

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Establishment of a	)	
Working Case for the Writing of a New	)	
Rule on the Treatment of Customer	)	
Information by Commission Regulated	)	File No. AW-2018-0393
Electric, Gas, Steam, Heating, Water,	)	
and Sewer Utilities and their Affiliates	)	
and Non-Affiliates.	)	

**COMMENTS OF UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI**

COMES NOW Union Electric Company d/b/a Ameren Missouri ("Ameren Missouri" or "Company"), and for its Comments on the Staff draft of a proposed new rule regarding the treatment of customer information, states as follows:

1. On June 27, 2018, the Missouri Public Service Commission's ("Commission") Staff submitted its *Motion to Establish Working Case* in order to address a potential draft rule for the treatment of customer information by regulated utilities. Staff noted that this is a subject currently reflected in multiple utility type-specific<sup>1</sup> Affiliate Transactions Rules, which are also currently the subject of a working case for potential consolidation. On July 11, 2018, the Commission issued its *Order Opening a Working Case to Consider a New Rule Regarding the Treatment of Customer Information*.

2. On August 9, 2018, Staff filed its *Staff Motion to Extend Comment Period and Expand Scope of the Working Case* ("Motion to Expand"). Staff noted that it "has become aware of interest among stakeholders to instill more robust protections for utility customers in relation to the implementation of the Advanced Meter Infrastructure ("AMI"),

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<sup>1</sup> 4 CSR 240-20.015(2)(C) for electrical corporations, 4 CSR 240-40.015(2)(C) for gas corporations, 4 CSR 240-80.015(2)(C) for heating companies, and 4 CSR 240-40.016(3)(C) for gas marketers. As noted in Staff's *Motion to Establish Working Case*, the treatment of customer information currently contained in each of the existing rules does not differ by utility industry.

or “smart meters.”<sup>2</sup> In order to address these concerns, which include the potential vulnerability of customer information, Staff requested the Commission issue an order to expand this case to include potential AMI-related vulnerabilities, and to consequently extend the comment date in this case until August 24, 2018. The Commission granted the *Motion to Expand* the same day.

3. Ameren Missouri appreciates the efforts Staff has extended to consolidate the appropriate treatment of customer information into one rule for all industries, and separate from the Affiliate Transactions Rules. This will give this important task – the protection of customer privacy by those entrusted with its care – the distinction and specific attention that it merits. The Company also appreciates Staff’s attention to evolving concerns and its request to address those concerns sooner rather than later.

4. Before it addresses the matters raised for discussion by this workshop, Ameren Missouri expresses to the Commission its ongoing commitment to be a good steward for the customer information entrusted to its care. The Company has not, and will not, sell or provide customer information to third parties for any non-utility related marketing. The Company will also continue to monitor, direct, and limit the way in which its third-party contractors access and utilize customer data. And the Company affirms that it intends to utilize customer usage information gathered at the meter only for the purposes of increasing the value of the energy services it provides to its customers.

5. In providing the information specifically requested by the Commission, Ameren Missouri will first address the AMI-related concerns. Then, the Company will provide comments on three items that should be considered as the examination and revision

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<sup>2</sup> *Motion to Expand*, p. 2.

of this draft rule move forward. Accordingly, the remainder of this pleading is organized as follows:

- The Company is planning ahead for AMI-related concerns, but currently, the call for additional measures is unnecessary.
- "Customer information" should be further defined;
- "Returning" information may not always be feasible in this electronic age; and
- The provision of customer-specific information as required by law should be added back to the rule.

### **AMI-Related Concerns**

6. Ameren Missouri is sensitive to the data privacy concerns of its customers, especially in light of several large-scale data breaches of the last few years. Many of these concerns are expressed by a recent article appearing in the Caldwell County News entitled, "Utility Smart Meters: Privacy Policies Needed," ("AMI Article"), which is included with these Comments as Attachment A. This article expressed three primary concerns:

- Customer information gathered by AMI could be breached at the home or at the utility;
- Utilities might sell the data gathered to third parties; and
- The existing data privacy laws are inadequate.

The Company believes that with a clarification of the applicable technological capabilities and existing laws will help alleviate these concerns. Accordingly, each of these concerns is addressed in more detail below.

7. First, Ameren Missouri notes that there appears to be some confusion about that AMI and AMR can and cannot do.<sup>3</sup> Both AMR and AMI transmit a customer's

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<sup>3</sup> Ameren Missouri does not currently have AMI capabilities; instead, it utilizes AMR.

encrypted usage information as logged by the meter, to the utility. Neither, however, collect, store, or transmit customer identifying information or usage data for individual appliances, lights, etc. As a result, even if someone were able to access and unencrypt data in an AMR or AMI meter, they would not be able to access any kind of customer information aside from the general usage patterns associated with that meter.<sup>4</sup>

8. Second, Ameren Missouri does not sell customer data to third-parties, since that is not allowed by the Commission's applicable laws. In fact, Ameren Missouri specifically (as required by current law) will not provide any customer information to a third party unless:

- It has the customer's permission;
- It has an agreement for services with a third party that strictly dictates how that information may be used (i.e., only for the contracted purpose and not for the marketing of the third-party's services); or
- It has received a Commission or court order, subpoena, city ordinance, safety-related request from a governmental entity, or other rule of law through which it shares a customer's information.

Even when that third-party is an Ameren Missouri affiliate, that information can only be used in a specified manner for limited purposes. Unless the marketing is being done specifically for Ameren Missouri's own purposes,<sup>5</sup> the Company never allows a third-party access to customer information for the sake of marketing.

9. Third and finally, Ameren Missouri notes that, even without detailed and specific Commission regulations covering numerous aspects of customer data privacy,

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<sup>4</sup> National Institute of Standards and Technology.

<sup>5</sup> For example, the provision of home energy usage reports to promote the implementation of energy efficiency measures.

numerous federal and state laws already exist that require the Company to closely guard this information including, but not limited to:<sup>6</sup>

- Financial Services Modernization Act of 1999;
- Federal Trade Commission ("FTC") Act;
- FTC's "Red Flag Rules"; and
- Missouri Data Breach Notification Law.

Ameren Missouri does not see a need for the Commission to establish another set of standards through which to protect this information, which is already well-regulated.

### **Defining "Customer Information"**

10. Given the amount of and manner in which a utility uses customer information, additional definition and clarification of what is and what is not specifically protected would be helpful. The definition contained in the current draft of 4 CSR 240-10.XXX(1) does follow the current trend of not requiring a combination of information (as many existing laws do) in order for the information to be considered personally identifiable. However, the definition is not necessarily clear about what information *can* be made publicly available.

11. To that end, Ameren Missouri suggests an overarching definition of "information," as it currently exists in the draft rule, with two subset definitions of "aggregate customer information" and "specific customer information." The Company has provided a complete mark-up of the proposed draft in Attachment B to this pleading.

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<sup>6</sup> This list does not include protections required by laws that address anything other than customer information, but which also influence the cybersecurity structure Ameren Missouri has in place, such as: Health Insurance Portability and Accountability Act of 1996; North American Electric Reliability Corporation's Critical Infrastructure Protection standards; Federal Energy Regulatory Commission's Critical Energy/Electric Infrastructure Information rules, etc.

a. The definition of "information" should specifically note that publicly available information will not be considered "information" for the purposes of this rule. The Company feels this is important because it should not be held accountable for information released via other means. For example, a customer may lodge a complaint, and as part of that complaint, may release his or her own account information publicly (e.g., the customer may disclose account matters if they decide to go to the press or pursue a matter in civil court). If the customer first releases this information, the Company should have the ability to use that information before the Commission freely in defending itself. The language proposed by the Company below mirrors the language found in Missouri's data breach notification statute, Section 407.1500 RSMo.

b. The Company also suggests a specific definition of "aggregate customer information," in conjunction with a new subsection (2) (discussed below), in order to make it clear that the current policy of allowing the release of aggregated customer information (e.g., average annual kWh usage by rate case, or amount of usage reductions achieved by a group of customers utilizing energy efficiency) will remain in place. While this provision is included in the draft rule, it currently appears near the end, and without significant definition.

c. Finally, the Company also suggests that "specific customer information" be added in the same form as the current draft's definition of "Customer information." Doing so will make it abundantly clear what information is specifically protected and subject to reporting requirements for breaches under this proposed rule.

6. Incorporating these suggestions, the proposed rule would look like this:

~~(B) Customer information means a subset of information in general, and includes but is not limited to one or more of the following items of one or more customers on the system of a covered utility that is identifiable with one or more particular customers: name, address, phone number, social security number, utility service usage, payment history, financial account, driver's license number, medical information, and health insurance information. Customer information includes information provided to a covered utility by an affiliated or nonaffiliated third party person, entity, or association.~~

~~(CB) Information means any data obtained by a covered utility that is not obtainable by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources. Information does not include information that is lawfully obtained from publicly available sources, or from federal, state, or local government records lawfully made available to the general public.~~

- ~~a. General or aggregate customer information means customer information that is aggregated or obscured in such a manner that no single customer is identifiable.~~
- ~~b. Specific customer information means a subset of information in general, and includes but is not limited to, one or more of the following items of one or more customers on the system of a covered utility that is identifiable with one or more particular customers: name, address, phone number, social security number, utility service usage, payment history, financial account, driver's license number, medical information, and health insurance information. Customer information includes information provided to a covered utility by an affiliated or nonaffiliated third party person, entity, or association.~~

### **The Provision of Customer-Specific Information as Required by Law**

12. The current versions of the rules regarding customer-specific information contain the certain language provision (underlined in the following quote), which is absent from the revised, consolidated draft:

Specific customer information shall be made available to affiliated or unaffiliated entities only upon consent of the customer or as otherwise provided by law or commission rules or orders....

As a public utility privy to certain customer-specific information, Ameren Missouri is often requested by various governmental entities to release customer-specific information

sometimes by means such as a subpoena or a city ordinance. Because of the rule as currently written, the Company has been able to provide the requested information in these circumstances. This means that, for example, if a police department is investigating a potential methamphetamine lab and an increase in electric usage may assist in a case, they might subpoena the utility for that information. Or if a city wants its fire department to know which customers install solar panels so that it can conduct appropriate safety inspections, it can pass an ordinance requiring us to provide that information. Omitting this provision from the revised, consolidated rule throws the ability of other legal options for appropriately garnering customer-specific information into question.

13. Additionally, the Company believes that, before the rule begins laying out conditions for affiliates and third-party nonaffiliated rules for the sharing of customer specific information, it is appropriate to lay out under which circumstances those provisions apply. Ameren Missouri recommends, then, that a new Section (2) be added to address the general availability of aggregate information, as well as to incorporate the comments regarding the provision of information pursuant to applicable law described in the prior paragraph.<sup>7</sup>

14. Accordingly, Ameren Missouri proposes the addition of the following language:

(2) General or aggregate customer information may be released without the affected customers' permission, and shall be made available to affiliates or third-party nonaffiliates upon similar terms and conditions. Specific customer information shall be made available to affiliated or third-party nonaffiliates only as specified below, or as otherwise provided by law, subpoena, regulation, ordinance, or orders.

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<sup>7</sup> With this proposed revision, the current Section (4) could be deleted.



## "Returning" Customer-Specific Information

15. 4 CSR 240-10.XXX(2)(A)5, as drafted, would require both affiliate and third-party nonaffiliates to return customer-specific information to the utility within 10 days of a written request. While Ameren Missouri does not disagree with the concept behind this provision, its execution in this exact manner may be difficult. For example, Ameren Missouri's affiliates and many of its vendors do not have information that *can* be returned. Instead, they have electronic access to the information. While it may be entirely appropriate to cut off a vendor's access as of a date certain and require its erasure, if necessary, from the vendor's systems, it may simply not be possible to request that information be returned. Accordingly, the Company suggests the following revision to 4 CSR 240-10.XXX(2)(A)5:

5. The affiliate or third party nonaffiliate shall, as appropriate, be either notified that its access to specific customer information has been terminated and that it shall make no further attempts to access said information, or directed to return to the covered utility, within ten (10) days following the receipt of a written request, all specific customer information provided to the entity. In either case, the affiliate or third party nonaffiliate shall provide the covered utility with an attestation that all replication of the information, if any, has been returned to the covered utility or permanently erased from its systems, or the affiliate or third-party nonaffiliate may provide to the covered utility an attestation that the affiliate or third-party nonaffiliate has destroyed or permanently erased, or has had destroyed or permanently erased, all material identifying the specific customer information.

Respectfully submitted,

UNION ELECTRIC COMPANY,  
d/b/a Ameren Missouri

*/s/ Paula N. Johnson*

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