

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

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

**STAFF DRAFT CUSTOMER INFORMATION RULE**

**COMES NOW** Staff of the Missouri Public Service Commission (“Staff”), by and through Staff Counsel’s Office, and files a draft Customer Information Rule in response to the July 17, 2019 Order Directing Staff To File A Draft Rule respecting the treatment of customer information by Commission regulated electric, gas, heating, water, and sewer utilities and their affiliates and nonaffiliates. In support of its response, Staff states as follows:

1. Presently the Commission has a section in its Affiliate Transactions Rules for electrical corporations, gas corporations (including those engaged in gas marketing), and heating companies that addresses, among other things, making available to affiliated or nonaffiliated entities specific customer information. The Commission presently has no similar section regarding the treatment of customer information for water corporations or sewer corporations.

2. Pursuant to Executive Order 17-03, Staff undertook a review of all of the Commission’s rules, and identified areas where the Commission’s rules could be consolidated, streamlined, or otherwise improved for user-friendliness. Staff was of the opinion that in the area of the treatment of customer information, there was an opportunity to make the Commission’s rules clearer and easier to use. Presently, the Commission’s

rules on the matter of the treatment of specific customer information being made available to affiliates and nonaffiliates, among other things, appear at:

- A. 20 CSR 4240-20.015(2)(C) Electrical Corporation Affiliate Transactions
- B. 20 CSR 4240-40.015(2)(C) Gas Corporation Affiliate Transactions
- C. 20 CSR 4240-80.015(2)(C) Heating Company Affiliate Transactions
- D. 20 CSR 4240-40.016(3)(C) Gas Marketing Affiliate Transactions Rule

3. Although the present version of the section on the treatment of customer information appears in the separate industry specific affiliate transactions rules, the content of the section on the treatment of customer information does not differ by utility industry. Staff last year redrafted the section on the treatment of customer information into a single rule specifically addressing an array of situations when affiliates or nonaffiliates may be entrusted with customer information for a business purpose by a Commission regulated utility. These situations previously existed, and still exist; they just were not specifically denominated by the customer information section of the Commission's existing rules.

4. Staff initially asked that the Commission issue an Order requesting comments to be filed within 30 days after the date of the Commission's Order establishing a working case and seeking comments on the draft potential new rule on the treatment of customer information and the rescission of the Commission's existing rules noted above which contain a section on the treatment of customer information by electrical corporations, gas corporations (including those engaged in gas marketing), and heating companies. Staff subsequently requested that the Commission extend the comment period from August 10, 2018 to August 24, 2018 and the Commission also expanded the scope of the working case to allow for interested stakeholders to provide written

comments and best practices related to the incorporation of language into the proposed draft rule meant to address issues pertaining to customer privacy and data gathering through the use of advanced metering infrastructure (“AMI”) meters.<sup>1</sup> Comments and draft proposed customer information rule provisions were filed by sixteen (16) persons or entities in the instant proceeding by August 24, 2018. A Customer Information Workshop was held on October 9, 2018. At the Workshop, Janine Anthony Bowen, industrial engineer and attorney who specializes in technology privacy and data protection, currently with the Atlanta law office of Baker Hostetler, made a presentation on Smart Meters, Data Collection, and Privacy Concerns. Ms. Bowen appeared courtesy of Missouri-American Water Company.

5. On October 22, 2018, based on a set of questions which specifically arose or were discussed at the Customer Information Workshop, Staff filed a Motion For Commission Order providing Notice of a Request For Comments in the instant working case requesting responses no later than November 30, 2018 addressing these items. Additional comments and suggested provisions of a customer information rule were filed by eleven (11) persons or entities in the instant file on November 30, 2018. Based on the rounds of comments, proposed language and discussions that occurred at the workshop itself, Staff has revised the original draft customer information rule it filed in this proceeding on June 27, 2018. The concerns of all stakeholders have been considered and so has the fact that there already may be an existing law in a certain subject area, such as a data breach notification law, Section 407.1500 RSMo. 2016. The fact that a commenter’s previously proposed (a) additional language or (b) deletion of language has

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<sup>1</sup> The Commission’s expanded scope has been addressed in the attached revised draft proposed rule through the definition of the term “personal customer information.”

not been accepted in the attached revised draft proposed rule, does not mean that the commenter's previous proposal cannot be suggested again in the same or in an amended form for consideration.

6. Staff requests that the Commission consider choosing one of three (3) possible courses of proceeding respecting a rulemaking: (1) continue this working case and issue an Order requesting comments from stakeholders within 30 days after the date of said Order addressing the consideration of the attached draft potential new rule on the treatment of customer information; (2) engage in an Order of Proposed Rulemaking utilizing the attached draft potential new rule on the treatment of customer information as the proposed Commission rule; or (3) in an Agenda or Agendas utilize the attached draft rule on the treatment of customer information to produce an Order of Proposed Rulemaking with changes of the Commissioners to the attached draft customer information rule. In each of the three (3) preceding options the Order of Proposed Rulemaking would apply to electrical corporations, gas corporations (engaging or not engaging in gas marketing), heating companies, and the addition of water and sewer corporations regulated by the Commission.

7. The Commission in addition to filing an Order of Proposed Rulemaking respecting a proposed new rule on the treatment of customer information would also file with the Secretary of State for the Proposed Rescission of the Commission's existing affiliate transaction rules which include a specific section addressing the treatment of customer information by electrical corporations, gas corporations (engaging or not engaging in gas marketing), and heating companies regulated by the Commission.

**WHEREFORE**, Staff files a draft Customer Information Rule in response to the July 17, 2019 Order Directing Staff To File A Draft Rule respecting the treatment of

customer information by Commission regulated electric, gas, heating, water, and sewer utilities and their affiliates and nonaffiliates and moves the Commission to consider choosing one of three (3) possible courses of proceeding as set out in Paragraph 6 above and the rescission of the Commission's existing affiliate transaction rules, which include a specific section addressing the treatment of customer information as related in Paragraph 7 and elsewhere above.

Respectfully submitted,

**/s/ Mark Johnson**

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record this 16th day of September, 2019.

**/s/ Mark Johnson**

## **20 CSR 4240-10.XXX Customer Information Of Electrical Corporations, Gas Corporations, Heating Companies, Water Corporations and Sewer Corporations**

PURPOSE: This rule is intended to prevent the misuse of customer information. All matters regarding treatment of customer information and release of personal customer information to an affiliate or a third-party nonaffiliate respecting the provision of utility related services may occur without customer consent but must be a matter of written contract between the regulated electrical corporation, gas corporation, heating company, water corporation and sewer corporation (utility) and the affiliate or third-party nonaffiliate pursuant to the conditions set out in the rule below. All matters regarding treatment of customer information and release of personal customer information to an affiliate or a third-party nonaffiliate respecting the provision of a nonutility related service must be limited to situations where there is documented customer consent and a written contract between the utility and the affiliate or the third-party nonaffiliate. Each utility shall maintain a Privacy Policy consistent with this rule, and make a copy of the Privacy Policy readily available to its customers.

### **(1) Definitions**

(A) Utility means, for purposes of this rule, an electrical corporation, gas corporation, heating company, water corporation, or sewer corporation as defined in section 386.020, RSMo., and subject to commission regulation pursuant to Chapters 386 and 393, RSMo.

(B) Customer information means any data respecting one or more customers obtained by a utility that is not obtainable by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources and which may include personal customer information.

(C) Personal customer information means a subset of customer information that includes a utility customer's name, address, phone number, social security number, payment history, financial account number, unique electronic identifier or routing code, driver's license number, medical information, health insurance information, customer specific utility service usage data, such as the history, quantity, quality, or timing of water, natural gas, steam heat, or electricity usage, or electricity production, or other personally identifiable information. Personal customer information may include information provided to a utility by an affiliated or nonaffiliated third-party person, entity, or association. Personal customer information does not constitute information that is lawfully included in, or obtained from, publicly available sources, or federal, state, county, or local government records lawfully made available to the general public.

(D) Utility related services includes those services provided by a utility in furtherance of the provision of regulated utility service pursuant to Chapters 386 and 393, RSMo., as well as actions taken by the utility to support customer use of those services, and pursuant to a utility's commission approved tariffs.

(2) Utility Related Services

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

1. The affiliate or third-party nonaffiliate shall be authorized to use the personal

customer information solely to perform the contracted for service and the personal customer information does not become the property of the affiliate or third-party nonaffiliate;

2. The affiliate or third-party nonaffiliate shall be expressly prohibited from any other use of the personal customer information with prohibitions to the affiliate or third-party nonaffiliate set out in the contract for any unauthorized use of the personal customer information;

3. The affiliate or third-party nonaffiliate shall be directed to treat the personal customer information as confidential at all times with specific prohibitions set out in the contract for not treating the personal customer information as confidential; and

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



(3) Nonutility Related Services

(A) Utilities shall not provide any affiliate or nonaffiliate third-party with personal customer information for a nonutility related service without first obtaining recorded or written affirmative customer consent, unless otherwise provided by law or the commission's rules or orders. The utility must maintain a record of each instance of affirmative consent authorizing disclosure of personal customer information.

(4) Aggregated or Anonymized Personal Customer Information

(A) Aggregated or anonymized personal customer information may be disclosed to affiliates or third-party nonaffiliates upon similar terms and conditions. A utility may disclose aggregated or anonymized personal customer information for a particular category or categories of data collected in the provision of utility service as determined by agreement between the utility and the affiliate or third-party nonaffiliate and submitted to the commission for authorization. Aggregated or anonymized personal customer information collected by a utility in its provision of utility related service, may otherwise be disclosed to an affiliate or third-party nonaffiliate by the minimum number of customers and the maximum percentage contribution of any one customer to the total of the data for the particular category of data being disclosed in the aggregate or anonymized as determined by agreement between the utility and the affiliate or third-party nonaffiliate and submitted to the commission for authorization.

(B) In addition to use by affiliates and third-party nonaffiliates, a utility may use aggregated or anonymized personal customer data for utility related analysis, reporting, or program

management if the individual identity of each customer has been removed in the aggregating or anonymizing process and staff counsel's office and the office of the public counsel are notified of the aggregating or anonymizing process by the utility.

(5) Privacy Policy

(A) Each utility shall maintain a Privacy Policy consistent with this rule, provide a copy of the Privacy Policy to customers upon establishment of service, and subsequently make the Privacy Policy readily available to its customers by advising them that a copy is available upon request. A utility's Privacy Policy shall identify what personal customer information obtained by the utility shall be made available to affiliates and nonaffiliate third-parties without the consent of the customer. The Privacy Policy also shall identify applicable (federal, state, county, city, etc.) laws, rules, orders, or judicial processes, (e.g., subpoenas or court orders) and utility tariffs, which support, limit, or prohibit disclosure, if known.

(6) Other Notification Required Respecting Personal Customer Information

(A) A utility shall notify staff counsel's office and the office of the public counsel if personal customer information is required to be made available to either a nonaffiliated third-party or a federal, state, or local court or administrative agency pursuant to a federal, state, county, or local statute, rule, subpoena or order, without documented recorded or written customer consent. The utility shall identify for staff counsel's office and the office of the public counsel how the personal customer information is to be treated without revealing the identity of the utility customer(s).