

**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) Case No. AW-2018-0393
By Commission Regulated Electric, Gas, Steam)
Heating, Water, and Sewer Utilities and Their)
Affiliates and Nonaffiliates)

COMMENTS OF ARCHCITY DEFENDERS, INC.

COMES NOW ArchCity Defenders, by and through counsel, and for its Comments states as follows:

BACKGROUND

The Public Service Commission requested comments regarding the Commission Staff's proposed draft rules for 4 CSR 240-10 designed streamline rules regarding affiliate transactions and to prevent the misuse of customer information. The Commission extended its original comment period deadline of August 10, 2018 to August 24, 2018.

ArchCity Defenders (ACD) is a nonprofit civil rights law firm based in St. Louis, Missouri that provides holistic legal advocacy to combat the criminalization of poverty and state violence against poor people and people of color. ACD uses direct services, impact litigation, and policy and media advocacy as its primary tools to promote justice, protect civil and human rights, and bring about systemic change on behalf of the poor and communities of color directly impacted by the abuses of the legal system. ACD provides these comments on behalf of the thousands of Missouri residents it serves and shares and incorporates some of the concerns raised

in Comments submitted by the Office of Public Counsel, ACLU of Missouri, and TGH Litigation LLC.

INTRODUCTION

Utilities regulated by the Commission provide a public good vital to the health, safety, and livelihood of Missouri residents. In most communities, those residents rarely have a choice as to which utility will receive their business because most operate without competition. This environment means consumers must accept the business practices of the local utilities without the protection of a market to ensure corporate accountability to the consumers.

As a public good, utilities are in the unique position to collect and maintain a repository of valuable consumer information. As identified in the proposed rules, the information could include “name, address, phone number, social security number, utility service usage, payment history, financial account, driver’s license number, medical information, and health insurance information.” We can think of no other database in this country that provides such a treasure trove for those interested in hacking this information for identity theft, consumer scams, or unfair debt collection and business practices.

Data privacy and security measures are more important than ever before as electronic information is collected, stored, and shared within myriad unsecure devices, not just computers or smartphones. It is for that reason that utilities must maintain the highest level of protection and security for the information it collects. The vulnerable communities we serve are commonly targets of predatory consumer products, scams, unfair collection practices, domestic violence, and even over-policing. Disclosing their private information, whether intentional or inadvertent, places an already-vulnerable community in a dangerous position.

It is for this reason that ArchCity Defenders opposes any rule change that would allow utility companies to share deeply personal and private information with third parties, especially a rule change that does not allow for informed consumer consent.

If passed as written, part of the proposed draft rule would allow for information regarding individuals' utility usage to be recorded in sub-fifteen minute intervals. When disclosed or breached, this information could allow third parties to identify specific customer usage patterns related to electric, gas, heating, water, and sewer utilities. Other sensitive and private information, such as consumers' social security numbers, payment history, medical information, and health insurance information, household composition, or immigration status, could also be shared with these third parties without express consent from the *true* owner of that private information: the consumer. This broadly worded rule could allow any type of information to be collected and distributed regardless of how the utility company received the information, whether it is relevant to the provision of utility services, or how it will be used by the third party recipient.

I. The Proposed Rules Circumvent Fourth Amendment Unlawful Search Protection

The vague terms “utility related use” or “nonutility services” leave a lot of room for utility companies to use their own discretion as to what falls under each rule. For example, a utility-related use could be interpreted to allow for a warrantless search of utility records by a law enforcement to obtain any of the information outlined above. The proposed rule would circumvent Missourians' right to be free from unlawful search by the government under the Fourth Amendment to the United States Constitution made cognizable to the states by the Fourteenth Amendment. Specifically, the Fourth Amendment protects “the right of the people to

be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” without a finding of probable cause by an impartial magistrate. Thus, with few exceptions, warrantless invasions of an individual’s privacy are unconstitutional.

As currently written, the proposed rule also fails to require law enforcement officers to obtain a warrant before acquiring an individual’s private information from a utility provider. Law enforcement officers should not be able to obtain private information about Missourians’ energy usage without a warrant, but this proposed rule makes it all too easy for law enforcement to bypass the Constitution’s protections and learn personal details about people who may already be vulnerable to abuse by the police or other government employees. This allows police to surveil a home and learn private information about activity inside the home for which they would otherwise need a warrant to obtain. ACD is actively involved in litigation to end unconstitutional practices by law enforcement agencies who circumvent due process requirements in order to effectuate more arrests and sweep up even more individuals into the criminal justice system.

II. The Proposed Rules Overexpose Vulnerable Populations to Increased Risks of Harm

This proposed rule is a grave violation of Missourians’ privacy. If utility usage, medical information, or other identifying information get into the wrong hands, the consequences can be dangerous for some in the communities we serve. For instance, data on the frequency and amount of energy usage can be used to identify a home’s appliances, the daily routines of the occupants, and their presence or absence from the home. This information could be used to time break-ins or thefts, or to effectively stalk or threaten the occupants of a home. The people who will suffer from these repercussions the most are those who already vulnerable: the poor, the

elderly, those with disabilities, or survivors of intimate partner violence.¹ Further, in the event of a seemingly-inevitable data breach² by the utility companies—or even any third-party custodians of customer utility data—consumers’ social security numbers, phone numbers, credit information, birth dates, and payment information each could be exposed and used for identity theft or targeted scams. The proposed rules impose no specific duties or security protocols for the transfer, use, or destruction of collected consumer information.

III. The Proposed Rules Could Most Help Those Engaged in Predatory or Unscrupulous Business Practices

Finally, we are concerned that third party contractors who gain access to utility usage patterns will use that data to increase their profits at Missouri residents’ expense. In other states, private energy services companies (ESCOs) have come under legal scrutiny for their unscrupulous and predatory practices.³ ESCOs frequently target communities with limited English-language proficiency and low-income or elderly communities to convince residents that switching to a private energy provider will lower their monthly payments, while in fact raising those payments after a few months. ESCOs prey on residents when wholesale energy prices are low, and, if the proposed rule is enacted, similar companies could easily use private information about Missourians’ energy usage to target people with high utility bills, people with medical

¹ See, e.g., Nellie Bowles, Thermostats, Locks and Lights: Digital Tools of Domestic Abuse, The New York Times (Jun. 23, 2018),

<https://www.nytimes.com/2018/06/23/technology/smart-home-devices-domestic-abuse.html>.

² See Christopher Mele, Data Breaches Keep Happening. So Why Don’t You Do Something?, The New York Times (Aug. 1, 2018),

<https://www.nytimes.com/2018/08/01/technology/data-breaches.html>.

³ See Jon Campbell, NY’s Parasitic Private Energy Scammers Are Digging In Their Heels, The Village Voice (Jun. 6, 2017),

<https://www.villagevoice.com/2017/06/06/nys-parasitic-private-energy-scammers-are-digging-in-their-heels/>.

conditions that require a higher use of utilities, or people with inconsistent payment histories. ESCOs and other profit-driven companies could easily use this data to pursue revenue at the expense of vulnerable Missouri residents who will have no say in who has their personal information or how it is being used. Additionally, the proposed rules lack any requirement that consumers give meaningful and informed consent for their information to be divulged to third parties, which is inconsistent with existing do-not-call laws and non-solicitation laws that aim to prevent third parties from using and sharing private information about consumers.

CONCLUSION

For these reasons, ArchCity Defenders opposes the proposed rules as drafted, and requests that the Public Service Commission extend the public comment period, hold several statewide public hearings, and rewrite the draft rule to include strict protections for the members of the public this Commission serves.

Respectfully submitted,

ARCHCITY DEFENDERS, INC.

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