

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

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.250 and 393.140, RSMo 2016, the commission adopts a rule as follows:

20 CSR 4240-10.175 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 1, 2024 (49 MoReg 1614-1615). The section with changes is reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended December 1, 2024, and the commission held a public hearing on the proposed amendment on December 6, 2024. The commission received written comments during the comment period from eleven (11) people representing eight (8) different individuals or entities. The commission received comments from thirteen (13) people representing thirteen (13) different individuals or entities during the hearing. The comments were generally in support of the proposed rule with suggested changes.

COMMENT #1: Lindsay VanGerpen, Senior Counsel, on behalf of the Office of the Public Counsel (OPC), submitted written comments, including the comments of Lisa Kremer, and provided comments at the hearing along with OPC Chief Economist, Dr. Geoff Marke, Ph.D. During the hearing, OPC updated its previously filed comments stating that it further modified its original six (6) suggested modifications to the proposed rule to now include seven (7) modifications based on other comments from stakeholders and Ameren Missouri’s responsive comments. The OPC’s suggested changes to the proposed rule include: adding definitions under subsection (1) of “Aggregated Customer Information,” “Consent,” and “Utility Related Services;” clarifying subsection (2)(B); adding a provision regarding the ownership of customer information; enhancing subsection (3) regarding notification of breaches; and lastly adding a new section (4) requiring the filing of a Customer Data Privacy Policy.

RESPONSE AND EXPLANATION OF CHANGE: The commission thanks OPC for its comments and participation in the hearing. With modifications, the commission will accept several of OPC’s suggested rule changes that were presented in its written comments and at the hearing. Several of OPC’s written comments presented at hearing include edits suggested by other stakeholders, as well. The commission will accept OPC’s proposed new definitions in section (1) and will put the definitions in alphabetical order and reletter the subsections as needed. The commission will make changes proposed by OPC to subsection (2)(B), add new subsection (2)(E) regarding ownership of customer data, and add new subsection (2)(F), with modifications, regarding utility related services. The commission will make changes as proposed by OPC to subsection (3)(A) regarding other notifications required, with modifications, and will add a new subsection (3)(B) to incorporate OPC’s draft report requirement. The commission will adopt, with modifications, OPC’s new section (4) regarding customer data privacy policy.

COMMENT #2: Sarah Rubenstein submitted written comments on behalf of the Sierra Club. The Sierra Club commented that it supported many of the changes offered by OPC, as they would clarify data protection and transparency customers deserve. Sierra Club does not support allowing utilities to charge for access to aggregated customer data, as it will reduce the ability of Sierra Club and other community action agencies to access that data. Sierra Club suggested removing the proposed rule's allowance for utilities to charge for the costs of producing customer data as set forth in subsection (2)(C).

RESPONSE: The commission appreciates Sierra Club's participation in the rulemaking process. However, if the utility incurs costs for producing the information requested by others, it should be reimbursed for those costs and if no additional costs are incurred by the utility then it should not charge for the information. The commission has adopted many of OPC's suggested comments to which Sierra Club agrees, but will not adopt Sierra Club's suggested change to the proposed subsection (2)(C). No additional changes have been made as a result of these comments.

COMMENT #3: Nicole Mers submitted written comments and provided comments at the hearing on behalf of Renew Missouri Advocates (Renew Missouri). At the hearing, Renew Missouri referenced its written comments which includes edits to OPC's proposed definition of aggregated customer information and consent. Ms. Mers also provided a correction to subsection (1)(A) as published. Ms. Mers stated the definition should be for four (4) or more dwelling units not five (5) dwelling units for multifamily properties.

RESPONSE AND EXPLANATION OF CHANGE: The commission thanks Renew Missouri for its comments. The commission will adopt some of Renew Missouri's edits to OPC's additions to subsections (1)(A) and (1)(B) as published to include adding: "at least four (4) and load exceeding fifty (50) percent" to new subsection (1)(A); and adding "When ongoing or successive transactions are explicitly agreed to by a customer, consent shall be valid until rescinded by the customer." to new subsection (1)(B).

COMMENT #4: Bruce Morrison submitted written comments on behalf of the Saint Louis County National Association for the Advancement of Colored People (NAACP). The NAACP supports many of OPC's changes to the proposed rule; however, it believes that utilities should be required to publish certain aggregated customer data without charge so that the public generally knows where service disconnections occur.

RESPONSE: The commission thanks the NAACP for its comments. As the commission stated above, if the utility incurs costs for producing the information requested by others, the commission believes the utility should be reimbursed for those costs and if no additional costs are incurred by the utility then it should not charge for the information. The commission makes no additional changes as a result of these comments.

COMMENT #5: William D. Steinmeier filed written comments supporting the OPC's proposed changes.

RESPONSE: The commission thanks Mr. Steinmeier for his comments. The commission has adopted many of OPC's changes. No additional changes were made as a result of this comment.

COMMENT #6: John B. Coffman provided comments on behalf of Consumers Council of Missouri. Consumers Council generally supports the proposed rule amendments and comments filed by OPC with the following concerns of paramount importance: the final rule should clearly state that utility usage information belongs to the captive customer; affirmative permission (“opt-in” only) granted by the customer should be required before a utility shares private customer usage data unless such information is sufficiently aggregated; and, the definition of “aggregate customer information” must be clearly laid out in the rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission appreciates Consumer Council’s participation and comments in this proceeding. The commission agrees with Consumers Council’s comment that consumer permission to allow the utility to share private customer usage data should be required to be affirmative (“opt-in” only). In addition to the changes the commission is making pursuant to OPC’s comments, the commission will add language to the newly added definition of “consent” in new subsection (1)(B).

COMMENT #7: Dana Gray, Community Development Outreach Coordinator, filed written comments and provided comments at the hearing on behalf of Tower Grove Community Development Corporation (Tower Grove CDC). Tower Grove CDC opposes a charge for energy data and believes that the approach requiring account holder consent will make it impossible for renters to obtain approximate energy costs prior to leasing a home or apartment. Additionally, Tower Grove CDC disagrees with the notion that data must be aggregated to include five (5) to fifteen (15) meters.

RESPONSE: The commission thanks Ms. Gray for her written comments and presentation at the hearing. As stated in response to other comments above, the commission finds that if the utility incurs costs for producing the information requested by others, it should be reimbursed for those costs and if no additional costs are incurred by the utility then it should not charge for the information. Therefore, no change was made as a result of these comments.

COMMENT #8: Anne Schweitzer, alderwoman in the City of St. Louis; Anna Chott, an individual; and Emily Andrews, Executive Director of Missouri Gateway Green Building Council, provided comments. The commenters expressed concerns that the rule will make it difficult or impossible for property owners to share and gather energy usage data on their buildings if they are not the tenant of the building or the one paying the energy bill. Ms. Chott indicated that Gateway Green Building Council opposes any efforts by the PSC to make building energy data less accessible.

RESPONSE: The commission thanks these commenters for their comments. However, as stated in response to other comments above, the commission finds that if the utility incurs costs for producing the information requested by others, it should be reimbursed for those costs and if no additional costs are incurred by the utility then it should not charge for the information. The commission also finds there is a need to protect to an extent the privacy of customer data, thus, the commission has added the customer consent opt-in provision. Therefore, no changes were made as a result of these comments.

COMMENT #9: Matthew Aplington, Sreenivasa Rao Dandamudi, and J. Antonio Arias, attorneys for Spire Missouri, Inc. filed written comments, and David Yonce provided comments during the hearing, on behalf of Spire. Spire suggested language that would define “utility related services” in section (2) and would allow utilities to send customer information to contracted

vendors, without customer consent for those services, provided that appropriate protections are in place. Spire also suggested adding an exception in a new subsection (2)(D) to the consent provision for utility related services.

RESPONSE AND EXPLANATION OF CHANGE: The commission thanks Spire for its comments. The commission agrees with Spire's comment regarding the need to balance the protection of customer information while also allowing for efficient provision of utility service to customers. The commission takes its responsibility to balance the interest of ratepayers and utilities seriously and is attempting to reach balance in this rule. The commission will accept Spire's suggestion to define utility related services with a modification of placing the definition within section (1); however, the commission disagrees with the addition of subsection (2)(D). No other changes will be made as a result of that comment.

COMMENT #10: James Lowery, attorney, provided comments on behalf of Union Electric Company d/b/a Ameren Missouri. Ameren Missouri responded to the comments filed by other stakeholders. Ameren Missouri stated that it has no objection to many of OPC's suggestions (or those of other stakeholders) provided that the rule does not handicap utilities. Ameren Missouri's comments addressed stakeholder comments and OPC's original six suggestions. Ameren Missouri also commented on OPC's newly proposed subsection (2)(F) presented at the hearing.

RESPONSE AND EXPLANATION OF CHANGE: The commission thanks Ameren for its comments. The commission agrees with Ameren's alternative language as a substitute for OPC's newly proposed subsection (2)(F) as contained in *Ameren's Additional Comments on OPC's Additional Proposed Rule Mark-Up* filed with the commission as part of the hearing. The commission believes this alternative language provides protection of customer data without a fiscal impact to the utilities. The commission further agrees with Ameren that new section (4) as suggested by OPC should be amended, and the commission will include Ameren's suggestions to new section (4).

COMMENT #11: Rachel Niemeier commented on behalf of Missouri-American Water Company (MAWC). MAWC is in general agreement with the proposed rule and the comments made by the other utility stakeholders.

RESPONSE: The commission thanks MAWC for its comments. The commission has incorporated numerous changes, including those suggested by other utility stakeholders. No additional changes were made as a result of this comment.

COMMENT #12: Scott Stacey, Deputy Counsel, with Staff Counsel's Office of the commission commented in support of the rule. Staff provided written responses to pre-filed comments as of December 9, 2024. Staff commented that additional time would be needed to verify the cost impact associated with OPC's proposed subsection (2)(F) as submitted on December 10, 2024.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with Staff's comments and, as noted above, will accept some of the changes suggested by OPC, Renew, Ameren, and Spire; however, the commission does not accept OPC's proposed subsection (2)(F) due to the cost impact of adding subsection (2)(F) being cost prohibitive for the utilities. The commission has no way to determine the fiscal cost to the utilities of OPC's added requirements in subsection (2)(F) as suggested by OPC. However, the commission will add subsection (2)(F) with modifications suggested by the utilities. No other changes were made as a result of these comments.

20 CSR 4240.10.175 Customer Information of Electrical Corporations, Gas Corporations, Heating Companies, Water Corporations, and Sewer Corporations

(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 four (4) residential customers with no individual customer's load exceeding fifty (50) 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 or electronic permission ("opt-in") 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. When ongoing or successive transactions are explicitly agreed to by a customer, consent shall be valid until rescinded by the customer. 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.

(C) 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.

(D) 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.

(E) Utility related services means 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 tariff.

(2) Standards.

(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.

(E) A utility customer's information remains the sole property of the customer at all times, subject to its use and disclosure as otherwise provided for by this rule.

(F) Utility Related Services.

1. When any utility contracts with an affiliate or a third-party nonaffiliated 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 nonaffiliated with the necessary personally identifiable customer information without customer consent, provided that the utility shall make reasonable efforts to impose contractual obligations on the recipient, the substance of which are designed so that the recipient acknowledges that the personally identifiable customer information remains the property of the customer and limits the use of the personally identifiable customer information to performance of the contracted service.

(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 utility shall provide a copy of the notice provided to customers and a copy of all reports detailing the investigation(s) to the staff counsel's office and the Office of the Public Counsel. Notices provided to customers shall be provided at the same time that they are sent to customers, and reports shall be provided immediately upon completion.

(B) Each utility shall retain draft work-in-progress reports consistent with its data retention policies.

(4) Customer Data Privacy Policy.

(A) Each covered utility shall maintain and submit to the commission the utility's current customer data privacy policy, and revisions thereto. A utility's customer data privacy policy shall be submitted in the Commission's Electronic Filing and Information System (EFIS) as a Non-Case Related Submission.

(B) The utility must also include the privacy policy on its website. The privacy policy shall answer what safeguards the utility is utilizing to protect customer information from inadvertent disclosure while contracting with an affiliate or nonaffiliated third-party providing services to the utility in furtherance of the utility related services the utility provides.