

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

**PUBLIC COUNSEL’S RESPONSIVE COMMENTS**

The Office of the Public Counsel (OPC), provides Response Comments to the latest rendition of a proposed customer information and privacy rule as follows:

BACKGROUND

1. On July 11, 2018, the Public Service Commission (Commission) established Case No. AW-2018-0393 in response to the Commission Staff’s (Staff) Motion to Open Rulemaking Workshop. The Commission Staff acted pursuant to Executive Order 17-03 to consolidate existing rules, and accordingly proposed new rules regarding the sharing of customer information by Commission regulated utilities.

2. The Commission requested comments regarding the Staff’s drafted rules to be submitted by no later than August 10, 2018. The comment period was later extended to August 24, 2018. Comments were provided by various parties, and a workshop followed.

3. The Commission later ordered that Staff file a second draft rule on July 17, 2019.

4. Staff filed its second draft on September 16, 2019, and concurrently requested that the Commission take one of three proposed actions. The Commission apparently selected Staff’s first proposed action, and has ordered interested parties provided further comments as to Staff’s latest draft rule by December 9, 2019. The OPC accordingly provides the following responsive comments.

## RESPONSIVE COMMENTS

5. The OPC appreciates the changes within its second draft that incorporate suggestions from the OPC, other stakeholders, and the workshop. Appreciation notwithstanding, the OPC still has comments regarding the latest proposed language.

6. Staff's latest proposed language contains a definition of "customer information." This phrase is not used in the operative language of the rule, and appears only once within the definition of "personal customer information." It appears that Staff's latest proposed rule based its separation of "customer information" from "personal information" on the delineation in the OPC's previous draft. However, the OPC identified multiple different classes of customer information that should receive varying degrees of protection, whereas Staff's proposed rule only focuses on "personal customer information." Therefore, identifying some customer information as being a subset of information generally is unnecessary in Staff's draft. The OPC recommends removing the definition of "customer information" from the proposed rule as well as the phrase "a subset of" from the definition of "personal customer information." This change should ensure clarity as to what information is protected by the rule, and to what extent.

7. Alternatively, the OPC recommends amending the proposed definition of "customer information." The definition excludes data "that is not obtainable by nonaffiliated entities." The inference naturally drawn from this definition is that information potentially obtainable by nonaffiliated entities is then not "customer information." The result of this inference is that customer data that is otherwise available in a public register or social media is not truly "customer data." Such publically available information can conceivably include name, address, race, political ideology, religion, or any other sensitive and personal matter that the OPC believes that Staff actually intends to be protected by its proposed rule. To support a rule that robustly

protects customer information, the OPC recommends removing the “not obtainable by nonaffiliated entities” clause from the definition.

8. Similar to the OPC’s observation as the phrase “that is not obtainable by nonaffiliated entities,” the OPC recommends removing the following sentence from the definition of “personal customer information”:

“Personal customer information does not constitute information that is lawfully included in, or obtained from, publicly available sources, or federal, state, county, or local government records made available to the general public.”

Again, such publically available information can conceivably include name, address, race, political ideology, religion, or any other sensitive and personal matter that utility customers may nonetheless expect their serving utility to not be sharing freely. Taken alone, the quote sentence then contradicts other portions of the definition that identify name and address as “personal customer information.” The OPC recommends that this sentence be accompanied by a caveat that otherwise public information may still be secured by the rule if it touches upon matters that the rule is intended to protect such as those categories of information that Staff has already included in its definition of “personal customer information.”

9. The proposed definition of “utility related services” provides that additional “actions taken by the utility to support customer use of those [utility] services” qualify for definitional treatment. The OPC notes that “actions” and “support” are vague and could conceivably encompass activities taken by non-regulated affiliates that happen to touch upon utility matters such as furnishing appliances, water line insurance, or home security. The OPC welcomes such an interpretation, but admits that its applicability is questionable. Therefore, the OPC recommends specifying the type of “actions” or “support” that Staff is envisioning within the definition of “utility related services.”

10. Sections (2) and (3) of the proposed rule refer to “customer consent” and “affirmative consent” when disclosing customer information, respectively. It is not clear whether the use of “affirmative” in one phrase, but not another, reflects the rule treating less than affirmative consent as appropriate. The OPC asks that the Commission avoid such distinctions of consent, and instead suggests that the rule’s language use consistent phraseology regarding consent.

11. Also regarding consent, the OPC notes that the proposed rules does not specify how consent is substantiated. The rule refers to “recorded or written” consent, but nothing further. Without specificity, consent could easily be deemed in the same manner websites thrust consent for tracking software simply for viewing a news article or page. To ensure adequate protection, a showing of customer consent should require more than a mere click on a computer or continued use of utility services. Therefore, the OPC recommends adding a separate subsection to the rule regarding the standards to acquire affirmative consent.

12. Section (4) of the proposed rule includes the following sentence:

“Aggregated or anonymized personal customer information collected by a utility in its provision of utility related service, may otherwise be disclosed to an affiliate or third-party nonaffiliated by the minimum number of customers and the maximum percentage contribution of any one customer to the total of the data for the particular category of data being disclosed in the aggregate or anonymized as determined by agreement between the utility and the affiliate or third-party nonaffiliated and submitted to the commission for authorization.”

This sentence seemingly states that personal customer information may be shared by the customers themselves under certain circumstances. The OPC does not believe that is Staff’s intent, and requests a rewriting of this language to provide more substantive feedback. Dividing this language into multiple sentences may aid in clarity.

13. The OPC also attaches its own proposed customer privacy rule, in substantially similar form from its previous version, with more edits being done since its August 24, 2018, filing for grammar, typographical errors, and clarity. The OPC has also recently added more substantive language to describe its proposed customer data privacy policy for covered utilities. The OPC continues to offer its proposed language for potential substitutions and additions to Staff's proposed language.

**WHEREFORE**, the OPC respectfully submits its Responsive Comments, and submits its own version of a proposed customer privacy rule for the Commission's consideration.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 9<sup>th</sup> day of December, 2019, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall

#### **4 CSR 240-10.XXX Customer Information of Electrical Corporations, Gas Corporations, Heating Companies, Water Corporations and Sewer Corporations**

PURPOSE: Strong consumer data privacy protections are essential to maintaining the trust of ratepayers. This rule is intended to prevent the misuse and inadvertent disclosure of customer information.

(1) Definitions

(A) Aggregate data means a combination of data elements for multiple customers to create a data set that is sufficiently anonymous so that it does not reveal the identity of any individual customer.

(B) Covered utility means an electrical corporation, gas corporation, heating company, water corporation, or sewer corporation as defined in section 386.020, RSMo., and subject to commission regulation pursuant to Chapters 386 and 393, RSMo.,

(C) Critical customer information means a subset of information regarding customers in general, including, but 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 customer(s): birth date, social security number, driver's license number, health insurance information, credit reporting information, internet protocol address, bankruptcy or probate information, and demographic data including race; religion; sexual orientation or self-identification; nationality; and immigration status.

(D) Customer Usage Data means customer specific electric, gas, heat, water, or sewer usage data, including but not limited to ccf, Mcf, therms, dth, kW, kWh, voltage, var, power factor or gallons and other information that is metered by the covered utility and stored in its system.

(E) Financial account of customer information means a covered utility created account used for the tracking of billing and payments of a particular customer or account, except that the term shall not include critical customer information.

(F) Medical information means that information related to a particular medical diagnosis or condition, or any other personal health information, including information necessitating uninterrupted utility service.

(G) Nonutility related service means those functions not directly connected to the furnishing of electricity, gas, heat, water, or sewer services including, but not limited to, services not regulated by the commission and demand-side programs under Section 393.1075, RSMo.

(H) Primary customer information means a subset of information regarding customers in general including 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, payment history, and financial account.

(I) Privacy impact assessment means an evaluation ensuring conformance with applicable legal, regulatory, and policy requirements for privacy; determining risks and effects; and evaluating protections and alternative processes to mitigate potential privacy risks.

(J) Secondary customer information means a subset of information regarding customers in general including 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: utility service usage, customer usage data, and medical information.

(K) Utility related service means regulated utility functions limited to the direct furnishing of electricity, gas, heat, water, or sewer service; billing; bad debt; repairs; discontinuation and continuation of service; grid maintenance; and any other activity provided in a commission-approved tariff except for those activities defined as a nonutility related service.

## (2) Utility Related Services

(A) When any covered utility contracts with an affiliate or a third-party nonaffiliate to perform a utility related service on behalf of the covered utility and primary customer information to perform the utility related service is required, the covered utility shall only provide the affiliate or third-party nonaffiliate with the necessary primary customer information without customer consent under the following contractual terms:

1. The affiliate or third-party nonaffiliate shall be directed that the primary customer information remains the sole property of the customer;
2. The affiliate or third-party nonaffiliate shall be authorized to use the primary customer information solely to perform the contracted for service;
3. The affiliate or third-party nonaffiliate shall be expressly prohibited from any other use of the primary customer information with prohibitions to the affiliate or third-party nonaffiliate set out in the contract for any unauthorized use of the specific customer information;
4. The affiliate or third-party nonaffiliate shall be directed to treat the primary customer information as confidential at all times with specified prohibitions set out in the contract for not treating the primary customer information as confidential; and
5. The affiliate or third-party nonaffiliate shall be directed to return to the covered utility, within ten (10) days following the receipt of a written request, all primary customer information provided to the entity with an attestation that all replication of the information has been returned to the covered utility 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 has had destroyed all material identifying the primary customer information.

## (3) Nonutility Related Services

(A) When an affiliated or nonaffiliated third-party person or entity contracts with the covered utility to perform a nonutility related service and that particular service requires primary or secondary specific customer information, the covered utility shall only provide that affiliate or third-party nonaffiliate with primary or secondary customer information with documented recorded or written customer consent, or by commission order.

(B) When a covered utility provides a nonutility related service and that particular service requires primary or secondary customer information, the covered utility shall first receive documented recorded or written customer consent to use that primary or secondary customer

information before providing that service, except as otherwise provided in subdivision (A) of this subsection.

(C) A covered utility shall not provide or sell primary or secondary customer information to its affiliates or nonaffiliate third-parties for the purposes of marketing services or product offerings to a customer who does not already subscribe to that service or product, unless the utility has first obtained the customer's documented recorded or written consent.

#### (4) Customer Data Privacy Policy

(A) Each covered utility shall file with the commission, for the commission's approval, a customer data privacy tariff that contains a customer data privacy policy. The privacy policy shall clearly answer the following:

1. What primary and secondary customer information is collected;
2. How customer information is collected (e.g., website, billing, usage);
3. For what purpose customer information is collected;
4. How the customer information is used;
5. What information may be disclosed without customer consent;
6. How a customer may withdraw previously provided consent;
7. What affiliated or nonaffiliated third-party person or entities have contracted with the covered utility to receive customer information, the type of primary or secondary customer information being shared, if any, and what safeguards the covered utility is utilizing to protect customer information from inadvertent disclosure while contracting with an affiliate or nonaffiliated third-party;
8. Whether customers may review or correct primary customer information;
9. Whether customers may review or erase secondary customer information;
10. What security measures are used to protect customer information;
11. The durational validity of a covered utility's privacy policy;
12. How long a covered utility retains my primary and secondary customer information;
13. How updates to the privacy policy are to be announced;
14. How customers can share their secondary customer information;
15. The policies is in place to ensure that all customers are protected from unauthorized use or disclosure by the covered utility, its affiliates, contractors or subcontractors;
16. Whether the covered utility undergoes periodic independent third-party privacy impact assessments.

#### (5) Critical Customer Information

(A) A covered utility shall not provide or sell critical customer information to its affiliates or nonaffiliate third-parties for any purpose.

#### (6) Customer Consent

(A) For the purposes of this rule, customer consent shall be deemed documented recorded or written when a customer provides an affirmative response to a request to share his or her customer information on a commission approved form or recording.

(B) Customer consent shall only be deemed to have been offered for discrete requests or transactions, and shall not be inferred for ongoing or successive transactions.

(C) A customer can withdraw his or her consent at any time.



(7) Advanced Metering

(A) A covered utility utilizing advanced metering infrastructure that allows a customer to access customer usage data shall enable the customer with the option to access that data without being required to agree to the sharing of his or her personally identifiable information, including customer usage data, with a third-party.

(B) A covered utility shall use reasonable security procedures and practices to protect a customer's unencrypted customer usage data from unauthorized access, destruction, use, modification, or disclosure, and prohibit the use of the data for a secondary commercial purpose not related to the primary purpose of any contract under subsection (2) of this section without the customer's consent.

(8) Aggregated Customer Information

(A) When sharing or disclosing aggregate customer information on residential customers a covered utility shall include at least fifteen (15) customers with no customer's load exceeding fifteen (15) percent of the data included in the aggregate.

(B) When sharing or disclosing aggregate customer information on nonresidential customers a covered utility shall include at least four (4) customers with no customer's load exceeding eighty (80) percent of the data included in the aggregate.

(9) Notification to Commission of Violations of Rule

(A) If a covered utility becomes aware of its customer information having become public or passed into the possession of an unauthorized entity in any single instance, the covered utility shall notify the staff counsel's office and public counsel within one day of knowledge of the customer information breach. Notice of the customer information becoming public or having been passed into the possession of an unauthorized entity shall be included with all affected customer's bills on a commission approved form.

(B) If a covered utility becomes aware of its customer information having become public or passed into the possession of an unauthorized entity at least four times in any calendar year, the covered utility shall notify the staff counsel's office and public counsel upon the fourth breach of customer information. Notice of the customer information becoming public or having been passed into the possession of an unauthorized entity shall be included with all customer's bills on a commission approved form.

(10) Enforcement

(A) When enforcing these standards, or any order of the commission regarding these standards, the commission may apply any remedy available to the commission.

(B) Any activity by a covered utility related and incident to a violation of this rule, including its customer information becoming public or passed into the possession of an unauthorized entity, shall be deemed imprudent and is not recoverable within commission approved rates or mechanisms.

(11) Waiver

(A) Provisions of this rule may be waived by the commission for compelling cause shown after an opportunity for a hearing.

(B) If approved by the commission, the covered utility shall inform all affected customers of the waiver on a separate commission approved disclosure on each customer's bill.

(C) Within six (6) months following the commission's order for a waiver, the covered utility shall file a report and accompanying documentation on the provision of specific customer information with the commission. The report shall, at a minimum, detail the category and type of customer information shared pursuant to a waiver, to whom customer information was shared, and the purpose a waiver was necessitated.

(12) Exception

(A) Nothing in 4 CSR-10.XXX precludes a covered utility from providing specific customer information without documented recorded or written customer consent when such provision is pursuant to state or federal law or under an order of the commission.

(B) Nothing in this section shall preclude a covered utility from using customer aggregate data for analysis, reporting, or program management if all information has been removed regarding the individual identity of customers.