

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14R-0394EG

IN THE MATTER OF THE PROPOSED RULES RELATING TO DATA ACCESS AND PRIVACY FOR ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3 AND DATA ACCESS AND PRIVACY RULES FOR GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-4.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: May 6, 2014
Adopted Date: April 30, 2014

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I. BY THE COMMISSION**A. Statement**

1. The Colorado Public Utilities Commission issues this Notice of Proposed Rulemaking (NOPR) to amend its rules governing access and privacy of customer information in the possession of utilities to make its rules more effective and efficient. We propose revisions to Rules 3026 through 3031, referred to as the “Data Privacy Rules,” in the Commission’s Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3 (Electric Rules), to simplify processes and provide clarification. In addition, we propose to amend the Commission’s Rules Regulating Gas Utilities and Pipeline Operators, 4 CCR 723-4 (Gas Rules), to introduce similar data access and privacy rules for gas utilities.

2. The statutory authorities for these proposed rules are §§ 24-4-101, *et seq.*, 40-1-101, *et seq.*, 40-2-108, 40-3-102, 40-3-103, 40-4-101, and 40-4-108, C.R.S.

3. The proposed changes to the Electric Rules are set forth in legislative (*i.e.*, ~~strikeout~~ and underline) format (Attachment A) and final format (Attachment B). Changes to the Gas Rules are also set forth in legislative format (Attachment C) and final format (Attachment D). These attachments are available through the Commission’s Electronic Filings (E-Filings) system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=14R-0394EG.

4. In addition, we propose revisions to the customer consent form for disclosure of certain customer information. We invite comment on the proposed form (Attachment E) and anticipate further revision to the consent form consistent with the rule changes adopted in this rulemaking proceeding.

5. We encourage interested persons to recommend rule revisions to the Electric Rules and Gas Rules relevant to data access and privacy, including, but not limited to, the specific revisions discussed below.

B. Overview

6. In Proceeding No. 10R-799E, the Commission introduced smart meter data privacy and disclosure rules applicable to electric utilities. The Commission found advanced metering infrastructure (AMI) for electric meters may allow the collection of granular data, which may create new, unanticipated markets for customer information.¹ The Commission also concluded that added rule protections for customer information balance the interest of respecting customer privacy with the interest of allowing governmental entities and certain other third-parties to have access to a customer's electric meter data upon informed consent.²

7. By Decision No. C13-1261, issued October 9, 2013, the Commission opened Proceeding No. 13M-1052EG to solicit input on possible revisions to the Electric Rules for data access and privacy and to assist the Staff of the Commission in preparing a NOPR for our consideration. Based on stakeholder input, Staff proposed revisions to the Electric and Gas Rules as well as changes to the customer consent form for the disclosure of customer data. In addition, we propose changes to the Electric and Gas Rules regarding data access and privacy to make these rules more effective and efficient and to ensure consistency with recent revisions to the Commission's Rules of Practice and Procedure, 4 CCR 723-1, made in Proceeding No. 12R-500ALL.³

¹ Decision No. R11-0922 at ¶ 2.

² See, e.g., Decision No. C11-1144 at ¶¶ 2-3.

³ Decision Nos. C13-0576, C13-0442, and R12-1466, Proceeding No. 12R-500ALL.

C. Title Revision to “Data Access and Privacy Rules”

8. Through these proposed rules, the Commission is committed to protecting customer privacy while permitting access to customer data under prescribed circumstances. The proposed rules promote customers’ ability to access their own energy usage data and permit third-party access only upon informed customer consent.

9. To reflect the Commission’s interest in protecting privacy of customer data and permitting access to that data, we amend the title of the electric Data Privacy Rules to “Electric Data Access and Privacy Rules.” Similarly, we propose adopting the title of the related Gas Rules as “Gas Data Access and Privacy Rules.” References to both rule sets should be: “Data Access and Privacy Rules.”

D. Electric Rule Changes**1. Rule 3001 Definitions**

10. We amend or introduce definitions for the following terms in the Electric Data Access and Privacy Rules: “customer data,” “aggregated data,” “standard customer data,” and “non-standard customer data.” In addition, we revise the definitions of “contracted agent” and “third party” to correspond with the same terms defined in the Commission’s Rules of Practice and Procedure 4 CCR 723-1, amended in Proceeding No. 12R-500ALL.

11. A utility may disclose “personal information” as defined in Rule 1004 only if the disclosure is specified and permitted in the Commission’s industry-specific rules and if the customer consents.⁴ Our proposed rules clarify the types of personal information protected from disclosure through the processes in the Electric Rules.⁵ Proposed definitional paragraph 3001(j) excludes from disclosable “customer data” the following personal information enumerated in

⁴ See Decision No. R12-1466 at ¶¶ 84-85; Decision No. C13-0442 at ¶ 11.

⁵ Gas Rules are similarly updated to include a definition of “customer data,” as discussed below.

subparagraphs 1004(x)(I) through (IV), even if this information is received as part of the customer's participation in a regulated utility program⁶ or shown on the customer's bill⁷:

- a) Social security or tax identification number;
- b) Driver's license number or identification card number;
- c) Credit card, debit card, other account number used for payment; and
- d) Any required security code, access code, or password that would permit access to the customer's account.⁸

12. The definition of "aggregated data" is clarified to require the combination of data from more than one customer. For example, a report with multiple years of data from a single customer does not constitute aggregated data as defined in the proposed rules. In addition, "aggregated data" must be combined in a manner precluding the ability to access or identify easily a single customer's data.⁹

13. Finally, the definition of "standard customer data" is revised to remove the term "actively" from the existing definition. A new definition for "non-standard customer data" accounts for use of this term in Rule 3026(c), which requires utilities to file a tariff describing "standard and non-standard customer data."

2. Rule 3027 Customer Notice

14. Rule 3027 sets forth the requirements for the utilities' publication to their customers of privacy and security policies governing access to and disclosure of customer data and aggregated data to third-parties. We propose three changes to this rule.

⁶ Subparagraph 3001(j)(II) includes information received from the utility as part of a customer's participation in a regulated utility program.

⁷ Subparagraph 3001(j)(III) includes information shown on bills issued to customers for regulated service.

⁸ Electric utilities shall continue to treat this type of information pursuant to the protections set forth for personal information in the Commission's Rules of Practice and Procedure 4 CCR 723-1. *See* Rules 1104 and 1105.

⁹ *See* paragraph 3031(b).

15. First, we clarify certain notice requirements. As discussed in Decision No. R12-1466, and confirmed in Decision No. C13-0442, Proceeding No. 12R-500ALL, we recognize that some sensitive personal information may be revealed by the utility's collection of disclosable customer data. For example, information from the customer's meter may reveal the customer's individual energy use when provided alone or in combination with other information, which could be "individually identifiable" under paragraph 1004(x)(VI) included in the definition of personal information. We suggest revising paragraph 3027(b) to require notice that customer data may reveal personal information. We invite participant comment on whether customers should be notified of the specific type of personal information that may be revealed given the metering technologies used, frequency of data collected, and general business practices of the regulated utilities.

16. Second, we propose changing the term "primary language" as the standard for determining the need for customer notice in a language other than English. The U.S. Census Bureau categorizes individuals who speak English "Very well," "Well," "Not well," or "Not at all." We propose changes consistent with the designations made by the U.S. Census Bureau. We also propose lowering the threshold percentage triggering the printing of the customer notice in a language other than English. Therefore, we propose an amendment to subparagraph 3027(c)(X) to require a utility to print the customer notice in "any specific language or languages other than English where the utility's service territory contains a population of at least 10 percent who speak a specific language other than English and where the proficiency of English is listed as 'Not well' or 'Not at all' as determined by reference to the latest U.S. Census information."

17. Because a utility can review U.S. Census Bureau data and determine whether it must provide notice in a language other than English, we propose removing the precondition requiring the Commission to issue a formal ruling. In addition, the proposed rules offer redress to persons showing a utility's non-compliance with these language requirements.¹⁰

3. Rule 3028 Consent Form

18. Rule 3028 sets forth the standards for the disclosure form that utilities must use to obtain informed consent from customers authorizing release of customer data to a third-party, including aggregated data and non-standard data.

19. The existing rules require a utility to use a form "prescribed and supplied by the Commission."¹¹ Participants in Proceeding No. 13M-1052EG advocated for a utility's ability to develop its own forms and a more flexible process for amending the form. In this NOPR, we propose simplifications and clarifications of what must be included in the form set forth in paragraph 3028(c).

20. In addition, to balance the interests of consistency and flexibility, we modify paragraphs 3028(a) and (b) to clarify that a utility may draft its own consent form provided that it includes required sections with specified language. Paragraph 3028(c) prescribes the requirements for the consent form that utilities may adopt. Further, paragraph 3028(d) provides utilities the option of using a form provided by the Commission. In addition to the changes proposed in paragraph 3028(c) and (d), we seek comments from stakeholders on a process for changing or amending the Commission-approved consent form.

¹⁰ Parallel requirements for translation of consent forms are included in Rule 3028.

¹¹ Paragraph 3028(a).

21. Finally, we request comment on paragraphs 3028(e) and (f), which permit, but do not require, the utility to implement certain electronic and in-person consent processes. Specifically, participants should discuss whether these rules should require an electronic or in-person consent process, as opposed to allow. Participants should address fiscal impacts, if any, resulting from an electronic or in-person process requirement.

4. Translation of Notice and Forms

22. We recognize it is often preferable or necessary to have translations of customer notices and consent forms available for customers who do not speak English. Therefore, we solicit comments on translations of customer notice and consent forms, including the potential for specifying translation services that may be authorized for use.

23. In addition, we seek input from participants on who should bear the costs of translation services and the mechanism for cost recovery.

5. Rule 3031 Requests for Aggregated Data

24. Rule 3031 describes the requirements for the disclosure of aggregated data including the “15/15 Rule,” in which aggregated data must contain: (1) at least 15 customers; and (2) within a customer class no single customer’s data may represent more than 15 percent of the data.

25. In Proceeding No. 13M-1052EG, certain participants expressed concerns that the “15/15 Rule” inhibits the development of potential energy efficiency projects. However, Staff found no agreement among the stakeholders on how to address those perceived challenges. In addition, we are cognizant that other states are faced with similar issues and are considering changes to the methods applied for data aggregation. We therefore seek additional input from

interested persons as to specific approaches to data aggregation methods protecting customer privacy and providing support for energy efficiency, including correlating rule changes.

E. Gas Rule Changes

26. In Proceeding No. 13M-1052EG, we sought input from interested persons on the need for data access and privacy rules for Colorado gas utilities. Based on those comments, we propose the Gas Data Access and Privacy Rules (Attachment C). These proposed rules are similar to the Electric Data Access and Privacy rules for electric utilities described above.

27. We seek comment as to whether all proposed rules should apply for gas utilities, or if amendment is necessary. In addition, we solicit comment about whether any additional rules may be necessary for gas utilities to strike the balance between ensuring customer privacy and providing authorized access to information.

28. Also, gas utilities subject to these rules vary in the number of customers served and their technologies. We solicit comment from all participants, but especially the gas utilities, on whether rule revision is necessary to account for the variations in gas utility customer base and technologies.

F. Customer Access Initiatives

29. Consistent with federal and state initiatives,¹² the Commission solicits comment on rule revisions that would ease customers' ability to access their own electric and gas meter data. As federal and state initiatives progress, participants are encouraged to make suggestions for Commission consideration on correlating rule revisions or policy objectives.

¹² For example, Senator Mark Udall (Colorado) recently sponsored Senate Bill 2165, which would encourage state and utility policies that ensure electricity consumers have timely access to information on electricity prices and power consumption. *See*, Dallas Heltzell, *Northern Colorado Business Report*, "Bill aims to expand access to power data." March 27, 2014 (available at <http://www.ncbr.com/article/20140327/NEWS/140329934>).

30. Similarly, we seek comment on the adoption of technical or other solutions to facilitate data access while protecting consumer privacy. Examples of potential solutions are applications and features that permit customers to access their own data, including the Green Button “Download My Data” and “Connect My Data” features.¹³ We invite interested persons to address the extent these initiatives make it unnecessary to implement rules for aggregation or disclosure to third-parties.

G. Customer Consent Form

31. Based on comments raised in Proceeding No. 13M-1052EG, we propose a revised consent form for customer data (Attachment E), which is intended to apply to proposed revisions to forms required by proposed Rule 4028 of the Gas Rules and Rule 3028 of the Electric Rules. We request participants to provide comment and suggestions regarding the proposed form that will correspond with rules ultimately adopted in this rulemaking proceeding.

H. Conclusion

32. This matter is referred to an Administrative Law Judge (ALJ) for the issuance of a Recommended Decision.

33. The proposed rules will be published in the May 25, 2014, edition of The Colorado Register.

34. As ordered below, we schedule a hearing on the proposed rules and related issues. Interested persons may submit written comments on the proposed rules, including data, views, or arguments, and present these orally at hearing unless the ALJ deems oral presentations unnecessary. The Commission prefers and encourages interested persons to submit comments

¹³ Green Button is a means to provide electricity consumers with easy access to their energy usage data in a consumer-friendly and computer-friendly format. “Download My Data” permits a customer to visit their utility web portal and download meter data information in an XML-formatted file. “Connect My Data” allows a consumer to authorize a third-party service provider to receive direct access to their meter data. *See* Green Button, <http://greenbuttondata.org> (last visited March 28, 2014).

through the Commission's E-Filings System in this Proceeding No. 14R-0394EG no later than June 16, 2014. Reply comments should be submitted in the same proceeding and through the Commission's E-Filings System by June 23, 2014. The Commission will consider all submissions, whether oral or written.

35. We request commenters to propose alternative rule language, as necessary, with their comments by the dates and manner specified above.

36. In addition to proposed rules, we request participants to comment on, and propose revision to, the consent form for Commission approval that corresponds with rule updates ultimately included in a recommended decision. The Recommended Decision shall include recommendations on rule revisions and a proposed customer consent form.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the May 25, 2014, edition of *The Colorado Register*.

2. This matter is referred to an Administrative Law Judge (ALJ) for the issuance of a Recommended Decision. The Recommended Decision shall include proposed rules for adoption by the Commission and a corresponding consent form, consistent with the discussion above.

3. A hearing in this matter shall be held on:

Date: July 1, 2014

Time: 9:00 a.m. until not later than 6:00 p.m.

Place: Commission Hearing Room

1560 Broadway, Suite 250

Denver, CO 80202

- 4. The ALJ may set additional hearings, if necessary.
- 5. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Commission finds oral comments are unnecessary.
- 6. Interested persons may file written comments in this matter before hearing. The Commission requests that initial written comments be submitted no later than June 16, 2014 and that written reply comments be submitted no later than June 23, 2014.
- 7. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
APRIL 30, 2014.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

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Commissioners