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Arizona Corporation Commission
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Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Re: Notice of Filing – Joint Comments of TEP, UNS Electric and UNS Gas
In the Matter of the Commission's 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 Relating to Smart Meters
Docket No. RU-00000A-14-0014

Pursuant Steven M. Olea's June 24, 2014 request for informal comment on the draft rules promulgated by Staff in the above-referenced docket, Tucson Electric Power Company ("TEP"), UNS Electric, Inc. ("UNS Electric") and UNS Gas, Inc. ("UNS Gas") (collectively, the "Companies") hereby submit the Companies' Joint Comments.

Sincerely,

Bradley S. Carroll

Attachment

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Tucson Electric Power, UNS Electric and UNS Gas

Joint Response to Request for Informal Comment

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)

Tucson Electric Power Company ("TEP"), UNS Electric, Inc. ("UNSE") and UNS Gas, Inc. ("UNSG") (collectively, the "Companies") hereby submit these joint comments on the draft rules relating to the handling of private customer information by utilities ("Draft Rules"), as issued June 24, 2014, by Steven M. Olea, Director of the Utilities Division Staff ("Staff") of the Arizona Corporation Commission (the "Commission").

Introduction

The Companies share the interest of the Commission and Staff in protecting the private customer information associated with our provision of safe, reliable service to our customers. The Companies fully comply with existing rules that restrict the release of customer-specific information without specific prior written customer authorization.[1] We also employ extensive technological and procedural safeguards to ensure that our customers' information does not fall into the wrong hands. The success of these efforts is reflected in the fact that our discussions in this docket address theoretical or potential risks rather, than specific incidents in which an Arizona utility customer's privacy was compromised by the unauthorized release of customer-specific information.

The Companies urge the Commission to consider this record of success under existing rules and practices as it evaluates the need for the new restrictions proposed in the Draft Rules, particularly when those changes could create unintended consequences for utilities and their customers. The scope of those consequences will be determined in part by the ultimate interpretation of several ambiguously defined terms, including "utility service," "utility product" and "private customer information." The Companies believe that proper clarification of those key phrases could mitigate some of the most troubling aspects of the proposal. But even the most benign reading would create new burdens for utilities and their customers without providing any meaningful enhancement of the privacy protections provided under existing rules.

Undefined Terms

The Draft Rules would create strict new limits on the use or disclosure of "private customer information" outside of certain circumstances. Section R14-2-2203 (B) (1) of the Draft Rules explains that a utility may "use a customer's private customer information as necessary to enable the utility directly or indirectly to provide the customer with any utility service *and* any utility product requested by the customer or to which the customer has subscribed." (Emphasis added.)

[1] A.A.C. R14-2-203(A) (2) states that "Customer-specific information shall not be released without specific prior written customer authorization unless the information is requested by a law enforcement or other public agency, or is requested by the Commission or its staff, or is reasonably required for legitimate account collection activities, or is necessary to provide safe and reliable service to the customer."

The next section makes the same allowances for the disclosure of private customer information to an agent, affiliate, or associate.

The Draft Rules do not define the terms "utility service" and "utility product," and the structure of the sentences in which they appear further clouds their meaning. If "utility service" is interpreted broadly and separately from the references to "utility product," these sections could be read to authorize the free use and sharing of customer information for almost any purpose related to the provision of service – including the development and marketing of tariffs, energy efficiency or renewable programs or other energy-related offerings in partnership with our contractors and other agents. The Companies support this broad interpretation, as it would limit interference with existing utility operations and potentially moot many of the most serious concerns raised below regarding the Draft Rules.

If, however, these sections are read to allow the use of information *only* in regard to programs and services that customers *are already using*, the Draft Rules would create a much greater burden on the Companies' ability to comply with Commission mandates and satisfy customers' changing energy needs. In this case, it would be unclear what process a utility would need to undertake to offer other, potentially beneficial utility services to its customers.[2]

The Companies believe it is both cost-effective and appropriate to use information about customers' individual energy usage, payment history and other aspects of their service to help make them aware of Commission-approved programs and services for which they may be eligible. These services, including low-income assistance, Budget Billing, time-of-use ("TOU") plans, renewable energy incentives, electric vehicle ("EV") rates and energy efficiency incentives, are typically intended for use by specific segments of utility customers. Unless the Commission embraces the broad definition of "utility service" described above, the Draft Rules would restrict the Companies' ability to rely on internal data generated from our own operations to target these and other services to customers for whom they were designed.

Overly Broad Definition

These troubling impacts would be compounded by the Draft Rules' overly broad definition of the "private customer information" that would be subject to new restrictions. It appears that details about an individual customer's usage, program participation and the configuration of utility equipment necessary to meet their individual needs would be restricted under Section R14-2-2201 (12) of the Draft Rules, even if such information is used or shared anonymously – that is, without personally identifying information. The Companies maintain that such details must be used and shared freely to support reliable service and maintain Commission-approved programs on behalf of our customers.

Some customers exhibit individual usage characteristics that merit special attention, including those with distributed generation ("DG") equipment or EVs. Making use of these customers' individual usage data and sharing such details with agents, associates or third parties may be necessary to ensure proper configuration of utility facilities, to promote awareness of utility programs and plans and even to help the Commission and others establish sound energy policy. Such uses of utility information should not be construed as a violation of customers' privacy, particularly when they do not involve names or other personally identifying information. The

[2] Based on its title, Rule 2204 only applies to "Non-Utility Purposes." However, under the text of Rule 2204, its applicability is dependent on the interpretation of Rule 2203.B.

Companies also share anonymous individual usage data and other information restricted under the Draft Rules with third parties to evaluate the potential efficacy of new programs and services, including those that assist in compliance with Commission mandates. The Companies oppose new restrictions on the use or sharing of such information, as doing so would unnecessarily compromise our operations without enhancing customers' privacy.

Opt-In vs. Opt-Out

If the Draft Rules are read to restrict the use of "private customer information" to create or promote utility services to which customers have not already subscribed, the proposed opt-in provisions[3] required to authorize such uses would impose a significant, costly and unnecessary burden on the Companies and our customers. Such a regime might be appropriate for companies that have demonstrated disregard for the privacy of customers' personal information through repeated, unauthorized releases of personal information. In this case, though, the Companies have remained committed to protecting our customers' privacy in accordance with existing rules and regulations. If the Commission sees a need for new privacy rules despite this strong track record, it should seek to minimize costs and complications for the vast majority of customers who have not raised concerns regarding potential, theoretical or imagined privacy abuses and would not wish to limit their utilities' ability to serve their energy needs on that basis.

Offering customers an opportunity to opt out of certain information sharing practices would prove less problematic than the opt-in procedures in the Draft Rules. It also would maintain consistency with standards applied to the telecommunications industry in the CPNI rules, which allow carriers to use either an opt-out or opt-in approval to market "telecommunications-related services of a category to which the customer does not already subscribe."[4] At a minimum, any new privacy rules should comport with the approach applied to other utility-related services or products.

The specific and selective opt-in procedure proposed in the Draft Rules would prove particularly onerous. As written, the Draft Rules would require the Companies to provide a list of each and every purpose for which we may seek to use or share "private customer information," as well as a complete list of agents, associates and third parties that might participate in such efforts. Customers would be provided an opportunity to approve, deny or "impose limitations" for each intended use. Such specificity may well be unattainable given the complexity and frequency of the Companies' ongoing interactions with an ever-changing population of contractors on new and changing work projects that emerge in response to daily business requirements and our customers' energy needs.

Any effort to comply with such rules would prove costly. A new software system would be required to manage customers' opt-in preferences, at an estimated development cost of $2.5 million, plus $400,000 in annual estimated operating costs. Each mailing of opt-in notices to the Companies' customers – which, under the rules, must either be sent separately from customers' bills or included within a separate, customized envelope – would create approximately $600,000 in postage and printing costs. Because the Company frequently employs new contractors and identifies new uses that could be subject to opt-in requirements, multiple mailings could be required each year. Such costs, and others that may become apparent as the Companies consider this proposal further, are not justified by any privacy benefit that arguably may be created through this process. Indeed, the Companies contend that most customers would consider such notices to be a nuisance and, as such, would simply ignore them. Under the rules, this could leave the Company

[3] R14-2-2204, p3
[4] A.A.C. R14-2-2103.A

unable to use broadly defined "private customer information" to develop and market programs and services to satisfy Commission requirements or serve customers' energy needs.

Law Enforcement Requests

Although the Draft Rules provide some exceptions to these onerous opt-in requirements, these too are troublesome. As written, they would require utilities to maintain records of customer information disclosures and provide notice of such to the customer and the Commission. This requirement raises logistical and legal issues, particularly with respect to compliance with or enforcement of laws and compliance with subpoenas, court orders or other criminal or civil investigative demands.

For example, the Draft Rules would require a utility to keep records of every law enforcement request for information. The utility would then be obligated to provide notice to the customer under investigation of the law enforcement inquiry. The Companies are concerned about the legality of such disclosure and the resulting interference with the law enforcement process. Although the Draft Rules do not require notice if doing so "would interfere with a legitimate law enforcement purpose," that provision is ambiguous, and the Companies would not be in a position to make that determination.[5]

Compliance with this requirement also would prove extraordinarily burdensome. For example, in the last month alone, the Companies responded to nearly 1,000 requests for customer information from law enforcement agencies and other authorities. These requests were issued by agencies including the Tucson Police and Pima County Sheriff's Departments, Internal Revenue Service, Pima County Attorney's Office, U.S. Marshall's Service, Immigration and Customs Enforcement, Drug Enforcement Agency, Department of Economic Security and Pima County Adult Probation Department. The degree of disclosure associated with this volume of requests would likely overwhelm the Companies and possibly the Commission itself, particularly in combination with the other disclosures required under the Draft Rules.

Metering Expenses

The Draft Rules would impose cumbersome new restrictions on many aspects of utility operations that have nothing to do with "smart meters" – the ostensible source of privacy concerns addressed in the title of this docket. Nevertheless, one of three paragraphs near the end of the Draft Rules that do address such concerns would impose steep costs on the Companies and our customers.

Under Section R14-2-2212 (B) of the Draft Rules:

> A utility shall ensure that private customer information transmitted wirelessly is protected from disclosure using encryption and password protection, or equivalent security measures, based upon the latest security practices, technologies, protocols and controls currently accepted as effective in the utility's industry.

The Companies currently employ automatic meter reading (AMR) meters that lack the two-way communication capabilities of so-called "smart meters." These AMR meters transmit usage data

[5] If the Commission approves further consideration of the law enforcement provision of the Draft Rules, the Companies suggest that the Commission seek input from law enforcement agencies regarding how the rules may impact ongoing investigations.

wirelessly via a fixed network that associates interval readings with unique meter identification numbers. These wireless signals are unencrypted, and the technology employed by the Companies cannot be upgraded to provide encryption. The system does not pose a risk to customers' privacy because the unencrypted, low-energy signals do not include customers' names, addresses or other personally identifying information. Nevertheless, under the broad definition employed by the Draft Rules, the signals would be considered "private customer information."

To comply with the Draft Rules as written, the Companies would be forced to stop installing AMR meters and end their use of a system that represents an investment of nearly $40 million at TEP alone. The Companies would then be forced to adopt costlier, more robust "smart meters" capable of two-way, encrypted communications. The estimated cost of installing this more capable "smart meter" infrastructure to serve TEP customers would exceed $94 million. For this reason, the Companies request that any new privacy rules adopted by this Commission allow for continued use of unencrypted wireless signals to transmit customer usage data.

Conclusion

As written, the Draft Rules would impose broad new restrictions on the use of information that poses no threat to customers' privacy, needlessly increasing service costs and limiting the Companies' ability to satisfy their customers' energy needs. As noted above, the Companies believe existing rules already provide strong privacy protections for utility customers. If the Commission wishes to provide additional protections to address perceived risks associated with smart meters – as suggested by the title of this docket – such measures should be narrowly crafted to address such concerns without imposing significant costs or burdens that compromise the quality or value of service to customers.