

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

In the Matter of the Commission’s Proposed)
Rule 20 CSR 4240-10.175 Relating to)
Customer Information of Electrical)
Corporations, Gas Corporations, Heating)
Companies, Certain Water Corporations and)
Certain Sewer Corporations)

Case No. OX-2025-0106

COMMENTS OF THE OFFICE OF THE PUBLIC COUNSEL

Pursuant to the Public Service Commission of the State of Missouri’s (the “Commission”) *Order Setting Hearings and Comment Period* filed in the above styled case on November 15, 2024, the Office of the Public Counsel (the “OPC”) submits these comments.

I. Introduction

The OPC appreciates the Commission promulgating a new rule to protect customer information. However, the OPC has concerns about the rule as currently proposed. Given the importance of protecting customers’ information, especially in today’s digitally connected world, the OPC encourages the Commission to take this opportunity to adjust the proposed rule to give customers the best protection possible.

As explained more fully in Ms. Lisa Kremer’s Memorandum, attached as Attachment A, the Commission previously considered a customer information rule as part of a years-long working group docket in which the Staff of the Commission (“Staff”) proposed three drafts of the rule. The OPC also put forward a proposed draft rule in that case. In that case, Staff indicated that its Third Draft Rule was ready for a formal rulemaking. (Staff Status Report 4, Case No. AW-2018-0393, Doc. 61). However, the rule proposed in this docket is more akin to the language in the Commission’s current affiliate transactions rule, as opposed to Staff’s Third Draft Rule. Though the OPC continues to support the draft rule it submitted as a part of the working group docket, it does not submit that proposed rule here. Rather, the OPC offers the following six suggested

modifications to the currently proposed rule for the Commission’s consideration. These changes highlight what the OPC considers to be the most important parts of its draft rule, while maintaining the simplicity of the Commission’s proposed rule. In the next section, the OPC identifies each of its suggested changes and provides a brief statement explaining why the change is important. For ease of comparison Attachment B shows these proposed changes in redline to the Commission’s originally proposed rule.

II. The OPC’s Six Suggested Modifications to the Proposed Rule

1. Add a definition of “Aggregated Customer Information”

Aggregated Customer Information means information derived from combining the data of multiple customers in such a manner that no single customer can be individually identified. For purposes of this definition, such aggregated customer information shall contain the information of either at least fifteen (15) residential customers with no individual customer’s load exceeding fifteen (15) percent of the data included in the aggregate or at least four (4) nonresidential customers with no individual customer’s load exceeding eighty (80) percent of the data included in the aggregate.

Explanation: The Standards section of the proposed rule delineates between “specific customer information” and “general or aggregated customer information,” applying different standards to each type of information. However, the rule does not define what it means by these terms. Though “specific customer information” may be clear on its face, what is meant by “general or aggregated customer information” is less clear. Because the standard applicable to “aggregated customer information”¹ is lower than that applicable to “specific customer information” and, in fact, requires no customer consent before it is shared with other entities, it is imperative that the Commission defines what must be included for information to be considered “aggregated customer information.” The OPC’s suggested definition importantly mandates that “no single customer can

¹ As explained more fully below, as part of its third suggested modification the OPC suggests eliminating the reference to “general customer information.”

be individually identified.” It also mandates the number of both residential and nonresidential customers, as well as their percentage of the load, that must be included.

2. Add a definition of “Consent”

Consent means either written permission provided by a customer on a commission approved form or verbal permission memorialized in a voice recording that the customer provides in response to a request to share the individual customer’s information. For purposes of this rule, customer consent shall only be deemed to have been offered for discrete requests or transactions, and shall not be inferred for ongoing or successive transactions. Such consent shall be freely revocable by the customer at any time. The utility must retain records memorializing a customer’s consent, unless and until the customer revokes said consent.

Explanation: Perhaps the most important change that the OPC suggests is adding a definition of the term “consent.” Importantly, the Commission’s proposed rule states that “[s]pecific customer information shall be made available to affiliated or unaffiliated entities only upon *consent* of the customer or as otherwise provided by law or commission rules or orders.” (emphasis added). However, the lack of a definition of the term “consent,” will surely lead to costly and contentious litigation over questions concerning what constitutes proper consent. For instance, without a definition important questions remain unanswered, including, but not limited to, does the consent have to be written? Can it be verbal? It is revocable? Can it be obtained through the click of a button in a lengthy Terms and Conditions document? Can consent be obtained by *not* clicking on a button? A definition included in the rule can help to avoid these types of questions. To avoid costly and time-consuming future litigation, the OPC offers this definition of consent. This definition addresses not only the form of the consent, but also specifies that it is freely revocable and applicable to only discrete circumstances. It also specifies that the utility must retain records showing that a customer has given consent.

3. Clarify subsection (2)(B)

(B) Aggregated customer information shall be made available to affiliated or unaffiliated entities upon request and under the same terms and conditions applicable to all entities receiving such information, unless otherwise ordered by the Commission.

Explanation: Subsection (2)(B) of the proposed rule identifies the standard applicable to aggregated customer information. As proposed, this subsection applies to both “[g]eneral and aggregated customer information.” However, the proposed rule does not define what is meant by “general customer information” and the rule does not use this term elsewhere. To enhance clarity and eliminate the need to add an additional definition, the OPC suggests eliminating the reference to “general customer information” and allowing this subsection to apply only to the newly defined “aggregated customer information.”

Also, as proposed the subsection states only that general or aggregated customer information shall be made available to affiliated or unaffiliated entities “upon similar terms and conditions.” However, it is not clear what “similar terms and conditions” refers to. Though it is possible to interpret this clause as meaning that the information must be provided to both affiliates and nonaffiliates “upon similar terms and conditions,” it is also possible to interpretate it to mean that the terms and conditions must be similar for both general and aggregated customer information. Arguably, it could also mean that general and aggregated customer information can only be shared upon similar terms and conditions as specific customer information, namely those identified in Subsection (2)(A). Again, to enhance the clarity of this subsection, the OPC suggests rewording it by adding “request and under the same” before the phrase “terms and conditions” and ending the subsection with the phrase “applicable to all entities receiving such information, unless otherwise ordered by the Commission.”

These changes recognize the value associated with aggregated customer information for many types of entities by making clear that such information should be available to all entities, regardless of whether they are affiliated with the utility.² It also promotes clarity by making clear that it is the same—not just similar—terms and conditions that must apply to both affiliated and nonaffiliated entities who request the information. However, in the event that a utility does not wish to disclose aggregated customer information to an entity—whether affiliated or nonaffiliated—it may seek a Commission order relieving it of that obligation.

4. Add a provision regarding the ownership of customer information

A utility customer’s information remains the sole property of the customer at all times.

Explanation: Currently the proposed rule does not identify who maintains ownership of a customer’s information. Given the importance of a customer’s information, it is of paramount importance that the Commission make clear that customers maintain ownership of their information at all times. This will ensure that it is clear that customers must consent to the disclosure of their specific customer information and utilities cannot freely monetize the sale of that information.

5. Enhance subsection (3) regarding notification of breaches

(A) A utility shall notify, without unreasonable delay, staff counsel’s office and the Office of the Public Counsel if there is a “breach of security” or “breach” as defined by subsection 407.1500.1, RSMo.

- a. The utility shall provide a copy of the notice provided to customers and a copy of all reports detailing the investigation(s) completed to the staff counsel’s office and the Office of the Public Counsel, in accordance with the following:
 - i. The notice provided to customers shall be provided at the same time that it is sent to customers.
 - ii. The report(s) shall be provided immediately upon completion, and in the event that a third-party entity completes the report(s),

² The OPC understands that there may be costs associated with compiling this aggregated data. Importantly, though, the rule as proposed provides in subdivision (2)(C) that “[t]he utility may set reasonable charges for costs incurred in producing customer information.” Therefore, the utility may seek to recover from the entity requesting the information its reasonable costs for producing the data.

that third-party entity will provide a copy of all drafts, including the final draft, to the staff counsel’s office and the Office of the Public Counsel at the same time that it provides the draft to the effected utility.

Explanation: The proposed rule ties the notification of breaches or breaches of security to the requirement to notify the attorney general’s office identified in § 407.1500 RSMo. That statute requires that the attorney general’s office be notified only “[i]n the event a person provides notice to more than one thousand consumers at one time pursuant to this section” § 407.1500.2(8) RSMo. However, some of the companies that the Commission regulates do not have 1,000 customers.³ Therefore, even if those utilities experienced a breach that affected all of their customers, they would not be required to notify Staff counsel’s office and the OPC. To ensure that Staff counsel’s office and the OPC receive notice of all breaches, the OPC suggests eliminating the reference to “an incident that warrants reporting to the attorney general of.”

Section 407.1500.2(8) also requires that if an entity must notify the attorney general’s office, it do so “without unreasonable delay.” § 407.1500.2(8) RSMo. Because the OPC suggests striking the language that ties notice to the requirement to notify the attorney general’s office and to ensure that Staff counsel’s office and the OPC receive timely notification of the breach, the OPC suggests adding this language back in.

Further, the proposed rule’s subsection (3) requires that the effected utility provide a copy of a report to Staff counsel’s office and the OPC. However, it is unclear what report this subsection refers to. To promote clarity, the OPC suggests adding language that the notice provided to customers be provided to Staff counsel’s office and the OPC at the same time that it is sent to customers. Further, to ensure that Staff counsel’s office and the OPC receive all information

³ Commission, Annual Report 2023 43, <https://psc.mo.gov/CMSInternetData/WaterSewer/Water%20Sewer%20Companies%20FY2023.pdf>.

regarding the breach, the OPC suggests adding language that ensures that any drafts of any reports, including the final drafts, are provided at the same time that they are provided to or generated by the effected utility.

6. Add a provision requiring the filing of a Customer Data Privacy Policy

(4) Customer Data Privacy Policy

(A) Each covered utility shall submit to the commission, for the commission's approval, tariff sheet(s) that contain a customer data privacy policy. The utility must also include the privacy policy on its website. This privacy policy shall clearly answer at least the following:

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

Explanation: The OPC also suggests that the Commission add a provision that requires all regulated utilities to file tariff sheet(s) that set forth their Customer Data Privacy Policy and that the policy be made available on their websites. These policies should answer important questions such as how the utility collects customer information and where that information is stored. The

OPC has identified a list of 17 questions that should be answered by the privacy policies, but admits that the list is non-exhaustive. By putting these policies in the Company's tariff sheets, it ensures that the Commission must approve of the policies and can enforce them, if necessary.

III. Conclusion

The OPC appreciates the Commission taking up the important issue of a rule governing the use of customer information. However, the OPC is concerned that the rule as proposed lacks important clarity and misses critical opportunities to set standards regarding reporting requirements and policy provisions. The OPC offers these modifications for the Commission's consideration and looks forward to the opportunity to present more on this important topic at the Commission's rulemaking hearings.

WHEREFORE, the OPC respectfully requests that the Commission consider these comments and make the changes suggested throughout.

Respectfully submitted,

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

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this 1st day of December 2024.

/s/ Lindsay VanGerpen

MEMORANDUM

To: Public Service Commission of the State of Missouri

From: Lisa Kremer, Consultant, Office of the Public Counsel

Subject: Background to the Commission's Proposed Customer Information Rule, 20 CSR 4240-10.175, Case No. OX-2025-0106

Date: December 1, 2024

I. INTRODUCTION

The Office of the Public Counsel (the "OPC") requested my assistance in analyzing the Public Service Commission of the State of Missouri's (the "Commission") most recent effort toward the protection of customer information from misuse while such data is being utilized by and under the control of Missouri's regulated utility companies. During my 30 plus year career employment with the Commission, I gained significant experience in customer-impacting issues including customer information privacy issues. I pull from that experience to provide this memorandum for the Commission's consideration.

The Commission's Proposed Rule includes extensive abbreviation from Staff's third rule draft filed previously in Case No. AW-2018-0393, which was the result of an open, thoughtful, and collaborative rulemaking process. Before addressing my specific concerns with the Commission's current draft customer information rule, the importance of this matter compels a historical look backward to the impetus of the effort to protect regulated utility customer's information, and a short discussion of a case showing the importance of having such a rule.

II. HISTORY AND BACKGROUND

Concerns regarding the abuse of customer data have become increasingly heightened over the years as cases of customer information breaches and fraud have become more widely documented and in the public eye.¹ Further, the monetary value of customer data has created intense enticement for selling such information, compelling diligent personal monitoring of which some customers may be unaware of the need to perform or unable to do so adequately. Older persons are especially vulnerable to on-line and telephone scams. According to the FBI Internet

¹ Stuart Madnick, *What's Behind the Increase in Data Breaches?*, THE WALL STREET JOURNAL (Mar. 15, 2024), <https://www.wsj.com/tech/cybersecurity/why-are-cybersecurity-data-breaches-still-rising-2f08866c>.

Crime Complaint Center (IC3), roughly \$3.4 billion in total fraud losses were reported by Americans over age 60 in 2023, up 11% from 2022. The average loss per case was nearly \$34,000.² The need to protect the information of customers of Missouri’s regulated utility companies has never been greater.

A. The Working Group Case, AW-2018-0393

The first draft of a customer information rule was filed six years ago in Case No. AW-2018-0393, on June 27, 2018 (the “First Draft Rule”). After the Commission permitted interested parties to file comments, held a workshop, and requested responses to the Staff of the Commission’s (“Staff”) written questions, Staff made two subsequent rule revisions. Staff filed these revised drafts on September 16, 2019, and February 18, 2020, respectively (the “Second Draft Rule” and “Third Draft Rule,” respectively), for a total of three rule drafts.

The OPC participated throughout this collaborative process, noting its concerns with Staff’s draft rules and its suggestions for improvement. It also submitted a new proposed rule in response to Staff’s Second Draft Rule “for potential substitutions and additions to Staff’s proposed language.”³

On July 19, 2023, approximately five years after the filing of the First Draft Rule and three years after the filing of the Third Draft Rule, Staff made another filing in Case No. AW-2018-0393. This filing indicated, among other things, Staff’s intention to make no further edits to the Third Draft Rule, and Staff’s readiness to move forward with a formal rulemaking case. Staff, however, did request comments from stakeholders regarding the costs for compliance with the Third Draft Rule. Staff’s July 19, 2023, filing included the following statement:

Status Report

Staff reviewed the stakeholders’ comments regarding cost impacts, and it struck Staff that many of the commenting stakeholders did not consider the already effective rules regarding treatment of customer information. Given this, Staff has made no further edits to its revised third draft, but is including again Staff’s revised third draft, attached hereto and labeled as Appendix A. Staff is of the opinion that the draft in Appendix A is ready for the Commission to move forward with a formal rulemaking case, yet Staff recognizes that it would be beneficial for the Commission to receive updated comments from stakeholders on the estimated costs of compliance.⁴

²The National Council on Aging, *The Top 5 Financial Scams Targeting Older Adults*, (Dec. 8, 2023).

³ OPC’s Responsive Comments 5, Case No. AW-2018-0393, Doc. 48.

⁴ Staff Status Report 4, Case No. AW-2018-0393, Doc. 61.

After several utilities filed comments regarding the cost of compliance in September 2023, no further substantive action took place in the working group docket.

B. The Rulemaking Docket, OX-2025-0106

Turning from history to the present day, the significant departure from Staff’s Third Draft Rule, presented in Case No. AW-2018-0393 is both concerning and perplexing. Staff indicated only approximately a year ago that it “was of the opinion that the draft” rules were “ready for the Commission to move forward with a formal rulemaking case.”⁵ "(Please see Attachment A, which is Staff’s Third Draft Rule). Staff’s draft rules, filed in Case No. AW-2018-0393, were by far more robust than what is being offered presently to protect customer information from abuse by regulated utility companies and their relationships with affiliated or unaffiliated entities. One cannot help but wonder: What has occurred? What new information is being relied upon that compels the dilution of a rule draft that Staff was ready to move forward with only a short time ago?

The Proposed Rule filed in the present OX-2025-0106 docket is a mere shell of Staff’s Third Draft Rule, which Staff supported only a little over a year ago. The Proposed Rule is presented without any explanation for the significant diminishment of customer information protection provisions that should strive to “protect those using . . . gas, electricity, water or sewer system[s].”⁶ The OPC’s comments and the modifications identified in the cover pleading regarding the Proposed Rule are respectfully offered in the spirit of “getting it right” during this important hour of opportunity. It is my opinion that the rule as currently drafted lacks required clarity to prevent future unnecessary confusion on the part of Missouri’s regulated utilities, its customers, parties that participate before the Commission, and the Commission itself. Such confusion and lack of clarity may result in costly litigation and potential customer hardship that could be avoided by including needed prescriptive and clarifying language now.

III. PRACTICAL APPLICATION: THE ALLCONNECT DECISION, EC-2015-0309

One may be wondering, why does this matter? To answer this question one need only look to a past case that demonstrates the importance of a rule protecting customer’s information. This example is the Commission’s decision in the Allconnect case, Case No. EC-2015-0309. In that case, two of Missouri’s own large, regulated utility companies—Kansas City Power & Light

⁵ Staff Status Report 4, Case No. AW-2018-0393.

⁶ § 393.140(2) RSMo.

Company and KCP&L – Greater Missouri Operations (now Evergy Missouri Metro and Evergy Missouri West)—engaged in the “selling” of customer information without customer knowledge or consent and for which they were a paid a confidential fee that was booked to shareholder profits.⁷ The Allconnect case was a complicated Staff complaint case that included extensive investigation, rounds of testimony, depositions and a time consuming and costly hearing before the Commission. The Commission’s order found that the companies were in violation of the Commission’s Affiliate Transaction Rule, 4 CSR-240-20.015(2)(C). Specifically, the Commission stated

Nevertheless, KCP&L and GMO have violated 4 CSR 240-20.015(2)(C). That regulation requires that customer information be made available to “affiliated or unaffiliated entities” only with the consent of the customer, or as otherwise allowed by Commission rules and orders. The plain language of the rule says that it applies equally to the transfer of customer information to either affiliated or unaffiliated entities.⁸

Further demonstrating the value of customer information and the lengths to which utilities may go to inappropriately use it, the Commission also found that KCP&L and GMO essentially “hid” the nature of the Allconnect transactions by purporting that Allconnect was necessary as part of their regulated operations to confirm the accuracy of customer data.

KCP&L and GMO attempt to mask the true nature of the transaction by having Allconnect ‘confirm’ the accuracy of the customer information already taken by KCP&L and GMO’s customer service representatives.⁹

The Commission continued saying,

The Commission finds and concludes that the revenue and expense associated with the Allconnect relationship should be treated as regulated revenue and expense and brought “above the line”. While the services Allconnect offers are not regulated by this Commission, KCP&L and GMO’s relationship with its customers is regulated. Further, the customer information and contacts that KCP&L and GMO are selling to Allconnect are developed through that regulated relationship. Finally, moving the revenue and expenses above the line reduces the impression that KCP&L and GMO are selling their customer’s information to increase their unregulated profits.¹⁰

⁷ Ex. 1 “Lisa A. Kremer Confidential Direct Testimony” 4, 16, Case No. EC-2015-0309, Doc. 63.

⁸ April 27, 2016 Order 18, Case No. EC-2015-0309, Doc. 119 (emphasis added).

⁹ *Id.* 19 (emphasis added).

¹⁰ *Id.* 22 (emphasis added)).

It should also be noted that KCP&L and GMO were selling one of their unregulated services through Allconnect and had discussions to offer other products through the arrangement.¹¹ This information was deemed Highly Confidential by the Companies but a reference to this discussion can be found in the Highly Confidential version of my Direct Testimony in that case on page 16.

Importantly, the establishment of Case No. AW-2018-0393 occurred approximately two years after the Commission's Order in Case No. EC-2015-0309, essentially on the heels of the Commission's Allconnect decision. It also originally involved a key attorney for Staff's Allconnect case, Mr. Steven Dottheim. The Commission's Findings and Order in the Allconnect case pinpointed the inappropriate selling by Missouri regulated utilities of regulated utility customer information without customer consent or knowledge.

The Allconnect decision was also followed by a related complaint against KCP&L and GMO filed by the OPC, Case No. EC-2017-0175. That case ultimately resulted in a \$50,000 payment to the State's School Fund.

The Allconnect case provides many opportunities for lessons learned when it comes not only to the protection of customer information, but to the protection of utility customers in general. Utility companies, even in Missouri, can and have engaged in activities with customer information that have ultimately been determined to be detrimental to the captive customers they serve. The unique position that regulated, monopolistic utility companies have regarding their collection and stewardship of a myriad of sensitive customer information should unquestionably compel strong rules that are clear and unambiguous in the interest, in part, of avoiding Allconnect-like occurrences.

IV. CONCLUSION

There are few things as sacrosanct to the individual as the protection of his or her privacy, of which customer information is central. It is therefore fundamental that such information be guarded with the utmost diligence. Such guarding must be mandated in Commission rules, which determine the practices of regulated utilities who operate without competition or substitute. All parties are best served when Commission rules limit opportunities for varying interpretations and debate.

¹¹ *Id.* 16.

The Commission and its rules stand as sentinel to the guardianship of customer privacy through the treatment of customer information. I respectfully urge the Commission to consider the OPC's rule making comments and suggested edits in this important new docket in the spirit in which they are offered: toward the protection of such customer privacy through the protection of customer information.


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

AFFIDAVIT OF LISA A. KREMER

STATE OF MISSOURI)
) SS.
COUNTY OF COLE)

COMES NOW LISA A. KREMER and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Memorandum* and that the same is true and correct according to her best knowledge and belief.

Further the Affiant sayeth not.

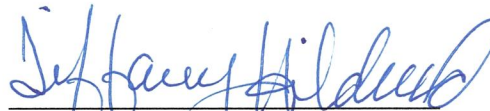


Lisa A. Kremer
Consultant

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 27th day of November, 2024.

TIFFANY HILDEBRAND NOTARY PUBLIC - NOTARY SEAL STATE OF MISSOURI MY COMMISSION EXPIRES AUGUST 8, 2027 COLE COUNTY COMMISSION #15637121



Tiffany Hildebrand
Notary Public

My Commission expires August 8, 2027.

**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 STATUS REPORT AND REQUEST FOR COMMENTS ON ESTIMATED COST
IMPACTS REGARDING DRAFT CUSTOMER INFORMATION RULE**

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through Staff Counsel’s Office, and files¹ its *Staff Status Report and Request for Comments on Estimated Cost Impacts Regarding Draft Customer Information Rule* consistent with the Commission’s *Report and Order* issued on May 3, 2023, in Case No. WR-2022-0303. In support, Staff states as follows:

Background

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. 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, and so on June 27, 2018, Staff filed a motion to open a working case and corresponding draft customer information rule. The present version of the section on the

¹ See Staff’s similar filing in Case No. AW-2018-0394.

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 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. 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

3. Staff initially asked that the Commission issue an order requesting comments to be filed within 30 days. 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. Comments and draft proposed customer information rule provisions were filed by sixteen (16) stakeholders. A Customer Information Workshop was held on October 9, 2018.

4. 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 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) stakeholders on November 30, 2018. Based on the rounds of comments, proposed language and discussions that occurred at the workshop itself, Staff revised its original draft customer information rule and filed a revised second draft on September 16, 2019.

5. Staff requested in the filing of its revised second draft 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; (2) engage in an Order of Proposed Rulemaking utilizing the attached draft rules; or (3) in an Agenda utilize the attached draft rules to produce an Order of Proposed Rulemaking with changes of the Commissioners to the attached draft customer information rule. The Commission ultimately issued an order on November 7, 2019, alerting stakeholders of the opportunity to comment on Staff's revised second draft.

6. Several stakeholders filed comments and proposed edits to Staff's revised second draft. Staff considered those comments and edits and ultimately filed, on February 18, 2020, a revised third draft. Staff included in this filing a request that the Commission invite stakeholders to file costs, if any, of implementing Staff's revised third draft. The Commission issued an order on February 26, 2020, inviting stakeholders to file comments on the cost of compliance.

7. Stakeholders did file comments regarding the estimated costs of complying with Staff's revised third draft. The Commission has not engaged in an Order of Proposed Rulemaking nor brought Staff's revised third draft to an Agenda discussion.

Status Report

8. Staff reviewed the stakeholders' comments regarding cost impacts, and it struck Staff that many of the commenting stakeholders did not consider the already effective rules regarding treatment of customer information.² Given this, Staff has made no further edits to its revised third draft, but is including again Staff's revised third draft, attached hereto and labeled as Appendix A. Staff is of the opinion that the draft in Appendix A is ready for the Commission to move forward with a formal rulemaking case, yet Staff recognizes that it would be beneficial for the Commission to receive updated comments from stakeholders on the estimated costs of compliance.

Staff Request for Comments

9. Staff requests the Commission issue an order or notice inviting stakeholders to file, within 30 days, comments in this case file regarding the costs, if any, of complying with Staff's revised third draft, contained in Appendix A. Staff reminds stakeholders that while the proposed rule in Appendix A would constitute a newly promulgated rule, the Commission currently has within it affiliate transactions rules, provisions regarding the treatment of customer information,³ and thus any costs or savings should be incremental in nature.

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

³ Id.

WHEREFORE, Staff requests the Commission will accept this *Staff Status Report and Request for Comments on Estimated Cost Impacts Regarding Draft Customer Information Rule* and issue an order or notice inviting stakeholders to file within thirty (30) days comments regarding the costs, if any, of complying with the rules in Appendix A; and grant such other and further relief as the Commission deems reasonable in the circumstances.

Respectfully submitted,

/s/ Jamie S. Myers

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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 19th day of July, 2023.

/s/ Jamie S. Myers

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 personally identifiable customer information.

(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) Personally identifiable customer information means information or data that could potentially identify a specific utility customer, including, but not limited to, a utility customer's name, address, phone number, date of birth, 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. Personally identifiable customer information may include information provided to a utility by an affiliated or nonaffiliated third-party person, entity, or association. Personally identifiable customer information does not include anonymized customer data, aggregated customer data, or 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.

(C) Anonymized customer information or data is customer data that has been processed in such a manner that it can no longer be attributed to a specific customer.

(D) Aggregated customer information or data is the aggregation of any anonymized data associated with at least fifteen (15) customers within a customer class, so long as no single customer's data comprises 15 percent or more of the total aggregated customer data.

(E) 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.

(F) Utility service usage data is information gathered by a utility's metering or similar systems that measure that data in increments such as therms, decatherms, cubic feet, British thermal units, kilowatts, kilowatt hours, voltage, var, gallons, or other applicable measurement method.

(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 personally identifiable customer information to perform the utility related service is required, the utility may provide the affiliate or third-party nonaffiliate with the necessary personally identifiable 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 personally identifiable customer information solely to perform the contracted for service and the personally identifiable 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 personally identifiable customer information with prohibitions

to the affiliate or third-party nonaffiliate set out in the contract for any unauthorized use of the personally identifiable customer information;

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

(3) Nonutility Related Services

(A) Utilities shall not provide any affiliate or nonaffiliate third-party with personally identifiable customer information for a nonutility related service without first obtaining

recorded verbal 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 personally identifiable customer information.

(4) Aggregated or Anonymized Customer Information or Data

(A) Aggregated or anonymized customer information or data may be disclosed to affiliates or third-party nonaffiliates upon similar terms and conditions. A utility may disclose aggregated or anonymized customer information or data 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. Aggregated or anonymized customer information collected by a utility in its provision of utility related service, may otherwise be disclosed to an affiliate or third-party nonaffiliate.

(B) In addition to use by affiliates and third-party nonaffiliates, a utility may use aggregated or anonymized customer information or 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.

(5) Privacy Policy

(A) Each utility shall maintain a Privacy Policy consistent with this rule, make available 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 there is an incident that warrants reporting to the attorney general of a "breach of security" or "breach" as defined by Section 407.1500.1 RSMo., and the utility shall provide a copy of that report to the staff counsel's office and the office of the public counsel.

TITLE 20—DEPARTMENT OF COMMERCE AND INSURANCE
Division 4240—Public Service Commission
Chapter 10—Utilities

PROPOSED RULE

20 CSR 4240-10.175 Customer Information of Electrical Corporations, Gas Corporations, Heating Companies, Water Corporations, and Sewer Corporations

PURPOSE: This rule is intended to prevent the misuse of personally identifiable customer information.

(1) Definitions.

(A) Aggregated Customer Information means information derived from combining the data of multiple customers in such a manner that no single customer can be individually identified. For purposes of this definition, such aggregated customer information shall contain the information of either at least fifteen (15) residential customers with no individual customer's load exceeding fifteen (15) percent of the data included in the aggregate or at least four (4) nonresidential customers with no individual customer's load exceeding eighty (80) percent of the data included in the aggregate.

(B) Consent means either written permission provided by a customer on a commission approved form or verbal permission memorialized in a voice recording that the customer provides in response to a request to share the individual customer's information. For purposes of this rule, customer consent shall only be deemed to have been offered for discrete requests or transactions, and shall not be inferred for ongoing or successive transactions. Such consent shall be freely revocable by the customer at any time. The utility must retain records memorializing a customer's consent, unless and until the customer revokes said consent.

~~(A)~~(C) 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)~~(D) Information means any data 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.

(2) Standards.

(A) Specific customer information shall be made available to affiliated or unaffiliated entities only upon consent of the customer or as otherwise provided by law or commission rules or orders.

(B) ~~General or aggregated~~Aggregated customer information shall be made available to affiliated or unaffiliated entities upon request and under the same similar terms and conditions applicable to all entities receiving such information, unless otherwise ordered by the Commission.

(C) The utility may set reasonable charges for costs incurred in producing customer information.

(D) Customer information includes information provided to the regulated utility by affiliated or unaffiliated entities.

(E) A utility customer's information remains the sole property of the customer at all times.

(3) Other Notification Required Respecting Personal Customer Information.

(A) A utility shall notify, without unreasonable delay, staff counsel's office and the Office of the Public Counsel if there is ~~an incident that warrants reporting to the attorney general~~ of a "breach of security" or "breach" as defined by subsection 407.1500.1, RSMo, ~~and the~~

a. The utility shall provide a copy of ~~that report~~ the notice provided to customers and a copy of all reports detailing the investigation(s) completed to the staff counsel's office and the Office of the Public Counsel, in accordance with the following:

i. The notice provided to customers shall be provided at the same time that it is sent to customers.

ii. The report(s) shall be provided immediately upon completion, and in the event that a third-party entity completes the report(s), that third-party entity will provide a copy of all drafts, including the final draft, to the staff counsel's office and the Office of the Public Counsel at the same time that it provides the draft to the effected utility.

(4) Customer Data Privacy Policy

(A) Each covered utility shall submit to the commission, for the commission's approval, tariff sheet(s) that contain a customer data privacy policy. The utility must also include the privacy policy on its website. This privacy policy shall clearly answer at least the following:

1. What customer information is collected;

2. How customer information is collected (e.g., website, billing, usage);

3. For what purpose customer information is collected;

4. When customer information is collected;

5. Where collected customer information is stored;

6. How the customer information is used;

7. How long a covered utility retains any customer information;

8. What information may be disclosed without customer consent, if any;

9. How a customer may withdraw previously provided consent;

10. What affiliated or nonaffiliated third-party person or entities have contracted with the utility to receive customer information, the type of customer information being shared, if any, and what safeguards the utility is utilizing to protect customer information from inadvertent disclosure while contracting with an affiliate or nonaffiliated third-party;

11. Whether customers may review, correct, or eliminate customer information;

12. What security measures are used to protect customer information;

13. The term for which the privacy policy will be in effect;

- 14. How updates to the privacy policy are to be announced;
- 15. How customers can share their information;
- 16. The policies in place to ensure that all customers are protected from unauthorized use or disclosure by the utility, its affiliates, contractors or subcontractors; and
- (A)17. Whether the utility undergoes periodic independent third-party privacy impact assessments.

AUTHORITY: sections 386.250 and 393.140, RSMo 2016. Original rule filed Sept. 25, 2024.

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