but enabled by a vendor with systems built to provide a similar service to multiple utilities and with processes to ensure compliance.

As an example, a lender may seek to understand energy expenses of certain borrowers. It could obtain insights by matching energy usage data by property address with data from its own databases showing loan amount, appraised value, square footage, and other factors.

Another example is seen in benchmarking services that provide customers information about their energy as compared to a pool of other similar customers. To do this, the provider

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<sup>23</sup> The article by Avery, Calaem, and Canner has a discussion of the importance of credit reporting agencies to the work of bank regulators and methods used to match sets while maintaining anonymity.

needs access to the large pool of information in order to define the cohort across multiple dimensions. If greater access were permitted as described, benchmarking companies would have the ability to perform cohort analysis on anonymized data so that when a individual customer requests the service, the company can obtain specific information about that customer from the utility and have the cohort analysis performed.

**Directly address customer expectations of privacy.** Customer privacy is a paramount consideration for utilities, financial institutions, and the customers of both. The analysis in this paper assumes that customer permission is required for all sharing of a customer’s energy usage information. Even with that express condition, additional attention to customer expectations and perception will be required.

Financial institutions rely on the credit reporting system to deliver hundreds of billions of dollars each year in consumer credit. At the same time, credit bureaus, according to reports and anecdotal evidence, do not enjoy warm feelings and affection by the same consumers that clearly value access to credit. This is not irrational or inconsistent consumer behavior – there are legitimate complaints about the credit reporting agencies, there is occasional misbehavior, and the “pre-screened list” loophole in the FCRA should be corrected.

It makes sense for all stakeholders in the utility sector to be cautious and careful about any proposals to enable greater access to customer energy usage information. This paper attempts to identify specific attributes of the consumer reporting agencies that have proven useful and that appear to make sense in the utility sector – it does not argue for wholesale replication of the FCRA framework.

The following elements should be highlighted as primary protections of customer privacy interests: i) In every case access to customer-specific information would allowed only with customer permission; ii) Use of customer information for “pre-screened lists” without permission would not be permitted; iii) Customers must be able to check the accuracy of information and make corrections as they would in their routine utility bill.<sup>24</sup> And, iv) Any entities obtaining energy usage data for distribution would be subject to additional regulatory requirements and oversight to ensure data security and confidentiality.

A review of literature suggests the credit reporting agencies generally have a record on privacy and data security that is better than the public perception of it, once use of “pre-screened lists” are separated out. The Privacy Rights Clearinghouse organization tracked the “top data breaches” in 2011 and no breaches by major credit reporting agencies are included, for example.<sup>25</sup>

There are companies that are able to obtain credit reports from a credit reporting agency without a legitimate permissible purpose.<sup>26</sup> These incidents are typically widely reported in part due to the enforcement action taken by the FTC and the need to alert the public due to the possibility of financial harm to consumers involved and the ability of consumers to monitor their accounts. It is interesting that a larger number of significant breaches appear to occur at financial institutions than at the credit reporting agencies.

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<sup>24</sup> The FCRA includes a self-policing mechanism that is useful: a CRA is required to include a notation on each report when a company obtains it, allowing customers to confirm permission was granted.

<sup>25</sup> Privacy Clearinghouse maintains a summary of enforcement actions on its website [www.privacyrights.org](http://www.privacyrights.org).

<sup>26</sup> See FTC recent settlement with three credit report re-sellers that were hacked, enabling unpermitted access. <http://www.ftc.gov/opa/2011/02/settlement.shtm>. ChoicePoint had a large data breach in 2004, which involved both credit reports and information not regulated by the FCRA. Similarly, Lexis/Nexis had a data breach in 2004 that involved a combination of private information and public information assembled from public records.

There is a reasonable basis to conclude that allowing a utility to outsource management of distribution of customer reports to a vendor, with proper oversight, would not reduce customers' privacy interests, since risk of a breach is present with the data housed at a utility. The primary risks appear to be a rogue employee who accesses reports outside of company policy, and accidental loss of a laptop computer with customer information.

Certain risks arise with any sharing of information – whether it occurs by a utility directly or is performed by a vendor. Since customer permission is a pre-condition for any sharing, it is likely customers are making the conscious trade-off in favor of obtaining the products or services involved. It is arguable that a specialized company might execute information exchanges with customer permission with greater integrity than a utility due to specialization and scale.

Enabling a firm to manage customer information and sharing for a utility would require careful attention to regulatory requirements, oversight, and enforcement for data security, privacy and other similar matters. It is beyond the scope of this paper to outline the terms of such oversight. Under the FCRA, for example, penalties for non-compliance can be severe and in some cases criminal penalties can apply.

**Permit fee for service model.** A few for service model has enabled credit reporting agencies to invest in modern systems for the management of customer information and the various permissions required to share it with authorized credit report users, rather than every bank implementing such systems.

A vendor that manages the permission and distribution process for multiple utilities could have a revenue model that similarly supports the business, provides incentives for high service levels, and enables investment in people, processes, and systems. Certain third-party users of “energy reports” could potentially pay a fee that makes sense in the market on a ‘per report’ or subscription basis. The homeowner or account holder could be permitted certain access to their information without a fee.

## **Conclusion**

A systematic and robust consumer credit reporting framework enabled growth and innovation in the delivery of credit services and products to U.S. consumers over the past 50 years. The credit industry is rich with technology and tools to make sense of large amounts of data. Central repositories of consumer credit information, managed by reporting agencies, have enabled new product development, more effective regulatory oversight, and research.

As policymakers and regulators consider how to position utilities to manage large amounts of energy usage information and how utility customers will obtain energy-related products and services using that data, there are instructive lessons in the experience of lenders, their customers, and credit reporting agencies. Specifically, utilities should have express regulatory authority to automate the information-sharing fulfillment processes and to engage a vendor to manage the information-sharing function on their behalf. These and the other attributes noted in this paper would create a more robust marketplace and encourage innovation.

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