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VIA ELECTRONIC MAIL:

Mr. Jonathan Booe, Deputy Director  
North American Energy Standards Board  
c/o REQ Executive Committee  
801 Travis, Suite 1675  
Houston, TX 777002  
[jbooe@naesb.org](mailto:jbooe@naesb.org)

Southern Company Services, Inc., for itself and on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and its other affiliates (collectively, "Southern"), is pleased to have had the opportunity to participate in the development of the NAESB Data Privacy Task Force's ("Task Force") Model Business Practices for Third Party Access to Smart Meter-based Information ("SMBI"). Southern applauds the efforts of the Task Force and all of its members and contributors that have shaped the proposed Model Business Practices into the form currently being proposed to the REQ Executive Committee ("REQ EC") today. Southern generally supports the proposed Model Business Practices as voluntary guidelines for the industry and to further the deployment of smart grid technologies and hopefully the realization of smart grid-related benefits.

Southern sees great promise in smart grid technologies and has been deploying them for some time -- with a goal of having deployed 4.4 million smart meters across its geographic footprint. Southern has great appreciation for its relationship with its customers and takes very seriously the security and privacy of the SMBI of its customers.

After the discussions that took place on the June 27, 2011 Task Force conference call, and upon further reflection, Southern continues to have a few remaining concerns and additional thoughts that it wishes to share with the REQ EC. In particular, there are three (3) points that Southern considers important enough to warrant the REQ EC's consideration as it reviews the Task Force's draft:

**I. Third Party Screening / Eligibility Requirements**

**Concern:** The idea of screening or establishing eligibility requirements for Third Parties has been discussed in many policy circles. Although some have expressed doubt about the jurisdiction of state commissions over non-regulated Third Parties, others -- such as the California Public Utilities Commission in its recently proposed decision -- have decided that it can place restrictions on Third Parties indirectly through its authority over the regulated utility

and its tariffs. Public utilities commissions and utilities alike express concern about the administrative burdens of screening the anticipated numerous Third Parties that may enter the market to provide Retail Customer services. (It should be noted, however, that establishing objective eligibility requirements may eliminate the need for individual screening.)

In any event, a potential inequity and vulnerability awaits if no requirements for Third Parties are established. Distribution Companies are subject to oversight by their state regulators. Distribution Companies hold their contracted agents to the same standard because they are acting on the Distribution Companies' behalf. Distribution Companies may contractually hold accountable those Third Parties who directly enter into agreements with them to receive a Retail Customer's SMBI. However, Third Parties who enter into contracts directly with the Retail Customer are beyond any control of the Distribution Company, and may have no standard to which they must be held. Without some sort of check on or eligibility requirements for Third Parties, they will not be held to a comparable standard in the marketplace, nor sufficiently incentivized to vigorously protect its customers' privacy interests. Yet when a Retail Customer finds that its SMBI has been breached (or even worse, its identity stolen or compromised), it likely will turn – either in the first or last instance – to the Distribution Company for answers.

Regardless of who performs the screening or establishes the eligibility requirements (whether the state public utilities commission, the secretary of state's office, another relevant state agency, an independent third party or the Governing Documents), NAESB's Data Privacy Model Business Practices (while not defining any process) should at least refer to and recognize that some sort of screening process or eligibility requirements should exist confirming minimum Third Party security and privacy protections. Without some measure of third party screening/eligibility requirements, a vital protection for the Retail Customer is missing.

In its formal comments, Southern had suggested revising Principle REQ 22.1.7 and the Technical Definition of "Third Party" to incorporate the idea that a Third Party must be one that has not been disapproved by the Applicable Regulatory Authority ("ARA") or Governing Documents from receiving SMBI. Southern proposed this wording for two reasons:

- (1) Southern chose a *disapproval* process over an *approval* process in an attempt to lessen the administrative burden on the screening agency, presupposing that more third parties would qualify than be disqualified; and
- (2) by defining Third Party as one that *has not been disapproved*, it preserves the flexibility of a given state to not adopt any sort of screening process at all – as long as an otherwise qualified Third Party has not been *disapproved*, it may receive SMBI, and if no process is in place, then no Third Parties will have been disapproved.

It also bears noting that the current definitions of ARA and Governing Documents are broad enough such that a screening process or eligibility requirements need not necessarily be established by the state public utilities commission, but could also be implemented by statute, regulation, the Governing Documents, or any state or local regulatory or governing body.

On the last Task Force conference call, a few members expressed concern about the administrative burdens of a screening process. They also expressed concern, despite Southern's explanation of the language's flexibility as described above, that using the phrase "not been disapproved" may necessarily imply that some sort of approval / disapproval must be required.

**Solution:** Southern still believes that a screening process of some type or design for Third Parties should be in place, or a set of eligibility requirements should be defined, for the protection of Retail Customers. Upon further reflection, and in an attempt to mitigate the concern of the Task Force members regarding the originally proposed language, Southern now suggests replacing the negatively phrased "not been disapproved" language with positively phrased "has been permitted" language. Therefore, Principle 22.1.7 would read:

**REQ 22.1.7** A Third Party seeking or provided Smart Meter-based Information should be an identifiable Entity that is, ~~which is subject to permitted to receive Smart Meter-based Information~~ in accordance with the Governing Documents and ~~the~~ requirements of the Applicable Regulatory Authority, including applicable cyber security and privacy requirements.

Similarly the Technical Definition of Third Party would read:

**REQ.22.2.xt Third Party:** An Entity, ~~other than~~ that is permitted to receive Smart Meter-based Information in accordance with applicable law, regulation, the Governing Documents and any requirements of the Applicable Regulatory Authority, other than: the Distribution Company and its contracted agents, the Applicable Regulatory Authority, ISOs or other regional entities, which seeks or is provided Smart Meter-based Information, including any Entity under contract with the Third Party to perform the services or provide the products as described in the Retail Customer's Authorization.

Defining an Entity as one "permitted" rather than "not disapproved" may afford extra interpretative flexibility to the ARA to decide whether these phrases require a permitting process or not. One ARA could adopt these and decide that they require a permission/approval process. Another ARA could adopt the position that as long as neither the ARA nor the Governing Documents restrict a Third Party from receiving access, such Third Party would be technically "permitted." In either case, inclusion of this language in the Model Business Practices would convey the general principle that similar consumer protection measures should be in place for comparable situations, while still allowing maximum flexibility as to how those consumer protections should be implemented.

## II. Consideration of Costs

**Concern:** The Executive Summary states that the ARA should consider the costs to Distribution Companies of implementing these voluntary model business practices. The costs to Distribution

Companies of implementing all of the measures contained within these Model Business Practices could be significant, and the ARA will need to make important decisions with respect to the balancing of the benefits afforded to customers in implementing some or all of these measures versus their associated costs. Southern believes this point is worth repeating in the Principles section as well as the Executive Summary and therefore proposed this concept as Principle REQ.22.1.9 in its formal comments. Southern's suggestion, however, was rejected by the Task Force for reasons that were unclear to Southern, except to the extent that some members seemed to feel that the concept was sufficiently stated in the Executive Summary alone.

**Solution:** Southern continues to believe that, just as Distribution Companies across the country have made significant investments in smart grid technology deployments, the associated investments in the voluntary privacy policies and practices encouraged by these Model Business Practices could also be significant. The additional costs incurred by a Distribution Company to voluntarily adopt these customer protections should be considered. Other commenters went further to advocate inclusion of a provision that cost recovery should be granted. From a standpoint of regulatory certainty as well as consistency with cost recovery of other investments made for the benefit of the ratepayer, Southern continues to believe that costs incurred to adhere to these voluntary privacy protection principles ought to at least be generally considered by the state regulatory authority for prudence and reasonableness. Southern further believes that this point is important enough that it warrants its own emphasis within the body of the document itself, and not just in a sentence within the Executive Summary. Southern therefore re-iterates its suggestion that a new Principle be added that reads as follows:

[REQ.22.1.9 The Applicable Regulatory Authority should consider the costs to the Distribution Company of implementing these voluntary Model Business Practices and any associated practices.](#)

### III. Revisions to Definition of Smart Meter-based Information

**Concern:** As it currently stands, Smart Meter-based Information is defined as the following:

**RXQ.0.2.xx Smart Meter-based Information:** Information and data from a smart meter identifiable to an individual Retail Customer, as defined and governed by the Governing Documents and determined to be made available by the Applicable Regulatory Authority.

Southern's concern -- as expressed during the last Task Force conference call and as captured in its previously submitted redline comments (although not articulated in its cover letter) -- is that it appears to imply that information cannot be made available unless it is both "defined and governed by the Governing Documents" and there has been a determination by the ARA that such information is "to be made available". Southern believes this was an unintended implication by the Task Force. When Southern raised this issue on the call, one member raised the point that changing this definition would require re-vetting it through the NAESB Glossary Subcommittee a second time. Southern chose not to pursue the matter any further on the call.

Upon further reflection, however, Southern feels that the unintended restriction caused by this language is important enough to raise in these comments, even though it may need to be re-considered by the Glossary Subcommittee. SMBI should be any information otherwise fitting within the definition that is allowed -- but not necessarily determined – by the ARA “to be made available”. Moreover, SMBI may be defined by the Governing Documents, statute or regulation or some means other than the decision of the ARA. The intention of this language was to simply reiterate, as has been done throughout the document, that this entire document is subject to the Governing Documents and requirements of the ARA – the intention was not to restrict the definition of SMBI any further than that.

**Solution:** Therefore, given these considerations, Southern reiterates the change suggested in its formal comments, as follows:

**RXQ.0.2.xx Smart Meter-based Information:** Information and data from a smart meter identifiable to an individual Retail Customer, as defined and governed by the Governing Documents and ~~determined to~~which may be made available ~~by~~pursuant to the Governing Documents or the Applicable Regulatory Authority.

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Southern again wishes to thank the Executive Committee for allowing Southern to express its remaining concerns and further suggestions through the filing of these comments. Southern wishes to reiterate its appreciation for the Data Privacy Task Force co-chairs Christine Wright and Robin Lunt as well as each member of the Task Force for contributing to the discussions in order to improve this document from a wide variety of perspectives. To the extent you have any questions or concerns about any of Southern’s suggestions or concerns, either in this filing or in previous filings, please do not hesitate to contact myself or Brandon N. Robinson.

Respectfully submitted,

/s/ Cherry C. Hudgins

Cherry C. Hudgins  
Smart Energy Policy Manager  
Southern Company Services, Inc.

CC: Gordon G. Martin