

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 10R-799E

IN THE MATTER OF THE PROPOSED RULES RELATED TO SMART GRID DATA
PRIVACY FOR ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3.

ORDER ON EXCEPTIONS

Mailed Date: October 26, 2011
Adopted Date: October 17, 2011

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

1. This matter comes before the Commission for consideration of exceptions filed on September 19, 2011 by Public Service of Colorado (Public Service); Black Hills/Colorado Electric Utility Company, L.P., d/b/a Black Hills Energy (Black Hills) (collectively, Utilities); the City of Boulder (Boulder); Tendril Networks, Inc. (Tendril), the Technology Network (TechNet), and Demand Response and Smart Grid Coalition (DRSG) to Recommended Decision No. R11-0922 (Recommended Decision). On October 3, 2011, the Office of Consumer Counsel (OCC) and the Utilities each filed a response to the exceptions of other parties. Being fully advised in the matter and consistent with the discussion below, we address these exceptions in turn.

2. This docket requires the balancing of two competing but valid interests. The Commission requires that the privacy of ratepayers be respected. The Commission is also creating a mechanism where, with the consent of ratepayers, certain confidential information may be provided to local governments and commercial interests.

3. The Commission has achieved this balance by clarifying that a utility is only authorized to use customer data to provide regulated utility service in the ordinary course of business. We created an annual notice requirement that utilities are required to send to their customers. We created a uniform customer consent form that will authorize the disclosure of customer data to third parties. We developed civil enforcement and civil penalties in the event confidential data is intentionally released.

4. Administrative Law Judge G. Harris Adams (ALJ) discussed the procedural history of this rulemaking docket in the Recommended Decision, issued on August 29, 2011, at ¶¶ 1-14. We incorporate that statement of procedural history in this Order and will not

reiterate it here, except as needed to provide context to our rulings. We proceed directly to a discussion of the arguments presented by each interested party on exceptions.

B. Rule 3001(ff)

5. Public Service states that the definition of “standard customer data” in Rule 3001(ff), as proposed by the ALJ, could be interpreted in a way that does not align with a utility’s collection practices and infrastructure. Public Service is concerned that the word “including” would significantly broaden the definition. It further argues that without a clarification this term, when read in conjunction with Rule 3026(d), would necessitate a substantial investment in personnel, internet bandwidth, and ongoing operations and maintenance. Public Service therefore recommends that the Commission amend Rule 3001(ff) as follows:

“Standard customer data” means customer data maintained by a utility in its ordinary course of business, including energy usage information sufficient to allow customers to understand their usage at level of detail commensurate with the meter or network technology deployed by the utility to serve the customer’s premise, as limited by the utility’s existing data collection practices and infrastructure.

6. For its part, Black Hills argues that a literal interpretation of Rule 3001(ff) would cause the fifteen minute interval data that is stored in the metering device to qualify as standard customer data. Black Hills states that the data would not be standard customer data because it is not maintained or controlled by the utility, as necessitated by Rule 3001(j). Black Hills therefore recommends that the Commission amend Rule 3001(ff) as follows:

“Standard customer data” means customer data maintained by a utility in its ordinary course of business, including energy usage information sufficient to allow customers to understand their monthly usage.

7. We agree with the Utilities that Rule 3001(ff) should be revised to provide additional clarification. The use of the word “including” may expand the definition, thus we are removing that word. We amend and clarify Rule 3001(ff) to read as follows:

“Standard customer data” means customer data maintained by a utility in its ordinary course of business. If maintained in the ordinary course of business, such data shall be sufficient to allow customers to understand their usage at a level of detail commensurate with the meter or network technology deployed by the utility to serve the customer’s premise.

8. We therefore grant, in part, and deny, in part, the exceptions filed by Public Service and Black Hills Energy on this issue.

C. Rule 3032

9. Public Service and Black Hills both argue that the data freeze concept and its associated forms create unnecessary complexity and administrative handling. They point out that the operating presumption is that customer data is not shared without a customer’s consent, thus making the data freeze unnecessary.

10. Likewise, TechNet argues that, the data freeze concept could unnecessarily alarm customers and convey the impression that it is prudent to impose restrictions on all third part data sharing. In the alternative, TechNet requests that unfreezing be simultaneous with the consent for data release, rather than a sequential process.

11. In promulgating the smart grid data privacy rules, we must balance both customer privacy and development of new smart grid technologies. We note that the incremental value of the data freeze concept appears to be minimal, because the default position is that customer data is not shared without consent. We therefore agree with the Utilities and TechNet that customer data freeze is unnecessary. Hence, we will strike Rule 3032 in its entirety and have any sections which reference the data freeze concept removed.

12. We grant the exceptions of Public Service, Black Hills, and TechNet on this issue.

D. Rule 3026(a)

13. Black Hills Energy argues that the rule, as proposed by the ALJ, does not recognize the totality of the services provided by the utility. Thus, it suggests amending the rules to allow the utility to use customer data to provide regulated and non-regulated products and services. Black Hills suggests the following language:

A utility is ~~only~~ authorized to use customer data to provide regulated utility service to its existing customers in the ordinary course of business and to market or provide non-regulated services offered by the utility or one of its affiliates to its customers.

14. In response, the OCC argues that such a rule would be an improper expansion of a utility's right to access customer data and should be considered an unauthorized use of customer data. Further, OCC argues that this rule could put utilities at a significant competitive advantage compared to other non-regulated companies.

15. We agree with the OCC that the wording changes proposed by Black Hills would be an improper expansion of a utility's right to access customer data and would amount to an unauthorized use of customer data. We therefore deny the exceptions filed by Black Hills on this issue.

E. Rule 3026(c)

16. In its exceptions, Black Hills contends a portion of Rule 3026(c)(I) is ambiguous. Black Hills argues that the provision that states "frequency of the data collected" refers to the function of how meter reading cycles are set as a function of general system administration or operation. It submits that the proper terminology for customer data updates availability should be in a tariff. Black Hills offers the following language:

A description of standard customer data and non-standard customer data (billing determinants or other collected data) and the frequency of customer data updates that will be available (annual, monthly, daily, etc.).

17. For its part, Public Service argues that utilities should be permitted to develop tariffs that recognize there may be individualized costs associated with processing certain “specialized requests” for customer data, mainly requests for “batched data.” Public Service defines “batched data” as a data request involving a third party obtaining consent from several individuals and requesting the standard customer data for these individuals in a single file or format. Public Service also raises concerns about requests for large quantities of historical data.

18. We find that Black Hills’ request for clarification is reasonable and we adopt it, with some modifications. However, we find that the issues raised by Public Service are already covered in Rule 3026(c)(IV). This is because requests for batched data may be considered non-standard data requests. We also note that historical data is standard data regardless of its amount. If Public Service is concerned with large data requests, it can always purge customer data after a length of time that comports to the utility’s record retention policy. We clarify that Section (I) of Rule 3026(c) defines the “what” whereas Section (II) defines the “how.” We therefore adopt the following changes to Rule 3026 (c).

A utility shall include in its tariffs a description of standard and non-standard customer data that the utility is able to provide to the customer or to any third-party recipient to whom the customer has authorized disclosure of the customer’s data within the utility’s technological and data capabilities. At a minimum, the utility’s tariff will provide the following:

(I) A description of standard customer data and non-standard customer data (billing determinants or other collected data) and the frequency of customer data updates that will be available (annual, monthly, daily, etc.);

(II) The method and frequency of customer data transmittal and access available (electronic, paper, etc.) as well as the security protections or requirements for such transmittal;

- (III) A timeframe for processing the request;
- (IV) Any rate associated with processing a request for non-standard customer data; and
- (V) Any charges associated with obtaining non-standard customer data.

19. We therefore grant the exceptions filed by Black Hills and deny the exceptions filed by Public Service on this issue.

F. Rule 3026(e)

20. Public Service raises four issues in its exceptions with respect to this rule: (1) elimination of the reference to customers, to clarify that customer access to standard customer data is controlled by Rule 3026(d) and third party access is controlled in 3026(e), (2) elimination of the term “CD” as it is a legacy of earlier drafts and not used in the Recommended Decision, (3) elimination of the data freeze concept (discussed at ¶ 7 of this Order), (4) clarification that this duty to provide access pertains to only routine requests for standard customer data. For its part, TechNet addresses the data freeze concept (discussed at ¶ 8 of this Order).

21. We find that Public Service’s exceptions do provide clarification and amend the rules to reflect that section (e) controls third party access, eliminate the term “CD,” and eliminate the data freeze concept (as discussed in ¶ 9 of this Order). We shall not provide clarification that the duty to provide access pertains only to routine requests for standard customer data, since Rule 3026(e) is already clear in that regard.

22. Therefore, we grant, in part, and deny, in part, the exceptions filed by Public Service on this issue.

G. Rule 3027(c)(IX)

23. Both Public Service and Black Hills argue on exceptions that, pursuant to the Recommended Decision, utilities would have the discretion regarding how they deliver the annual written notice. Public Service suggests striking this section of the rule entirely, but requests a clarification that an insert in an electronic bill would satisfy the delivery requirement (of rule 3027. Customer Notice). Black Hills also requests a clarification that electronic billing may be used to provide notice.

24. We agree with the ALJ that “[b]y requiring written notice, the rule does not limit the means by which the utility delivers the notice to the customers. The rule will remain silent leaving the means of delivery to the discretion of the utility and its agreement with the customer as to how notices will be delivered.”¹ To provide a clarification, we amend Rule 3027(c)(IX) by striking the word “mailed” and replacing it with the word “sent.”

H. Rule 3028(a)

25. Public Service argues that, because utilities can be fined for improperly releasing the customer data, there should be a uniform manner in how the data will be released. Rule 3028(a), as proposed by the ALJ, specifies that the Commission shall prescribe and supply the form used by customers to disclose their customer data to third parties. However, another provision within that rule allows third parties to use their own consent form so long as the form’s contents comply with the Rule’s requirements. Public Service argues this provision raises ambiguity regarding whether a third party’s consent form can be relied upon to release customer data.

26. Public Service also requests the Commission clarify for how long a consent to disclose customer data will remain valid. Public Service requests that these consents be limited

¹ Recommended Decision, at ¶ 50.

to three years from the date of the executed form, in order to coincide with its record retention responsibilities.

27. For its part, Black Hills requests the Commission add another method to handle consents to disclose customer data. Black Hills explains it has local offices that provide in-person customer service. It proposes that, if a customer fills out a form in-person at a local office and provides sufficient identification, a notary should not be required. Black Hills suggests the following language be added to Rule 3028:

A customer of a utility, who completes a Customer Consent Form at the local office of the utility and provides adequate identification, including, but not limited to, a valid picture identification and customer account information, will not be required to provide a notarized signature.

28. Tendril, TechNet, and DRSG all argue that the notarization requirement in Rule 3028(a) should be eliminated. They argue that the requirement is onerous and that it obligates customers to locate notaries and incur notarization costs whenever they seek to do business with third parties. Tendril, TechNet, and DRSG argue the notarization requirement could significantly impair customer choice of demand response or energy management services or products offered by a party other than the utility.

29. In response to Public Service, the OCC states that the term of customer consent should not be time-limited and should last until terminated by the customer. It argues that Public Service's approach would be overly burdensome on customers, third-party data aggregators, and the utility.

30. We agree with Public Service that the Commission prescribed form should be the uniform manner in which customers may disclose their data to third parties. The release forms developed by third party would impose a burden upon the utilities to verify these forms comply

with the Commission requirements. In addition, third parties have the options to attach a cover letter to the Commission prescribed form to provide additional information to the customers. We therefore remove any references to the use of a third party form from the rules. However, we do not agree with Public Service that the consent period should be limited to three years, for reasons as stated by the OCC.

31. We agree with Black Hills that its proposal to handle consents to release customer data “in person” at its local offices is reasonable. We therefore add a new section to Rule 3028 to explicitly permit for this method of customer data release.

32. We agree with Tendril, TechNet, and DRSG that the notarization requirement is onerous and obligates customers to locate notaries and incur notarization costs whenever they seek to do business with third parties. We are concerned with customer privacy and the need to verify customer identity. However, we note that notarization is not required for other interactions between a utility and its customers where misuse of customer information is equally possible, for example to establish a new account. Further, under the rules as proposed by the ALJ, a customer may release data electronically without a notarization requirement; therefore alternative methods of establishing customer identity are available. We direct the Utilities to propose alternative and less burdensome methods of verifying customer identity in their tariffs, such as requiring customers to provide certain identifying information within the consent form.

33. Therefore, we grant, in part, and deny, in part, the exceptions of Public Service; grant the exceptions of Black Hills; and grant the exceptions Tendril, TechNet and DRSG on this issue.

I. Rule 3028(b)

34. Tendril argues that electronic customer consent process for disclosure of customer data should be mandatory not permissive within the rules. Tendril argues that any utility has an on-line portal through which customers already manage their accounts and thus utilities would not be required to undertake new web development initiatives. Tendril suggests the following amendment:

(b) A utility that provides customers with online account management features shall make available an electronic customer consent process for disclosure of customer data a third party.

35. Likewise, TechNet argues the best competitively-neutral option for an electronic customer consent process is to allow a utility or a third party to obtain consumer consent through the use of a secure web portal without notarization.

36. DRSG argues that the utilities that have an on-line presence with their customers should be required to the electronic consumer consent process, unless the utility can establish its system does not have the proper and necessary functionality and capability to accommodate the electronic process absent a major upgrade and modification.

37. We find that permissive language within the rules is adequate for the purposes of obtaining customer consent. We encourage the utilities to continue using existing web portals, but see no need at this time to mandate such use. We therefore deny the exceptions filed by Tendril, TechNet, and DRSG on this issue.

J. Rule 3029(a)(II)

38. In its exceptions, Tendril argues that Rule 3029(a)(II) should be amended to allow third-party agents to use non-personal aggregated and anonymous data for secondary purposes.

It argues that the rule currently prevents contracted agents from utilizing customer data for any secondary purpose without first obtaining customer consent. Tendril supports this rule to the extent that it applies to personally identifiable information. However, Tendril argues the rule, as adopted by the ALJ, applies to all customer data, irrespective of whether or not it is personally identifiable. TechNet and DRSG make similar arguments in their exceptions. DRSG adds that secondary uses of information that is not personally identifiable are of critical importance to third parties. These parties may use such anonymous information to improve products and services, to demonstrate the energy and cost savings that result from their products, or to develop additional product and service offerings.

39. In its response to exceptions, Public Service disagrees with Tendril, TechNet, and DRSG. It argues that allowing third-party agents to use customer data for their own purposes without an additional customer consent would not be transparent to customers. Further, Public Service argues the amendment proposed by Tendril, TechNet, and DRSG would fundamentally violate the informed consent principle that serves as a foundation for the rules. Public Service also argues the proposed amendment is unnecessary because the rules already contain two mechanisms for these groups to obtain information for their own purposes.

40. We agree with Public Service that the amendment proposed by Tendril, TechNet and DRSG would violate the principles of informed consent and transparency. We therefore deny the exceptions filed by Tendril, TechNet, and DRSG on this issue.

K. Rule 3031(a) & (b)

41. In its exceptions, Tendril argues that Rule 3031(b) should be modified to require utilities to demonstrate a specific privacy or security risk when denying a request for aggregated data. Rule 3031, as proposed by the ALJ, sets forth the circumstances under which utilities may disclose aggregated data reports to customer and third parties. The rule requires the disclosure of aggregated data unless the disclosure would compromise the individual customer's privacy or the security of the utility's system. DRSG echoes these arguments in its exceptions.

42. Both Public Service and Black Hills argue that a utility must be able to exercise its management discretion in both operating its system in a safe, reliable, and secure manner and protecting customer privacy. In addition, providing the details of why a certain data aggregation compromises security or privacy may, in and of itself, trigger the security or privacy concerns the utility is trying to avoid. The Utilities also argue that, if a party believes a utility is improperly obstructing requests for aggregated data, the Commission already has processes in place to seek a remedy.

43. We agree with the Utilities. We find that the utilities must be able to exercise their discretion and that providing the details of why a certain data aggregation compromises security or privacy may, in and of itself, trigger these concerns. We also agree with the Utilities that the Commission's complaint process is sufficient to address any bad faith allegations. We therefore deny the exceptions filed by Tendril and DRSG on this issue.

L. Rule 3031(e)

44. Boulder argues that utilities under Rule 3031(e) be required to make reasonable efforts to fulfill non-standard aggregated data report requests. Boulder acknowledges that some data may be inordinately difficult or expensive to obtain and aggregate. However, Boulder argues that the rules leave requestors with no recourse should the utility deny their request.

45. Public Service argues the Commission's existing complaint process is sufficient for remedying alleged bad faith on the part of the utilities in fulfilling requests for aggregated data.

46. We agree with Public Service and find that that the Commission's existing complaint process is sufficient to address such allegations. We therefore deny the exceptions filed by Boulder.

M. Rule 3976

47. Public Service and Black Hills Energy argue that the rules, as adopted by the ALJ, allow for penalties for a violation of each and every provision of the rules. The Utilities disagree with this approach, as it could lead to cumulative penalties for a single incident. The Utilities ask the Commission to revise Rule 3976 in a manner that avoids cumulative penalties. Public Service suggests that on approach would be to cap the total amount of penalty per incident.

48. In its response, the OCC argues that if that utilities are allowed to consolidate an incident in which the data of multiple customers is disclosed, the consequences would be the same as if the data of only one customer were disclosed. The OCC argues that, when multiple customers are harmed, multiple penalties should be assessed.

49. We agree with the OCC and decline to amend Rule 3976. It is important to note that the penalties listed in Rule 3976 are only violations if the actions were "intentional."

We note further that the penalties listed are only maximums and thus will not be imposed in every instance. The Commission will retain its prosecutorial discretion in evaluating the circumstances of every alleged violation and can take any mitigating and aggravating factors, as applicable, into account in determining what the amount of penalties should be in a particular instance. We therefore deny the exceptions filed by Public Service and Black Hills on this issue.

N. Customer Meter Request

50. In the Recommended Decision at paragraphs 33-35, ALJ Adams stated it was reasonable for the utility to accommodate a customer's metering request for the customer who desires available technology and equipment to manage energy usage, so long as the associated costs are borne by the customer causing the requested change outside the ordinary course of business.

51. The ALJ further reasoned that the customers with keen privacy concerns might request installation of an analog meter to alleviate concerns about how existing meters transmit energy usage information. However, if the utility no longer installs analog meters for the customer class in the ordinary course of business, then the choice would not be available to the customer.

52. In its exceptions, Public Services requests that the Commission reserve consideration regarding the ability of customers to choose a meter type for their premises. It argues that this rulemaking docket contains insufficient information for the Commission to decide whether it is beneficial from a cost/benefit standpoint to offer customers the choice of different metering technologies. It argues that choosing where and how to deploy different metering technologies is a decision that involves many cost variables and is a decision that should remain within the utility's discretion.

53. We agree with Public Service that the record does not contain sufficient information on this issue. Instead, we will address this issue in future proceedings as appropriate.

O. Implementation

54. We order the Utilities are required to file advice letters in compliance with the rules on or before March 1, 2012.

P. Adopted Rules Not Discussed

55. All other rules not discussed in this decision are adopted without change from the Recommended Decision, and as attached.

II. ORDER

A. The Commission Orders That:

1. Exceptions to Recommended Decision No. R11-0922 (Recommended Decision) filed on September 19, 2011 by Public Service Company of Colorado are granted, in part, and denied, in part, consistent with the discussion above.

2. The exceptions to the Recommended Decision filed on September 19, 2011 by Black Hills/Colorado Electric Utility Company, L.P., d/b/a Black Hills Energy are granted, in part, and denied, in part, consistent with the discussion above.

3. The exceptions to the Recommended Decision filed on September 19, 2011 by the City of Boulder are denied, consistent with the discussion above.

4. The exceptions to the Recommended Decision filed on September 19, 2011 by Tendril Networks, Inc., are granted, in part, and denied, in part, consistent with the discussion above.

5. The exceptions to the Recommended Decision filed on September 19, 2011 by the Technology Network are granted, in part, and denied, in part, consistent with the discussion above.

6. The exceptions to the Recommended Decision filed on September 19, 2011 by Demand Response and Smart Grid Coalition are granted, in part, and denied, in part, consistent with the discussion above.

7. The Commission adopts the rules attached to this Order as Attachment A, consistent with the above discussion.

8. The rules shall be effective 20 days after publication in the Colorado Register by the Office of the Secretary of State.

9. The opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules.

10. A copy of the rules adopted by the Order shall be filed with the Office of the Secretary of State for publication in the Colorado Register. The rules shall be submitted to the appropriate committee of the Colorado General Assembly if the General Assembly is in session at the time this Order becomes effective, or for an opinion as to whether the adopted rules conform with § 24-4-103, C.R.S.

11. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Order.

12. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATION MEETING
OCTOBER 17, 2011.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

JAMES K. TARPEY

MATT BAKER

Commissioners

COLORADO DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

4 CODE OF COLORADO REGULATIONS (CCR) 723-3

PART 3 RULES REGULATING ELECTRIC UTILITIES

* * * * *

[indicates omission of unaffected rules]

3001. Definitions.

The following definitions apply throughout this Part 3, except where a specific rule or statute provides otherwise. In addition to the definitions stated here, the definitions found in the Public Utilities Law apply to these rules. In the event of a conflict between these definitions and a statutory definition, the statutory definition shall apply.

- (a) "Affiliate" of a public utility means a subsidiary of a public utility, a parent corporation of a public utility, a joint venture organized as a separate corporation or partnership to the extent of the individual public utility's involvement with the joint venture, a subsidiary of a parent corporation of a public utility or where the public utility or the parent corporation has a controlling interest over an entity.
- ~~(b)~~ "Aggregated data" means reports aggregating customer data, alone or in combination with other data.
- ~~(bc)~~ "Applicant for service" means a person who applies for utility service and who either has taken no previous utility service from that utility or has not taken utility service from that utility within the most recent 30 days.
- ~~(cd)~~ "Average error" means the arithmetic average of the percent registration at light load and at heavy load, giving the heavy load registration a weight of four and the light load registration a weight of one.
- ~~(de)~~ "Basis point" means one-hundredth of a percentage point (100 basis points = 1 percent).
- ~~(fe)~~ "Benefit of service" means the use of utility service by each person of legal age who resides at a premises to which service is delivered and who is not registered with the utility as the customer of record.
- ~~(fg)~~ "Commission" means the Colorado Public Utilities Commission.

- (h) "Contracted agent" means any third-party entity that has contracted with a utility in compliance with rule 3029 to assist in the provision of regulated utility services (e.g., an affiliate or vendor).
- (gi) "Customer" means any person who is currently receiving utility service. Any person who moves within a utility's service territory and obtains utility service at a new location within 30 days shall be considered a "customer." Unless stated in a particular rule, "customer" applies to any class of customer as defined by the Commission or by utility tariff.
- (j) "Customer data" means customer-specific data or information that: (1) is collected from the electric meter by the utility and stored in its systems (e.g., kWh, kW, voltage, VARs and power factor); (2) is received by the utility from the customer identifying whether they participate in regulated utility programs, such as renewable energy, demand-side management, load management, and energy efficiency; and (3) information other than personal information that is shown on bills issued to customers for metered service furnished.
- (hk) "Creep" means that, with all load wires disconnected, a meter's moving element makes one complete revolution in ten minutes or less.
- (il) "Distribution extension" is any construction of distribution facilities, including primary and secondary distribution lines, transformers, service laterals, and appurtenant facilities (except meters and meter installation facilities), necessary to supply service to one or more additional customers.
- (jm) "Distribution facilities" are those lines designed to operate at the utility's distribution voltages in the area as defined in the utility's tariffs including substation transformers that transform electricity to a distribution voltage and also includes other equipment within a transforming substation which is not integral to the circuitry of the utility's transmission system.
- (kn) "Energy assistance organization" means the nonprofit corporation established for low-income energy assistance pursuant to § 40-8.5-104, C.R.S.
- (lo) "Heavy load" means not less than 60 percent, but not more than 100 percent, of the nameplate-rated capacity of a meter.
- (mp) "Informal complaint" means an informal complaint as defined and discussed in the Commission's Rules Regulating Practice and Procedure.
- (nq) "Light load" means approximately five to ten percent of the nameplate-rated capacity of a meter.
- (or) "Load" means the power consumed by an electric utility customer over time (measured in terms of either demand or energy or both).
- (ps) "Local office" means any Colorado office operated by a utility at which persons may make requests to establish or to discontinue utility service. If the utility does not operate an office in Colorado, "local office" means any office operated by a utility at which persons may make requests to establish or to discontinue utility service in Colorado.
- (qt) "Main service terminal" means the point at which the utility's metering connections terminate. Main service terminals are accessed by removing the meter dial face from the meter housing.

- (~~fu~~) "MVA" means mega-volt amperes and is the vector sum of the real power and the reactive power.
- (~~sv~~) "Output" means the energy and power produced by a generation system.
- (~~tw~~) "Past due" means the point at which a utility can affect a customer's account for regulated service due to non-payment of charges for regulated service.
- (~~ux~~) "Principal place of business" means the place, in or out of the State of Colorado, where the executive or managing principals who directly oversee the utility's operations in Colorado are located.
- (~~vy~~) "Reference standard" means suitable indicating electrical equipment permanently mounted in a utility's laboratory and used for no purpose other than testing rotating standards.
- (~~wz~~) "Regulated charges" means charges billed by a utility to a customer if such charges are approved by the Commission or contained in a tariff of the utility.
- (~~xaa~~) "Rotating standard" means a portable meter used for testing service meters.
- (~~ybb~~) "RUS" means the Rural Utilities Service of the United States Department of Agriculture, or its successor agencies.
- (~~zcc~~) "Security" includes any stock, bond, note, or other evidence of indebtedness.
- (~~aadd~~) "Service connection" is the location on the customer's premises/facilities at which a point of delivery of power between the utility and the customer is established. For example, in the case of a typical residential customer served from overhead secondary supply, this is the location at which the utility's electric service drop conductors are physically connected to the customer's electric service entrance conductors.
- (~~bbee~~) "Staff" means Staff of the Public Utilities Commission.
- (~~ff~~) "Standard customer data" means customer data maintained by a utility in its ordinary course of business. If maintained in the ordinary course of business, such data shall be sufficient to allow customers to understand their usage at level of detail commensurate with the meter or network technology deployed by the utility to serve the customer's premise.
- (~~gg~~) "Third-party" means any entity other than the customer of record, the utility serving such customer, or a contracted agent, that requests authorization from the customer for access to customer data from the utility.
- (~~eehh~~) "Transmission extension" is any construction of transmission facilities and appurtenant facilities, including meter installation facilities (except meters), which is connected to and enlarges the utility's transmission system and which is necessary to supply transmission service to one or more additional customers.

- (~~de~~ij) "Transmission facilities" are those lines and related substations designed and operating at voltage levels above the utility's voltages for distribution facilities , including but not limited to related substation facilities such as transformers, capacitor banks, or breakers that are integral to the circuitry of the utility's transmission system.
- (~~ee~~jj) "Unregulated charges" means charges that are billed by a utility to a customer and that are not regulated or approved by the Commission, are not contained in a tariff filed with the Commission, and are for service or merchandise not required as a condition of receiving regulated utility service.
- (~~ff~~kk) "Utility" means any public utility as defined in § 40-1-103, C.R.S., providing electric, steam, or associated services in the state of Colorado.
- (~~gg~~ll) "Utility service" or "service" means a service offering of a public utility, which service offering is regulated by the Commission.

* * * * *

[indicates omission of unaffected rules]

3011. – 309925. [Reserved].

DATA PRIVACY

3026. Disclosure of Customer Data by a Utility.

- (a) A utility is only authorized to use customer data to provide regulated utility service in the ordinary course of business.
- (b) A utility shall not disclose customer data unless such disclosure conforms to these rules, except as required by law or to comply with Commission rule. Illustratively, this includes responses to requests of the Commission, warrants, subpoenas, court orders, or as authorized by § 16-15.5-102, C.R.S.
- (c) A utility shall include in its tariffs a description of standard and non-standard customer data that the utility is able to provide to the customer or to any third-party recipient to whom the customer has authorized disclosure of the customer's data within the utility's technological and data capabilities. At a minimum, the utility's tariff will provide the following:
 - (I) A description of standard customer data and non-standard customer data (billing determinants or other collected data) and the frequency of customer data updates that will be available (annual, monthly, daily, etc.);
 - (II) The method and frequency of customer data transmittal and access available (electronic, paper, etc.) as well as the security protections or requirements for such transmittal;
 - (III) A timeframe for processing the request;
 - (IV) Any rate associated with processing a request for non-standard customer data; and

(V) Any charges associated with obtaining non-standard customer data.

- (d) As part of basic utility service, a utility shall provide to a customer the customer's standard customer data, access to the customer's standard customer data in electronic machine-readable form, in conformity with nationally recognized open standards and best practices, in a manner that ensures adequate protections for the utility's system security and the continued privacy of the customer data during transmission. Such access shall be provided without additional charge.
- (e) A utility shall provide to any third-party recipient to whom the customer has authorized disclosure of the customer's customer data, access to the customer's standard customer data in electronic machine-readable form, in conformity with nationally recognized open standards and best practices, in a manner that ensures adequate protections for the utility's system security and the continued privacy of the customer during transmission. Such access shall be provided without additional charge to the customer or the third-party recipient.
- (f) Nothing in these rules shall limit a customer's right to provide his or her customer data to anyone.
- (g) A utility and each of its directors, officers and employees that discloses customer data pursuant to a customer's authorization in accordance with these data privacy rules shall not be liable or responsible for any claims for loss or damages resulting from the utility's disclosure of customer data.

3027. Customer Notice.

- (a) A utility shall annually provide written notice to its customers complying with this rule and conspicuously post on its website notice of its privacy and security policies governing access to and disclosure of customer data and aggregated data to third-parties. This notice shall clearly advise customers that their customer data will not be disclosed to third-parties, except: (1) as necessary to provide regulated utility services to the customers, (2) as provided in paragraph 3026(b), or (3) pursuant to the authorization given by the customer in accordance with these rules.
- (b) The notice shall advise customers that their customer data can be used to obtain insight into their activities within the premises receiving service. The notice shall also explain how the customer data collected may reveal information about the way customers use energy at their premises. 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.
- (c) The contents of the notice required by this rule shall:
- (I) Include a description of customer data;
 - (II) Explain the frequency with which the utility collects and stores customer data and the frequency that the customer can obtain customer data;
 - (III) Inform customers that the privacy and security of their customer data will be protected by the utility while in its possession;

- (IV) Explain that customers can access their standard customer data, as identified by the utility's tariff, without additional charge;
- (V) Explain that, with the exception of the data disclosures provided in rule 3026(b), customers have an expectation of privacy for their customer data.
- (VI) Describe the utility's policies regarding how customers can authorize access and disclosure of their customer data to third-parties not falling within the exceptions outlined in paragraph 3026(b). With regard to such third party data disclosure, the notice shall:
 - (A) Inform customers that declining a request for disclosure of customer data to a third-party will not affect the provision of utility service that the customer receives from the utility; and
 - (B) Explain that any customer consent for access to, disclosure of, or use of a customer's customer data by a third-party may be terminated or limited by the customer of record at any time and inform the customers of the process for doing so.
- (VII) Inform customers that customer data may be used to create aggregated data, and that the utility may provide aggregated data to third-parties, subject to its obligation under paragraph 3031(b);
- (VIII) Be viewable on-line and printed in 12 point or larger font;
- (IX) Be sent either separately or included as an insert in a regular monthly bill conspicuously marked and stating clearly that important information on the utility's privacy practices is contained therein;
- (X) Be printed in English and any specific language or languages other than English where the utility's service territory contains a population of at least 30 percent who speak a specific language other than English as their primary language as determined by the Commission using the latest U.S. Census information;
- (XI) Include an explanation, in clear and neutral language, describing a data freeze, that it is available without additional charge, and that it must be released before authorization can be given to disclose customer data to a third party; and.
- (XII) Provide a customer service phone number and web address where customers can direct additional questions or obtain additional information regarding their customer data, the disclosure of customer data or aggregated data, or the utility's privacy policies and procedures with respect to customer data or aggregated data.

3028. Customer Consent Form for the Disclosure of their Customer Data to Third-Party Recipients by a Utility.

- (a) A utility shall make available a consent to disclose customer data form, prescribed and supplied by the Commission, to any customer or third-party upon request. The form shall be provided and made available in paper and electronic form for use in obtaining customer consent to disclose customer data. The contents of the consent to disclose customer data form must:
- (I) Describe the customer's rights under subparagraph 3027(c)(V); and
 - (II) Provide spaces for the following information regarding the third-party recipient to be populated by that third-party recipient on the consent to disclose customer data form:
 - (A) The name, including trade name if applicable, physical address, mailing address, e-mail address, and telephone number;
 - (B) The name, mailing address, e-mail address, and telephone number of the third-party recipient's data custodian;
 - (C) The name, mailing address, e-mail address, and telephone number of the third-party recipient's Colorado agent for service of process; and
 - (D) A statement describing the third-party recipient's business structure (corporation, limited liability company, partnership, sole proprietorship, etc).
 - (i) If the third-party recipient is a corporation: the name of the state in which it is incorporated; the location of its principal office, if any, in Colorado; the names of its directors and officers; and a certificate of good standing issued by the Secretary of State authorizing it to do business in Colorado, certified within six months prior to the submission of the consent to disclose customer data form.
 - (ii) If the third-party recipient is a limited liability company: the name of the state in which it is organized; the complete mailing address and physical address of its principal office; the name of its managers; and a certificate of good standing issued by the Secretary of State authorizing it to do business in Colorado, certified within six months prior to the submission of the consent to disclose customer data form.
 - (iii) If the third-party recipient is a partnership: the names, titles, and addresses of all general and limited partners and a copy of the partnership agreement establishing the partnership and all subsequent amendments.
 - (III) State the uses of the data for which the customer is allowing disclosure;
 - (IV) State the purposes of the data collection;
 - (V) State the date(s) of disclosure;

- (VI) State the description of the data disclosed;
 - (VII) State that the consent is valid until terminated;
 - (VIII) State that the customer must notify the utility service provider in writing (electronically or nonelectronically) to terminate the consent including appropriate utility contact information;
 - (IX) State any additional terms except an inducement for the customer's disclosure;
 - (X) Provide notice to the customer that the utility shall not be responsible for monitoring or taking any steps to ensure that the third-party to whom the data is disclosed is maintaining the confidentiality of the data or using the data as intended by the customer; and
- (b) A utility may make available an electronic customer consent process for disclosure of customer data to a third-party (e.g. a utility controlled web portal) that authenticates the customer identity. The contents of the electronic consent process must generally follow the format of the model consent to disclose customer data form, be clear, and include the elements to be provided pursuant to paragraph (a) of this rule. Such process may not include an inducement for disclosure by the customer.
- (c) A utility may make available an in-person consent process for disclosure of customer data to a third party that authenticates the customer identity. If a customer of a utility completes a Customer Consent Form at an office of the utility and the customer provides adequate identification, including but not limited to, a valid picture identification and customer account information then the customer will not be required to provide a notarized signature.
- (d) The consent to disclose customer data form may be submitted to the utility through paper or electronic methods.

3029. Contracted Agent Access to Customer Data from a Utility.

- (a) A utility may disclose customer data to a contracted agent provided that the contract meets the following minimum requirements:
- (I) Implement and maintain reasonable data security procedures and practices appropriate to the private nature of the information to protect the customer data from unauthorized access, destruction, use, modification, or disclosure. These data security procedures and practices shall be equal to or greater than the data privacy and security policies and procedures used by the utility internally to protect customer data;
 - (II) Use customer data solely for the purpose of the contract, and prohibit the use of customer data for a secondary commercial purpose not related to the purpose of the contract without first obtaining the customer's consent as provided for in these rules;
 - (III) Destroy any customer data that is no longer necessary for the purpose for which it was transferred; and

(IV) Execute a non-disclosure agreement with the utility.

(b) The utility shall maintain records of the disclosure of customer data to contracted agents for a minimum of three years. Such records shall include all contracts with the contracted agent and executed non-disclosure agreements.

3030. Third-Party Access to Customer Data from a Utility.

(a) Except as outlined in paragraphs 3026(b) and 3029(a), a utility shall not disclose customer data to any third-party unless the customer or a third-party acting on behalf of a customer submits a paper or electronic signed consent to disclose customer data form that has been executed by the customer of record and any data feeze for the service address has been released.

(b) Incomplete or non-compliant consent to disclose customer data forms are not valid and shall be rejected by the utility.

(c) The utility shall maintain records of all of the disclosures of customer data to third-party requestors. Such records shall include a copy of the customer's signed consent to disclose customer data form, all identifying documentation produced by the third-party requestor, the customer's agreed upon terms of use, the date(s) and frequency of disclosure, and a description of the customer data disclosed.

(d) The utility shall maintain records of customer data disclosures for a minimum of three years and shall make the records of the disclosure of a customer's customer data available for review by the customer within five business days of receipt a paper or electronic request from the customer, or at such greater time as is mutually agreed between the utility and the customer.

3031. Requests for Aggregated Data Reports from a Utility

(a) A utility shall not disclose aggregated data unless such disclosure conforms to these rules.

(b) In aggregating customer data to create an aggregated data report, a utility must take steps to ensure the report is sufficiently anonymous in its aggregated form so that any individual customer data or reasonable approximation thereof cannot be determined from the aggregated amount. At a minimum, a particular aggregation must contain: (1) at least fifteen customers or premises, and (2) within any customer class, no single customer's customer data or premise associated with a single customer's customer data may comprise 15 percent or more of the total customer data aggregated per customer class to generate the aggregated data report (the "15/15 Rule"). Notwithstanding, the 15/15 Rule, the utility shall not be required to disclose aggregated data if such disclosure would compromise the individual customer's privacy or the security of the utility's system.

- (c) If a single customer's customer data or premise associated with a single customer's customer data is 15 percent or more of the total aggregated customer data per customer class used to generate the aggregated data report requested, the utility will notify the requestor that the aggregated data, as requested, cannot be disclosed and identify the reason(s) the request was denied. The requestor shall be given an opportunity to revise its aggregated data request in order to address the identified concerns. An aggregated data request may be revised by expanding the number of customers or premise accounts in the request, expanding the geographic area included in the request, combining different customer classes or rate categories, or other applicable means of aggregating.
- (d) A utility shall include in its tariffs a description of standard and non-standard aggregated data reports available from the utility to any requestor. At a minimum, the utility's tariff shall provide the following:
- (I) A description of standard and non-standard aggregated data reports available from the utility including all available selection parameters (customer data or other data);
 - (II) The frequency of data collection (annual, monthly, daily, etc.);
 - (III) The method of transmittal available (electronic, paper, etc.) and the security protections or requirements for such transmittal;
 - (IV) The charge for providing a standard aggregated data report or the hourly charge for compiling a non-standard aggregated data report;
 - (V) The timeframe for processing the request; and
 - (VI) A request form for submitting a data request for aggregated data reports to the utility identifying any information necessary from the requestor in order for the utility to process the request.
- (e) If a utility is unable to fulfill an aggregated data report request because it does not have and/or does not elect to or cannot obtain all of the data the requestor wishes to include in the aggregated data report, then the utility may contract with a contracted agent to include the additional data, along with the customer data in the utility's possession, to generate an aggregated data report.
- (f) A utility and each of its directors, officers and employees that discloses aggregated data as provided in these data privacy rules shall not be liable or responsible for any claims for loss or damages resulting from the utility's disclosure of aggregated data.

304432. – 3099.

[Reserved].

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[indicates omission of unaffected rules]

3976. Regulated Electric Utility Rule Violations, Civil Enforcement, and Civil Penalties.

An admission to or Commission adjudication for liability for an intentional violation of the following may result in the assessment of a civil penalty of up to \$2,000.00 per offense. Fines shall accumulate up to, but shall not exceed, the applicable statutory limits set in § 40-7-113.5, C.R.S.

Citation	Description	Maximum Penalty Per Violation
	Articles 1-7 of Title 40, C.R.S.	\$2000
	Commission Order	\$2000
Rule 3005(a)-(c);(f)	Records and Record Retention	\$2000
<u>Rule 3026(a)</u>	<u>Collection and Use of Customer Data</u>	<u>\$1000</u>
<u>Rule 3026(b);(e)</u>	<u>Disclosure of Customer Data</u>	<u>\$2000</u>
<u>Rule 3026(c)</u>	<u>Tariff</u>	<u>\$1000</u>
<u>Rule 3026(d)</u>	<u>Disclosure of Customer Data</u>	<u>\$1000</u>
<u>Rule 3027(a)</u>	<u>Customer Notice</u>	<u>\$1000</u>
<u>Rule 3028(a);(b)</u>	<u>Consent Form</u>	<u>\$1000</u>
<u>Rule 3029(a)</u>	<u>Disclosure of Customer Data</u>	<u>\$2000</u>
<u>Rule 3029(b)</u>	<u>Records</u>	<u>\$1000</u>
<u>Rule 3030(a)</u>	<u>Disclosure of Customer Data</u>	<u>\$2000</u>
<u>Rule 3029(b)-(d)</u>	<u>Consent and Records</u>	<u>\$1000</u>
<u>Rule 3031(a)</u>	<u>Disclosure of Aggregated Data</u>	<u>\$2000</u>
<u>Rule 3031(c)</u>	<u>Tariff</u>	<u>\$1000</u>
<u>Rule 3032</u>	<u>Data Freeze</u>	<u>\$1000</u>
Rule 3100(a)	Obtaining a Certificate of Public Convenience and Necessity for a Franchise	\$2000

Rule 3101(a)	Obtaining a Certificate of Public Convenience and Necessity or Letter of Registration to Operate in a Service Territory	\$2000
Rule 3102(a)	Obtaining a Certificate of Public Convenience and Necessity for Facilities	\$2000
Rule 3103(a),(c),(d)	Amending a Certificate of Public Necessity for Changes in Service Territory or Facilities	\$2000
Rule 3108(a),(c)	Keeping a Current Tariff on File with the Commission	\$2000
Rule 3109	Filing a New or Changed Tariff with the Commission	\$2000
Rule 3110(b),(c)	Filing an Advice Letter to Implement a Tariff Change	\$2000
Rule 3200(a),(b)	Construction, Installation, Maintenance and Operation of Facilities in Compliance with Accepted Engineering and Industry Standards	\$2000
Rule 3204	Reporting Incidents Resulting in Death, Serious Injury, or Significant Property Damage	\$2000
Rule 3210	Line Extensions	\$2000
Rule 3251	Reporting Major Events	\$2000
Rule 3252	Filing a Report on a Major Event with the Commission	\$2000
Rule 3303(a)-(j)	Meter Testing	\$2000
Rule 3306	Record Retention of Tests and Meters	\$2000
Rule 3309	Provision of Written Documentation of Readings and Identification of When Meters Will be Read	\$2000
Rule 3401	Billing Information, Procedures, and Requirements	\$2000
Rule 3603	Resource Plan Filing Requirements	\$2000
Rule 3654(a),(d)	Renewable Energy Standards	\$2000
Rule 3657(a)	QRU Compliance Plans	\$2000

Rule 3662	Annual Compliance Reports	\$2000
Rule 3803(c)	Master Meter Exemption Requirements	\$2000

Citation	Description	Maximum Penalty Per Violation
Rule 3004(b)-(f)	Disputes and Informal Complaints	\$1000
Rule 3202(a),(b),(f),(g)	Maintaining a Standard Voltage and Frequency	\$1000
Rule 3203(a),(b)	Trouble Report Response, Interruptions and Curtailments of Service	\$1000
Rule 3405	Provision of Service, Rate, and Usage Information to Customers	\$1000
Rule 3406	Provision of Source Information to Customers	\$1000
Rule 3253	Filing a Supplemental Report on a Major Event with the Commission	\$1000

Citation	Description	Maximum Penalty Per Violation
Rule 3208(a)-(c)	Poles	\$500
Rule 3403(a)-(q):(s)	Applications for Service, Customer Deposits, and Third Party Guarantees	\$500
Rule 3658	Standard Rebate Offer	\$500

Citation	Description	Maximum Penalty Per Violation
Rule 3006(a),(b),(e)-(m)	Annual Reporting Requirements	\$100
Rule 3304	Scheduled Meter Testing	\$100
Rule 3305	Meter Testing Upon Request	\$100
Rule 3402(a),(c),(d)	Meter and Billing Error Adjustments	\$100
Rule 3404(a)-(f)	Availability of Installation Payments to Customers	\$100
Rule 3407	Discontinuance of Service	\$100
Rule 3408(a)-(g);(i)	Notice of Discontinuance of Service	\$100
Rule 3409	Restoration of Service	\$100
Rule 3411(c)(IV),(d)(I),(d)(II),(e)	Low-Income Energy Assistance Act	\$100
Rule 3614	Filing of Annual Reports	\$100

3977. – 3999. [Reserved].

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[indicates omission of unaffected rules]