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2014 JUL - 7 P 3: 40

Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE COMMISSION
INQUIRY INTO AMENDMENT OF THE
COMMISSION'S RULES RELATED TO PUBLIC
SERVICE CORPORATIONS' RELEASE OF
CUSTOMER INFORMATION INCLUDING
AMENDMENT OF THE RULES TO
SPECIFICALLY ADDRESS PRIVACY AND
CONFIDENTIALITY CONCERNS RELATED TO
SMART METERS.

DOCKET NO. RU-00000A-14-0014

**INITIAL COMMENTS OF THE
GLOBAL WATER UTILITIES**

The Global Water Utilities¹ respectfully submit these Initial Comments on the draft Customer Information rules submitted by the Commission Staff on June 24, 2014.

I. Comments to the rules as a whole.

The Global Water Utilities place a high priority on protecting customer information, and the Global Water Utilities share the Commission Staff's concern that private or confidential customer information be protected. However, the Global Water Utilities have a number of concerns with the proposed rules.

First, the rules rigidly apply to all utilities regardless of size. It makes little sense for a Class D or E water utility, which may have only 100 customers or less, to have to comply with the same complex set of rules as Arizona Public Service (APS) or Southwest Gas. In the case of water

¹ Global Water - Santa Cruz Water Company, Global Water - Palo Verde Utilities Company, Global Water - Picacho Cove Water Company, Global Water - Picacho Cove Utilities Company, Valencia Water Company - Town Division, Valencia Water Company - Greater Buckeye Division, Water Utility of Greater Tonopah, Willow Valley Water Co., Water Utility of Northern Scottsdale, and Hassayampa Utilities Company.

1 utilities, even the largest water utilities are much smaller than APS or Southwest Gas. Thus, it
2 would make the most sense to have different requirements for different sized utilities.

3 Second, the rules present a rigid “one size fits all” solution to all electric, gas, water, and
4 wastewater utilities. These industries are very different.

5 Third, the Global Water Utilities are concerned that the rules are unduly burdensome.
6 Rather than using a principles-based approach, which would focus on the ultimate objective of
7 protecting customer privacy, the proposed rules as they stand now present a highly detailed
8 prescriptive approach

9 Fourth, the rules contain many burdensome record-keeping and notice requirements that
10 will be costly and difficult to implement.

11 Fifth, the Global Water Utilities are concerned that with the timing of the proposed rules.
12 The timeline for providing initial comments is very short. The rules are far-reaching and complex,
13 and water utilities and other stakeholders should be given a chance to review them in some depth
14 before the formal rulemaking process begins. While there has been some discussion of these
15 issues in the electric “smart meters” docket, that discussion did not include the water and
16 wastewater industry. Thus, the Global Water Utilities suggest that if these rules go forward, they
17 apply to the electric utility industry only, and that the Commission hold one or more workshops
18 with water and wastewater utilities, RUCO, ACC Staff and other interested parties to discuss
19 customer privacy issues as applicable to the water and wastewater industry.

20 **II. Comments to specific rules.**

21 **Proposed Rule 14-2-2201.**

22 In the definition of “associate,” employees should also be excluded, so that the definition
23 reads “a person, separate from the utility and neither an affiliate nor an agent or employee of the
24 utility....”

25 The definition of “Private customer information” should add the following: “e.

26 “However, information that is publicly available is not “private customer information.”
27

1 The definition of “subsidiary,” by referring to “shares” may be construed as applying only
2 to corporations, and not other types of business entities. In addition, including subsidiaries of the
3 parent makes little sense, because they are already included in the term “affiliates.” Further, this
4 definition of “subsidiary” is inconsistent with A.A.C. R14-2-801(6).

5 **Proposed Rule 14-2-2202.**

6 As described above, it does not make sense to have the same rules govern the smallest
7 water company and the largest electric utility. Water and wastewater utilities should be subject to
8 a separate set of rules tailored to the particular privacy concerns for those industries.

9 **Proposed Rule 14-2-2203.**

10 The word “employee” should be added to Proposed Rule 2203(B)(2), so that utility
11 employees are authorized to use Private Customer Information.

12 Proposed Rule 2203(B)(3) should allow the utility to provide customer information to
13 entities that administer low-income assistance, and should allow for electronic or recorded verbal
14 consent. A revised version would be “Disclose a customer’s private customer information to a
15 third party, if the customer has made an affirmative written, electronic, or recorded verbal request
16 to the utility for such disclosure to be made, or if the third party is the administrator or provider of
17 low-income assistance to utility customers.”

18 Further, as written the rules would not allow the utility to share Private Customer
19 Information, including billing information, to agents, attorneys, attorneys-in-fact, or legal
20 guardians of the customer. Such legal representatives should be allowed to access private
21 customer information. Possible language to address such concerns could be added as 2203(B)(4)
22 “disclose a customer’s private customer information to a customer’s legal representative, including
23 an attorney in fact or legal guardian.” Proposed Rule 2209(D) may be intended to cover such
24 situations, but it would not apply where the customer is not able to give the notice required in that
25 section.

26 Proposed Rule 2204(C) could be burdensome for smaller water companies, who often must
27 rely on contractors. For example, if a small water utility has to hire someone with a backhoe to dig

1 up a leaking water line at a customer's property, technically the customer's address is "private
2 customer information" under these rules, and that would require a written confidentiality
3 agreement. In general, the requirement to have written confidentiality agreements may be more
4 burdensome for utilities that do not have an attorney on staff.

5 **Proposed Rules 14-2-2204, 2205 and 2207.**

6 These Proposed Rules govern the "opt in" process. These rules are extremely complex and
7 burdensome. To be blunt, it is unlikely that any water or wastewater utility could comply with
8 these requirements. If it is the Commission's Staff's intent to ban any use of Private Customer
9 Information other than as approved in Rule 2203, then the Commission Staff should do so openly
10 and directly, rather than proposing a set of rules so complex and convoluted they could never be
11 followed.

12 Given the very limited time provided, the Global Water Utilities have not been able to
13 prepare a version of these rules that would be workable.

14 In addition, there is potential conflict between these requirements and the authorization to
15 share customer information with a third party in Proposed Rule 2203(B)(3). The proposed rules
16 should clarify whether the Commission Staff intends that the opt-in requirements apply even when
17 the customer is affirmatively requesting the utility to share the information.

18 **Proposed Rule R14-2-2209.**

19 As written, Proposed Rule 2209(A) would not allow the utility to provide private customer
20 information to the Commission's Consumer Services Section unless the section sends a formal
21 data request. The same goes for complaints to the attorney general's office and the Better Business
22 Bureau. The Global Water Utilities suggest that the following sentence be added as 2209(A)(8):
23 "To respond to an inquiry from the Commission's Consumer Services Section, any customer
24 protection agency, or the Better Business Bureau."

25 The Global Water Utilities do not object to maintaining records of disclosures made under
26 this Section (although this may be burdensome for smaller utilities). However, the requirement in
27 Proposed Rule 2209(A) that the utility must include the specific subsection in each such record is

1 burdensome and unnecessary. For example, rather than simply keeping a copy of a subpoena and
2 the subpoena response, this rule would require the utility to also create an additional record that
3 states the specific subsection that authorizes the utility to respond to the subpoena. Likewise, the
4 requirement that the record contain a notation “Whether the disclosure was made voluntarily or in
5 response to a request or order” is burdensome and unnecessary.

6 The Requirement in Proposed Rule 2209(C) for customer notice for each disclosure is
7 burdensome and may conflict with other legal requirements, such as court orders in the case of
8 criminal warrants or grand jury subpoenas. To the extent this requirement is retained, it should be
9 limited to disclosures under Proposed Rules 2209(A)(1) to (A)(5), and in the case of emergencies,
10 the time period should begin only after the emergency ends. If not limited in this way, the
11 Proposed Rules would seem to require the utility to send the customer a notice each time a “blue
12 stake” is performed, because customer information, such as the address, was provided to the blue
13 stake contractor. Further, unless the disclosure requirement is limited, it could cause conflict with
14 law enforcement. The sentence “Notwithstanding, a notice of disclosure need not be provided to
15 the customer when it would interfere with a legitimate law enforcement purpose” is insufficient
16 and ambiguous. Who makes that determination? The utility? On what basis? Rather than get
17 into such difficult questions, the disclosure requirement should not apply to subpoenas, warrants,
18 etc.

19 **Proposed Rule 14-2-2210.**

20 This proposed rule raises serious constitutional issues by apparently limiting a utility’s
21 ability to have free speech with its customers. The limited time available precludes providing a
22 detailed constitutional analysis. However, the government’s ability to limit commercial free
23 speech is very limited, especially when the limits do not have to do with the truth or accuracy of
24 the communication. The rule is unnecessary and seems to be a “solution in search of a problem.”

25 **Proposed Rule 14-2-2212.**

26 The Global Water Utilities note that the requirement to “continuously review and evaluate”
27 security practices may not be feasible, and will be more difficult for many small water companies.

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1 Is a Class E water company violating a rule if they do not continuously review their security
2 practices?

3 Rule 2212(B) essentially requires a “best practices” requirement for security. In concept,
4 this is fine, at least for larger companies, but the requirement that the security features be “based
5 upon the latest security practices, technologies, protocols and controls currently accepted as
6 effective in the utility’s industry” should be limited, otherwise, the rule could be read to require a
7 utility to replace all of certain assets or systems if a version with a higher level of security comes
8 out, even if its existing assets and systems are sufficient to protect customer information.
9 Likewise, some new security protocols may not be workable under a utility’s legacy platforms or
10 computer systems that provide adequate protections but are not the “latest.”

11 **Proposed Rule R14-2-2213.**

12 This rule seems to be directed at electric utilities only. If that is the case, it should be
13 expressly stated. Otherwise, there may be some ambiguity.

14
15 RESPECTFULLY SUBMITTED this 7th day of July 2014.

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filed this 7th day of July 2014, with:
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- 5 Copies of the foregoing hand-delivered/mailed
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