

Office of the President

TO MEMBERS OF THE COMMITTEE ON FINANCE:

ACTION ITEM – CONSENT

For Meeting of May 11, 2016

APPROVAL OF INDEMNIFICATION TERM IN DATA REQUEST AND RELEASE PROCESS FOR NON-DISCLOSURE AGREEMENT WITH ENERGY UTILITIES, DAVIS CAMPUS

EXECUTIVE SUMMARY

This item seeks approval for the President of the University or her designee to be authorized to enter into a Non-Disclosure Agreement with four investor-owned energy utilities in the State: Southern California Gas Company (SCGC), San Diego Gas and Electric (SDG&E), Pacific Gas & Electric (PG&E), and Southern California Edison (SCE) by which the University would assume third-party liability, which is reserved to the Regents under Standing Order 100.4(dd)(9). The data to be released to UC Davis pursuant to the Non-Disclosure Agreement is needed to complete the campus's energy and water efficiency research projects. Regents' approval was granted in December 2015 for two similar projects, one funded by SCGC and a second project funded by the California Department of Water Resources (DWR) that required data from SCGC, PG&E, and SCE. This item requests approval to enter into a Non-Disclosure Agreement with PG&E and SCE, with indemnification language identical to that which was approved in December 2015 for a project funded by the California Energy Commission (CEC). In addition, this item requests approval and permission to enter into potential future Non-Disclosure Agreements with the four investor-owned California energy utility companies, all with identical indemnification provisions, to obtain the same or similar data necessary for the UC Davis Center for Water-Energy Efficiency's research.

RECOMMENDATION

The President of the University recommends that the Committee on Finance recommend to the Regents that the President be authorized to approve and execute the California Public Utilities Commission standard Non-Disclosure Agreement with Southern California Gas Company, San Diego Gas and Electric, Pacific Gas and Electric, and Southern California Edison, which contains an indemnification provision by which the University would assume third-party liability for any damages or claims related to UC Davis' use, maintenance, or disclosure of the utilities' customer data.

BACKGROUND

The Center for Water-Energy Efficiency

The UC Davis Center for Water-Energy Efficiency (CWEE) is focused on leading innovations in water- and energy-efficient technologies and policies. CWEE goals and objectives include: identifying, developing, and testing innovative technologies and practices for aggressive improvements in water-energy efficiency; designing policies and outreach activities that facilitate market access and penetration of innovative water-energy conservation strategies and technologies; and serving as a collaborative hub for universities, industrial partners, and government agencies to advance water-energy research, education, technology development, and policy assessment.

The Research

CWEE was granted a \$429,000 sub-award from the California Energy Commission (CEC) via the grant recipient Wexus Technologies that requires the team to analyze and benchmark the groundwater pumping energy inputs to a variety of crops grown in the Salinas and Central Valleys of California. The study is to last from June 2015 through June 2018 with preliminary benchmarking results due in 2016.

To perform the research, CWEE must have access to electricity data for agricultural users in the Central and Salinas Valleys, including personally identifiable information (PII) such as account number, residential address, zip code +4, telephone number, owner name, high-resolution energy electricity usage data, utilization of utility rebates, billing cycle data, enrollment in electronic bill pay, and date of meter installation.

The team would like to utilize the model Non-Disclosure Agreement provided by the energy IOU's regulatory agency, the California Public Utilities Commission (CPUC) to secure agreement for the transfer of customer data as soon as possible to ensure that the University is able to meet the project milestones outlined in the grant agreement with the CEC and Wexus Technologies.

In addition, the team would like to request approval for the President or her designee to execute Non-Disclosure Agreements with the four investor-owned utilities: Southern California Gas Company (SCGC), San Diego Gas and Electric (SDG&E), Pacific Gas & Electric (PG&E), and Southern California Edison (SCE) in support of future research projects by the CWEE.

The Non-Disclosure Agreement

The information sought by CWEE is protected from disclosure to third parties without customer consent, except in limited cases, by Public Utilities Code Section 8380. Recognizing the increasing demand for such information and the public benefit of energy efficiency studies such as those being conducted by CWEE, on May 1, 2014, the CPUC issued Decision 14-05-016 titled, "Decision Adopting Rules to Provide Access to Energy Usage and Usage-Related Data While Protecting Privacy of Personal Data," (the CPUC Decision).

Pursuant to the CPUC Decision, qualified researchers seeking covered information will be required to sign a Non-Disclosure Agreement with the utility to ensure compliance with the

CPUC Decision and to confirm their willingness to accept liability for data breaches or prohibited disclosures. The CPUC Decision specifically states that the University of California is subject to this requirement.

As a condition to providing PII to CWEE, SCGC has advised that the University must enter into a Non-Disclosure Agreement identical to the sample provided at Appendix B of the CPUC Decision. The Non-Disclosure Agreement includes the following indemnification provision:

Recipient shall defend and hold harmless Utility and its affiliates, officers, directors, employees, agents, representatives, successors and assigns, from and against any and all losses, causes of action, liabilities, damages and claims, and all related costs and expenses, fines, penalties, or interest, including reasonable outside legal fees and costs, arising out of, in connection with, or relating to Recipient's use, maintenance and/or disclosure of Data.

Standing Order 100.4(dd)(9) provides that Regents' approval is required for agreements by which the University assumes liability for persons other than University officers, agents, employees, students, invitees, and guests. Although the University attempted to negotiate the indemnification provision in the Non-Disclosure Agreement to comply with Standing Order 100.4(dd)(9), SCGC has taken the position that it is unable to make modifications to the model Non-Disclosure Agreement provided by the CPUC and it is anticipated that SDG&E, PG&E, and SCE will do the same. Accordingly, to proceed with the research projects, CWEE must obtain permission to enter into the Non-Disclosure Agreements.

Future Agreements

CWEE's research in this area is anticipated to last at least through 2026. While CWEE will continue its efforts to negotiate the indemnification provision of the model Non-Disclosure Agreement into compliance with Standing Order 100.4(dd)(9), as indicated above, CWEE requests that the permission granted in this item include Non-Disclosure Agreements with SCGC, SDG&E, PG&E, and SCE, using the model Non-Disclosure Agreement created by the CPUC and with identical indemnification provisions, where obtaining the data is necessary for CWEE's continued work on these types of research projects.

Risk Assessment

In an effort to mitigate the risk of third-party claims against the University arising from the provision of customer data and PII by SCGC, SDG&E, PG&E, and SCE to the University, CWEE has developed a comprehensive Trust Framework to manage internal operations associated with private critical infrastructure information (PCII) and personally identifiable information (PII). The Trust Framework outlines the technical standards and protocols and the business, legal, and operational policies associated with PCII and PII. The Data Policy Management (DPM) policy/rules accommodate the following standards:

- NIST SP 800-171
- Control Objectives for Information and Related Technology (COBIT):
<http://www.isaca.org/COBIT/Pages/default.aspx>

- Council on CyberSecurity (CCS) Top 20 Critical Security Controls (CSC):
<http://www.counciloncybersecurity.org>
- ANSI/ISA-62443-2-1 (99.02.01)-2009, Security for Industrial Automation and Control Systems: Establishing an Industrial Automation and Control Systems Security Program:
<http://www.isa.org/Template.cfm?Section=Standards8&Template=/Ecommerce/ProductDisplay.cfm&ProductID=10243>
- ANSI/ISA-62443-3-3 (99.03.03)-2013, Security for Industrial Automation and Control Systems: System Security Requirements and Security Levels:
<https://www.isa.org/store/ansi/isa-62443-3-3-990303-2013-security-for-industrial-automation-and-control-systems-part-3-3-system-security-requirements-and-security-levels/116785>
- ISO/IEC 27001, Information technology --Security techniques --Information security management systems --Requirements:
http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=54534
- NIST SP 800-53 Rev. 4, Security and Privacy Controls for Federal Information Systems and Organizations, April 2013 (including updates as of January 15, 2014).
<http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>

Although there is no comprehensive legal framework in the U.S. for data privacy or security, the U.S. Department of Commerce's National Institute of Standards & Technology (NIST) released a Framework for Improving Critical Infrastructure Cybersecurity which is rapidly becoming the preferred standard for transactional diligence. The measures being voluntarily taken by the University with respect to the data sought by CWEE meet the standards of the Framework.

As with data privacy, there is no single standard, rule or guideline for an organization's information security posture. Regulators are focusing on transactional diligence (where most standards are weakest) as even more essential to managing compliance, given the miscellany of sector-specific, technology-specific, class-specific laws, regulations, and directives coupled with a wide range of self-regulatory and industry standards. NIST SP 800-171 framework standards, which, as set forth above have been adopted by the University for purposes of the CWEE's research projects, meet transactional protection requirements for PCII and non-PCII qualified functions.

Accordingly, CWEE believes that it has appropriate standards and measures in place to protect the security of all PCII and PII that it receives for purposes of the CEC and future studies, and, therefore, that risk to the University has been mitigated to the extent possible.