

Decision No. C13-0442

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 12R-500ALL

IN THE MATTER OF THE PROPOSED RULES OF PRACTICE AND PROCEDURE,
4 CODE OF COLORADO REGULATIONS 723-1.

DECISION ON EXCEPTIONS

Mailed Date: April 16, 2013
Adopted Date: March 13, 2013

TABLE OF CONTENTS

I. BY THE COMMISSION	2
A. Statement	2
B. Procedural History	3
C. Personal Information	3
1. General Clarification and Revision	4
2. Definition of “Personal Information” – Rule 1004(x)	4
3. Collection of Personal Information – Rule 1104	8
4. Customer Request of Personal Information – Rule 1104.....	8
5. Form of Request for Personal Information – Rule 1105	9
6. Information Requested to Facilitate Energy Assistance – Rule 1105	10
7. Revisions Related to “Contracted Agent” – Rule 1105	10
D. Amicus Curiae and Attorney Representation	12
E. Interventions	15
1. Glustrom.....	15
a. Procedural Arguments.....	15
b. Substantive Arguments	17
2. Gas Producers.....	21
F. Show Cause Proceedings.....	22
1. Notice to Regulated Entity	22
2. Taking Administrative Notice of Evidence.....	24

Before the Public Utilities Commission of the State of Colorado

Decision No. C13-0442

DOCKET NO. 12R-500ALL

of personal information in Rule 1004(x); collection of personal information pursuant to Rule 1104; and distribution of personal information pursuant to Rule 1105.

1. General Clarification and Revision

5. On our own motion, we revise rule language related to personal information in rules 1004(x), 1104, and 1105, for consistency and clarity as attached in Attachments A and B hereto. Specifically, we find that it is in the public interest for these rules to be generally applicable to all regulated entities. Therefore, where appropriate, we revise the use of “utility” to “regulated entity” and “utility service” to “regulated service.” Additionally, we remove reference to “account data” in Rule 1105(c). This term was discussed throughout these proceedings, yet not adopted or defined and therefore should be deleted to avoid potential confusion.

6. Further, we find that personal information pursuant to Rule 1105(a) should not be disclosed unless permitted pursuant to Commission rule² or as required by state or federal law. While such disclosure must be “in compliance” with state or federal law, we note that it is only when such disclosure is compelled as required by law that disclosure by a regulated entity is permitted. As discussed in the Recommended Decision, heightened protection of personal information is necessary, in part, due to the fact that customers often do not have readily viable alternatives to regulated services and therefore *must* disclose certain information or go without services, including fundamental utility services.³

2. Definition of “Personal Information” – Rule 1004(x)

7. The public interest to protect personal information is significant and is given due consideration in the Recommended Decision, including in the revision of the definition.

² As discussed below, “Commission rule” indicates both these Rules of Practice and Procedure and the Commission’s industry-specific, subject matter rules.

³ Recommended Decision, at 69-72.

Before the Public Utilities Commission of the State of Colorado

Decision No. C13-0442

DOCKET NO. 12R-500ALL

Regulated entities must not disclose this information, despite the availability of the information elsewhere. We therefore revise the rule to allow disclosure of information that is “public and lawfully available for only “other individually identifiable information” set forth in subparagraph 1004(x)(VI).

15. Consistent with the above discussion we revise the definition of personal information as attached.

3. Collection of Personal Information – Rule 1104

16. Participants, including SourceGas and Boulder, argue that not all information regarding creditworthiness is always personal information and suggest updates to clarify that information regarding creditworthiness might not be included within the meaning of personal information. In its response to exceptions, Public Service disagrees with these suggested revisions, arguing that it believes information regarding creditworthiness *is* personal information.¹⁰ It argues that, like social security numbers, information regarding creditworthiness is highly sensitive information that is specific to individuals and can be used to perpetrate identity theft.

17. We agree with Public Service that, as listed in the revised Rule 1104, information regarding creditworthiness is individually identifiable information and should be afforded treatment consistent with the rules applicable to personal information. We therefore find that revision of the rule is not necessary and deny exceptions to this point.

4. Customer Request of Personal Information – Rule 1104

18. Pursuant to Commission Rule 1104(c), a customer may request his or her personal information that is held by a regulated entity. In its exceptions, Public Service suggests limiting customer requests of personal information to that information designated in

¹⁰ Public Service response to exceptions, at 11.

Before the Public Utilities Commission of the State of Colorado

Decision No. C13-0442

DOCKET NO. 12R-500ALL

subparagraphs 1004(x)(I) through (IV).¹¹ It argues that not limiting this language would be burdensome and would require the utility to identify all possible information associated with the customer. It further notes that such information may be maintained in multiple systems and in aggregated formats. In response to exceptions, Boulder disagrees with any change to the proposed rule. In addition to arguing that the Commission should not make it more difficult for customers to have their own information released, Boulder also notes that Public Service does not explain why customers should not be able to correct personal information held by the company that falls within the category of individually identifiable information.

19. We agree with Boulder that a customer should have access to his or her personal information held by a regulated entity. The potential burdens on the regulated entity described by Public Service are speculative and outweighed by the interest of the customer to access his or her personal information and make corrections pursuant to Rule 1104(c) if necessary. We therefore deny Public Service's request to limit the request for personal information upon customer request in Rule 1104(b).

5. Form of Request for Personal Information – Rule 1105

20. Public Service argues that requests for personal information pursuant to Rule 1105(c) should be limited to those in writing. It contends that written requests would promote the utility's and the Commission's ability to track disclosure and determine if disclosure was appropriate in a particular instance. In response to exceptions, Boulder asks that the Commission affirm Rule 1105 as it appears in Attachment A to the Recommended Decision and not make it more difficult for customers to have their own information released.

¹¹ Public Service exceptions, at 6.

Before the Public Utilities Commission of the State of Colorado

Decision No. C13-0442

DOCKET NO. 12R-500ALL

21. Although we agree with Public Service, on the one hand, that written requests would document the disclosure process and promote compliance with our rules, customers should have reasonable access to their own information. In order to meet both concerns, we revise language to require that all requests for a customer's personal information be in writing, unless the request is from the customer regarding his or her own personal information, or from an entity facilitating energy assistance to that customer pursuant to Rule 1105(c). In the event the request is from an individual customer or an entity facilitating energy assistance and the request is not in writing, the regulated entity shall verify the requestor's identity as required by the rule.

6. Information Requested to Facilitate Energy Assistance – Rule 1105

22. Rule 1105(c) lists information that utilities are authorized to provide to agencies that provide energy assistance to consumers. Public Service and other commenters claim that these agencies request more information than what is listed currently in the revised rules and thus suggest that the rule be expanded to include all information requested by the agencies.

23. We agree that the rule language should be updated to encompass requests by agencies to facilitate energy assistance. We further note that, within Rule 1105, the Commission requires that a utility notify customers that their information may be disclosed to help facilitate energy assistance. On our own motion, we clarify in the rule that the utility shall notify the customer of the personal information that is or may be requested in accordance with Rule 1105(c) to facilitate in the energy assistance process.

7. Revisions Related to “Contracted Agent” – Rule 1105

24. Public Service requests clarification in relation to the use of “contracted agent” in Rules 1004 and 1105(d). It notes that a “contracted agent” is defined to be a “third-party”;

Before the Public Utilities Commission of the State of Colorado

Decision No. C13-0442

DOCKET NO. 12R-500ALL

however, a “third party” is defined to be a person who is not a contracted agent. Similarly, in Rule 1105(d), Public Service recommends consistent use of “contracted agent” and “third party contract,” as opposed to “contracted third party” or “third party contract” in reference to contracted agents.

25. Atmos Energy and Colorado Natural Gas recommend updates to Rule 1105(d) to make explicit that treatment of personal information by contracted agents applies only after the effective date of the new Rules of Practice and Procedure. In its response to exceptions, Public Service agrees that the revisions to Rule 1105 should apply to contracts only after the rules are effective; however, it suggests a clarifying statement by order, as opposed to a rule change.

26. We agree with Public Service that revisions to the rules are necessary to clarify the inconsistent use of “contracted agent” and “third party.” Additionally, we confirm that the rules are prospective, including with respect to rules related to the use of a contracted agent in Rule 1105, and will not be effective until the rules’ effective date. However, we agree with Public Service that no rule change is necessary, and therefore deny Atmos Energy and Colorado Natural Gas’ request for explicit revision.

27. In addition to revisions and clarifications related to a contracted agent raised by participants in exceptions, on the Commission’s own motion we revise language in Rule 1105. Specifically, we make revisions to the rules related to the following:

- a. Rule 1105(d)(II) states that “[t]he use of personal information for a secondary commercial purpose not related to the purpose of the contract *without first obtaining the customer’s consent* is prohibited.” (Emphasis added.) We add clarifying language in the rule to make explicit that the regulated entity must obtain approval if, for any reason, the purpose of the contract is altered.

Before the Public Utilities Commission of the State of Colorado

Decision No. C13-0442

DOCKET NO. 12R-500ALL

We further note that any change in a contracted agent's use of personal information must be for purposes permitted by Commission rule.¹²

- b. We add subparagraph 1105(d)(V) to indicate that any misuse of personal information by the contracted agent that would violate these rules or otherwise be impermissible by law shall be treated as a violation of these rules by the regulated entity.

D. Amicus Curiae and Attorney Representation

28. The Gas Producers take exception to proposed Rule 1200(c), which would require an amicus curiae to file its brief within the time allowed the party whose position the amicus brief will support. The Gas Producers argue that an amicus curiae should not be required to support any position and is entitled to advocate its own viewpoints, which may or may not be identical or similar to that of a litigating party.

29. The ALJ mirrored proposed Rule 1200(c) on Rule 29 of the Colorado Appellate Rules (C.A.R.). Recommended Decision, at ¶ 96. C.A.R. 29 requires an amicus curiae to file its brief "within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party pay answer." In addition, C.A.R. 29 contemplates that an appellate court will consider only those questions properly raised by the parties and that any additional questions presented in a brief filed by an amicus curiae will not be considered. *Denver United States Nat'l Bank v. People ex Rel. Dunbar*, 29 Colo. App. 93, 480 P.2d 849 (1970).

¹² For example, consider a situation where the contracted agent initially uses personal information that is also customer data for the sole purpose of assisting the utility in providing service. Subsequently, the same contracted agent proposes to use the information for other purposes as permitted by the Data Privacy Rules. Prior to using the data for an alternate purpose, the regulated entity must first obtain customer consent in compliance with Commission rules.