Decision No. R15-0406

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.

RECOMMENDED DECISION
OF ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
AMENDING RULES

Mailed Date: May 1, 2015

TABLE OF CONTENTS

I. STATEMENT

1. On May 6, 2014, the Public Utilities Commission issued the Notice of Proposed Rulemaking (NOPR) that commenced this proceeding. *See* Decision No. C14-0461 issued May 6, 2014. The Commission referred this matter to an administrative law judge (ALJ) and scheduled a hearing for July 1, 2014. The purpose of the proposed amendments to the rules governing access to and privacy of customer data in the possession of utilities is to make the rules more effective and efficient.

2. Throughout the proceeding written comments were filed with the Commission by Black Hills/Colorado Electric Utility Company LP and Black Hills/Colorado Gas Utility Company, LP (Black Hills); Boulder County, Bruce Stevens; City and County of Denver; City of Arvada; City of Aurora; City of Boulder; City of Golden; City of Westminster; Colorado Communications and Utilities Alliance; Colorado Apartment Association; Colorado Energy Office (CEO); Colorado Natural Gas, Inc.; Colorado Department of Public Health & Environment; Colorado Office of Consumer Counsel (OCC); Durango Mountain Utilities, LLC; Energy Outreach Colorado; Institute for Market Transformation, Natural Resources Defense Council, and Southwest Energy Efficiency Project; Mission:data; Public Service Company of Colorado (Public Service); SourceGas Distribution LLC and Rocky Mountain Natural Gas LLC (respectively, SourceGas Distribution and Rocky Mountain); Rocky Mountain Trane; U.S. Energy Information Administration; and Western Resource Advocates (WRA).

3. Being fully advised in this matter and consistent with the discussion below, in accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

II. FINDINGS, DISCUSSION, AND CONCLUSIONS

4. The statutory authorities for these 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.

5. The proceeding first focused on proposed modifications to the Commission's electric rules, then evolved to proposed modifications to the gas rules. Topics generally overlap both sets of rules.

6. At the scheduled time and place, the hearing was convened. Throughout the hearing in this proceeding and through written comments, all who are interested have had

extensive opportunities to thoroughly discuss, review, and comment upon modifications to the rules. Decision Nos. R14-1001-I, R15-0073-I, and R15-0102-I solicited further comment on proposed changes to the rules utilizing redlined changes to prior versions, based upon comments at that point of the proceeding (Hearing Exhibits 2, 7, and 8 respectively).

7. The undersigned ALJ has reviewed and considered the record in this proceeding to date, including written and oral comments. This Recommended Decision generally focuses on contested issues addressed during the course of the proceeding. All modifications to the rules are not specifically addressed herein. Changes incorporated into the rules attached hereto are recommended for adoption. Any specific recommendations made by interested parties that are not adopted below or otherwise incorporated into the redlined rules attached are not adopted.

8. As commented by the CEO, the proposed rules will continue to ensure that "individual customer data must be kept private by default." The adopted rules effectively allow customers to leverage new capabilities of utilities in ways not available before and respect customer privacy interests when information is released without consent.

A. Definitions

1. Definition: Person

9. Boulder points out that person is defined in the Public Utility Law at C.R.S. § 40-1-102(10) to mean "any individual, firm, partnership, corporation, company, association, joint stock association, and other legal entity." However, if the Commission wishes to ensure that its Rules are not misinterpreted, Boulder recommends that the definition of person found in the Public Utility Law be duplicated in the Rules.

10. Rule 3001 explicitly provides that definitions found in the Public Utilities Law apply to these rules. Statutory definitions control and apply without duplication.

The Commission already duplicated the definition in Rule 1004(w) of the Rules of Practice and Procedure, 4 CCR 723-1, which also applies to electric and gas utilities.

11. Clarifying language will be added to the first paragraph of the definition rule regarding the hierarchy and applicability of rules found in the Commission's Rules of Practice and Procedure (i.e. including person). However, the definition will not be repeated here.

2. Definition: Aggregated Data

12. Black Hills suggests deleting the words "or premises" from the definition of aggregated data. Black Hills contends that because the definition contains the words "or premises," the rule could enable a third party to request customer data for a single customer if that customer has more than one premise.

13. Public Service supports clarifying the definition of aggregated data by explicitly and fundamentally requiring the combination of data from more than one customer explicit.

14. Other parties, including the OCC and the City of Boulder argue the Commission should include the concept of anonymized data. Similar to aggregated data, anonymized data has all potential customer identifying information removed. Public Service supports the concept. While the rules generally use the word "aggregated" to mean a summation of a group of customers' data (i.e., the total use of a certain geographic area over a certain time period), the word aggregated is also used in other contexts to refer to a group or compilation of individual customer records.

15. The OCC proposes that second category (a group of individual records released together) should be referred to as "anonymized," whereas the first example (a summation of the use in a given area) should be referred to as "aggregated." The OCC believes it is necessary, even in the absence of other changes to the 15/15 rule, to make clear that the 15/15 rule covers

only the release of "aggregated" data, and not the release of "anonymized" data. Illustratively, OCC sites that repetitive access to data sets can allow determination of individual information based upon comparisons and analysis. Also, "anonymized" datasets may be combined with datasets available from other sources that may contain personally identifiable information and that it may be possible to re-identify particular customers by linking those datasets.

16. Public Service generally agrees with the distinction drawn by the OCC between aggregation and anonymization — aggregation (the summation of data belonging to two or more individuals) being different from anonymization (the stripping data of individual identification). Public Service believes that there is value in defining anonymized data as distinct from Aggregated Data and providing utilities with explicit guidance on whether utilities are to make anonymized data available, and under what circumstances. A statistical study is proposed on the topic.

17. Regarding aggregated data and anonymized data, the undersigned agrees that the Commission's rules should address both concepts. However, it has not been shown that protections for aggregated data are inadequate to protect anonymized data or aggregated data reports containing anonymized data. Thus, the definition of aggregated data will be modified to include anonymized data. Data reports including anonymized data may be made available, subject to applicable restrictions (i.e. the 15/15 rule).

3. Definition: Contracted Agent

18. Public Service recommends that the reference to a contracted agent's access to customer data from a utility, continue to be a part of the definition. The purpose of specifically identifying persons or entities with which utilities contract to provide regulated utility services in the data privacy rules is to address how to handle customer data in the contractual relationship.

As such, Public Service recommends the definition in the electric rules make explicit that a contracted agent means "any a person or entity that has contracted with a utility in compliance with Rule 3029(a) to assist in the provision of regulated utility service…."

19. Contracted agent is defined Rule 1004(l) of the Rules of Practice and Procedure, 4 CCR 723-1, and applies to all industry rules. Illustratively, this structure permits Public Service to engage a contracted agent to assist in the provision of natural gas and electric utility service. The definition will not vary as to utility service.

20. Rather than adopt definitions of different types of contracted agent, rule 1004(l) will be relied upon and applied in the context of the subject matter rules. While the definition will be redundantly included in industry rules, it will remain identical to the Rules of Practice and Procedure to avoid any potential for conflict in application across the Commission's jurisdiction.

4. Definition: Customer

21. Public Service recommends that the definition of customer explicitly include references to an entity, in addition to person. The proposed modification is redundant because an entity is already included in the definition of person. Particularly with the clarifying language added to Rules 3001 and 4001, the proposed modification is not necessary.

5. Definition: Customer Data

22. Black Hills comments that the third part of the definition of customer data, which reads "shown on bills issued to the customer for regulated utility service," is overly broad and not reasonable. Specifically, name and address – "shown on bills issued to the customer" – are publicly and lawfully available from many sources (*e.g.*, telephone books, county property tax records, the Secretary of State business-searchable database). Therefore, Black Hills requests

that the customer data definition be modified as follows: (III) shown on bills issued to the customer for regulated utility service when not otherwise publicly or lawfully available.

23. Public Service supports Black Hills' comments limiting customer data to information that is "not otherwise publicly or lawfully available."

24. Boulder supports the Commission's proposed revisions to the definition of customer data as they clarify what had been a confusing use of the word "and" in the definition.

25. Additionally, Black Hills requests clarification whether other information concerning a customer's payment and collections history is *implied* to be customer data and therefore protected from disclosure to third parties without written customer consent. While "past due amount" is shown on the customer's bill – and therefore clearly becomes customer data by Commission definition – Black Hills is unclear whether other information, not shown on the bill, but related to payment and collections, should be equally protected from disclosure. This type of information includes payment history and arrearage amounts by aging categories. This is sensitive information and guidance is sought on this point.

26. Under the rules, the combination of publicly available information with information not publicly available is protected. Information that is publicly available, that might also happen to appear on a bill need not be protected when provided alone. Prior rule focused upon the customer bill as a bright line delineation of the scope of customer data.

27. This proceeding focuses more on access to data than prior proceedings. Thus, it is appropriate to reconsider the scope of data that will be accessed. Rather than solely limiting the availability of data to current utility practices, access will be considered in light of the data available. Illustratively, data available from installed equipment that is not used as a billing determinant (e.g., a production meter) is still data that should be accessible to the customer.

28. To further clarify as to payment and collection history, it is notable that one component of customer data is defined in terms of information included on bills, as opposed to the bills themselves. Thus, including amounts billed and paid on a customer's bill requires that the same information in utility systems be protected (i.e. payment history and outstanding balance).

29. Boulder proposes changes to the modified definition of customer data to further expand the reference to program participation.

30. Public Service agrees with the City of Boulder's comments that the wording in the existing rule does not effectively describe information on customer participation in regulated programs, and supports modifications to the definition that would simply refer to customer participation information, as opposed to participation information received from the customer.

31. The proposal is reasonable and will be adopted.

a. Customer Data versus Personal Information

32. Public Service proposes modifications to maintain a clear distinction between the definitions of customer data and personal information. Public Service believes that the utility should not be the source for third party access to personal information and that personal information must continue to be distinguishable from the broader access rules that apply to customer data.

33. Public Service comments that there is confusion created by the potential overlap between the existing definitions of, and rules pertaining to, personal information and customer data. Limiting customer data to customer identifying information appearing on bills in combination with either customer-specific energy usage information or information about the customer's participation in a regulated program resolves the confusion.

34. SourceGas Distribution and Rocky Mountain find the following statement in the rule addressing Privacy, Access, and Disclosure to be confusing: "Unless the information is included as customer data, a utility shall not disclose personal information, except as provided in rule 1105." Clarification is requested by providing examples of when personal information is "included as customer data." The Commission also should clarify the relationship between Rule 4 CCR 723-1-1105 and Rule 4027(b), which seems to imply that the provision of personal information that is "included as customer data" would not be governed by Rule 4 CCR 723-1-1105.

35. The definition of customer data will be modified to eliminate overlap in the definitions. Customer specific information that is not publicly available and appears on the customer's bill will remain customer data. Customer identifying information, such as a customer's name, when combined with energy usage information or information about participation in regulated program will also remain customer data.

6. Definition: Standard Customer Data

36. Public Service comments that the current definition of standard customer data is significant as it embodies the cost-causation principle. Public Service recommends that the "actively maintained" distinction continue to apply to standard customer data.

37. It is important to read the definitions of customer data and standard customer data together and consistently, by incorporating the concept of active maintenance, to make Standard Customer Data more restrictive than Customer Data. The concept of "active maintenance" comports with the cost-causation principles that support the demarcation between Standard and Non-Standard Customer Data. Consistent with cost-causation principles,

Public Service contends that providing Standard Customer Data as a part of utility service extends only to information that is readily accessible or "actively maintained" in the utility's systems in the ordinary course of business.

38. The undersigned agrees with the delineation as the foundational distinction of standard customer data recognizing cost-causation principles. However, unanswered questions remain because of the ambiguous term. Specifically, how should "actively maintained" be distinguished from being otherwise maintained? The existing "actively" qualification will be stricken and standard customer data will focus upon that maintained in the ordinary course of business.

B. Privacy, Access, and Disclosure, Generally

39. Public Service believes that all customers have a privacy or confidentiality interest in their specific energy data, regardless of the particular rate class to which they belong. Public Service suggests that the phrase, "…and reasonable access restrictions expectations…," be inserted in the rule to respect the various data access concerns and expectations that commercial or industrial customers may have.

40. The undersigned joins in the belief regarding expectations conceptually; however, other comment opposes including reference to reasonable expectations of a customer. At hearing, Black Hills raised concern applying the standard in light of unique customer perspectives.

41. Black Hills proposes rule modifications, based on findings by both independent and proprietary survey research, that customers of the regulated utility find value in offers of consumption-related goods and services as part of utility non-regulated functions (*e.g.*, Service Guard). Black Hills proposes that Service Guard be permitted to reach

Black Hills' customers by telephone, mailing address, or email only and promptly honor customers' requests to cease marketing contacts when so notified.

42. WRA contends that modifications proposed by Black Hills regarding the provision of non-utility services should be rejected based upon the same rationale expressed in Decision No. C11-1144.

43. The undersigned agrees with the comments of WRA. Black Hills' proposal will not be adopted because it reflects the utility's pecuniary interest in a business not regulated by the Commission, rather than the public interest. The foundation of a public utility's relationship with its customer is the essential nature of public utility service. Particularly as an essential service, the customer does not generally choose to provide information about themselves to the utility for dissemination to others. Information may be used when the customer consents to appropriate disclosure in accordance with these rules. However, even where some customers find value in a non-regulated service provided by a utility, permitting use of information about all customers for non-regulated purposes (e.g. including those not finding value) is not appropriate. Additionally, permitting non-regulated use of regulatory information by a non-regulated affiliate of a utility creates a slippery slope for others seeking to use the same information.

44. Public Service also recommends retaining the provision in the Rule 3027 and 4027 that Standard Customer Data is provided by a utility as part of basic utility service. The request is reasonable and the introductory phrase will be retained.

45. Black Hills is concerned that the words reference to "adequate protections for the utility's system security" are not stringent enough protections. Black Hills believes the word "appropriate" should replace "adequate" to impart a stricter standard for electronic entry into the utility's system to access the customer's standard customer data.

46. Comment has not demonstrated need for the proposed modification because, as applied, no material distinction has been shown. Adequate protections are appropriate protections.

C. Customer Notice

47. Requiring customer notice about data access and privacy strikes a balance to inform customers regarding data access when they enter and exit the system as well as when their needs change over time. Significant comment is directed at the notice content and required languages.

48. Public Service proposes the notice:

> shall specifically identify for customers the different elements of customer data being requested and the intended use of that information, including any further sharing with other third parties. The notice shall advise the customers to consider the proposed scope, purpose, and use of customer data prior to authorizing the disclosure of customer data to third-parties.

49. WRA proposes that the phrase "specifically identify" in the first sentence be replaced with "summarize" as being more appropriate for purposes of the annual notice. Further, that the phrase "including any further sharing with other third parties" be deleted from the first sentence. WRA is concerned that the phrase is not defined and is excessively vague. It may also cause unnecessary alarm for customers.

50. WRA is correct that the notice at issue is a general notice to be provided to customers annually. As such, the specific level of applicable detail identified by Public Service is neither appropriate nor necessary. The rule will be modified to provide notice to customers of available information from the utility (as opposed to a general categorical description), how often the information can be provided by the utility, and the available level of detail.

1. Delivery Methods

51. SourceGas Distribution and Rocky Mountain contend that the rule should be modified to expressly authorize utilities to send the customer notice electronically to those customers who have consented to receive their bills through the e-billing option allowed by rule. SourceGas Distribution and Rocky Mountain have found that their customers who have consented to receive their bills through the e-billing option expect to receive notifications from their utility by electronic means, rather than by hard copy in the mail. Moreover, the ability to send this notice electronically to customers receiving e-bills will eliminate the cost otherwise incurred to mail hard copy notices to those customers.

52. Public Service agrees with SourceGas Distribution and Rocky Mountain and supports the modification.

53. The comment is reasonable and will be incorporated in the rules adopted with the condition that notice delivered electronically must be separate from any billing. By electronic delivery, the additional cost, if any at all, will be minimal and separate delivery from a bill maximizes the opportunity to draw customer attention.

D. Customer Consent

1. Gas Transportation Service

54. SourceGas Distribution first raises a concern that gas transportation customers (shippers) could be affected by these rules, especially for requests coming from a transportation customer's agent. In their respective tariff, these companies have Forms of Agency Agreements where a transportation customer provides its agent with "full authority to act on its behalf in managing gas transportation." Because such transportation customers already have conferred full authority on their agents to act on their behalf, which would include obtaining the customer's customer data from SourceGas Distribution and Rocky Mountain, requiring such

transportation customers to execute a Consent to Disclose Utility Customer Data and applying the proposed Gas Data Access and Privacy Rules to those customers would be duplicative and could create confusion.

55. Public Service does not believe that the consent process poses a conflict for gas transportation customers with agents, based upon agency law.

56. The undersigned agrees with the comment and analysis of Public Service regarding gas transportation customers. In those instances, the agent stands in the shoes of the customer under agency law. This is not the case in consent to provide data access. The rules adopted by the Commission are not intended to affect operation of agency law. Based thereupon, modification is not needed to accommodate gas transportation service.

2. In-Person Consent

57. Comment suggests that utilities should strive to continue to adopt new electronic and in-person consent processes that are consistent with nationally recognized best practices. Boulder supports that a customer ought to be able to visit a utility's business office to file a customer consent form, and get a receipt of acknowledgement from the utility. Other comments support an optional approach for utilities.

58. CNG contends that utilities should be *allowed* to offer the consent process electronically or in-person. CNG believes that the language of the rule should be as proposed with "may make available."

59. CNG's approach is reasonable and will be adopted. Based upon the comments received, it appears that the burden would outweigh the benefit of requiring a retail location in order to facilitate the in-person consent process.

E. Customer Consent Form

60. Initial comments addressed proposed changes to the customer consent form and associated processes for making changes to the form. By Decision No. R14-0759-I, the undersigned suggested that interested stakeholders collaborate on making joint comments to address concerns and reach agreement on modifications to the consent form.

61. During the course of the proceeding, a group of interested stakeholders collaborated to address concerns and reach agreement on modifications to the form customers use to give consent to disclose their information to third parties. The CEO filed supplemental comments supported by Boulder County, City and County of Denver, City of Arvada, Energy Outreach Colorado, Public Service Company of Colorado, and Western Resource Advocates (collectively the Joint Form Commentors) joined in comments proposing a new form.

62. The consensus proposal to modify the consent form, with very minor additional modifications, was incorporated into Hearing Exhibit 2 for additional comment. The proposal is incorporated with the adopted rules. The newly-revised requirements are within the scope of the prior form or do not materially modify the scope of consent given under prior forms. As such, consent forms executed by customers prior to the effective date of rules adopted in this proceeding may continue according to their terms.

1. Changes to Commission-Provided Consent Form Over Time

63. Public Service supports a process for revising or amending the customer consent form that is separate from a proposed NOPR. Public Service supports Commission Staff being able to initiate a process based on requests made to them for materially significant changes to the approved form.

64. Boulder County suggests a 30 or 60 day notice be filed with the Commission prior to the adoption of a new consent form, and that there be a mechanism whereby parties can meet in a non-adjudicated setting to resolve any outstanding issues brought forth by the changes. Where the process did not lead to agreement, a petition might be filed for Commission resolution.

65. Public Service requests clarification whether a new consent form is required when the terms of an existing form would change, such as the type of information or the frequency of data deliver (*i.e.*, from a single release to an ongoing release). The Joint Form Commentors request that the Commission make it explicit that the consent form remains valid (i.e., no new consent form is required) if contact persons of the data requesting entity identified in consent forms change. In any event, Denver emphasizes the importance of ensuring that previous versions of the form be grandfathered to avoid having to obtain consent on a new form for continuing authorization.

66. The undersigned conceptually agrees with Commenters. While the consent form has been addressed and modified in connection with rulemaking considerations, the form itself is not part of the Commission's rules. Rather, the rule establishes requirements for the form and requires Commission Staff to maintain the form and make it available in compliance with the rule requirements. Thus, the form may be modified informally over time for improvement without rulemaking so long as the modifications are consistent with existing rule.

67. Consistent with the clarification sought, rule language will be modified to make clear that the validity of consent will not be affected by changes to the Commission-approved form over time. Consent will be valid according to its terms until terminated, without regard to subsequent changes to the Commission-approved form. A safe harbor provision will be added to

the rule establishing a presumption of compliance with the Commission's rules to the extent of reliance upon a version of the form made available on the Commission's website. By this approach, anyone investing in an electronic consent process can also be assured that form modifications will not be required in absence of a rulemaking proceeding. In the event of conflict, a petition may be filed requesting relief.

68. Proposals also address when some changes in circumstances occur following execution of the consent form. A customer consents to disclosure of customer data to a third party for a specified purpose. The undersigned views any change to the party receiving the data to be a material change affecting the consent given. However, where an organization is constant and the individual representative changes over time, the party to whom the data is provided has not changed. Thus, some changes affecting information included on the consent form will be recognized in rule not to invalidate the consent.

2. Integration of Consent in Other Forms.

69. The Colorado Apartment Association (The Association) represents apartment owners and property managers throughout the State of Colorado. The Association comments that developers plan and strive for energy efficiencies in new builds and property managers have an interest in monitoring efficiency. It encourages expanding access to utility energy use data to assess energy efficiency in buildings and contends that property managers and property owners should be able to access information on their properties without getting resident approval in for lease units. The Association's comments also state that any requirement for annual approval would impose a substantial additional administrative burden.

70. The Association addressed the administrative burden in having to obtain customer consent to obtain information for use in affordable housing programs. Comment contends that expanding these burdens to all leased units would result in extreme additional burden.

71. Natural Resources Defense Council, the Southwest Energy Efficiency Project, and the Institute for Market Transformation request similar changes.

72. The undersigned declines to adopt these proposals. Consent to release customer data is and should remain a stand-alone process between the utility and its customer. This process maximizes the likelihood of informed customer consent while ensuring efficient management of the process by utilities in accordance with the wishes of customers. This information is not available to third parties from any other source and may reveal information about the way customers use energy. Reasonable caution is warranted and need not be complicated with an infinite possibility of other types or terms of agreement.

F. Language Translations

73. The rules introduce a requirement for utilities to make notice and consent forms available in English and Spanish, as well as an efficient process for the same information to be made available in other languages.

74. CEO supports having consent forms available in other languages to ensure customers are giving informed consent to disclosing data when participating in weatherization programs.

75. Throughout the proceeding, comment was solicited to require the customer notice and customer consent form, as applicable, to be translated into other language based upon objective criteria in the latest U.S. Census information.

76. Comment highlighted the complexity and resulting lack of clarity as to census criteria for determining languages in which utilities must make notice and consent forms available. No clear reasonable standard emerged that could be implemented and managed by utilities. This convinced the undersigned that the general approach alternatively advocated by the OCC should be pursued. Therefore, the focus shifted toward adoption of a process in rule for additional translations that could be relied upon by customers, vendors, utilities, and the Commission alike.

77. Some comment addresses translation cost. While there is little specific cost information or projected number of translations, the cost to translate one English form to Spanish for use of all utilities need only be incurred once under the adopted rule. This translation cost will be incurred as part of basic utility service. The prudently incurred costs to comply with Commission rules may be addressed in an appropriate proceeding.[1]

G. Local Government Audit Exceptions

78. Substantial comment was provided regarding disputes about local government access to customer data. There is a demonstrated need for an exception to the data privacy rules permitting regulated utilities to disclose customer data to municipal auditors as reasonably necessary to determine the accuracy of franchise fees. However, no need has been shown to permit use of customer data for other local government purposes.

79. To be clear, the proper focus of this proceeding is upon rules of general applicability, rather than tailoring rules in an attempt to solve every existing franchise or

[1] Comments suggest translation cost would be recovered as any other cost to inform rate payers of their rights and obligations. In light of the purpose of the translated forms comment also suggests that recovery through the DSM recovery mechanism would be appropriate.

ordinance issue. Other options remain for parties to modify franchise agreements, seek waivers of Commission rules, or seek other relief as appropriate.

80. Westminster first contends that protections found in State law negate any need to limit distribution of customer data local governments receive from a utility. Westminster contends that Colorado municipalities are already required to protect personally identifiable information and confidential commercial information of private entities, including that provided by regulated public utilities. *Citing* §24-72-501 et seq. and 24-72-204(3)(a)(IV), (IX), C.R.S.

81. Illustratively, although the process described in comment apparently never got very far, it is interesting to question how Westminster's privacy policy implementation minimized "the collection of personally identifiable information to the least amount of information required" when it requested that Public Service provide "[o]ne recent sample month containing the addresses and billing statements included in the City of Westminster's gross revenue calculations, to verify that the correct addresses and bill amounts are included/excluded." Although, after Public Service's apparent refusal to provide information, the City later agreed: "Note: personal identifying information related to customer's individual use may be redacted to protect their privacy."[2]

82. Section 24-72-501 et. seq. enumerates a list of items that the privacy policy of each governmental entity must address. However, there are no objective criteria that are required to apply, no penalty for a local government violating any privacy policy adopted, and no assurance of consistency either between customers within different local government jurisdictions or as to a specific utility customer's information provided to two local governments. Additionally, neither §24-72-501 et seq. nor 24-72-204(3)(a)(IV), (IX), C.R.S. limit use or

[2] This illustration should not be read to imply that a local government may not need further information during the course of an audit.

distribution of customer data once in the hands of the local governments. These protections have not been shown to be adequate protection for customer data obtained pursuant to a franchise agreement for purposes of auditing franchise fees.

83. Some comment raises concern about protections for use of customer data by Commission rule in light of existing local law. Cities argue that non-disclosure agreements are unnecessary because local governments will have existing standards to protect customer data. Denver points out that it imposes eight taxes under the Denver Revised Municipal Code. Denver, and like all municipalities that it is familiar with, prohibits municipal auditors from disclosing any information gained from a tax audit, except in accordance with a judicial order. See, Denver Revised Municipal Code § 53-8.

84. Westminster also objects to non-disclosure agreement requirements, supporting the comments of Denver. Like Denver, Westminster comments that the city, its officers, employees, and legal representatives must hold such information in confidence and provides criminal penalties for the failure to do so. *Citing* §§4-l-12 and 4-1-35(C), Westminster Municipal Code. Westminster also points to provisions of its franchise agreement governing nondisclosure.

85. Variation and existence of protections across all local governments can best be assured by adopting standards in Commission rule. Comment fails to show protections of all affected local governments in the state (i.e. counties as well as cities not addressed in coment). The undersigned is concerned as to the unique nature of customer data and the limited use for which it is made available to local governments to further franchise agreements. The fact that one local government affords appropriate protection for some customers of a utility provides no assurance that another local government will equally protect customer data (or even the same customer will be equally protected if customer data is provided to two local governments).

The rules adopted will maintain and ensure uniform protections for the disclosure and use of customer data across jurisdictions.

86. Some comment addresses arrangements of local governments with outside auditors. It has not been shown that appropriate protections exist for all local governments or that those protections applicable to tax administration explicitly and necessarily apply in all instances to franchise fees. By conditioning access to customer data, the adopted rules facilitate local government audits while maximizing the opportunity to protect disclosure of customer data in the first instance as well as for others engaged by such local governments.

87. Some comment also supports adoption of a Commission rule governing local government access to customer data in connection with tax audits. Such proposals have not convinced the undersigned that sufficient need warrants the complexities to reconcile and address jurisdictional boundaries. At this time, no attempt will be made to affect the exercise of local government jurisdiction apart from the exercise of Commission jurisdiction over franchises. The gas and electric rules already contain explicit provisions permitting disclosure of customer data as required by law or to comply with Commission rule. In addition to not being convinced of need, the undersigned has little confidence in the ability to anticipate, capture, and address every tax or fee imposed by all local governments affected by these rules.

88. In sum, comment demonstrates there have been differences regarding audits of franchise fees. Comment and argument presented demonstrates the need for Commission rules to facilitate local government audit of franchise fees and to consistently protect the use and disclosure of customer data by local governments pursuant to these rules. A rule will be adopted balancing local government desires to use and access customer data with interests of utilities and customers. Notably, the Commission is not attempting to limit, condition, or address local

government jurisdiction (e.g. taxation). Rather, the rule focuses upon a structure to facilitate access to customer information from a utility as reasonably necessary in connection with the exercise of Commission jurisdiction over franchises, including accommodation of outside auditors.

89. Westminster also seeks modification to required destruction or return of information when such requirement would conflict with other mandates. The proposal is reasonable and will be incorporated.

H. Community Energy Reports

90. Local governments have a vested interest in evaluating effectiveness of local energy efficiency programs and regular reporting of certain data for Green House Gas Inventories, Climate Action Plans, etc. There is broad support in comment for public utilities to provide local governments with annual community energy reports to better understand energy consumption (at customer expense). Comment also supports aggregation in community energy reports so that individual customer data is not disclosed or cannot be determined through data manipulation.

91. Comment contends the obligation should only apply where a utility serves more than a majority for municipalities in which it serves at least 50,000 customers and for counties in which it serves the majority of the residents. Therefore, a standard Community Energy Report should not be required where a small portion of a community is served. SourceGas Distribution contends it should not be required to create a report for the fewer than 12,000 of the nearly 270,000 residents it serves in Weld County or in any municipality in Weld County where its largest locality served has fewer than 4,000 customers. However, if Weld County desires to have county-wide information, such information cannot be complete without combining information

of all utilities serving in the county. Therefore, the focus will continue toward the size of the utility and community rather than portions of communities served.

92. CNG contends that applying the Community Energy Report concept from electric rules would be burdensome to gas utilities because sufficiently anonymous customer data may be almost impossible for small utilities with noncontiguous service areas to develop.

93. At present, local governments comment that they have no idea how Public Service defines a jurisdictional boundary. It appears local governments generally have the ability to create GIS map files of jurisdictional boundaries or have access to such a file from another local government. It also appears that the largest tier of public utilities has the ability to utilize GIS map files to generate reports based upon jurisdictional boundaries.

94. A rule will be adopted establishing a Community Energy Report as a standard report that utilities will provide without any requirement for customer consent. Particularly because all customers will pay any costs to generate the report, the reports will be available via the utility website and high aggregation thresholds will be maintained. However, the Commission clearly does not want to impose costs without benefit. The adopted rules incorporate the Community Energy Report in a way that balances the resulting costs and benefits based upon size of utility and community desire for the information.

95. Several requests for comment failed to yield cost information for implementation or certainty of criteria. A few utilities also comment that they have not received any requests for information comparable to the Community Energy Report. Comment suggests that larger communities are more likely to have staff interested and focused upon energy usage information; however, the benefit is not limited to larger communities. Therefore, an opt-in form of notice

will be available to smaller communities or those where a minority of customers are served.[3] With one request, smaller communities desiring information will be able to obtain the same information as any other sized community. This approach will more likely align costs with actual demand and provide local governments with access to comprehensive information. Local governments may request complex or time consuming reports under other provisions of the rule and these reports can be made available consistent with cost causation principles.

96. A Community Energy Report stakeholder group comprised of local government staff from the City and County of Denver, Boulder County, and the cities of Arvada, Aurora, Boulder, Golden, Lafayette, Lakewood, and Westminster, and staff from Public Service Company of Colorado filed joint comments with a proposed form of report and data points. The adopted rules are intended to implement those joint comments.

I. Property Owner Access to Data

97. Many commenters address applicability of the 15/15 aggregation standard (15/15 rule) to whole building aggregate electric or natural gas data for benchmarking purposes.

98. The minimum aggregation standard should be set at a level that reasonably protects individual customers from being re-identified, or having their unique customer data identified, when that data is included in an aggregated data set. Public Service believes that obtaining the individual consent of fifteen customers or fewer represents a manageable burden for the data requestor.

99. Denver disagrees with Public Service's comments that obtaining the individual consent of fifteen customers or fewer represents a manageable burden for the data requestor.

[3] Some comment assumed that the opt-in notice was intended to be an annual requirement. That is not the case. A community desiring the report is more likely to be interested in continuing availability and can always communicate a desire to stop receiving future reports. The contemplated approach was intended to avoid communities receiving annual reports of data that they did not desire.

Denver estimates that there are around 1,250 buildings just in the City of Denver with between 5 and 14 tenants. To avoid the burden of obtaining customer consent, Denver requests adoption of the standard already adopted in by utilities in Washington State and New York State: titled "2/null." This would allow property owners to obtain monthly whole building energy use data from the utility when there are at least two separate accounts aggregated.

100. Rather than defining new stakeholder category definitions, Denver proposes different primary and secondary "intentions" in requesting customer data. Second, allow eligible third parties to submit a non-disclosure agreement stating that the party will not re-identify individual customer data. With an approved primary purpose and signed non-disclosure agreement, aggregate data requests would be subject to higher aggregation standard.

101. Denver also contends that property owners and managers have a unique interest from other third parties because they have a vested interest in energy data for their buildings in order to keep operation expenses low. As such, Denver contends they should be differentiated from vendors and marketers.

102. Denver supports modification of the 15/15 rule to permit broader benchmarking of buildings having 15 tenants or less. After surveying aggregation standards across the country, Denver recommends an aggregation standard of 4/80, which is consistent with Austin Energy's policy which specifies that data can be aggregated for commercial tenant-occupied buildings with four or more separate utility customers; for buildings with three or fewer customers, individual data release forms would be required. Tenant authorization is also required if any single customer in the building uses 80 percent or more of the building's total energy usage per annum.

103. Several other utilities, including Consolidated Edison, Commonwealth Edison, Pepco, Seattle City Light, and Puget Sound Energy (PSE) have independently landed on thresholds of two to five utility meters for data aggregation. Commonwealth Edison will also automatically release aggregated data if there are more than three meters in the building and has individually worked with customers that want more access. PSE will release whole-building data without tenant authorization if five or more meters have been aggregated together.

104. The U.S. Government also has adopted aggregation standards for the release of sensitive survey information. The Census Bureau and Department of Agriculture aggregate data from three individuals before releasing data. In addition, no one individual or cell can account for more than 50% and 60% of the total value in the aggregated data set, respectively. In the Commission's parlance, this is equivalent to a "3/50" or "3/60" aggregation standard.

105. The 4/80 standard is also consistent with recommendations made by the City of Minneapolis through the Minnesota PUC Customer Energy Usage Data (CEUD) Workgroup. This standard has been found to protect customer privacy, while also making it easier to benchmark buildings.

106. Some comment suggests that requests for aggregated annual data, or city- or county-wide, would be required to include at least three customers and no one customer could comprise more than 80% of the aggregation: a "3/80 Rule." A threshold of 3/80 was selected based on a review of best practices by state and federal agencies that provide public data sets.

107. The Institute for Market Transformation, Natural Resources Defense Council, and Southwest Energy Efficiency Project (collectively the Institute group) comment that property owner interests justify differing treatment under Commission rule. Property owners can best pursue energy efficiency projects when they understand the energy used in their building.

Owners have an economic interest in their building, are uniquely positioned to identify and seize efficiency opportunities, and are positioned to agree to terms and conditions of use of data – such as non-disclosure (comparable to contracted agents).

108. The City of Boulder points to city incentives or regulations requiring benchmarking of buildings, including energy efficiency standards as a condition to obtain a rental license. The City also suggests that an analysis of the risk to customers from energy consumption data on a yearly level, or certain other anonymized energy data sets, in light of resulting benefits warrants lowering the 15/15 aggregation threshold.

109. The City of Boulder supports Denver comments regarding property owner access and highlights what it calls a "split incentive." Tenants frequently pay utility bills, but are unable to install major energy efficiency measures. Builders are capable of installing such measures, but do not have the financial incentive to do so. Boulder contends that property owner's access to aggregated whole building data facilitates benchmarking and promotes energy efficiency, ultimately benefitting tenants.

110. By Decision No. R14-0759-I, the undersigned specifically invited additional comment regarding several topics. In supplemental comments, Black Hills points out that property owners are not the utility's customer of record and have no right to customer data. Rather, access should be a matter of contract between the property owners (i.e. lessor) and the utility customer (i.e. the tenant). The Institute group points to economic interest, access to efficiency opportunities, and non-disclosure protections warranting unique treatment and a lower aggregation threshold. It is argued that property owners could be required to agree to terms and conditions as a pre-condition to the utility providing whole building energy usage data, comparable to contracted agents.

111. Rocky Mountain Trane comments in support of property owner access to whole-building energy usage data and provided an illustration of its use of the type of information at issue.

112. The undersigned is persuaded that the unique interests of property owners warrant relief. Comment suggests that benchmarking buildings is a primary issue necessitating property owner access to customer data. Further, it is suggested that whole building data on a monthly basis is adequate for that purpose. In order for a property owner to benchmark a building in Portfolio Manager, the owner must have 12 months of energy use data for the whole building. Releasing a lower threshold of aggregated data covering not less granular than monthly data to permit benchmarking can be balanced with customer interests.

113. Notably, property owners already handle sensitive tenant-specific information and, in most counties, ownership can easily be independently verified through county records available on the Internet. In light of the owner interests, the relationship with tenants, and the nature of information managed, the risks of granting property owners some additional access to aggregated data is reasonable.

114. Property owner access to whole building data, subject to protections, furthers the interests of the Commission and other governmental entities. Just as contracted agents must agree to protections as a condition of receiving customer data from the utility, property owners will also be required to agree to terms and conditions as a condition to the utility providing whole building energy usage data.

115. Despite solicitation of comments, no clear standard emerged for how to measure "whole building" data. It was commented that multiple buildings might be found on a real estate parcel or that multiple meters might be found to serve one or more buildings or units.

Based upon cost-causation principles as well as the lack of a standard emerging, no standard property owner report will be incorporated in rule. Rather, availability of non-standard reports with a lower aggregation threshold will be required to be conditionally available to property owners.

116. Property owner obligations undertaken to access customer data, the scope of information available, and the unique interest of property owners, warrant a lesser aggregation standard than generally applicable. Extensive comments argue based upon various standards applied in various settings across the United States. The rule adopts a 4/50 aggregation standard for property owner whole building energy use data as being within a range of reasonableness in heavy reliance upon the protections undertaken by property owners.

117. The rule narrows the scope of property owners that will be required to obtain customer consent to obtain whole building data. To the extent the aggregation standard is not met, customer consent will still be required.

118. The undersigned remains concerned with the burden (and resulting costs) for utilities to verify and qualify property owners requesting data. The adopted process requires direct involvement of the property owner (i.e. as opposed to a property manager) so that utilities and the Commission will be able to most efficiently rely upon public real estate records as a primary source to verify authenticity of requests. There is no comparable publicly-available means to verify then-current property managers or other theoretical designees. As direct beneficiaries of the expanded access adopted in rule, it is appropriate that property owners minimize the administrative burdens imposed upon others.

J. Aggregated Data Standard

119. New rules are adopted to change aggregation thresholds for specific property owner access and community energy reports. No substantive modifications are adopted for the current general rule regarding data aggregation.

120. Comment suggests that different standards are appropriate for the release of aggregated data based on large areas or a longer timeframe because the risks that are generally identified from energy data have to do with identifying private activities in the home or proprietary business practices that are time-sensitive. Comment requests that some flexibility be incorporated for other types of data requests: such as frequency data, averages, or anonymized data.

121. Public Service objects to proposals in comment to lower aggregation thresholds allowing disclosure based upon purpose or terms of confidentiality. Public Service sites customer concerns about unauthorized data sharing and contends that proposals would compromise the privacy or confidentiality expectations of an unacceptably large portion of their customer base. Public Service also raises administrative concerns based upon limiting the purpose of a request.

122. Regarding the current 15/15 standard that is generally applicable, Public Service suggests two alternatives:

> (1) authorize a statistical study to be conducted by an independent organization to determine an appropriate level for setting minimum aggregation standards; or (2) maintain the current 15/15 standard, recognizing that it represents an appropriate balance between the burden on data requestors and customer autonomy.

123. Providing access to communities and property owners is responsive to these comments in part. As to the remainder affected, the existing rule has not been shown adequate to protect interests concerned and no showing warrants modification.

K. Regulated Electric Utility Rule Violations, Civil Enforcement,

124. Public Service objects to increased penalties in the electric rules without any basis being been shown for the increase. The undersigned notes that a review of the Commission's file indicates that the notice to the General Assembly of Proposed Rule to Increase Fees or Fines Required Pursuant to § 24-4-103(3)(a.5), C.R.S. does not address the one modification indicated in the NOPR. The modified penalties proposed to the electric rules in the NOPR will not be adopted.

L. Ombudsman

125. Boulder has found difficulties implementing the prior rules and states that a lack of clarity in the rules has thwarted appropriate and necessary access to data. Boulder respectfully requests the Commission appoint a designated staff person to be a resource for local governments making data requests from utilities. This person would act as essentially an ombudsman to help local governments understand and comply with the Data Access and Privacy Rules, and to ensure that their requests receive responses.

126. WRA is aware of many disputes concerning data access under these rules experienced by non-commercial entities, such as local governments, water utilities, or state government agencies. WRA believes the existence of a Commission-appointed ombudsman could assist in the resolution of these disputes in a more efficient manner, without the time and expense of formal litigation before the Commission. Therefore, WRA supports Boulder's suggestion that the Commission appoint such an ombudsman. However, WRA recommends the

assistance of this ombudsman not be limited to only disputes involving local governments. If the Commission wishes to formalize this position within the rules, WRA suggests it be included as a new subsection within Boulder's proposed rule.

127. Public Service's comments question the authority of an appointed staff member to act, and how such an appointment would provide additional assistance to local governments. Public Service encourages a focus upon standardizing aggregated data reports.

128. The Commission cannot delegate its authority to an ombudsman. Commission Staff is envisioned as effectively being an ombudsman without decision-making authority. Although the undersigned declines to incorporate the explicit process proposed, attention will be brought to Rule 1007(c) of the Rules of Practice and Procedure, 4 CCR 723-1. The rules explicitly contemplate Commission Staff as a resource in applying Commission rules. Additionally, Staff can exercise discretion in implementing the Commission's rules and make available forms as a result thereof. Others may then be afforded protection (e.g. in the form of a presumption) in relying upon Staff in implementing Commission rules. While not official views of the Commission, nor could an ombudsman be.

129. The undersigned prefers to rely upon existing informal processes and make the rules more detailed in this regard. Where informal means fail, other means remain available through complaint or petition to obtain a definitive resolution.

M. Data Access

130. By Decision No. R14-0759-I, the undersigned specifically invited additional comment to leverage capabilities of installed infrastructure and to make more information available to customers. Customer rates already include costs of meter infrastructure, some of

which was designed to accommodate such additional services for customers. However, there is insufficient comment to generally expand requirements in rule at this point.

131. Public Service highly recommends the Commission rules not require adoption of specific technology for data access. If the Commission wishes to support the adoption of a specific technology, then Public Service asks that costs be recognized and utilities be given assurances regarding cost recovery.

132. Black Hills contends that the Commission should not mandate any particular software system or platform. The company has invested in the "MyAccount Portal" for customers to electronically access usage data in a CSV format. It argues implementation of another solution should not now be required.

1. Raw Customer Data

133. Raw customer data generally refers to customer data accessible directly accessible from the customer's meter, as opposed to data collected from the meter by the utility and stored in its systems. Because of perceived issues with meter technology and unspecified security issues, Public Service believes that there should be no requirement to make raw customer data available. Public Service comments that access to customer data must be balanced with security issues for the utility's system and should not compromise efforts to protect the grid. First, there is concern about security from tampering to ensure no outside party alters how the meter operates (guaranteeing the integrity of the data received from the meter). Second, there is concern regarding security between the customer's meter and the utility.

134. Mission:data comments that "[w]here utilities do not provide easily-accessible usage data in an electronic, standardized format, consumers are missing out on significant

opportunities to take advantage of the most effective tools to save energy and money available today."

2. Portfolio Manager

135. Comment recommends that utilities implement Portfolio Manager "WebServices." Some utilities have already begun providing aggregate data for third party use via the Portfolio Manager tool, and expansion would further decrease barriers to benchmarking. While Denver acknowledges that unspecified initial costs would be borne by the utility to interface directly with Portfolio Manager, they point out that automatic upload services already exist through programs such as InfoWise with Xcel Energy. Denver cites studies supporting broad benefits from data access programs.

136. Because Green Button currently does not interface with Portfolio Manager, Denver believes that automatic upload of data (through Portfolio Manager Web Services) will provide the most benefit in regards to streamlining the benchmarking process for property owners and managers. Denver proposes that cost recovery for implementing Web Services for Colorado customers come from the demand side management budget because of the direct energy savings associated with benchmarking practices.

137. A copy of the Portfolio Manager® Quick Start Guide was included as Attachment B to Decision No. R14-1001-I and additional comment was sought about the program among other things. Little specific information was provided in comment about the Environmental Protection Agency's Portfolio Manager.®

3. Green Button

138. Green Button refers to two initiatives: Download My Data and Connect My Data. Public Service implemented Green Button Download My Data, which allows a user to manually

download their usage data. No other utility in this proceeding has implemented Download My Data.

139. Green Button Connect My Data supports ongoing, automatic transmittal of usage data from the utility without continual customer intervention. Illustratively, a utility might include a check box option as part of an electronic customer consent process to authorize ongoing automatic transmittal of usage data. Consistent with other approvals in the rules, the recipient would continue to receive the customer's data until the customer revoked that approval.

140. Denver comments that the rules should permit implementation of Connect My Data. Further, Denver references Green Button Connect My Data as being consistent with the July 20, 2011 National Association of Regulatory Utility Commissioners Board of Directors passage of their "Resolution on Access to Whole-Building Energy Data and Automated Benchmarking" that encourages State public utility commissions to take all reasonable measures to facilitate convenient, electronic access to utility energy usage data for property owners.

141. Public Service cautions that requiring implementation of Green Button Connect My Data must be evaluated in the context of customer value and cost recovery related investment and maintenance costs. Public service currently provides Download My Data functionality through the customer web portal. For Public Service, the attributes associated with Download My Data required the least amount of custom IT development to implement, while those associated with Connect My Data required significantly more. An investigation conducted several years ago found the range of cost to implement the Connect My Data platform would be $5 million to $10 million.

142. CNG does not support any rules that require utilities to offer a Green Button Download My Data. There is concern that imposing obligations may have unintended adverse consequences.

143. Comment maintains that most local government energy efficiency programs gauge program effectiveness based upon the compilation of individual and aggregated participant results over time. Customers must currently periodically request a new data download.

144. Regarding the appropriate cost recovery mechanism for a utility that incorporates the more robust Connect My Data, Boulder County believes that a cost of implementation analysis should be done for utilities required to adopt the platform.

145. WRA agrees with Mission:data that the Green Button Connect functionality is a form of nationally recognized open standards and best practices as contemplated by the existing rules, and should be explicitly required or encouraged by these rules. Moreover, Green Button Connect is a mechanism to provide customers with timely access to information on power consumption, as proposed in Senate Bill 2165, which was cited in the Commission's Notice of Proposed Rulemaking, at footnote 12.

146. In recognition of comments regarding costs, WRA recommends the Commission require utilities, before a date certain, to file an application to address how "a customer may access and/or share his or her own customer data in a consumer-friendly and computer-friendly format via 'Green Button Connect' on the utility's website." Thus, relative costs and benefits of implementing Green Button Connect may be considered for each utility in a detailed and comprehensive fashion.

4. Electric Utility Filing Required

147. Utility investments have yielded the ability to access new or additional customer data from regulated utility service. Comment indicates that customers and others desire to take advantage of these capabilities and that utilities have not always provided access to customer data to meet that demand.

148. In adopting rules, the Commission balances policy goals with other interests. The first data privacy rules established standard customer data (benefitting the general body of ratepayers), and non-standard or aggregated data offerings (left largely to utility implementation through service offerings based upon capability and cost causation). The rules will now expand utility requirements to provide access to information.

149. In addition to considering the burden and benefits of obligations as applied to all utilities, the Commission is ensuring broader and more consistent access to information. Where obligations are imposed for the benefit of the general body of ratepayers, or to facilitate other broad policy efforts, it may be appropriate for costs to be borne by all ratepayers. However, where obligations are imposed to benefit a specific customers or interests, it may be appropriate for those costs to be borne by the cost causer or through other means. To the extent obligations are imposed by rule, an affected utility may seek a waiver or variance under appropriate circumstances, or seek rate recovery in an appropriate proceeding.

150. The current state of metering infrastructure did not arise over night. Utilities have invested in meter infrastructure expanding availability of energy usage information to some or all of their customers. The associated costs have been included in customer rates. Where those meters are designed with the capability to provide end-user customer access to raw data, theoretical undemonstrated risks argued fail to overcome the equity of customers leveraging

maximum benefit of such meter information. It would also seem that risks can be managed and mitigated through terms of access, proper management, and perhaps otherwise, based upon surrounding facts and circumstances.

151. The rules attempt to accommodate expansion of customer data access. However, the lack of specific information, costs, and benefits about specific forms of access necessitates development elsewhere based each utility's facts and circumstances. The general approach advocated by WRA will be adopted. Electric utilities will be required to file an appropriate application or advice letter filing on or before October 1, 2015, addressing whether and how a customer may access and/or share his or her own customer data, both raw and utility maintained, in a consumer-friendly and computer-friendly way.

152. The proceeding contemplated will allow the Commission to assess the relative costs and benefits of implementing raw data access, the Environmental Protection Agency's Portfolio Manager,® Green Button Download My Data, Green Button Connect My Data, or other "nationally recognized open standards and best practices" for each subject utility.

5. Multiple Overlapping Requests

153. Public Service has rejected Aggregated Data report requests that target a group of specific individual customers, which in combination with other less granular Aggregated Data reports may reveal individual Customer Data (e.g. based on a list of specific customer addresses). Public Service encourages the Commission to take a similar approach by making it explicit that such requests are prohibited.

154. Denver contends that local governments require overlapping data requests in order to track changes in energy use over time. Denver proposes a possible solution to address Public Service's concern would be to allow overlapping data requests for specific local

government programs in which the jurisdiction makes a commitment not to re-identify individual customer data.

155. Boulder contends that the standard Public Service is proposing is too vague and the Commission should not outright prohibit local governments from making multiple requests from data that may overlap. Rather, Boulder focuses upon nondisclosure protections and supports the FTC "contractually prohibit[] downstream recipients from trying to re-identify the data."

156. Boulder also points to the Health Statistics and Evaluation Branch of the Colorado Department of Public Health & Environment as a possible source as to how other state agencies deal with data requests.

157. CDPHE responsibilities differ dramatically from public utilities and the Commission. CDPHE provides "public health data to the public, researchers, academicians, other state and federal agencies, and community and faith based organizations in order to enhance the ability of these parties to protect and enhance the public's health." CDPHE comments at 1.

158. Despite differing responsibilities, comment explains that data sets are managed addressing and balancing interests consistent with applicable and differing, state and federal statutory requirements. A copy of CPDHE's Data Privacy and Security Policy was provided as well as the Health Statistics and Evaluation Branch's Data Release Agreement used to address custom requests is included in comment.

159. CDPHE costs to provide responses to data requests are recovered based on actual staff time required to complete the request. "Whereas there are no conclusive scientific standards

for data release related to statistical validity, industry standards, where established, are used." Comments at 1.

160. Public Service opposes the proposals to incorporate NDA requirements as a condition of disclosure as proposed. Validation and verification are pointed to as sources of concern and burden. Further, Public Service contends they are not in a position to police such arrangements to ensure that the signer has not breached his or her obligations under the non-disclosure agreement.

161. Aspects of comments in this area have been addressed and incorporated in the adoption of local government and property owner exceptions to the requirements to obtain customer consent for the disclosure of customer data. In large part, comment provided fails to demonstrate a solution to overlapping data requests. Particularly in wanting to error on the side of protecting customer data from unintended or unauthorized disclosure, and in light of the availability of Community Energy Reports and audit information for local governments, the utility will continue operating largely under existing rule. Where differences remain, other means are available through complaint or petition to obtain a definitive resolution.

N. Tiering of Utilities.

162. As the focus of this proceeding evolved from electric to natural gas, oral and written comment raised concern as to implementation and compliance costs for proposed concepts and little or non-existent demands for information, especially among the smaller utilities. Addressing these concerns, a tiering of electric and gas utilities is adopted.

163. Durango Mountain Utilities first suggested that the Commission define a smaller category of utility for the purpose of exempting such utilities from obligations proposed for larger utilities. DMU suggests that, based on the number of meters served, there should be a

bright-line threshold below which the Commission finds that the costs of compliance outweigh the benefits.

164. CNG raises similar concern about placing the onus on a utility having little understanding of the burdens imposed without the benefit of a cost-benefit analysis. CNG proposes that natural gas customers may be better served by requiring third parties to petition or apply for aggregated data from natural gas utilities.

165. SourceGas Distribution and Rocky Mountain contend that expanded requirements generally should not apply to them because requests for aggregated data reports have come from entities not in the Companies' service territories, have focused exclusively on electric-related data, and have been directed at the largest utilities in the State of Colorado that serve the most urban and heavily suburban areas. Neither SourceGas Distribution nor Rocky Mountain has received requests for aggregated data reports. The companies also question whether the 15/15 is appropriate when applied to a utility of their size.

166. Utility service offerings clearly and reasonably vary based upon scale and scope. The same cost can be perceived as minor to a large utility and burdensome to a small utility. The Commission now seeks to expand service offerings where appropriate, without imposing undue burden.

167. First, the undersigned will note as to all rules that a person may seek a waiver of a rule that proves burdensome in a particular circumstance. That said, the undersigned agrees with comment that some bright lines are appropriate for adoption in rule and to mitigate need to request waivers or variances.

168. In supplemental comments, Black Hills agrees that addressing data aggregation obligations for utilities in terms of size is meritorious. While the vast majority of requests are

directed to the largest natural gas and electric utility in Colorado, these rules are generally applicable to all gas and electric utilities. Recognition of available resources and imposing burdens without regard to customer impact warrant further consideration.

169. The smallest utilities, where no unmet demand for information has been shown, will be obligated to protect customer information, with little additional burden to expand standard customer data offerings. On the other end of the spectrum, Public Service does not oppose implementing or expanding some service offerings and some new obligations will be imposed. The potential benefits of the expanded offerings further Commission policy across a much larger population that also provides a larger base for cost recovery. A middle tier of utility will be defined to balance the concerns on both ends of this spectrum. Where minimal or lesser costs are justifiable based upon a smaller customer base, additional benefits are reasonably achievable. As such, the proposed rules attempt to expand the information available while being very mindful of costs imposed.

170. Comment was solicited for criteria or thresholds to define the proposed tiers. All comment supported adoption of tiers based upon number of customers, rather than levels of demand for particular information. The number of customers will be utilized as the better measure for tiers.

III. ADAPTATION OR APPLICABILITY UNIQUELY TO GAS RULES

171. Throughout the proceeding, concerns raised have been considered in the context of the scope of the proceeding (e.g. applicability to gas and electric utilities). CNG comments in one aspect uniquely applicable to natural gas utilities. In the definition of standard customer data, concern is raised that the phrase “network technology” should be deleted because network technology, such as advanced metering infrastructure, is a concept applicable to service provided

by electric utilities but not to service provided by gas utilities. The phrase causing concern has been eliminated from the rule.

IV. CONCLUSIONS

172. Attachments A and C to this Recommended Decision represents the electric and gas rule amendments adopted by this Decision with modifications to the prior rules being indicated in redline and strikeout format (including modifications in accordance with this Recommended Decision).

173. Attachment B and D to this Recommended Decision represents the electric and gas rule amendments adopted by this Decision in final form.

174. It is found and concluded that the proposed rules as modified by this Recommended Decision are reasonable and should be adopted.

175. Pursuant to the provisions of § 40-6-109, C.R.S., it is recommended that the Commission adopt the attached rules.

V. ORDER

A. The Commission Orders That:

1. The Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* 723-3, contained in redline and strikeout format attached to this Recommended Decision as Attachment A, and in final format attached as Attachment C, are adopted.

2. The Rules Regulating Gas Utilities and Pipeline Operators, 4 *Code of Colorado Regulations* 723-4, contained in redline and strikeout format attached to this Recommended Decision as Attachment B, and in final format attached as Attachment D, are adopted.

3. On or before October 1, 2015, all electric utilities must file an appropriate application or advice letter addressing whether and how their respective customers may access

and/or share his or her own customer data, both raw and utility maintained, in a consumer-friendly and computer-friendly way.

4. The Consent to Disclose Utility Customer Data attached hereto as Attachment E complies with the rules adopted by this Recommended Decision. Staff of the Commission shall maintain the form consistent with the Recommended Decision and make it available from the Commission's website.

5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director