

**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)

**THE OFFICE OF THE PUBLIC COUNSEL’S RESPONSE TO COMMISSION ORDER
REQUESTING ADDITIONAL COMMENTS**

COMES NOW the Office of the Public Counsel (OPC), by and through counsel, and for its Comments states as follows:

1. On October 9, 2018, the Staff of the Public Service Commission (Staff) hosted a rule workshop on proposed rules regarding the safeguarding of utility customer information and privacy.

2. Based on discussion at the workshop, Staff thereafter requested a time period for the filing of additional comments to respond to specific questions. The Public Service Commission (Commission) so granted Staff’s request, and the OPC now answers Staff’s questions accordingly:

1) What is an appropriate definition of “utility related services” for purposes of this rule?

In its initial comments the OPC offered the following definition of “utility related services”:

“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.”¹

¹ *The Office of the Public Counsel’s Comments*, Case No. AW-2018-0393 (Aug. 24, 2018).

The OPC maintains that this definition offers clarity by limiting the description of “utility related service” as those activities provided for in a Commission approved tariff, while also granting flexibility by not constricting the concept of utility service to a few limited instances at the meter.

2) What is an appropriate definition of “non-utility related services” for purposes of this rule?

In its initial comments the OPC offered a definition of “non-utility related services.” Based on comments made at the workshop, the OPC has amended its prior definition with the result as follows:

“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.”

The OPC believes that this definition stands as a proper opposite to “utility related service” by recognizing that utility affiliate and parent companies engage in a multitude of differing industry sectors. Therefore, a broad vision of “nonutility related service” should be considered. The OPC is still evaluating the interplay between demand-side programs and any distinction thereof between nonregulated services, and believes that more discussion is needed in future workshops to properly denote proper customer protections if a utility engages in programs ancillary to the provision of safe and adequate service.

3) In what situations, and for what purposes, is it appropriate for a utility company to share specific customer information with third parties without consent of the customer?

A utility company should be permitted to share specific customer information without the consent of the customer only when the information shared is pursuant to a utility related service and limited to primary customer information, defined by the OPC as name, address, phone number, payment history, or utility account number. Otherwise, sharing customer information without

customer consent should only be permissible when such sharing is pursuant to a Commission order.

4) What is an appropriate definition of “customer information” for purposes of this rule?

The OPC proposes that the definition of “customer information” should consider separate and distinct classes of customer information. Certain sensitive customer information may be harmlessly divulged by a utility if the information is otherwise publically available, and if it is being shared for a legitimate utility related service such as bill payment and the recoupment of bad debt.² Conversely, innocuous information may identify personally embarrassing customer details or be capitalized upon by a third-party to the detriment of ratepayers if such information is shared pursuant to a nonutility service. Accordingly, the Commission can employ a two-part test for whether customer information is being properly shared: 1) What kind of information is it; and 2) What is it being shared for?³ The OPC envisions the different categories of customer information as follows:

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 customers: birth date, social security number, driver’s license number, health insurance information, bank account 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.

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 utility account number. Primary⁴ customer

² No party was able to identify legitimate utility related services to a third-party beyond debt collection at the Commission workshop.

³ The OPC notes though that a lawful subpoena or court order directing a utility to divulge customer information would trump this proposed test.

⁴ The word “Primary” was left out of the OPC’s earlier Comments due to a typographical error.

information includes information provided to a covered utility by an affiliated or nonaffiliated third party person, entity, or association.

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.

The OPC imagines that primary customer information may be shareable by a utility for a utility related purpose without the need for customer consent. Secondary customer information may be shared, but only if it is for a utility related service and accompanied with affirmative customer consent, or a Commission order. Utilities would then not be permitted to share critical customer information. What is included within each category may be refined with more workshops.

5) How should a utility's privacy statement be shared with the public?

Staff has suggested three circumstances as follow up questions to this inquiry: sharing with the public via a website, mailing shareholders, and mailing individual customers. The OPC answers positively that all three avenues should be employed to share a utility's privacy statement and to inform customers of what their data is being used for. A privacy statement and explanatory disclosure as to why customer data may be shared can easily be placed on a utility's website, and displayed prominently on said website for so long as the domain host is valid. More importantly, the utility should clearly, in plain text, identify exactly why customer data information is being shared and with what (potential) entities. The disclosure of a utility's privacy statement should be both traditionally and electronically mailed to individual customers whenever said customer starts purchasing from their utility, and at least annually thereafter. As for shareholder disclosures, the OPC believes that data breaches and the potential liability inherent to maintaining customer information should be considered a risk factor relevant to disclose to the Securities and Exchange Commission; however, such decision is ultimately at the discretion of the Company.

6) Should utilities advise their customers that their customer information is shared with other entities? If “yes,” what types of customer information sharing should be disclosed to customers, and how and when should this disclosure occur?

Yes, utilities should most certainly advise their customers that their customer information may be shared with other entities. Captive ratepayers should be informed of what data may be exposed in order to minimize risks, be prepared for future data breaches, and to become more engaged customers. Numerous mobile phone applications will notify customers immediately upon a change in their privacy policies. There is no reason why regulated utilities should be held to a lesser standard than the video games on one’s mobile phone, and every reason to believe they should be held to a higher standard.

The requirement that utilities advise their customers on who has access to their data, and for what purposes, is especially justified given that during the rule workshop no party provided a justifying context for the sharing of customer data other than for the collection of bad debt; a reason that the OPC does not dispute. Given the ignorance of all parties as to why customer information may be shared currently, more transparency is better for everyone.

A customer disclosure as to the use of their data should encompass all customer information, but pay detail to secondary and critical customer information, using the aforementioned definitions used by the OPC. Accordingly, notice need not be provided at each instance that primary customer information is shared, but disclosure and the request for consent should occur before each instance that critical customer information is divulged.

This disclosure should occur once an individual begins a customer relationship, and annually thereafter using both traditional mail with a bill and electronic media. Electronic

messaging should be employed due to its relatively minimal cost, but postal notification should still occur for those customers who lack reliable internet access or other means.

3. In addition to answering the Staff's questions, the OPC offers further matters when drafting customer privacy rules for consideration for all parties. First and foremost, the OPC believes that the Commission must provide clarity to all parties by definitively stating who owns the data on utility customers. The OPC answers that customers are the ultimate owners of that data, and the utility's possession of that data for purposes of providing utility services should not equate to ownership. If, however, the Commission concludes that customer data is seen as a utility asset, then at a minimum it's associated market value should offset revenue requirements since customers provided that value to their utility.

4. Secondly, regardless of whether one sees a utility as an owner or bailor of customer data, the Commission should consider whether utility customers have the right to have their data scrubbed or removed from their utility's records; colloquially referred to as the "right to be erased."⁵ The OPC affirmatively responds that customers do have this right, and that it should be protected by both the Commission and public utilities.

5. Finally, the Commission should also contemplate whether advanced meters will be regulated differently from other utility activities under a customer information protection rule. The OPC does not see advanced meters as deserving of special treatment. Instead, any customer protection rules should apply equally to advanced meters as they do to any other utility service. Commission rules should not be drafted in a reactionary manner in response to any particular technology, but instead be prepared for a changing world and apply regardless of the technology employed by a utility.

⁵ See General Data Protection Regulation Art. 17, Regulation (EU) 2016/679, available at <https://gdpr-info.eu/art-17-gdpr/>

WHEREFORE, the OPC respectfully submits its Additional Comments.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

/s/ Caleb Hall

Caleb Hall, #68112

Senior Counsel

200 Madison Street, Suite 650

Jefferson City, MO 65102

P: (573) 751-4857

F: (573) 751-5562

Caleb.hall@ded.mo.gov

**Attorney for the Office of the Public
Counsel**

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 30th day of November, 2018, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall

MEMORANDUM

To: Missouri Public Service Commission Official Case File,
Case No. AW-2018-0393

From: Geoff Marke, Chief Economist
Missouri Office of the Public Counsel

Subject: Supplemental Response to Staff Questions

Date: November 30, 2018

OPC appreciates the opportunity to share several examples of utility customer data protection policies enacted by Commissions or legislatures in other states to ensure appropriate protection of ratepayers, shareholders and the public at large. The examples from other states should not be construed as an exhaustive list but rather guideposts that further support the Commissions interest in this topic are well founded and supported by other regulatory or elected bodies. Examples include:

Minnesota

For individual meter data, the Minnesota Public Utility Commission has approved a model data release consent form to be used by all rate regulated utilities in Docket E,G 999/CI-12-1344 (See GM-1)

- For aggregate data, a utility shall not disclose customer energy use data without the customer's consent unless the utility has adequately protected the anonymity of the customer energy use data. Each utility shall file its aggregation and release policies with the Commission within 30 days of the order or 30 days prior to implementation as stated in Docket E,G 999/CI-12-1344 (See GM-2).

Michigan

The Michigan Public Service Commission updated its administrative rules pertaining to data privacy and data accessibility in R 460.101-460.169 (See GM-3). These rules took effect in December 2017 and call for utilities to have in place data privacy procedures that assure customers that their personal information will not be distributed to third parties without a customer's knowledge or consent.

- R 460.153 calls for all regulated utilities to submit a data privacy policy in the form of a tariff to the Commission. Per R 460.153 (g) the policy must:
 - *Provide clear instructions regarding the method by which a customer and a third party (authorized by the customer) may obtain customer usage data in a timely manner and in a readily accessible format.*
- Order U-18485-0002 (See GM-4) in Case No. U-18485 directs regulated utilities to comply with R 460.153 administrative rules by June 8, 2018.

Maryland

Code of Maryland Regulations 20.53.07. Residential Customer Protection states:¹

- A. Except as provided in §B of this regulation, a supplier may not disclose a customer's billing, payment, and credit information without the customer's consent.
- B. A supplier may disclose a customer's billing, payment, and credit information for the sole purpose of facilitating billing, bill collection, and credit reporting.
- C. A supplier shall provide a customer with a copy of the supplier's customer information privacy policy.

Washington

Washington privacy policies for disclosure of customer energy use information are provided in WAC 480-100-153 (See GM-5) which includes:

- 1) An electric utility may not disclose or sell private consumer information with or to its affiliates, subsidiaries, or any other third party 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 written or electronic permission to do so.
- 2) Private consumer information includes the customer's name, address, telephone number, and any other personally identifying information, as well as information related to the quantity, technical configuration, type, destination, and amount of use of service or products subscribed to by a customer of a regulated utility that is available to the utility solely by virtue of the customer-utility relationship.
- 3) The utility must obtain a customer's prior permission for each instance of disclosure or sale of his or her private customer information to an affiliate, subsidiary or other third party for purposes of marketing services or products that the customer does not already subscribe to and maintain a record of each instance of permission for disclosing his or her private customer information.

Washington's PUD produced a comprehensive report titled: "Data Privacy Guidelines for Large Utilities" and is included as an attachment to this memorandum in its entirety (see GM-6). Included in the report is a Sample Customer Rights Statement which states:

This Customer Rights Statement shares our guiding principles for how we operate and conduct our business related to the security, privacy, and use of customer data, and matters of customer choice. Consumer trust is essential to the success of new technologies, and protecting the privacy of customer data is one crucial component of strengthening this trust.

¹ <http://mdrules.elaws.us/comar/20.53.07.02>

[Utility] collects and uses customer data to perform essential business operations such as operating and maintaining the system, managing outages and processing customer bills. In using this data, [Utility] will conform to applicable laws and regulations intended to keep this information private and secure. Moreover, [Utility] recognizes its responsibilities may appropriately extend beyond these laws and regulations and as such has developed this Customer Rights Statement.

[Utility] customers have the right to:

- **Privacy**
 - We only share customer information with third parties in order to conduct essential business functions (such as bill processing services).
 - We will not sell our customer's information. Our vendors are held accountable to the same standards regarding customer information shared with them.
 - We will obtain customer permission in advance of providing data to a third party for services the customer does not already subscribe to.
 - We only share customer information with the public in compliance with local, state, and federal laws. As a public entity, we will seek to protect the privacy of our customers' personal information in complying with public records requests.
 - We are committed to a fair resolution of privacy concerns. We provide our customers with an appeal process that allows them to voice concerns regarding the release of their information.
- **Data Security & Integrity**
 - We only capture data required to conduct our business and retain it for only as long as required.
 - We design security into every data collection, access and transfer point.
 - We will not transmit personally identifiable information over our Advanced Metering Infrastructure network.
 - We implement measures to protect against a loss, misuse, and alteration of the information we control.
 - We ensure delivery of an accurate bill and/or timely response if an error is discovered.
 - We will notify customers if any personal information is breached.
- **Transparency**
 - We conduct business in an open, transparent manner where our privacy policies and decisions are available to the public.
 - We provide information to our customers about all aspects of their account. The District will strive to provide more accessibility for customers through the development of a web portal.
- **Customer Choice**
 - The District does not currently have a time-of-use pricing program in place. In the event a time-of-use pricing program is considered, development of such a program will be conducted through an open, public process.

- We will not implement a Home Area Network that enables customers to monitor and control their own appliances without prior written consent. ○
- We are confident in the advanced meter technology that we have deployed: however customers may opt-out of our advanced meters. Fees are established to offset the cost of meter replacement and manual reads.

OPC endorses a codified requirement for utilities to include a detailed Customer Rights Statement echoing the same principles as expressed in the Washington Customer Rights Statement sample seen above.

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange
Dan Lipschultz
Matthew Schuerger
Katie J. Sieben
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Commission Inquiry into
Privacy Policies of Rate-Regulated Energy
Utilities

ISSUE DATE: June 9, 2017

DOCKET NO. E,G-999/CI-12-1344

ORDER APPROVING CUSTOMER
ENERGY USE DATA CONSENT
FORM

PROCEDURAL HISTORY

In 2013, the Commission convened a workgroup to inquire into various aspects of privacy and the confidentiality of customer information held by energy utilities.

On January 19, 2017, the Commission issued an order addressing the dissemination of Customer Energy Use Data (CEUD) collected by utilities. That order expressed the Commission's desire to develop a model form to facilitate customers' consent to release of their CEUD by utilities to designated third parties. The order noted that while commenters in this docket had made substantial progress in developing a recommendation about how to enable Minnesota energy customers to consent to the release of their CEUD to designated third parties, they were unable to fashion a final recommendation for the Commission.

On January 25, 2017, the Commission issued a Notice of Comment Period requesting comments on the content and format of a potential CEUD release consent form to permit Minnesota's energy customers to give informed consent for the release of their data.

On February 22 2017, the following people and entities filed comments:

- Mission:data Coalition¹
- Fresh Energy
- Otter Tail Power
- Minnesota Energy Resources Corporation
- CenterPoint Energy
- Xcel Energy
- Minnesota Power
- Minnesota Office of the Attorney General
- Minnesota Department of Commerce
- Dakota Electric

¹ Mission:data Coalition is a national coalition of technology companies that deliver data-enabled energy management services and solutions.

FirstFuel Software² and the Minnesota Large Industrial Group³ filed reply comments in March.

On May 18, 2017, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Use of a Model Customer Consent Form

Comments received following the January 25, 2017 Notice of Comments generally favored developing a model customer consent form based on a form used in Colorado (Attachment A to this order). The Colorado model form asks the customer to identify the third party who is to receive the customer's data, the type of data to provide (electric, gas, steam), the purpose for releasing the data (for example, to analyze the customer's energy usage), and the period for which the utility is to provide the data. The form also contains a statement informing the customer of his or her right to withhold consent, limit consent, and retract consent for disclosing the data.

Many commenters favored uniformity in use of a model form. Mission:data Coalition, FirstFuel, and the Department favored uniformity over all utilities so as to streamline the collection of CEUD for a large number of customers. FirstFuel also asserted that a web-based CEUD authorization would support large scale automated data transfers to assist in "big data" analytics.

Other utilities argued that use of a uniform form does not fit all utilities or all requests for data for CEUD. Other utilities stated that because they receive so few requests for CEUD, it would be difficult to justify the expense to develop a website to obtain consent.

II. Recommended Changes to the Colorado form

The Department recommended the following modifications to the Colorado model form disclosure page.

In addition to the [Customer Data] described above, the data recipient may also receive the following from your utility: your name; account number; service number; meter number; utility type; service address; premise number; premise description; meter read date(s); number of days in the billing period; utility invoice date; base rate bill amount; other charges including base rate and non-base rate adjustments; taxes; and invoice total amount. Your utility will not provide any other information, including Personally Identifiable Information such as your Social Security Number or any financial account number, to the data recipient through this consent form.

² FirstFuel Software is a "big data" analytics company that provides web-based customer engagement and demand side management solutions to approximately 30 electric and gas utilities, energy retailers and government agencies.

³ The Minnesota Large Industrial Group describes itself as a continuing ad hoc consortium of large industrial end-users of electricity in Minnesota, spanning multiple utilities and functioning to represent large industrial interests.

And,

Your utility will have no control over the data disclosed pursuant to this consent, and will not be responsible for monitoring or taking any steps to ensure that the data recipient maintains the confidentiality of the data or uses the data as authorized by you. Please be advised that neither you nor your utility will be able to control the use or misuse of your data once it has been released.

The Department also recommended the following changes to the Colorado consent form:

1. Removal of the language on the side of the form that says, "To be completed by the Customer" and "To be completed by the Data Recipient" and include those directives in a less visually confusing manner; and
2. Placement of the Customer Signature section after the Customer Disclosure section, ensuring that both of these sections are placed on the same page.

Last, the parties commented on whether the consent form should be made available in languages other than English. Two utilities disagreed that this should be required. The Department recommended that the form be made available in a number of languages, including Hmong, Somali, and Spanish. Other parties expressed concern about the costs of translating the form into multiple other languages.

III. Commission Action

The Commission appreciates the continuing efforts of the commenting parties in helping to fashion an acceptable consent form to be used as a model for release of CEUD by utilities to designated third parties. While most of the commenting parties were amenable to use of the Colorado consent form as a model form, with the modifications proposed by the Department, other utilities preferred to retain some measure of flexibility in the language of the consent form to be used.

The Commission has carefully weighed the various options discussed. The Commission concurs that the most reasonable approach, while retaining some level of flexibility for utilities with differing customer bases and needs, is to approve the modified Colorado consent form as a model for use in Minnesota, as attached to this order. And, to facilitate third party and customer access to the model form, the Commission will require all Minnesota rate-regulated utilities to make the approved form available, on line and in hard copy, to retail customers.

Utilities are free to develop and use an alternative form, consistent with the form approved herein, with the caveat that any such alternative forms must be submitted to the Commission, as a compliance filing in this docket, for approval prior to use. To avoid interrupting the availability of consent forms, utilities may use the consent forms they are currently using for a period of up to 90 days following the date of this order.

The Commission will also allow, each utility, at its discretion, to post to its web site a Commission-approved consent form that enables customers to securely fill in, sign, and submit the form via the web site. The electronic form must be consistent with the hard copy consent form.

Further, the Commission will require all utilities to make their consent forms available in English. And, on a utility-specific basis, the Commission will require that the approved consent form be made available in any other language the utility or Commission determines appropriate for that utility based on information such as demographics and English language proficiency in the utility's service area.

Recognizing the potential costs such translations could impose on an individual utility, the Commission will delegate to the Executive Secretary the discretion to make the modified Colorado consent form available in other languages as may be requested by utility customers.

Finally, utilities are required to honor valid CEUD requests from third parties only to the extent the third parties use Commission-approved consent forms provided by the utility.

ORDER

1. The Colorado consent form, as modified herein (Attachment A), is approved as a model for use in Minnesota. All rate regulated utilities shall make the form available, on line and in hard copy, to retail customers.
2. Utilities may develop and use alternative consent forms, but any such alternative forms must be consistent with the attached model form and submitted to the Commission for approval as a compliance filing in this docket.
3. Utilities may use the consent forms they are currently using for a period of up to 90 days following the date of the Commission order.
4. Each utility, at its discretion, may post to its web site a Commission-approved consent form that enables customers to securely fill in, sign, and submit the form via the web site. The electronic form must be consistent with the hard copy form.
5. Utilities shall make their consent forms available in English and, on a utility-specific basis, in any other language the utility or Commission determines appropriate for that utility based on the demographics and English language proficiency in the utility's service area. The Commission hereby delegates to the Executive Secretary the discretion to make the attached model consent form available in other languages as requested.
6. Utilities shall honor valid CEUD requests from third parties only to the extent the third parties use Commission-approved consent forms provided by the utility.

7. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf

Daniel P. Wolf
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service.

| |
|--|
| CONSENT TO DISCLOSE UTILITY CUSTOMER DATA |
|--|

All requested information must be provided for the consent to be valid. This form may be available from your utility provider in other languages. To obtain a copy in another language, please contact your utility provider. Para obtener una copia de este formulario en español, por favor contacte a su proveedor de servicios públicos.

TO BE COMPLETED BY THE DATA RECIPIENT

| |
|--|
| Utility Name and Contact: _____ Physical and Mailing Address: _____ Phone: _____ Email: _____ Fax: _____ For additional information, including the utility's privacy policy, visit [web address] |
| By signing this form, you allow your utility to give the following information to: Organization/Trade Name: _____ Contact Name (if available): _____ Physical and Mailing Address: _____ _____ Phone: _____ Email: _____ Fax: _____ |
| This organization will receive the following customer data: <input type="checkbox"/> Information from your meter collected by your utility services provider from the following services (check all services that apply): <input type="checkbox"/> electric <input type="checkbox"/> steam <input type="checkbox"/> natural gas <input type="checkbox"/> Information regarding your participation in renewable energy, demand-side management, load management, energy efficiency or other utility programs <input type="checkbox"/> Other (specify) _____ |
| This information will be used to: <input type="checkbox"/> Provide you with products or services you requested <input type="checkbox"/> Offer you products or services that may be of interest to you <input type="checkbox"/> Determine your eligibility for an energy program <input type="checkbox"/> Analyze your energy usage <input type="checkbox"/> Other (specify): _____ |
| DATA COLLECTION PERIOD The relevant timeframe associated with the requested data is from ___/___/___ and will: <input type="checkbox"/> end on ___/___/___ <input type="checkbox"/> be effective until terminated by you. |
| You may terminate this consent at any time by sending a written request with your name and service address to your utility. |

CUSTOMER DISCLOSURES

*** Customer data can provide insight into activities within the premises receiving utility service. Your utility may not disclose your customer data except (1) if you authorize the disclosure, (2) to contracted agents that perform services on behalf of the utility, or (3) as otherwise permitted or required by laws or regulations.***

You are not required to authorize the disclosure of your customer data. Not authorizing disclosure will not affect your utility services.

You may access your standard customer data from your utility without any additional charge.

Your utility will have no control over the data disclosed pursuant to this consent, and will not be responsible for monitoring or taking any steps to ensure that the data recipient maintains the confidentiality of the data or uses the data as authorized by you. Please be advised that you may not be able to control the use or misuse of your data once it has been released.

In addition to the [Customer Data] described above, the data recipient may also receive the following from your utility: your name; account number; service number; meter number; utility type; service address; premise number; premise description; meter read date(s); number of days in the billing period; utility invoice date; base rate bill amount; other charges including base rate and non-base rate adjustments; taxes; and invoice total amount. Your utility will not provide any other information, including Personally Identifiable Information such as your Social Security Number or any financial account number to the data recipient through this consent form.

TO BE COMPLETED BY THE CUSTOMER

PLEASE READ THE ABOVE CUSTOMER DISCLOSURES
BEFORE SIGNING THIS FORM

By signing this form you acknowledge and agree that you are the customer of record for this account and that you authorize your utility service provider to disclose your customer data as specified in this form.

CUSTOMER ACCOUNT NUMBER

SERVICE ADDRESS

PRINTED NAME

SIGNATURE OF CUSTOMER OF RECORD

DATE SIGNED

GM-1

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
Nancy Lange
Dan Lipschultz
Matthew Schuerger
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Commission Inquiry
into Privacy Policies of Rate-Regulated
Energy Utilities

ISSUE DATE: January 19, 2017

DOCKET NO. E,G-999/CI-12-1344

ORDER GOVERNING DISCLOSURE OF
CUSTOMER ENERGY USE DATA TO
THIRD PARTIES, REQUIRING FILING
OF PRIVACY POLICIES AND COST
DATA, AND SOLICITING COMMENT

PROCEDURAL HISTORY

On June 17, 2013, the Commission issued an order to convene a workgroup to explore the appropriate use of customer energy use data (CEUD), and to recommend policies on the appropriate use and limitations on use of CEUD, balancing customer privacy and the state's energy goals.¹ Over time the following people and entities filed comments, participated in workgroups, or both:

- The Building Owners and Managers Association
- The Center for Energy and Environment
- CenterPoint Energy
- The Citizens Utility Board of Minnesota
- The City of Minneapolis
- Dakota Electric Cooperative
- Fresh Energy
- Great Plains Natural Gas
- Interstate Power and Light (Alliant)
- The Institute for Market Transformation
- The Minnesota Pollution Control Agency
- Minnesota Power
- Minnesota Valley Electric Cooperative
- Mission: Data Coalition
- National Federation of Independent Business
- The National Housing Trust
- Natural Resource Defense Council
- Northern States Power Company d/b/a Xcel Energy (Xcel)
- Opower

¹ This docket, Order Establishing Procedures for Further Comment and for Working Group (June 17, 2013).

- The Legal Services Advocacy Project
- The McKnight Foundation
- The Midwest Energy Efficiency Alliance
- The Minnesota Department of Commerce
- Minnesota Energy Resources Corporation
- The Minnesota Large Industrial Group
- The Minnesota Office of the Attorney General (OAG)
- Otter Tail Power Company
- PAR Energy Solutions LLC
- The Southwest Minnesota Housing Partnership
- The U.S. Green Building Council
- UtilityAPI
- Alexandra B. Klass, Elizabeth J. Wilson, and other individuals.

On September 17, 2014, an Administrative Law Judge (ALJ) from the Office of Administrative Hearings issued her First Workgroup Report (First Report); she issued an amended appendix on October 20, 2014.

On August 24, 2016, the ALJ issued her Second Workgroup Report (Second Report).

On December 1, 2016, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Summary

Data regarding customer energy use can help people—including people other than the customers in question—identify opportunities to pursue energy efficiency, conservation, and economic competitiveness, and to measure the effectiveness of those efforts. This data may be helpful in permitting greater use of electricity from renewable sources and reducing greenhouse gas emissions.² But disclosure of CEUD could reveal confidential facts about the consumer, and potentially about the energy distribution system.³ In this order the Commission does the following:

- Defines customer energy use data (CEUD);
- Declares that an energy utility should refrain from disclosing CEUD without the customer's consent unless the utility has adequately protected the customer's anonymity;
- Directs each utility to file its policies on aggregating and releasing CEUD, and to track and report the costs it incurs responding to requests for this data; and
- Solicits comments on a model form by which customers may give informed consent to the release of their data.

² First Report at 1-2.

³ *Id.*

II. Background

A. Energy Goals

CEUD is not only used by a utility to bill customers for their energy use. CEUD is also used to design, implement, and evaluate a utility's efforts to meet the various energy goals set forth in Minnesota statutes. For example, Minn. Stat. § 216B.2401 establishes the statewide goal to achieve savings of 1.5 percent of energy sales through energy efficiency and conservation:

The legislature finds that energy savings are an energy resource, and that cost-effective energy savings are preferred over all other energy resources. The legislature further finds that cost-effective energy savings should be procured systematically and aggressively in order to reduce utility costs for businesses and residents, improve the competitiveness and profitability of businesses, create more energy-related jobs, reduce the economic burden of fuel imports, and reduce pollution and emissions that cause climate change. Therefore, it is the energy policy of the state of Minnesota to achieve annual energy savings equal to at least 1.5 percent of annual retail energy sales of electricity and natural gas....

Consistent with this objective, Minn. Stat. § 216B.241, subd. 1c, establishes the general goal for energy utilities to reduce their retail energy sales by 1.5 percent via Conservation Improvement Programs. And subdivision 1e authorizes the Department to issue grants to research and develop "new technologies or strategies to maximize energy savings, improve the effectiveness of energy conservation programs, or document the carbon dioxide reductions from energy conservation programs."

Likewise, Minn. Stat. § 216C.05, subd. 2, establishes the goal of reducing the use of fossil fuels per capita by 15 percent by 2015, and of meeting 25 percent of the state's energy needs from renewable sources by 2025. Minn. Stat. § 216H.02, subd. 1, provides for reducing greenhouse gas emissions relative to 2005 levels by 30 percent in 2025, and by 80 percent by 2050. And the state's Renewable Energy Standard, Minn. Stat. § 216B.1691, directs sixteen utilities to acquire a specified portion of their energy supplies from renewable sources.

In addition to these state policies, there are also various local, regional, and national energy goals.⁴ The achievement of these goals and standards could be helped or hindered by policies governing the availability of CEUD.

B. Commission Authority

While the Commission's statutes do not address the disclosure of CEUD specifically, they grant the Commission broad authority over public utility practices that affect customers. For example, Minn. Stat. § 216B.05, subd. 2, directs utilities to publicly declare their practices if the Commission finds those practices to be relevant to the provision of regulated utility service.

⁴ See First Report, at 14-20.

Every public utility shall file ... all rules that, in the judgment of the commission, in any manner affect the service or product, or the rates charged or to be charged for any service or product, as well as any contracts, agreements, or arrangements relating to the service or product or the rates to be charged for any service or product to which the schedule is applicable as the commission may by general or special order direct; provided that contracts and agreements for electric service must be filed as required by [other statutes].

Similarly, Minn. Stat. § 216B.09, subd. 1, grants the Commission jurisdiction over the practices of regulated utilities with respect to their regulated utility service.

The commission ... may ascertain and fix just and reasonable standards, classifications, rules, or practices to be observed and followed by any or all public utilities with respect to the service to be furnished.

C. 2013 Order

The Commission exercised its jurisdiction over CEUD when it issued its 2013 order establishing a workgroup to explore the following topics, among others:

- A definition of Customer Energy Use Data, limiting the use of energy consumption data solely to further the state's energy goals.
- Whether it is in the public interest to share energy consumption data with each of the following third parties, and whether the same type of data should be shared with each:
 - i. Governmental units,
 - ii. Non-governmental organizations (NGOs),
 - iii. Public Interest Advocacy groups,
 - iv. Private vendors of service, supplies or equipment,
 - v. Building owners, and
 - vi. Building designers.
- Whether data about the following groups of customers (or building types) should be treated differently:
 - i. Single-family residences,
 - ii. Multi-family residences,
 - iii. Mixed use buildings,
 - iv. Public buildings,
 - v. Commercial buildings, and
 - vi. Industrial buildings.
- Who should cover the cost of providing the data.

III. Definition of Customer Energy Use Data (CEUD)

As an initial matter, the record reflected some dispute about the precise scope of the term Customer Energy Use Data. But the First Report states that the Workgroup ultimately reached consensus that CEUD should refer to—

natural gas and electric usage data, including but not limited to ccf [hundred cubic feet], Mcf [million cubic feet], therms, dth [decatherms], kW [kilowatts], kWh [kilowatt-hours], voltage, var [volt-ampere reactive], or power factor, and other information that is collected from the utility meter for utility purposes, and that is necessary to further state energy goals.⁵

This definition has the advantages of identifying various measures of electricity and gas—addressing both quantity and quality—while limiting the scope of the data to matters that are measured by the utility’s meter. The Commission approves of, and will adopt, these aspects of the proposed definition. But in the course of the Commission’s hearing it became apparent that the definition should be modified to reflect additional concerns.

First, as noted above, the various units listed in the proposed definition characterize the quantity and quality of electricity or gas used. To make this definition simpler and more general, the Commission will re-phrase the definition to refer to data regarding the quantity or quality of the electricity or gas used, in lieu of listing specific units.

Second, it is unclear whether the proposed definition encompasses data regarding *when* a customer using electricity or gas. Customers may well have a privacy interest regarding data about when they consume energy and power. To remove any ambiguity on this point, the Commission will state explicitly that the definition encompasses data regarding the timing of a customer’s use of electricity or gas.

Third, the proposed definition refers to data collected by a utility meter regarding the customer’s *usage*, but omits data regarding the customer’s energy *production*. If a meter records data regarding the electricity generated at a customer’s premise—by solar photovoltaic cells, for example—this data should fall within the ambit of the CEUD definition as well.

Fourth, the Commission will clarify that CEUD refers to data collected by utility *customer meters*—that is, meters used for billing customers. This docket is not intended to address data collected at meters embedded within a utility’s system.

Finally, the Commission will decline to adopt the qualifying language “*for utility purposes*” and “*necessary to further state energy goals.*” The Commission desires its CEUD policies to apply to whatever data a customer’s meter records about the quantity, quality, or timing of the customer’s electricity or gas usage, regardless of whether a utility has identified a specific purpose for recording the data. And disputes about whether certain data is *required* to further state energy goals renders this language unsuitable for a definition. Consequently the Commission will omit this language from the definition of CEUD.

⁵ First Report at 35 (citations omitted).

Taking these considerations into account, for purposes of this docket the Commission will define Customer Energy Use Data as follows:

Customer Energy Use Data (CEUD) refers to data collected from the utility customer meters that reflects the quantity, quality, or timing of customers' natural gas or electric usage or electricity production.

IV. Disclosure of Customer Energy Use Data

A. Positions of the Commenters

The Department identifies both advantages and disadvantages for a policy authorizing release of CEUD without customer consent, even when using methods designed to maintain customer privacy.

Other commenters support disclosure of CEUD with safeguards designed to protect customer privacy, even without securing the consent of each individual customer. These commenters include the Center for Energy and Environment; the City of Minneapolis; Fresh Energy; the Institute for Market Transformation; the McKnight Foundation; the Midwest Energy Efficiency Alliance; the Minnesota Pollution Control Agency; the Mission: data Coalition, Inc.; the Natural Resources Defense Council; the National Housing Trust; the Southwest Minnesota Housing Partnership; the U.S. Green Building Council; and UtilityAPI. These commenters argue that access to this information would provide a basis for identifying the most promising opportunities for energy conservation efforts, and for evaluating the progress in achieving conservation goals. Some argue that access to this information is necessary to achieve the state's energy conservation goals.

In contrast, the Minnesota Large Industrial Group and the OAG argue that the Commission need not, and should not, exercise its general authority over utility practices to promote third party access to CEUD. They note that the Legislature has provided the Commission with various tools—such as the Conservation Improvement Program—specifically designed to promote conservation and energy efficiency, obviating any need for a policy that promotes the disclosure of CEUD to anyone beyond the utility and the customer.

Both the Minnesota Large Industrial Group and the OAG also oppose any broad policy authorizing release of CEUD without customer consent even if that data is aggregated and anonymized in some manner. The OAG argues that the record of this proceeding does not yet establish (1) the value of releasing this data, (2) the cost of managing this data release, nor (3) the effectiveness of measures intended to protect customer privacy. Similarly, the Minnesota Large Industrial Group argues that knowledge of a large industrial firm's CEUD can be commercially valuable to competitors, and that the data can be so distinctive as to defy efforts to obscure the customer's identity through aggregation.

Finally, the utilities express both a desire to have clear direction from the Commission and a concern that any direction might fail to address the privacy needs of individual customers.

B. Commission Action

The Commission acknowledges the trade-offs identified by the commenters. The ALJ's First Report observed that CEUD is useful—

- for establishing baseline energy use and setting conservation and efficiency goals,
- for improving customer awareness of energy use,
- for planning and implementing energy efficiency programs, and
- for measuring and verifying energy savings.⁶

As a report for the National Association of Regulatory Commissioners (NARUC) observed, the choice to limit access to CEUD may limit the ability to achieve these objectives:

Regulators are in a position to influence or drive how the evolving customer-focused model will continue to be shaped in their territories. Regulatory environments with more open data access markets will allow for faster innovation in products and services, providing more choices and value for customers. Regulatory environments with more limiting or conservative data access policies will potentially delay the availability of customer choices. [H]ow the customer-focused business model is shaped will partially depend on the regulatory environment of each territory, as well as the innovation, choices, and customer value stemming from a more open market.⁷

But on the other hand, greater access to CEUD could reveal details about a customer's daily life. The data might disclose facts about a customer's household routine (when the customer sleeps and when the customer is active at home), whether the household has an alarm system, the types of appliances installed, the presence of certain medical equipment, and so on. Data from industrial customers might reveal competitively sensitive information. And, conceptually, disclosure of CEUD could reveal vulnerabilities in the energy distribution system.⁸

The evolving state of technology involving data collection and analysis, as well as the evolving state of privacy law, prompt the Commission to adopt a cautious approach. Balancing these considerations, the Commission concludes that utilities should refrain from releasing CEUD without the customer's consent unless the utility adequately protects the anonymity of the data. Among other things, this means that where a customer's data would be so distinctive as to defy anonymization, a utility must secure the customer's consent before releasing the data to third parties.

⁶ See First Report, at 20-21.

⁷ Navigant Consulting, Inc. *Value of Customer Data Access – Market Trends, Challenges, and Opportunities, Final Report*, at 7-8 (March 2015), prepared for the National Association of Regulatory Commissioners (NARUC) and the Eastern Interconnection States' Planning Council (EISPC).

⁸ See First Report at 1-2.

At this time the Commission will not specify any one technique or procedure a utility must follow to adequately protect a customer's anonymity. Instead, the Commission will direct utilities to file their practices with the Commission. That is, utilities that already have a practice for releasing CEUD to third parties after taking steps to anonymize the data—for example, by aggregating that data with other customers' data before releasing it—should file these practices with the Commission. And if a utility currently refrains from releasing any CEUD without the customer's consent, but later seeks to amend this practice, the Commission will direct that utility to file its new proposed practice with the Commission at least 30 days before implementing it.

By requiring utilities to file their procedures for protecting the anonymity of its customers, the Commission will gain insights into the actual practices utilities are employing today. In addition, this order may prompt utilities to re-evaluate the adequacy of their current practices, and to refine those practices before filing them with the Commission.

V. Securing Consent to Disclose CEUD

A. Background

Commission rules direct regulated energy utilities to retain customer information for at least three years, and to provide access to that information—and reasonable access to additional information—to the customer upon request:

The utility shall retain customer billing, complaint, payment, and deposit records for the length of time necessary to permit the utility to comply with the commission's rules; provided the utility shall retain these records for not less than three years. A customer's own billing, complaint, payment, and deposit records shall be available to that customer.

Each utility shall have available for existing customers and applicants for service such information as is needed to obtain and maintain adequate, timely, and efficient service.

Each utility shall furnish additional information as the customer may reasonably request.⁹

But these rules do not expressly authorize a utility to release this information to a third party, even with the customer's consent. A customer's consent to the release of his or her CEUD raises issues of logistics and consumer protection. As a matter of logistics, customers, utilities, and third parties would all benefit if customers have a clear, unambiguous way to signal consent for the release of their CEUD. And as a matter of consumer protection, the Commission seeks to ensure that customers who consent to release their data to third parties give *informed* consent.

⁹ Minn. R. 7820.4800.

B. Positions of the Commenters

Commenters—especially the City of Minneapolis, CenterPoint, the OAG, and Xcel—offered various opinions about whether the Commission should establish a consent form, the contents of that form, and whether its use should be mandatory or optional.

In the Second Report, the ALJ stated that commenters generally favored developing a model customer consent form based on a form used in Colorado, as attached to this order.¹⁰ This form asks the customer to identify the third party who is to receive the customer's data, the type of data to provide (electric, gas, steam), the purpose for releasing the data (for example, to analyze the customer's energy usage), and the period for which the utility is to provide the data. The form also contains statements informing the customer of his or her rights to withhold consent, limit consent, and retract consent for disclosing this data, among other things.

However, commenters also recommended altering the Colorado form to incorporate modifications such as these:

- [Any third party seeking the customer's CEUD] should be required to disclose a purpose for the request as a means of providing important information for the customer, but the proposed disclosure should not create any duty on the part of the utility to monitor the substance or appropriateness of identified purposes.
- Colorado's disclosure language should be retained, which notifies the customer that the utility will not monitor whether the data is being used for the purposes requested.
- The customer's signature, whether in print or in electronic form, should be required on the same page as the disclosures as a means of ensuring that the customer has read them.
- The Commission should clarify the form with respect to its applicability to the allowed sharing of [data regarding any special programs the requestor participates in], whether in individual or aggregated form.
- The form should be web-based to the greatest extent possible and made available in languages other than English (Spanish, Somali, Hmong, etc.).¹¹

¹⁰ See Second Report, Exhibit L.

¹¹ See Second Report at 21-22.

C. Commission Action

The record reveals that commenters tried to develop a recommendation about how to enable customers of Minnesota's energy utilities to consent to the release of their CEUD to specified third parties, and that these commenters made substantial progress. Nevertheless, the Workgroup was not able to fashion a final recommendation for the Commission.

Consequently the Commission will solicit additional comments on how to develop a model form to permit Minnesota's energy customers to give informed consent for the release of their data to the third parties they designate. The Commission will authorize its Executive Secretary to establish a schedule by which interested parties may submit comments and recommendations regarding the Workgroup's draft model form.

VI. Tracking and Reporting Costs Related to CEUD Disclosure

A. Positions of the Commenters

Utilities and other commenters expressed concern about the cost of providing access to CEUD. Xcel reported that in 2013 it processed 112,400 requests for CEUD, in addition to replying to subpoenas and other court orders seeking this data, and that requests for such data was increasing. Minnesota Valley Electric Cooperative and Dakota Electric Association estimate that they process 100 requests annually. Other utilities did not track this information.¹²

Nor do Minnesota utilities generally track the cost of complying with these requests. According to the First Report:

Whether the request is as simple as a copy of last month's residential invoice for one customer, or annualized energy usage for an entire community accessed by specific zip codes, historically utilities have invested the necessary staff hours into pulling and manipulating responsive data, no matter the cost or time commitment, without an ability to seek specific remuneration for costs associated with necessary technology or staff time. Traditionally these costs have been spread across all consumers through each utility's rate structure.¹³

Nevertheless, these costs could be substantial. The First Report cited an estimate that California utilities incurred costs between \$1.6 million and \$19.4 million simply to develop systems to provide access to CEUD with appropriate safeguards.¹⁴

But some utilities have begun seeking recovery of their costs for managing CEUD. Xcel, for

¹² See First Report at 37.

¹³ *Id.*

¹⁴ *Id.*, citing California Public Utilities Commission Decision 14-05-016, Decision Adopting Rules to Provide Access to Energy Usage and Usage-Related Data While Protecting Privacy of Personal Data at 105 (May 5, 2014).

example, claims that when a third party seeks data for more than 10 customer accounts, Xcel's tariffs provide for recovering some of the cost of that work from the third party. Similarly, Xcel states that its tariffs provide for billing individual customers when those customers seek specialized CEUD reports or data feeds of their own data.¹⁵

B. Commission Action

One principle of rate design is to require cost causers to bear the burden of the costs they impose on a utility and its ratepayers; this reduces the subsidies that any party bears for another party's conduct or benefit. But there can be many countervailing considerations—for example, the question of whether a request for data is caused by some third party's request, or ultimately caused by a desire to advance public policies encouraging energy conservation and efficiency.

In any event, the Commission's ability to address issues of cost recovery for managing CEUD is impaired by the lack of data in the record. To remedy that problem, the Commission will direct utilities to (1) track the requests they receive for this data and the costs they incur to aggregate and disclose it, and (2) file this information with the Commission annually. The Commission's Executive Secretary will issue a notice providing additional instruction for making this filing.

ORDER

1. For purposes of this docket, the Commission defines *Customer Energy Use Data (CEUD)* as data collected from the utility customer meters that reflects the quantity, quality, or timing of customers' natural gas or electric usage or electricity production.
2. A utility shall not disclose CEUD without the customer's consent unless the utility has adequately protected the anonymity of the CEUD. Each utility shall file its aggregation and release policies with the Commission within 30 days of the order or 30 days prior to implementation.
3. Each utility shall track the requests it receives for CEUD and its costs of aggregating and disclosing that data. Each utility shall file this information annually.

¹⁵ *Id.*

4. The Commission hereby delegates to the Executive Secretary the authority to –
 - A. Establish the schedule for soliciting additional comments and recommendations on the Workgroup draft model consent form, and
 - B. Direct how utilities make their annual filings regarding the requests they receive for CEUD and the cost of aggregating and disclosing the data.
5. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf

Daniel P. Wolf
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service.

CONSENT TO DISCLOSE UTILITY CUSTOMER DATA

All requested information must be provided for the consent to be valid. This form may be available from your utility provider in other languages. To obtain a copy in another language, please contact your utility provider. Para obtener una copia de este formulario en español, por favor contacte a su proveedor de servicios públicos.

To be completed by the Data Recipient

Utility Name and Contact: _____
Physical and Mailing Address: _____
Phone: _____ Email: _____ Fax: _____
For additional information, including the utility's privacy policy, visit [web address]

By signing this form, you allow your utility to give the following information to:

Organization/Trade Name: _____
Contact Name (if available): _____
Physical and Mailing Address: _____
Phone: _____ Email: _____ Fax: _____

This organization will receive the following customer data:

Information from your meter collected by your utility services provider from the following services (check all services that apply): electric steam natural gas

Information regarding your participation in renewable energy, demand-side management, load management, energy efficiency or other utility programs

Other (specify) _____.

This information will be used to:

- Provide you with products or services you requested
- Offer you products or services that may be of interest to you
- Determine your eligibility for an energy program
- Analyze your energy usage
- Other (specify): _____.

DATA COLLECTION PERIOD

The relevant timeframe associated with the requested data is from ___/___/___ and will:

end on ___/___/___

be effective until terminated by you.

You may terminate this consent at any time by sending a written request with your name and service address to your utility.

To be completed by the Customer

PLEASE READ THE CUSTOMER DISCLOSURES ON PAGE 2 OF THIS FORM

By signing this form you acknowledge and agree that you are the customer of record for this account and that you authorize your utility service provider to disclose your customer data as specified in this form.

CUSTOMER ACCOUNT NUMBER

SERVICE ADDRESS

PRINTED NAME

SIGNATURE OF CUSTOMER OF RECORD

DATE SIGNED

GM-2

CUSTOMER DISCLOSURES

*** Customer data can provide insight into activities within the premises receiving utility service. Your utility may not disclose your customer data except (1) if you authorize the disclosure, (2) to contracted agents that perform services on behalf of the utility, or (3) as otherwise permitted or required by laws or regulations.***

You are not required to authorize the disclosure of your customer data. Not authorizing disclosure will not affect your utility services.

You may access your standard customer data from your utility without any additional charge.

Your utility will have no control over the data disclosed pursuant to this consent, and will not be responsible for monitoring or taking any steps to ensure that the data recipient maintains the confidentiality of the data or uses the data as authorized by you.

In addition to the [Customer Data] described above, the data recipient may also receive the following from your utility: your name; account number; service number; meter number; utility type; service address; premise number; premise description; meter read date(s); number of days in the billing period; utility invoice date; base rate bill amount; other charges including base rate and non-base rate adjustments; taxes; and invoice total amount. Your utility will not provide your Social Security Number or any financial account number to the data recipient.

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

PUBLIC SERVICE COMMISSION

CONSUMER STANDARDS AND BILLING PRACTICES

FOR ELECTRIC AND NATURAL GAS SERVICE

(By authority conferred on the public service commission by section 7 of 1909 PA 106, section 2 of 1909 PA 300, section 5 of 1919 PA 419, sections 4 and 6 of 1939 PA 3, and sections 3, 9, and 231 of 1965 PA 380, MCL 460.557, MCL 460.55, MCL 460.4, MCL 460.6, MCL 462.2(12), MCL 16.103, MCL 16.109, MCL 16.331, and Executive Reorganization Order Nos. 1996-2, 2003-1, 2008-4, and 2011-4, MCL 445.2001, MCL 445.2011, MCL 445.2025, and MCL 445.2030.)

R 460.101 Applicability; purpose.

Rule 1. (1) These rules apply to utility service that is provided by electric and natural gas utilities that are subject to the jurisdiction of the public service commission.

(2) These rules are intended to promote safe and adequate service to the public and to provide standards for uniform and reasonable practices by electric and natural gas utilities in dealing with residential and nonresidential customers.

(3) These rules do not relieve a utility from any of its duties under the laws of this state.

History: 2007 AACCS; 2017 MR 22, Eff. Dec, 11, 2017.

R 460.101a Scope of rules.

Rule 1a. (1) Nothing contained in these rules covering consumer standards and billing practices shall be implemented in a manner that circumvents or is inconsistent with utility rules, orders, or tariffs approved by the commission to ensure the safe and reliable delivery of energy service.

(2) After notice and an opportunity to be heard, utilities determined by the commission to be in violation of these rules shall be subject to all damages and fines contained within the statutes under which these rules are promulgated.

(3) Upon written request of a person, utility, or on its own motion, the commission may temporarily waive any requirements of these rules when it determines the waiver will further the effective and efficient administration of these rules and is in the public interest.

History: 2017 MR 22, Eff. Dec, 11, 2017.

R 460.102 Definitions; A to F.

Rule 2. As used in these rules:

History: 2007 AACCS; 2017 MR 22, Eff. Dec, 11, 2017.

R 460.151 Reporting requirements.

Rule 51. A utility shall file with the commission quarterly reports that disclose all of the following:

- (a) The payment performance of its customers in relation to established due and payable periods.
- (b) The number and general description of all complaints registered with the utility.
- (c) The number of shut off notices issued by the utility and the reasons for the notices.
- (d) The number of hearings held by the utility, the types of disputes involved, and the number of complaint determinations issued.
- (e) The number of written settlement agreements entered into by the utility.
- (f) The number of shut offs of service and the number of reconnections.
- (g) Any other customer service quality information requested by the commission staff.

History: 2007 AACCS; 2017 MR 22, Eff. Dec, 11, 2017.

R 460.152 Inspection.

Rule 52. A utility shall permit authorized staff of the commission to inspect all of the utility's operations that relate to customer service.

History: 2007 AACCS; 2017 MR 22, Eff. Dec, 11, 2017.

R 460.153 Customer access to consumption data and confidentiality.

Rule 53. (1) A utility shall provide to each customer, upon request, a clear and concise statement of the customer's actual energy usage, or weather adjusted consumption data for each billing period during the last 12 months, or both. A utility shall notify its customers at least once each year by whatever method is used to transmit the customers' bills, that a customer may request energy usage, or weather-adjusted consumption data, or both.

(2) Each electric and natural gas 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 do all of the following:

- (a) Encompass all customer information or data collected or maintained by the utility.
- (b) Clearly define customer information or data that the utility collects or maintains.
- (c) Protect all customer information or data collected for the utility from unauthorized use or disclosure by the utility, its affiliates, or contractors.
- (d) Ensure that, for secondary purposes, customer usage data, personally identifiable information, and certain other customer information are only disclosed to third parties with the customer's written consent.
- (e) Specify that customer information may be disclosed without consent in response to a warrant or court order, as required for collection activities, or as necessary for primary purposes.

(f) Permit a customer to share his or her information with a third party that is not affiliated with the utility. The utility may elect to insert language in the privacy policy stating that the utility is not responsible, in this circumstance, for a third party's unauthorized disclosure or use of this information.

(g) Provide clear instructions regarding the method by which a customer and a third party, authorized by the customer, may obtain customer usage data in a timely manner and a readily accessible format from the utility.

(h) Indicate that the policy does not apply to aggregate data, containing general characteristics of a customer group, which is used for analysis, reporting, or program design purposes.

(3) The privacy policy shall be posted on the utility's website.

History: 2007 AACCS; 2017 MR 22, Eff. Dec, 11, 2017.

PART 10. DISPUTES, HEARINGS AND SETTLEMENTS

R 460.154 Disputed matters.

Rule 54. (1) If a customer advises a utility, or if the utility is notified by a regulation officer on behalf of a customer, before the date of the proposed shut off of service, that all or part of a bill is in dispute, then the utility shall do all of the following:

(a) Immediately record the date, time, and place the customer made the complaint and transmit verification to the customer.

(b) Investigate the dispute promptly and completely.

(c) Advise the customer of the results of the investigation.

(d) Attempt to resolve the dispute informally in a manner that is satisfactory to both parties.

(e) Provide the opportunity for the customer to settle the disputed claim or to satisfy any liability that is not in dispute.

(2) A customer may advise a utility that a matter is in dispute in any reasonable manner, such as by written notice, in person, by a telephone call directed to the utility, or through a regulation officer.

(3) A utility, in attempting to resolve the dispute, may employ telephone communication, personal meetings, on-site visits, or any other method that is reasonably conducive to obtaining a settlement.

(4) If the utility has resolved the matter in dispute but the customer remains dissatisfied, the utility shall inform the residential or small nonresidential customer of the right to request a customer hearing and the procedure for requesting the hearing. The utility shall also inform the customer that they contact the commission to file a complaint. Unless the customer takes action by either requesting a customer hearing or taking its dispute to the commission, the matter in dispute shall be considered closed.

History: 2007 AACCS; 2017 MR 22, Eff. Dec, 11, 2017.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion,)
to process data privacy tariffs filed in compliance)
with Mich Admin Code, R 460.153 for approval.)
_____)

Case No. U-18485

At the December 20, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER OPENING DOCKET

This order opens a docket for the processing and approval of data privacy tariffs filed in compliance with Mich Admin Code, R 460.153 (Rule 53) of the Commission's Consumer Standards and Billing Practices for Electric and Natural Gas Service. Rule 53 provides as follows:

R 460.153 Customer access to consumption data and confidentiality.

Rule 53. (1) A utility shall provide to each customer, upon request, a clear and concise statement of the customer's actual energy usage, or weather adjusted consumption data for each billing period during the last 12 months, or both. A utility shall notify its customers at least once each year by whatever method is used to transmit the customers' bills, that a customer may request energy usage, or weather-adjusted consumption data, or both.

(2) Each electric and natural gas 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 do all of the following:

(a) Encompass all customer information or data collected or maintained by the utility.

(b) Clearly define customer information or data that the utility collects or maintains.

(c) Protect all customer information or data collected for the utility from unauthorized use or disclosure by the utility, its affiliates, or contractors.

(d) Ensure that, for secondary purposes, customer usage data, personally identifiable information, and certain other customer information are only disclosed to third parties with the customer's written consent.

(e) Specify that customer information may be disclosed without consent in response to a warrant or court order, as required for collection activities, or as necessary for primary purposes.

(f) Permit a customer to share his or her information with a third party that is not affiliated with the utility. The utility may elect to insert language in the privacy policy stating that the utility is not responsible, in this circumstance, for a third party's unauthorized disclosure or use of this information.

(g) Provide clear instructions regarding the method by which a customer and a third party, authorized by the customer, may obtain customer usage data in a timely manner and a readily accessible format from the utility.

(h) Indicate that the policy does not apply to aggregate data, containing general characteristics of a customer group, which is used for analysis, reporting, or program design purposes.

(3) The privacy policy shall be posted on the utility's website.

Because of concerns about customer data privacy, Rule 53 was added during a recent rulemaking in Case No. U-18120 where the Commission revised and consolidated two of its previous rules sets that pertained to consumer standards and billing practices for residential and non-residential electric and gas service. Rule 53 addresses customer access to energy consumption data and confidentiality. This rule addresses utility customers' access to their energy usage information as well as the utility's responsibility to file a customer data privacy tariff. The data privacy tariffs will provide customers information about what kind of customer information is collected and maintained by the utility and how that information is protected. The utility can use customer data for primary purposes that are central to the utility's operation, such as billing and energy waste reduction program administration. However, for secondary purposes, the rule requires explicit customer consent for the utility to release such data to any third party. As set forth in the rule, the data privacy tariffs shall specify that a customer can share his or her data with third parties that are not affiliated with the utility as authorized by the customer's consent; however, the utility would not be responsible for any unauthorized release of such information by

the third party. Further, Rule 53 requires that the data privacy policy be posted on the utility's website. To comply with the provisions of Rule 53(2), each electric and natural gas utility is directed to file a data privacy tariff in this docket by June 8, 2018. Upon conclusion of the Commission's review of each tariff, the Commission will issue a second order in this docket indicating whether it approves each tariff. Further, the Commission's Executive Secretary shall electronically serve a copy of this order on each Commission-regulated electric and natural gas utility in Michigan.

THEREFORE, IT IS ORDERED that:

A. Each electric and natural gas utility shall file a data privacy tariff in this docket by June 8, 2018.

B. The Commission's Executive Secretary shall electronically serve a copy of this order on each Commission-regulated electric and natural gas utility in Michigan.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION




Sally A. Talberg, Chairman



Norman J. Saari, Commissioner

By its action of December 20, 2017.



Kavita Kale, Executive Secretary



Rachael A. Eubanks, Commissioner

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-18485

County of Ingham)

Lisa Felice being duly sworn, deposes and says that on December 20, 2017 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

Lisa Felice

Lisa Felice

Subscribed and sworn to before me
This 20th day of December 2017

Steven J. Cook

Steven J. Cook
Notary Public, Ingham County, Michigan
As acting in Eaton County
My Commission Expires: April 30, 2018

GEMOTION DISTRIBUTION SERVICE LIST

| | |
|--|--|
| kadarkwa@itctransco.com | ITC |
| tjlundgren@varnumlaw.com | Energy Michigan |
| lachappelle@varnumlaw.com | Energy Michigan |
| CBaird-Forristall@MIDAMERICAN.COM | Mid American |
| david.d.donovan@XCELENERGY.COM | Xcel Energy |
| ddasho@cloverland.com | Cloverland |
| bmalaski@cloverland.com | Cloverland |
| vobmgr@UP.NET | Village of Baraga |
| braukerL@MICHIGAN.GOV | Linda Brauker |
| info@VILLAGEOFCLINTON.ORG | Village of Clinton |
| jgraham@HOMEWORKS.ORG | Tri-County Electric Co-Op |
| mkappler@HOMEWORKS.ORG | Tri-County Electric Co-Op |
| psimmer@HOMEWORKS.ORG | Tri-County Electric Co-Op |
| aurora@FREEWAY.NET | Aurora Gas Company |
| frucheyb@DTEENERGY.COM | Citizens Gas Fuel Company |
| mpscfilings@CMSENERGY.COM | Consumers Energy Company |
| jim.vansickle@SEMCOENERGY.COM | SEMCO Energy Gas Company |
| kay8643990@YAHOO.COM | Superior Energy Company |
| ebrushford@UPPCO.COM | Upper Peninsula Power Company |
| christine.kane@we-energies.com | WEC Energy Group |
| ghaehnel@uppcoco.com | Upper Peninsula Power Company |
| kerriw@TEAMMIDWEST.COM | Midwest Energy Coop |
| dave.allen@TEAMMIDWEST.COM | Midwest Energy Coop |
| meghant@TEAMMIDWEST.COM | Midwest Energy Coop |
| tharrell@ALGERDELTA.COM | Alger Delta Cooperative |
| tonya@CECELEC.COM | Cherryland Electric Cooperative |
| bscott@GLENERGY.COM | Great Lakes Energy Cooperative |
| sculver@glenergy.com | Great Lakes Energy Cooperative |
| panzell@glenergy.com | Great Lake Energy Cooperative |
| dmartos@LIBERTYPOWERCORP.COM | Liberty Power Delaware (Holdings) |
| kmarklein@STEPHENSON-MI.COM | Stephson Utilities Department |
| debbie@ONTOREA.COM | Ontonagon County Rural Elec |
| sharonkr@PIEG.COM | Presque Isle Electric & Gas Cooperative, INC |
| dbraun@TECMI.COOP | Thumb Electric |
| rbishop@BISHOPENERGY.COM | Bishop Energy |
| mkuchera@AEPENERGY.COM | AEP Energy |
| todd.mortimer@CMSENERGY.COM | CMS Energy |
| jkeegan@justenergy.com | Just Energy Solutions |
| david.fein@CONSTELLATION.COM | Constellation Energy |
| kate.stanley@CONSTELLATION.COM | Constellation Energy |
| kate.fleche@CONSTELLATION.COM | Constellation New Energy |
| mpscfilings@DTEENERGY.COM | DTE Energy |
| bgorman@FIRSTENERGYCORP.COM | First Energy |
| vnguyen@MIDAMERICAN.COM | MidAmerican Energy |

Updated 8-18-2017

GEMOTION DISTRIBUTION SERVICE LIST

rarchiba@FOSTEROIL.COM
greg.bass@calpinesolutions.com
rabaey@SES4ENERGY.COM
cborr@WPSCI.COM
john.r.ness@XCELENERGY.COM
cityelectric@ESCANABA.ORG
crystalfallsmgr@HOTMAIL.COM
felichel@MICHIGAN.GOV
mmann@USGANDE.COM
mpolega@GLADSTONEMI.COM
rferguson@INTEGRYSGROUP.COM
rgustafson@CMSENERGY.COM
tahoffman@CMSENERGY.COM
daustin@IGSENERGY.COM
krichel@DLIB.INFO
pnewton@BAYCITYMI.ORG
Stephen.serkaian@lbwl.com
George.stojic@lbwl.com
jreynolds@MBLP.ORG
bschlansker@PREMIERENERGYLLC.COM
ttarkiewicz@CITYOFMARSHALL.COM
d.motley@COMCAST.NET
blair@michigan.gov
mpauley@GRANGERNET.COM
ElectricDept@PORTLAND-MICHIGAN.ORG
gdg@alpenapower.com
dbodine@LIBERTYPOWERCORP.COM
leew@WVPA.COM
kmolitor@WPSCI.COM
ham557@GMAIL.COM
AKlaviter@INTEGRYSENERGY.COM
BusinessOffice@REALGY.COM
landerson@VEENERGY.COM
Ldalessandris@FES.COM
mbarber@HILLSDALEBPU.COM
mrzwiars@INTEGRYSGROUP.COM
dityler@MICHIGANGASUTILITIES.COM
donm@BPW.ZEELAND.MI.US
Teresa.ringenbach@directenergy.com
christina.crable@directenergy.com
Bonnie.yurga@directenergy.com
ryan.harwell@directenergy.com
johnbistranin@realgy.com
jweeks@mpower.org

My Choice Energy
Calpine Energy Solutions
Santana Energy
Spartan Renewable Energy, Inc. (Wolverine Power Marketing Corp)
Xcel Energy
City of Escanaba
City of Crystal Falls
Lisa Felice
Michigan Gas & Electric
City of Gladstone
Integrys Group
Lisa Gustafson
Tim Hoffman
Interstate Gas Supply Inc
Thomas Krichel
Bay City Electric Light & Power
Lansing Board of Water and Light
Lansing Board of Water and Light
Marquette Board of Light & Power
Premier Energy Marketing LLC
City of Marshall
Doug Motley
Dan Blair
Marc Pauley
City of Portland
Alpena Power
Liberty Power
Wabash Valley Power
Wolverine Power
Lowell S.
Integrys Energy Service, Inc WPSES
Realgy Energy Services
Volunteer Energy Services
First Energy Solutions
Hillsdale Board of Public Utilities
Michigan Gas Utilities/Upper Penn Power/Wisconsin
Michigan Gas Utilities/Qwest
Zeeland Board of Public Works
Direct Energy
Direct Energy
Direct Energy
Direct Energy
Realgy Corp.
Jim Weeks

GEMOTION DISTRIBUTION SERVICE LIST

mgobrien@aep.com
mvorabouth@ses4energy.com
sjwestmoreland@voyager.net
hvester@itctransco.com
lpape@dickinsonwright.com
Karl.J.Hoesly@xcelenergy.com
Deborah.e.erwin@xcelenergy.com

Indiana Michigan Power Company
Santana Energy
MEGA
ITC Holdings
Dickinson Wright
Xcel Energy
Xcel Energy

Updated 8-18-2017

GM-4

REGULATED ELECTRIC UTILITIES IN MICHIGAN

gdg@alpenapower.com'; patti.poppe@cmsenergy.com; kurmass@dteenergy.com'; 'mgobrien@aep.com';
'mark.stoering@xcelenergy.com'; bashier@uppc.com; scdevon@uppc.com;
allen.leverett@wecenergygroup.com; Robert.garvin@wisconsinenergy.com; 'tharrell@algerdelta.com';
'tanderson@cecelec.com'; 'ddasho@cloverland.com'; bscott@glenergy.com';
'bob.hance@teammidwest.com'; 'Debbie@ontorea.com'; 'bburns@pieg.com'; 'dbraun@tecmi.coop';
'mkappler@homeworks.org'; 'ebaker@wpsci.com'; 'jweeks@mpower.org'; 'jaault@gomega.org';
'cborr@meca.coop'; patti.williams@bayfieldelectric.com; sara.anderson@bayfieldelectric.com;
Deborah.e.erwin@xcelenergy.com

REGULATED NATURAL GAS UTILITIES IN MICHIGAN

jtierney@freeway.net; kurmass@dteenergy.com; billingtonc@dteenergy.com;
patti.poppe@cmsenergy.com; rherr@michigangasutilities.com;
dgkult@minnesotaenergyresources.com; mark.stoering@xcelenergy.com; bburns@pieg.com;
steve.mclean@semcoenergy.com; jim.vansickle@semcoenergy.com; hare@secnaturalgas.com;
robert.garvin@wisconsinenergy.com; kurmass@dteenergy.com; Christine.kane@we-energies.com;
eischneidewind@varnumlaw.com; bhubbard@dickinsonwright.com; shaltz@mielderlaw.com

WAC 480-100-153

Disclosure of private information.

(1) An electric utility may not disclose or sell private consumer information with or to its affiliates, subsidiaries, or any other third party 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 written or electronic permission to do so.

(2) Private consumer information includes the customer's name, address, telephone number, and any other personally identifying information, as well as information related to the quantity, technical configuration, type, destination, and amount of use of service or products subscribed to by a customer of a regulated utility that is available to the utility solely by virtue of the customer-utility relationship.

(3) The utility must obtain a customer's prior permission for each instance of disclosure or sale of his or her private customer information to an affiliate, subsidiary or other third party for purposes of marketing services or products that the customer does not already subscribe to and maintain a record of each instance of permission for disclosing his or her private customer information.

(4) The utility will retain the following information for each instance of a customer consent for disclosure of his or her private customer information if provided electronically:

(a) The confirmation of consent for the disclosure of private customer information;

(b) A list of the date of the consent and the affiliates, subsidiaries, or third parties to which the customer has authorized disclosure of his or her private customer information; and

(c) A confirmation that the name, service address, and account number exactly matches the utility record for such account.

(5) This section does not prevent disclosure of the essential terms and conditions of special contracts as provided for in WAC 480-80-143 (Special contracts for gas, electric, and water companies).

(6) This section does not prevent the utility from inserting any marketing information into the customer's billing package.

(7) The utility may collect and release customer information in aggregate form if the aggregated information does not allow any specific customer to be identified.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 11-06-032 (Docket U-100523, General Order R-563), § 480-100-153, filed 2/25/11, effective 3/28/11. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. WSR 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-100-153, filed 10/29/03, effective 11/29/03. Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 01-20-060 (Docket No. UE-990473, General Order No. R-489), § 480-100-153, filed 9/28/01, effective 10/29/01.]

Data Privacy Guidelines for Large Utilities

Contents

| | |
|--|----|
| 1. Overview..... | 3 |
| 2. RCW 19.29A Consumers of Electricity - Utility Requirements | 4 |
| 2.1 Customer Consent to Release Data | 4 |
| 2.2 Release of Data to a Person..... | 5 |
| 2.3 Resolution of Customer Complaints – Disclosure of Data..... | 6 |
| 2.4 Contractor/Third Party Contract Requirements..... | 6 |
| 3. Required Notification – Data Breaches | 7 |
| 4. Other Considerations – Model Data Privacy Policy | 8 |
| 4.1 Aggregated Data | 8 |
| 4.2 Personally Identifiable Information (PII) | 8 |
| 4.3 Transmittal of PII | 9 |
| 4.4 Transmittal of PII over Advanced metering infrastructure (AMI) | 9 |
| 5. Public Records Requests..... | 10 |
| 5.1 Disclosure of PII/Customer Information to Law Enforcement | 10 |
| 6. Contracts Best Practices and Statute Requirements..... | 11 |
| 7. Addendum | 12 |
| Addendum 1: Sample Customer Rights Statement/Customer Data & Privacy (Customer Facing) | 12 |
| Addendum 2: Sample Internal Policy (Internal Document that encompasses RCW requirements and best practices) | 14 |
| Addendum 3: Contract Work Manager Non-Disclosure Agreement Checklist (Internal Facing) | 18 |
| Addendum 5: Customer Authorization to Release Information (Customer Facing) | 21 |
| Addendum 6: Complaint Investigation Process (Customer Facing) | 22 |
| Addendum 7: Sample Law Enforcement Request Form (Internal)..... | 23 |
| Addendum 8: Summary of Disclosure of Customer Data – Public and Law Enforcement Records Requests (Internal Reference Document) | 24 |
| Addendum 9: Sample Billing History Report with RCW 19.29A.110 Disclaimer (Customer/Recipient Facing)..... | 25 |

1. Overview

This document is intended to provide a guide to Public Utility Districts in developing a policy to address the specific obligations of utilities under RCW 19.29A and other applicable Washington laws, rules, and regulations regarding the collection use, disclosure, and protection of personally identifying information of the utility’s customers. Utilities should consult with their local counsel before adopting the policies and procedures outlined in this document, as they may need to be modified and tailored as appropriate to address individual policies and practices.

Strong consumer data privacy protections are essential to maintaining the trust of our customers. We understand the importance of protecting the personal information we collect from the public. This document is intended to help utilities emphasize their commitment to protect customer data from unauthorized disclosure or breach of security throughout the lifecycle of the data. It will also help utilities understand some of the requirements imposed by RCW’s related to data security, and will recommend some best practices utilities can follow to add levels of security above and beyond the minimum state requirements.

More and more customer information is being collected by utilities and is used to perform essential business functions such as operating and maintaining the system, managing outages, processing customer bills, credit and collections, conservation and usage management, etc. With the implementation of automated metering, even more detailed customer data is now being collected. Utilities must be committed to protecting the security and privacy of all customer data, and to conform to applicable laws and regulations, to keep this information private and secure.

This document is divided into several sections:

- Section 2 includes data privacy requirements for consumer owned utilities that must be incorporated in a policy approved by the governing board. To be in compliance with statute, the governing board must approve the policy by October, 2016.
- Section 3 addresses utility obligations when a breach of customer personal information has occurred. The breach can occur at the utility, or at with a subcontractor that has customer information.
- Section 4 includes information that may not be required by statute but should be considered as a utility develops internal policies and practices, and customer-facing documents, related to customer data privacy.
- Section 5 discusses the impacts of the Public Records Act on public entities, and considerations related to the release of information to law enforcement as allowed by statute.
- Section 6 includes information about contract management best practices. This section also addresses the statute requirement regarding utilities who utilize contractors to perform essential business functions, and, requirements regarding contracts when the contractor subcontracts to third parties to perform these functions. In this case, the statute requires that all contracts - with the primary contractor or with the subcontractor- include language that prohibits the release of customer information. This requirement must also be incorporated into the overall policy adopted by the governing board.
- An Addendum section includes examples of internal and external policies and documents that utilities can use as resources when drafting their own policies.

2. RCW 19.29A Consumers of Electricity - Utility Requirements

RCW 19.29A establishes a number of requirements enacted by the Legislature that utilities must follow. During the 2015 legislative session, several new requirements were added to this chapter following the adoption of House Bill 1896 and House Bill 2264. Specifically, RCW 19.29A.100 and RCW 19.29A.110 were added as new sub-chapters, reflecting the requirements of the two house bills. Further, RCW 19.29A.100 (10) adds a due date for incorporation of the requirements into policy, which must be adopted by governing boards by October 9, 2016.

A summary of the requirements is as follows. A customer facing document that incorporates these requirements and can be approved by a board is provided as Addendum 1, and an internal policy with the requirements is in Addendum 2:

2.1 Customer Consent to Release Data

In accordance with RCW 19.29A.100 a utility may not sell private or proprietary customer information. Further, the utility cannot disclose private or proprietary information for the purposes of marketing services or product offerings the customer does not already subscribe to. In order to disclose information to a third party for this purpose, a utility first must obtain a customer's permission prior to releasing the information. The RCW defines proprietary and private customer information as a customer's name, address, telephone number, and other personally identifying information, as well as a customer's usage, payment history, and other information the utility has solely by virtue of the utility-customer relationship.

Customer consent is *not* required when the utility releases private and proprietary information when performing an essential business function, i.e. to a third party vendor. Therefore it is recommended that a utility define the purposes that customer data will be used when released to a third party. As an example, the utility should distinguish the release of data for *primary* purposes, such as generating a bill, printing and mailing a customer newsletter, or energy efficiency program administration data. The utility should also define data used for a *secondary* purpose such as marketing services or products. A sample definition is as follows:

Primary Purpose - data released for essential business functions, such as billing or bill presentment, energy efficiency program validation or administration (such as BPA), and customer surveys. When data is released to a vendor to provide services that are of a primary purpose, the vendor is further prohibited from disclosing the customer information to a party that is not under contract with the utility or its contracted affiliates. Further, the vendor must sign a Confidentiality and Non-Disclosure Agreement.

Secondary Purpose - data released for marketing services or product offerings the customer does not already subscribe to. Requests for customer data used for secondary purposes might come from a customer asking for their data to be shared directly to a third

party vendor, from a vendor asking for customer information for marketing purposes, or from utility staff working with a third party to market a new product or service.

Obtaining Affirmative Customer Consent - Release of Data for a Secondary Purpose

When data is released for a secondary purpose, affirmative (advance) consent must be obtained from the customer prior to the release to the third party. In accordance with the RCW, the utility must, in part:

- Maintain a record for each instance of consent
- Provide the ability to receive consent via hard copy or electronically.
- Confirm that the customer providing the consent exactly matches the utility record for that customer.
- Provide the customer with an option to withdraw the consent.
- Refer to RCW 19.29A.100 for the complete list of requirements.

A sample Customer authorization to Release Information is included as Addendum 5.

Affirmative customer consent is not required in the following circumstances

- When the data is aggregated. Refer to the definitions section for the definition of aggregated data.
- When the data is disclosed to effect, administer or complete a financial transaction that the electric customer requested or otherwise authorized; however, the data cannot be further disclosed (i.e. for marketing purposes).

2.2 Release of Data to a Person

RCW 19.29A.110 addresses the release of customer information to a “Person,” with Person being defined as any individual, partnership, corporation, LLC or other organization or commercial entity except an electric utility. Persons who request non-exemptible customer information must first obtain consent from the customer before receiving said information, if the data will be used for commercial or marketing purposes. However, consent is not required if the customer initiated the purpose of the release (for example, a realtor requests usage information on behalf of a customer for a house they are selling).

While utilities are not expected to be enforcers of this RCW sub-chapter, it is something to be aware of. It is recommended that utilities make the recipient aware of the requirements established by this RCW, i.e. the data cannot be used for commercial or marketing purposes unless the customer has given consent to the Person to do so. A sample Usage History Report that a utility would provide to a Person requesting usage information is included as Addendum 9. This sample includes disclaimer language regarding the recipient’s use of the data.

2.3 Resolution of Customer Complaints – Disclosure of Data

In accordance with RCW 19.29A.100, utilities are required to establish a policy that must include procedures for investigation and resolution of complaints by a customer whose private or proprietary information may have been sold or disclosed by the utility for the purposes of marketing services or products.

A sample “Complaint Investigation Process” is provided as Addendum 6 that describes the actions a customer must take to request an investigation if they suspect that their information has been released, and the steps the utility must take in response.

2.4 Contractor/Third Party Contract Requirements

While utilities can release customer data to vendors for primary business purposes, RCW 19.29A.100(5)(a) requires the contract with that vendor contain language preventing the vendor from further disclosing or selling any provide customer information.

A sample Confidentiality and Non-Disclosure Agreement (CNDA) that meets this requirement is provided as Addendum 4.

3. Required Notification – Data Breaches

Under RCW 42.56.590, when a breach of personal data occurs, utilities are required to disclose the breach to the customers whose data was acquired by an unauthorized person. This notice needs to be provided as soon as the utility discovers the breach or is notified of the breach (for example, from a third party vendor who has personal information for a primary or secondary business purpose), subject to the following:

- Notice is not required if the breach is not likely to subject the customer to a risk of harm.
- Required notification may be delayed if a law enforcement agency will impede a criminal investigation.
- The notice can be written or electronic.
- Depending on the cost of the notification, other options exist to provide this notification.

Utilities should refer to the RCW for additional requirements regarding breaches.

Contractor Responsibility

It is recommended that utilities include language in their contracts that contractors provide timely notification of a breach to the utility. Please refer to the Confidentiality and Nondisclosure Agreement (Addendum 4) for sample contractor responsibility language.

4. Other Considerations – Model Data Privacy Policy

While not required by law, utilities should consider creating an internal policy that addresses different aspects of customer data privacy and sets the standards the utility will follow to protect customer data. When developing a data privacy policy, utilities should consider including the following (see sample internal policy provided as Addendum 2). This sample policy incorporates the following topics:

4.1 Aggregated Data

Customer consent is not required when releasing aggregated data. In accordance with RCW 19.29A.100 (8), aggregated data is data that is considered sufficiently consolidated so that any individual customer cannot reasonably be identified. Utilities may want to establish their own definition of aggregated data to include in their policy. APPA has developed a 15/15 rule which achieves this level of consolidation. The 15/15 rule states that aggregated data must include the data of at least 15 customers, and that no single customer included in the sample is to comprise more than 15% of the total aggregated load. Any personally identifying information must be removed from the aggregated data before release.

4.2 Personally Identifiable Information (PII)

Each utility may want to define Personally Identifiable Customer Information, or PII, to incorporate into their policy. The utility definition of PII may be more restrictive than what is established by local, state and federal laws. A sample definition of PII is as follows:

1. Names
2. Street addresses
3. Telephone numbers
4. Email addresses
5. Social Security numbers
6. Account numbers (including utility account numbers, credit card numbers, bank account numbers)
7. Account balances
8. Any information received to identify the customer, such as driver's license, passport, or information collected to establish their credit worthiness.
9. Meter identifier and meter interval/electricity use data that is released **in combination with** any information included with items # 1-8 above.

RCW 19.29A.010 (25) and (26) also provide definitions for Private Customer Information and Proprietary Customer Information.

4.3 Transmittal of PII

It is considered a cyber security best practice to send customer data and PII to external parties using FTP or encrypted websites. While email and hard copies are often times the easiest forms of transmittal, keep in mind that email can be intercepted and hard copies can be misplaced or lost through the mail.

4.4 Transmittal of PII over Advanced metering infrastructure (AMI)

Utilities with AMI systems need to be aware of the data that is being transmitted over their networks and if it contains PII. If it contains PII, efforts should be taken to ensure the network is secure and customer data cannot be accessed or obtained if the network is breached.

5. Public Records Requests

Public utilities must comply with RCW 42.56, the Public Records Act. Within the PRA, exemptions exist that prevent the release of certain personal information. The Summary of Disclosure of Customer Data (Addendum 8) summarizes the types of information a utility might be asked to release via a public records request, and if exemptions exist that prevent the release of the data. Public Records Requests can be submitted by Law Enforcement, or from the general public.

5.1 Disclosure of PII/Customer Information to Law Enforcement

RCW 42.56.335 gives law enforcement authorities a mechanism to obtain records of individuals who are suspected of committing a crime. The law enforcement officer must provide the utility with a written request that states the authority suspects the individual to whom the records pertain is suspected of committing a crime, and the authority believes the records could help determine if the suspicion is true.

A sample law enforcement request form “Request for Inspection, Copying or Obtaining of Public Records by Law Enforcement Agencies” is provided as Addendum 7.

Customer information that is strictly protected from disclosure by law will not be released to law enforcement under the above process. In order for law enforcement to obtain exemptible data, a subpoena, warrant or other form of court order must be obtained by the requesting agency.

6. Contracts Best Practices and Statute Requirements

Utilities may engage a contractor to provide services in support of primary and secondary business functions as noted above without obtaining advance customer consent. As noted above in Section 2.4, a Confidentiality and Non-Disclosure Agreement (CNDA) must be included as part of the standard contract language and approved as part of the utilities standard contract approval process. Further, the contractors may engage a subcontractor or third party to provide services in support of their contract with the utility. In accordance with the statute, a CNDA must be signed by a subcontractor or third party, ensuring the subcontract or third party will not sell or release PII for marketing or commercial purposes. A sample CNDA is provided as Addendum 4.

Utilities that assign an internal Contract Work Manager (CWM) to manage contracts throughout their life cycle should also ensure the CWM is aware of their obligations as it relates to the protection of customer data and its release to a third party. A sample “Non-Disclosure Agreement Checklist” is provided as Addendum 3 to create that awareness as the CWM is preparing the contract.

Releasing Information to Contractors – Method it is released

It is recommended that the transmittal of files and forms that include PII to Contractor/subcontractor be sent via secure FTP or encrypted in order for a vendor to conduct business of the utility. Email or hard copies should never be used to share PII with a vendor.

7. Addendum

Addendum 1: Sample Customer Rights Statement/Customer Data & Privacy (Customer Facing)

This Customer Rights Statement shares our guiding principles for how we operate and conduct our business related to the security, privacy, and use of customer data, and matters of customer choice. Consumer trust is essential to the success of new technologies, and protecting the privacy of customer data is one crucial component of strengthening this trust.

[Utility] collects and uses customer data to perform essential business operations such as operating and maintaining the system, managing outages and processing customer bills. In using this data, **[Utility]** will conform to applicable laws and regulations intended to keep this information private and secure. Moreover, **[Utility]** recognizes its responsibilities may appropriately extend beyond these laws and regulations and as such has developed this Customer Rights Statement.

[Utility] customers have the right to:

- Privacy
 - We only share customer information with third parties in order to conduct essential business functions (such as bill processing services). We will not sell our customer's information. Our vendors are held accountable to the same standards regarding customer information shared with them.
 - We will obtain customer permission in advance of providing data to a third party for services the customer does not already subscribe to.
 - We only share customer information with the public in compliance with local, state, and federal laws. As a public entity, we will seek to protect the privacy of our customers' personal information in complying with public records requests.
 - We are committed to a fair resolution of privacy concerns. We provide our customers with an appeal process that allows them to voice concerns regarding the release of their information.
- Data Security & Integrity
 - We only capture data required to conduct our business and retain it for only as long as required.
 - We design security into every data collection, access and transfer point.
 - We will not transmit personally identifiable information over our Advanced Metering Infrastructure network.
 - We implement measures to protect against a loss, misuse, and alteration of the information we control.
 - We ensure delivery of an accurate bill and/or timely response if an error is discovered.
 - We will notify customers if any personal information is breached.

- Transparency
 - We conduct business in an open, transparent manner where our privacy policies and decisions are available to the public.
 - We provide information to our customers about all aspects of their account. The District will strive to provide more accessibility for customers through the development of a web portal.

- Customer Choice
 - The District does not currently have a time-of-use pricing program in place. In the event a time-of-use pricing program is considered, development of such a program will be conducted through an open, public process.
 - We will not implement a Home Area Network that enables customers to monitor and control their own appliances without prior written consent.
 - We are confident in the advanced meter technology that we have deployed: however customers may opt-out of our advanced meters. Fees are established to offset the cost of meter replacement and manual reads.

Addendum 2: Sample Internal Policy (Internal Document that encompasses RCW requirements and best practices)

Customer Privacy Policy

Introduction

Strong consumer data privacy protections are essential to maintaining the trust of our customers. This Directive is intended to emphasize the District’s commitment to protect customer data from unauthorized disclosure or breach of security throughout the lifecycle of the data.

Customer information [Personally Identifiable Information (PII) as defined below] is collected and used to perform essential business functions such as operating and maintaining the system, managing outages, processing customer bills, credit and collections, conservation and usage management, etc. With the implementation of automated metering, even more detailed customer data is now being collected. The District is committed to protecting the security and privacy of all customer data, and will conform to applicable laws and regulations, as well as internal standards and policies which are intended to keep this information private and secure.

The District may be required to release various types of customer information in response to a public records request, court order, search warrant or discovery request. When one of these events occurs, efforts will be made as allowed by law to notify customers of such requests before the information is disclosed.

Scope

This Directive applies to all District employees, Commissioners, and contract personnel with access to the District’s systems and data, hereinafter referred to within this policy as “employees.”

Personally Identifiable Information (PII)

The District is committed to the protection of Personally Identifiable Information (PII) to prevent its unauthorized use or disclosure. To this end, customer data defined as PII by this Directive is more restrictive than what is established by local, state and federal laws. Information considered PII covered by this Directive is limited to:

1. Names
2. Street addresses
3. Telephone numbers
4. Email addresses
5. Social Security or Unified Business Identifier (UBI) numbers
6. Account numbers (Named Utility account numbers, credit card numbers, bank account numbers)
7. Account balances
8. Any information received during the identity and customer credit worthiness process
9. Identity information provided on a driver’s license, passport, etc.
10. Meter interval/electricity use data that can be tied to items # 1-8 above.

Definition for the Use and Release of PII – Primary vs. Secondary Purpose

When customer data is released to a contractor/subcontractor or third party, the purpose of the release of the data will be defined as being for either a “Primary” or “Secondary” purpose, as follows:

Primary Purpose - data released for essential business functions, such as billing or bill presentment, energy efficiency program validation or administration (such as BPA), and customer surveys. When data is released to a vendor to provide services that are of a primary purpose, the vendor is further prohibited from disclosing the customer information to a party that is not under contract with the District or its contracted affiliates. Further, the vendor must sign a Confidentiality and Non-Disclosure Agreement.

Secondary Purpose - data released for marketing services or product offerings the customer does not already subscribe to. Data released for a secondary purpose requires affirmative customer consent (see definition below). Requests for customer data used for secondary purposes might come from a customer asking for their data to be shared directly to a third party vendor, from a vendor asking for customer information for marketing purposes, or from District staff working with a third party to market a new product or service.

Affirmative Customer Consent – Release of Data for Secondary Purpose

When releasing customer data for a secondary purpose, affirmative (advance) customer consent must be obtained for each instance of release of data unless the customer has previously provided advance consent.

The following is necessary to meet the requirements of affirmative consent, which can be provided electronically or via hard copy:

- The consent must include the date or date period for which the consent is granted.
- The consent must specify the party or parties the customer has authorized the release of their data to, including any affiliates and third parties.
- The District must validate that the individual providing the consent matches the name, service address and account number of the customer of record in the District’s customer information system.
- A record for each instance the customer has given written or electronic consent must be maintained, following applicable records retention guidelines.

The attached “Customer Authorization to Release Information” (CARI) is provided as a template to use to obtain consent from a customer. CARI’s obtained for a contract will be routed with the Contract Recommendation memo and CARI’s obtained for customer-requested releases of their data will be retained in Customer Service.

Customers who have given affirmative consent also have the right to retract said consent at any time.

Aggregated Data

Aggregated data is data that is considered sufficiently consolidated so that any individual customer cannot reasonably be identified. The District will generally follow a 15/15 rule, which means that aggregated data must include the data of at least 15 customers, and that no single customer included in the sample is to comprise more than 15% of the total aggregated load. Any personal identifying information must be removed from the aggregated data before release.

Customer consent is not required when releasing aggregated data that meets this definition.

Disclosure of PII to Contractors/Subcontractors

As an electric utility, the District may engage a contractor to provide services in support of primary and secondary business functions as noted above. For new contracts, a Confidentiality and Non-Disclosure Agreement (CNDA) will be included as part of the standard contract language and approved as part of the standard contract approval process. Further, the District's contractors may engage a subcontractor or third party to provide services in support of their contract with the District. A CNDA must be signed by a subcontractor or third party and be routed through the normal contract approval process, accompanying the contract recommendation memo.

Responsibilities of Contract Work Manager - Release of PII for Primary Purpose

The Contract Work Manager (CWM) must review any need or request for PII to determine if PII shared with the contractor/subcontractor is necessary to meet the business objective.

- Any need or request to release PII to a contractor requires approval from the Assistant General Manager and Chief Privacy Officer. An approval only needs to be obtained the first time the District releases PII to that entity. Subsequent requests are only required if additional types of PII will be provided to the contractor.
- It is up to the CWM to reduce the amount of PII that is being released, where possible, by questioning the purpose and needs of the contractor to receive all information they are requesting.
- The contractor/subcontractor must provide a specific timeline in which the PII will be used and a scope that defines the manner in which the data will be used. Further, the contractor must comply with contract requirements that will address the disposition of PII after the contract timeline has expired.
- The CWM is also responsible for communicating the terms of the agreement to the contractor.

To facilitate this review, the CWM must complete the Non-Disclosure Agreement Checklist (below) and route it through the standard contract approval process.

Responsibilities of Contract Work Manager – Release of PII for Secondary Purpose

The CWM must obtain completed CARI forms from each customer whose data will be shared. Copies of the forms must be routed through the standard contract approval process.

The third party vendor the CWM is working with will be required to sign a CNDA.

Transmittal of PII to Contractor/Subcontractor

All files and forms of data provided to a vendor to conduct business of the District must be sent via secure FTP or be encrypted. Email or hard copies should never be used to share PII with a vendor.

Disclosure of PII During Customer Transactions

[Utility] considers security of PII a top priority, and will only share PII when requested with the customer(s) of record or an individual designated by the customer(s) of record to receive such information. Before releasing PII, measures will be taken to verify the identity of the person requesting the information. This may include asking for the UBI number of a commercial business, some combination of a social security number (first three digits, last four digits), or verification by driver's license number.

Disclosure of PII to Law Enforcement

The District will comply with RCW 42.56.235, which gives law enforcement authorities a mechanism to obtain records of individuals who are suspected of committing a crime. The law enforcement officer must complete a "Request for Inspection, Copying or Obtaining of Public Records by Law Enforcement Agencies" form before certain PII will be released to the requesting officer.

Customer information that is strictly protected from disclosure by law will not be released to law enforcement under the above process. In order for law enforcement to obtain this type of exemptible data, a subpoena, warrant or other form of court order must be obtained by the requesting agency.

All requests for PII by law enforcement should be processed through the District's Public Records Officer.

Breach Notice Practice

The District will implement administrative, technical, and physical safeguards to protect PII from unauthorized access, destruction, use, modification or disclosure.

If the District should discover or be informed of a breach, it will make an effort to secure the breached data and will ensure notification to all affected customers of the breach. The District will keep customers informed about the status of their information security as updates are made.

Addendum 3: Contract Work Manager Non-Disclosure Agreement Checklist (Internal Facing)

**Non-Disclosure Agreement Checklist
(Routed with Contract Recommendation Memo)**

It is the utilities policy to implement strong consumer data privacy protections to maintain the trust of our customers. The sharing of District customer, employee, or vendor information with third parties should occur only when it for a primary purpose and is necessary in the conduct of essential business functions.

Any Contract Work Manager (CWM) who requests that such information be shared with a third party will complete this checklist, sign, and route with the Contract Recommendation Memo.

The CWM's signature indicates that he/she is aware of the District's policy concerning Customer Privacy and in particular Personally Identifiable Information (PII) as defined in the policy. The CWM should evaluate the purpose of the information data sharing request and attempt to limit the amount of PII shared with the third party to that which is minimally necessary to meet the business objective.

The following customer/vendor/employee information will be shared with <Vendor Name> (check all that apply):

- 11. _____ Names
- 12. _____ Street addresses
- 13. _____ Telephone numbers
- 14. _____ Email addresses
- 15. _____ Social Security or Unified Business Identifier (UBI) numbers
- 16. _____ Account numbers (Named Utility account numbers, credit card numbers, bank account numbers)
- 17. _____ Account balances
- 18. _____ Any information received during the identity and customer credit worthiness process
- 19. _____ Identity information provided on a driver's license, passport, etc.
- 20. _____ Meter interval/electricity use data that can be tied to items # 1-8 above.

I have reviewed the information and data sharing request and believe that the PII identified above is that which is minimally necessary to accomplish the business objective, and that the data is being used for a primary purpose. A non-disclosure agreement is required with the contract.

By _____ / _____
Contract Work Manager/Date

Title _____

Chief Privacy Officer: _____ / _____
Date

Assistant General Manager: _____ / _____
Date

Addendum 4: Confidentiality and Nondisclosure Agreement (Internal/Vendor Facing)

**CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT
Contract #XX-XX-XX**

Date: _____

This Confidentiality Agreement (“Agreement”) is by and between **[Utility]** a municipal corporation governed under RCW 54 of the laws of the State of Washington, and _____ (“Contractor”).

For purposes of this Agreement, “Confidential Information” shall include **[Utility]** customer, employee, or vendor information, all technical and business information or material that has or could have commercial value or other interest in the business or prospective business of **[Utility]**, and all information and material provided by the **[Utility]** which is not an open public record subject to disclosure under the Washington Public Records Act. Confidential Information also includes all information of which unauthorized disclosure could be detrimental to the interests of **[Utility]** or its customers, whether or not such information is identified as Confidential Information.

For purposes of this Agreement, “Contractor” shall include all employees, consultants, advisors and subcontractors of Contractor (“its Representatives”).

Contractor hereby agrees as follows:

1. Contractor and its Representatives shall use the Confidential Information solely for the purposes directly related to the business set forth in Contractor’s agreement with **[Utility]** and shall not in any way use the Confidential Information to the detriment of **[Utility]**. Nothing in this Agreement shall be construed as granting any rights to Contractor, by license or otherwise, to any **[Utility]** Confidential Information.

Contractor agrees to obtain and utilize such Confidential Information provided by **[Utility]** solely for the purposes described above, and to otherwise hold such information confidential pursuant to the terms of this Agreement.

2. In the event third parties attempt to obtain the Confidential Information by legal process, the Contractor agrees that it will not release or disclose any Confidential Information until **[Utility]** has notice of the legal process and has been given reasonable opportunity to contest such release of information and/or to assert the confidentiality privilege.

3. Upon demand by **[Utility]**, all information, including written notes, photographs, memoranda, or notes taken by Contractor that is Confidential Information shall be returned to **[Utility]**.

4. Confidential Information shall not be disclosed to any third party without prior written consent of **[Utility]**.

5. It is understood that Contractor shall have no obligation with respect to any information known by it or generally known within the industry prior to the date of this Agreement, or become common knowledge with the industry thereafter.

6. Contractor acknowledges that any disclosure of Confidential Information will cause irreparable harm to the **[Utility]**, and agrees to exercise the highest degree of care in safeguarding Confidential Information against loss, theft, or other inadvertent disclosure and agrees generally to take all steps necessary to ensure the maintenance of confidentiality including obligating any of its Representatives who receive Confidential Information to covenants of confidentiality.

7. The obligation set forth in this Agreement will continue for as long as Contractor possesses Confidential Information. If Contractor fails to abide by this Agreement, the **[Utility]** will be entitled to specific performance, including immediate issuance of a temporary restraining order or preliminary injunction enforcing this Agreement, and to judgment for damages caused by the Contractor's breach, and to any other remedies provided by applicable law. Any breach of this Agreement shall constitute a default in performance by Contractor in any contract between the **[Utility]** and Contractor. If any suit or action is filed by **[Utility]** to enforce this Agreement, or otherwise with respect to the subject matter of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in the preparation or in prosecution or defense of such suit or action as affixed by the trial court, and if any appeal is taken from the decision of the trial court, reasonable attorney fees as affixed by the appellate court. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

| | |
|------------------|--------------|
| _____ | Dated: _____ |
| [Utility] | |
| _____ | Dated: _____ |
| Consultant | |

Addendum 5: Customer Authorization to Release Information (Customer Facing)

CUSTOMER AUTHORIZATION TO RELEASE INFORMATION

This form is to permit [Utility] to release customer data as indicated below to a third party. The customer must complete this document in its entirety and must also be listed as a customer of record in [Utility] Customer Information System in order to authorize the release of said data.

Customer Information:

Account Number: _____
Name on Account: _____
Service Address: _____
Phone Number: _____
Email Address: _____ (if applicable)

I authorize the release of my customer data as follows:

Type of data to be released (i.e. usage or payment history, payment etc.) and the period in which the data covers (i.e. from January, 2014 through December, 2014 :

Name of Recipient/Business: _____
Address: _____
Phone Number: _____
Manner in which data should be provided (mail, email, pick up): _____
Date(s) in which this release is in effect: _____

This data release is at the request of, and on behalf of the [Utility] customer listed above, and as such, the customer agrees to release and hold harmless [Utility] from any liability, claims, demands, causes of action, damages or expenses resulting from: 1) any release of information to the recipient noted above; 2) the unauthorized use of this information or data; and 3) from any actions taken by the recipient with respect to such information or data.

Account Holder Signature: _____ Date: _____

Addendum 6: Complaint Investigation Process (Customer Facing)

Complaint Investigation Process A customer has the right to request their utility investigate the potential release of their information.

A Customer shall utilize the following steps to initiate the investigation process

1. The utility must receive a customer's written request by personal delivery or mail, and shall be addressed to the (Named Utility).
2. The request must contain a short, plain statement of potential data released, the action requested by the customer and the appropriate customer contact information for purposes of communications for the appeals process.
3. Upon receipt of the request, the customer will be contacted by the utility's designee(s) within ___ business days and an informal conference will be scheduled.
4. The utility's designee(s) will investigate and will report back their findings of the investigation to the customer.
5. If the investigation is resolved to the satisfaction of the customer, the process is concluded.
6. If the situation remains unresolved, the customer may appeal the results of the investigation to (the governing board/general manager/hearing officer as designated by the utility's policy).

Addendum 7: Sample Law Enforcement Request Form (Internal)

**REQUEST FOR INSPECTION, COPYING OR OBTAINING PUBLIC RECORDS
BY LAW ENFORCEMENT AGENCIES**

[Utility] is governed by Title 54 of the Revised Code of Washington, and is subject to Washington state laws pertaining to the release of public records.

This document is provided to allow law enforcement agencies to obtain disclosure of public records in accordance with [Utility Resolution Number] and the Washington Public Records Act. Authorized law enforcement representatives are required to provide proper identification and sign this form acknowledging the records being requested are being obtained pursuant to the requirements of the Washington Public Records Act.

For further information, please contact [contact info]

Date of Request: _____

Requestor's Name: _____

Representing Agency: _____

Identification provided: _____

Specific Document/Information requested:

Legal Process Requirements: The following types of records, or portions thereof, will require a signed warrant and/or subpoena for processing: *customer records containing banking information, including routing numbers, social security numbers, and credit card numbers. (This list may not be all inclusive.)*

Requestor must review and sign prior to document/information being provided:

This request for customer information from [Utility] is being made pursuant to the Washington Public Records Act. Upon signing this statement, the requestor acknowledges that the above information is being requested because they suspect that a particular person to whom the records pertain has committed a crime. The requestor further states that there is reasonable belief that the records being requested could determine or help determine whether their suspicion might be true.

_____ (signature of requestor)

For Internal Use:

- ___ Request approved
- ___ Date information provided
- ___ Other pertinent information _____.

Signature of Public Records Officer: _____

(A copy of this request and all records provided must be retained in the District's Public Information Request files)

Addendum 8: Summary of Disclosure of Customer Data – Public and Law Enforcement Records Requests (Internal Reference Document)

| Disclosure of Customer Data - Public Records Requests and Law Enforcement Records Requests | | | | |
|--|---|--|---|---|
| Information Requested | Is Information Released Based on Method Used to Request (yes/no)? | | | If "No," Governing law/policy |
| | General Public Records | Law Enforcement (requires written request ⁵) | Law Enforcement Warrant or Court Order (all FACTA Data) | |
| Name | No ¹ | Yes | Yes | RCW 42.56.330 - Public Utilities and Transportation |
| Address | Yes/No ² | Yes | Yes | RCW 42.56.330 - Public Utilities and Transportation |
| Mailing Address | No ³ | Yes | Yes | |
| Telephone Number | No | Yes | Yes | RCW 42.56.330 - Public Utilities and Transportation |
| Social Security Number | No | No | Yes | 42 USC 405 |
| Usage Information - billing period | Yes | Yes | Yes | |
| Usage Information < billing period | No | No ⁶ | Yes | RCW 42.56.330 - Public Utilities and Transportation |
| Email Addresses | No | Yes | Yes | RCW 42.56.330 - Public Utilities and Transportation |
| Bank Account/Credit Card Numbers | No | No | Yes | FACTA-Patriot Act |
| Payment information (am't, when pd) | No | Yes | Yes | RCW 42.56.230 - Personal Information Exemptions |
| Account payment history | No | Yes | Yes | RCW 42.56.230 - Personal Information Exemptions |
| Type of payment (credit card, cash) | No | Yes | Yes | RCW 42.56.230 - Personal Information Exemptions |
| Billing statements | No | Yes | Yes | RCW 42.56.230 - Personal Information Exemptions |
| Customer account notes | Yes/No ⁴ | Yes | Yes | RCW 42.56.230 - Personal Information Exemptions |
| Driver's License | No | Yes | Yes | RCW 42.56.230 - Personal Information Exemptions |

¹ When requesting the name of a person at an address, the address is exemptible, therefore the name becomes exemptible

² No, unless the address is provided in conjunction with a request for usage information

³ RCW 42.56.330 exempts "addresses", and each utility should discuss with their legal counsel if they want to apply this exemption when dealing with "mailing addresses."

⁴ Depends on the content of the note, and if it contains exemptible information

⁵ Written request and purpose must be in accordance with Law Enforcement statute RCW 42.56.335

⁶ Individual utility decision to release information to law enforcement that is less than the billed usage

This is intended to be guide only. Please consult with your legal council for interpretation of governing laws

**Addendum 9: Sample Billing History Report with RCW 19.29A.110 Disclaimer
(Customer/Recipient Facing)**

12 Month Billing History Report

Premise Address: 123 Main Street
Meter No. 12345

| Start Date | End Date | Start Read | End Read | KWH | # of Days | Total Amount |
|------------|------------|------------|----------|------|-----------|--------------|
| 06/24/2016 | 07/25/2016 | 65572 | 66307 | 735 | 31 | \$72.03 |
| 05/25/2016 | 06/24/2016 | 64964 | 65572 | 608 | 30 | \$62.05 |
| 04/25/2016 | 05/25/2016 | 64467 | 64964 | 497 | 30 | \$53.81 |
| 03/25/2016 | 04/25/2016 | 63829 | 64467 | 638 | 30 | \$64.84 |
| 02/25/2016 | 03/25/2016 | 62793 | 63829 | 1036 | 31 | \$93.24 |
| 01/25/2016 | 02/25/2016 | 61474 | 62793 | 1319 | 29 | \$115.38 |
| 12/24/2015 | 01/25/2016 | 58870 | 61474 | 2704 | 31 | \$218.73 |
| 11/24/2015 | 12/24/2015 | 56711 | 58770 | 2059 | 32 | \$169.74 |
| 10/25/2015 | 11/24/2015 | 55507 | 56711 | 1204 | 30 | \$106.28 |
| 09/24/2015 | 10/25/2015 | 54976 | 55507 | 531 | 30 | \$56.90 |
| 08/25/2015 | 09/24/2015 | 54337 | 54976 | 639 | 30 | \$63.26 |
| 07/25/2015 | 08/25/2015 | 53511 | 54437 | 826 | 31 | \$73.29 |

IMPORTANT MESSAGE TO ALL RECIPIENTS OF THIS REPORT

The information contained in this report is subject to RCW 19.29A.110, which prohibits its use for commercial or marketing purposes. By receiving this information, you are acknowledging it will be used only as expressly permitted by this RCW.

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

AFFIDAVIT OF GEOFF MARKE

STATE OF MISSOURI)
) SS.

COUNTY OF COLE)

COMES NOW GEOFF MARKE and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *The Office of the Public Counsel's Response to Commission Order Requesting Additional Comments*; and that the same is true and correct according to his best knowledge and belief.

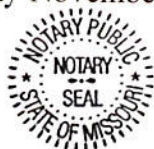
Further the Affiant sayeth not.




Geoff Marke
Chief Economist

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 30th day November, 2018.



JERENE A. BUCKMAN
My Commission Expires
August 23, 2021
Cole County
Commission #13754037



Jerene A. Buckman
Notary Public

My Commission expires August 23, 2021.