

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

In The Matter Of A Proposed Rulemaking to)
Promulgate a New Rule Regarding a)
Residential Customer Disconnection Data)
Reporting Rule)

Case No. AX-2023-xxxx

MOTION FOR RULEMAKING

COME NOW the Office of the Public Counsel (the “OPC”) and the Staff of the Public Service Commission of the State of Missouri (“Staff”) and request that the Public Service Commission of the State of Missouri (the “Commission”) open a rulemaking docket to consider the promulgation of a new rule requiring certain electrical corporations, gas corporations, sewer corporations, and water corporations to submit monthly reports identifying categories of information related to customer disconnection data. In support of their Motion, the OPC and Staff state:

I. Background

In a November 19, 2019 Resolution, attached as Appendix A, the National Association of Regulatory Utility Commissioners (“NARUC”) resolved that states should consider requiring utilities to collect certain monthly data relating to utility disconnections, to make that data publicly available, and to file that data with State public utility commissions (the “November 19, 2019 NARUC Resolution”). After participating in a nearly three year long working group docket that included two workshops, a voluntary case study, and multiple revisions to the proposed rule, the OPC and Staff bring this Motion for Rulemaking requesting the Commission open a rulemaking docket to consider the promulgation of a rule to require certain electrical corporations, gas corporations, sewer corporations, and water corporations to submit monthly reports addressing information related to customer disconnections.

A. Factual Background

As explained in Dr. Geoff Marke’s memorandum, attached as Appendix B (the “November 9, 2022 Dr. Marke Memorandum”), the proposed rule arose when the OPC “was unable to positively affirm the number of involuntary disconnections across the Commission’s regulated utilities based on EFIS filings from the companies’ Annual Reports and monthly Cold Weather Reports.” (Nov. 9, 2022 Dr. Marke Memo. 1). As a result of its review of the available data, the OPC concluded, in part, that “[b]ased on the consolidated filings there does not appear to be an agreed-to standardization of data; consequently, despite over a decade of collected data, no definitive statements about customer disconnects can be made as it appears how a ‘disconnect’ is counted varies considerably between utilities.” (*Id.*). Dr. Marke’s memorandum also identifies several illustrative problems noted in the OPC’s review of the available information. (*See id.* 2).

B. Procedural Background: Commission Case Number AW-2020-0148

On November 25, 2019, the OPC filed a Motion to Open a Working Group Docket Regarding a Proposed Residential Customer Disconnection Data Reporting Rule (the “Motion for a Working Group”). (Case No. AW-2020-0148, Doc. 1).¹ The OPC attached to its Motion for a Working Group a memorandum authored by Dr. Marke (the “November 25, 2019 Dr. Marke Memorandum”); the November 2019 NARUC Resolution; a proposed rule (the “Initial Proposed Rule”); and workpapers supporting the conclusions of the November 25, 2019 Dr. Marke Memorandum. (*See*. Doc. 1 Apps. A–C, OPC-1).

In its Motion for a Working Group, the OPC explained that “[b]ased on extensive investigation, the OPC has determined that there presently exists significant problems with the

¹ References to document numbers represent the document numbers assigned in the Electronic Filing Information System (“EFIS”). All document number references refer to the document numbers assigned in Commission case number AW-2020-0148, the working group docket established to consider the OPC’s proposed rule.

data related to customer disconnections that is currently available for nearly all major public utility providers in the State of Missouri.” (Mot. for a Working Grp. 1, Doc. 1). Further, the OPC recognized that

[m]any of the problems identified by the OPC are issues that were also identified in the *Resolution on Best Practices in Data Collection Reporting for Utility Services Delinquencies in Payments and Disconnections of Service* passed by the National Association of Regulatory Utility Commissioners’ Committees on Consumers and the Public Interest and Adopted by the National Association of Regulatory Utility Commissioners’ Board of Directors on November 19, 2019.

(*Id.* 1-2). The OPC requested that the Commission open a working group docket “to review the OPC’s proposed rule and discuss any other concerns related to the collection and aggregation of customer disconnection data.” (*Id.* 3).

The next day, the Commission ordered Staff to respond to the Motion for a Working Group. (Doc. 2). In its response, Staff stated that it “recommend[ed] the Commission consider, in this working docket, promulgation of a rule to standardize the residential disconnection of services reporting requirements of investor owned utilities subject to Commission jurisdiction.” (Doc. 3 1).

On December 11, 2019, the Commission issued an Order Opening a Working Case to Consider a Proposed Residential Customer Disconnection Data Reporting Rule (the “December 11, 2019 Order”). (Doc. 4). In that Order, the Commission scheduled a workshop. (*Id.* 3). Further, the Commission allowed stakeholders to submit comments to the OPC’s proposed rule. (*Id.*).

In accordance with the Commission’s December 11, 2019 Order, five utilities—Union Electric Company d/b/a Ameren Missouri (“Ameren”); Spire Missouri, Inc. (“Spire”); Missouri-American Water Company (“MAWC”); Summit Natural Gas of Missouri, Inc. (“Summit”); Evergy Metro, Inc. d/b/a Evergy Missouri Metro; and Evergy Missouri West, Inc. d/b/a Evergy

Missouri West (collectively, “Evergy”)²—and Staff filed comments addressing the OPC’s proposed rule. (Docs. 7-12).

Due to the COVID-19 pandemic, the first workshop was held virtually on November 18, 2020 (the “First Virtual Workshop”). (*See* Doc. 23). Individuals representing the interests of at least eight investor-owned utilities—Ameren; Evergy;³ Liberty;⁴ Spire; Summit; MAWC; Central States Water Resources;⁵ and Raytown Water Company—four interested parties—Sierra Club; the Missouri Division of Energy; the National Housing Trust; and Renew Missouri—Staff; and the OPC attended the First Virtual Workshop. During the workshop, Dr. Marke gave a presentation discussing the November 2019 NARUC Resolution and some of the information detailed in the November 25, 2019 Dr. Marke Memorandum. During his presentation, Dr. Marke noted that based on information available in the Annual Reports and the monthly Cold Weather Rule Reports “there does not appear to [be] an agreed-to standardization of data.” (Doc. 24 slide 13). Further, Dr. Marke pointed out that “[q]uality, accessible, timely and reliable data is needed to help with the measurement of sound utility performance[]” and “[w]ithout agreed to standardizations, widely different conclusions can be drawn, and inappropriate policy responses may arise.” (*Id.* slide 14). Dr. Marke then specifically highlighted several of the discrepancies in the information available from the Annual Reports and monthly Cold Weather Rule Reports. (*Id.* slides 19-22, 24-32).

² Evergy Missouri Metro and Evergy Missouri West filed a joint response to the OPC’s proposed rule. (Doc. 12).

³ Counsel did not specify whether the Evergy representatives participated on behalf of Evergy Missouri Metro or Evergy Missouri West.

⁴ Counsel stated that she appeared for the Liberty companies in Missouri, including The Empire District Electric Company; The Empire District Gas Company; Liberty Utilities (Midstates Natural Gas Corp.); and Liberty Utilities (water).

⁵ The representative stated that she appeared on behalf of Confluence Rivers Utility Operating Company, Inc.; Elm Hills Utility Operating Company, Inc.; Hillcrest Utility Operating Company, Inc.; Indian Hills Utility Operating Company, Inc.; Osage Utility Operating Company, Inc.; and Raccoon Creek Utility Operating Company, Inc.

Following Dr. Marke’s presentation, the participants in the First Virtual Workshop discussed each of the thirteen definitions included in the OPC’s Initial Proposed Rule.

Based on the feedback it received during the First Virtual Workshop and the filed comments to the Initial Proposed Rule, the OPC made substantial edits to its Initial Proposed Rule. (*See* Doc. 29 App. B). The OPC then filed a Motion for Commission Order Providing Notice of Second Workshop (the “Motion for Second Workshop”) and requested that the Commission issue an Order providing notice of a second workshop. (Doc. 29). The OPC attached to the Motion for Second Workshop a revised proposed rule (the “First Revised Proposed Rule”) and a redline version of the First Revised Proposed Rule that showed the changes between the Initial Proposed Rule and the First Revised Proposed Rule. (Doc. 29 Apps. A & B).

After allowing responses, the Commission granted the Motion for Second Workshop and scheduled a second workshop. (Docs. 30, 33). However, due to the effects of COVID-19, the second workshop was rescheduled (the “Second Virtual Workshop”). (Doc. 37).

On February 25, 2022, the Commission held the Second Virtual Workshop. During the Second Virtual Workshop, the OPC gave a presentation detailing the history of this working group case, discussing the revisions the OPC made to its Initial Proposed Rule, and detailing its plans for the future of its proposed rule. Following the OPC’s presentation, the participants of the Second Virtual Workshop⁶ discussed each section of the OPC’s First Revised Proposed Rule.

Based on the feedback that it received during the Second Virtual Workshop, the OPC made further revisions to its First Revised Proposed Rule. The OPC attached its revised proposed rule (the “Second Revised Proposed Rule”) to its Motion to Establish a Deadline for Participation in a

⁶ During the Second Virtual Workshop, representatives appeared from the OPC; Staff; each of the investor-owned electric and gas utilities that the Commission regulates; MAWC; Sierra Club; Renew Missouri; the State of Missouri Division of Energy; Consumer Counsel; and the Community Action Agency of St. Louis County, Inc.

Voluntary One-Month Case Study (the “Motion for Case Study”). (Doc. 39 Apps. A & B). In the Motion for Case Study, the OPC requested that the Commission establish a “deadline for interested stakeholders to respond to a voluntary one-month case study.” (Mot. for Case Study 5, Doc. 39). The OPC explained that “[t]he objective of the case study is to ensure that when the OPC files the Petition for Rulemaking, the proposed rule meets the goals that began this working group, as expressed in the November 2019 NARUC Resolution and the Dr. Marke Memorandum.” (*Id.*). As part of its proposed case study, the OPC stated that it would hold all information submitted in response to the case study as strictly confidential. (*See id.* 6). The Commission granted the OPC’s Motion for Case Study and ordered that the OPC hold all submitted information as confidential. (Doc. 41).

The OPC received responses to its voluntary case study from several utilities. It then held individual follow up meetings with the responding utilities to further discuss the utilities’ experience in responding to the proposed rule.

Based on the responses and feedback that it received from the voluntary case study, the OPC has made additional changes to the Second Revised Proposed Rule. Attached to this Motion for Rulemaking as Appendix C is the OPC’s Proposed Rule, which is the third revised version of the proposed rule. A redline version showing the changes from the OPC’s Second Revised Proposed Rule is attached as Appendix D.

II. Legal Standard

Section 386.250 of the Revised Statutes of Missouri grants the Commission the power to promulgate rules that prescribe the conditions of rendering public utility service, disconnecting or refusing to reconnect public utility service and billing for public utility service. § 386.250(6) RSMo.

III. Analysis: The Commission Should Open a Rulemaking Docket

The OPC and Staff request that the Commission open a rulemaking docket to consider the promulgation of the proposed rule, attached as Appendix C.

The OPC drafted the proposed rule in response to the NARUC November 19, 2019 Resolution, attached as Appendix A, and to address the discrepancies in the currently available data, as explained in Dr. Marke's memorandum, attached as Appendix B. The OPC and Staff, as well as utility parties and interested stakeholders have participated in a nearly three-year long working group docket considering the proposed rule. After incorporating edits to reflect the feedback received during this working group process, the OPC and Staff now agree that the Commission should open a rulemaking docket to consider promulgation of the proposed rule found in Appendix C to this Motion.

IV. Conclusion

WHEREFORE, the OPC and Staff respectfully request that the Commission open a rulemaking docket to consider the promulgation of the OPC's proposed rule, attached as Appendix C.

Respectfully submitted,

/s/ Lindsay VanGerpen
Lindsay VanGerpen (#71213)
Associate Counsel

Missouri Office of the Public Counsel
P.O. Box 2230
Jefferson City, MO 65102
Telephone: (573) 751-5565
Facsimile: (573) 751-5562
E-mail: Lindsay.VanGerpen@opc.mo.gov

/s/ Eric Vandergriff
Eric Vandergriff
Legal Counsel

