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MEMORANDUM

TO: Docket Control

FROM: Steven M. Olea
Director
Utilities Division

Arizona Corporation Commission

DOCKETED

JUN 25 2014

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DATE: June 25, 2014

ORIGINAL

SUBJECT: Commission's Inquiry into Smart Meters, Docket No. E-00000C-11-0328;
Notice of Staff's Request for Informal Comment in Docket No. ~~RU-00000A-14-0014~~
Handling of Private Customer Information by Utilities

Attached is a copy of draft rules pertaining to the handling of private customer information by utilities filed yesterday in Docket No. RU-00000A-14-0014.

The deadline for informal comment on these draft rules is July 7, 2014 and the deadline for reply comment on the draft rules is July 14, 2014. Please do not file your comments on these draft rules in this Docket (E-00000C-11-0328). Please file any comments you may have on the draft rules in Docket No. RU-00000A-14-0014.

If you have any questions regarding this matter, please do not hesitate to contact our Consumer Services Division.

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Originator: Maureen Scott

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ARTICLE 22. PRIVATE CUSTOMER INFORMATION

R14-2-2201. Definitions.

In this Article, unless otherwise specified:

1. "Affiliate" means, with respect to a utility, any other entity directly or indirectly controlling, controlled by, or under common control with the utility, where the control includes the power to direct management policies or practices, whether through ownership of voting securities, by contract, or otherwise.
2. "Agent" means a person who is acting under and in accordance with authority granted by a utility and in furtherance of the utility's objectives, but who is not a utility employee.
3. "Aggregate information" means collective data that relates to a group or category of services or customers, from which private customer information has been removed such that a specific customer's identity cannot be ascertained.
4. "Associate" means a person, separate from a utility and neither an affiliate nor an agent of the utility, with which the utility has a business relationship through contract or otherwise, and includes a person such as an independent contractor or joint venture partner.
5. "Customer" means a person currently receiving service from a utility.
6. "Disclose" means to release, transfer, permit access to, or divulge in any other manner.
7. "Disclosure" means the act or omission through which one discloses.
8. "Documentation" means supportive information recorded in written, photographic, electronic, or other permanent form.
9. "Opt-in approval" means customer consent to use or disclose the customer's private customer information, obtained as required in this Article.
10. "Person" means an individual or a partnership, corporation, governmental agency, or other organization operating as a single entity.
11. "Personally identifying information" means any of the following pertaining to a specific customer:
 - a. Name,
 - b. Address,
 - c. Telephone number,
 - d. E-mail address,
 - e. Account number,
 - f. Date of birth, or
 - g. Other information that could be used to determine the identity of or to make contact with the customer.

12. "Private customer information" means any of the following pertaining to a specific customer and available to the utility serving that customer solely by virtue of the utility-customer relationship:
 - a. Personally identifying information;
 - b. Information regarding the type, quantity, and technical configuration of any utility service or product to which the customer subscribes;
 - c. Information regarding the time of use, amount of use, and destination for any utility service or product to which the customer subscribes; and
 - d. Information regarding any specific type of device, equipment, or appliance that a customer uses and any inference drawn as a result of such use.
13. "Subsidiary" means an affiliate for which the utility or the utility's parent owns or controls at least a majority of the shares.
14. "Third Party" means a person who is not:
 - a. The customer;
 - b. The utility providing service to the customer;
 - c. An agent or associate of the utility obtaining private customer information only for purposes of enabling the utility to safely and effectively provide the customer with the utility service and products to which the customer has subscribed; or
 - d. A person to whom the customer has authorized disclosure of private customer information.
15. "Utility" means a public service corporation, as defined in Article 15, § 2 of the Arizona Constitution, providing electric, gas, water, or sewer service within Arizona.

R14-2-2202. Applicability.

This Article applies to each utility as defined in R14-2-2201.

R14-2-2203. Prohibition on Use and Disclosure of Private Customer Information.

- A. Except as provided in this Article, a utility shall not use or disclose a customer's private customer information.
- B. Notwithstanding subsection (A), a utility may:
 1. 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;
 2. Disclose a customer's private customer information to an agent, affiliate, or associate for use, 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; and

3. Disclose a customer's private customer information to a third party, if the customer has made an affirmative written request to the utility for such disclosure to be made.

C. Before a utility discloses a customer's private customer information to an agent, affiliate, or associate for a purpose described in subsection (B)(1) or (2), the utility shall ensure that the agent, affiliate, or associate executes a confidentiality agreement that:

1. Requires the agent, affiliate, or associate receiving the customer's private customer information to use the information only as described in subsection (B)(1) or (2);
2. Requires the agent, affiliate, or associate not to disclose the customer's private customer information; and
3. Is executed either in writing or electronically.

R14-2-2204. Opt In Approval Required Before Use or Disclosure of Private Customer Information for Non-Utility Purposes.

Except as provided in R14-2-2209, a utility shall obtain a customer's opt-in approval, as provided in this Article, before the utility:

1. Uses the customer's private customer information for any purpose other than as described in R14-2-2203(B);
2. Discloses the customer's private customer information to an agent, affiliate, or associate for any purpose other than as described in R14-2-2203(B); or
3. Discloses the customer's private customer information to any third party for any purpose other than as requested under R14-2-2203(B)(3).

R14-2-2205. Obtaining Opt-In Approval; Restrictions.

A. A utility that desires to use or disclose a customer's private customer information, as set forth in R14-2-2204, shall first obtain the customer's opt-in approval as provided in this Section.

B. A utility that desires to obtain a customer's opt-in approval for use or disclosure of private customer information shall send to the customer an opt-in notice that:

1. Identifies each agent, affiliate, associate, or third party to whom the utility desires to disclose the customer's private customer information;
2. Identifies with specificity each purpose for which the utility desires to disclose the customer's private customer information to each agent, affiliate, associate, or third party; and each purpose for which the utility desires to use the customer's private customer information.

3. With respect to private customer information obtained from a meter or other utility equipment installed on the customer's premises, the use or disclosure of which is not necessary to provide utility service to the customer, specifically identifies the manner in which the private customer information is to be used by the utility, or by an agent, affiliate, associate or third party;
4. Includes the definition of private customer information from R14-2-2201;
5. Informs the customer of the customer's right to deny the utility's request to use the customer's private customer information for a purpose other than as described in R14-2-2203(B) or R14-2-2209;
6. Informs the customer of the customer's right to deny the utility's request to disclose the customer's private customer information to any agent, affiliate, associate, or third party for any purpose other than as described in R14-2-2203(B) or R-14-2-2209;
7. Informs the customer of the customer's right to impose limitations on the use and disclosure of the customer's private customer information, rather than granting the full opt-in approval requested by the utility, except as set forth in R14-2-2203(B);
8. Informs the customer of the utility's duty to comply with any limitations the customer imposes on the utility's use and disclosure of the customer's private customer information;
9. Informs the customer of the requirements set forth in R14-2-2203;
10. Informs the customer that the customer's denial of opt-in approval will not affect the utility's provision to the customer of any utility service or any utility product requested by the customer or to which the customer has subscribed;
11. Informs the customer of the customer's right, at any time, to revoke or limit any opt-in approval previously granted by the customer;
12. Includes a phone number that the customer may call with any questions concerning the opt-in notice;
13. Is clearly legible, in 12-point or larger print;
14. Is available to read on the utility's website in at least English and Spanish versions;
15. Is provided to the customer in both English and Spanish versions, unless the customer has previously expressed a preferred language, in which case the notice may be written in that language alone;
16. If mailed to the customer, is mailed separately from any billing information, inducement, advertising, or promotional information, unless the opt-in notice is

included as an insert in the customer's monthly bill sent within an envelope clearly marked in bold type "contains important privacy information";

17. If sent to the customer electronically, is e-mailed separately from any billing information, inducement, advertising, or promotional information;
 18. Includes instructions for how the customer must respond to provide opt-in approval;
 19. Informs the customer's opt-in approval shall be automatically renewed and remain in effect until the customer revokes, modifies, or limits the opt-in approval; and
 20. Informs the customer of a toll-free telephone number, and any other available method, through which the customer can notify the utility if the utility has made an error regarding the customer's opt-in approval status or the customer desire to revoke or limit the customer's opt-in approval.
- C. If a customer does not respond to an opt-in notice, the customer's non-response shall be deemed a denial of the requested opt-in approval.
- D. A customer's opt-in approval authorizes a utility to use the customer's private customer information only for the purposes set forth in the opt-in notice, subject to any additional limitations made by the customer, and to disclose the customer's private customer information only to the persons identified in the opt-in notice, subject to any additional limitations made by the customer.
- E. An opt-in notice that does not comply with the provisions of subsection (B) cannot result in effective opt-in approval from a customer.
- F. Before a utility discloses a customer's private customer information to an agent, affiliate, associate, or third party as authorized by the customer's opt-in approval, the utility shall require the agent, affiliate, associate, or third party to execute a confidentiality agreement that:
1. Requires the agent, affiliate, associate, or third party receiving the customer's private customer information to use the private customer information only as authorized in the customer's opt-in approval;
 2. Requires the agent, affiliate, associate, or third party not to disclose the customer's private customer information; and
 3. Is executed either in writing or electronically.

R14-2-2206. Confirmation and Verification of Opt-In Approval.

- A. Within 10 days after receiving a customer's opt-in approval, a utility shall provide the customer with written confirmation:
1. Sent to the customer by mail or electronic mail with return receipt requested to ensure that the customer received the confirmation of opt-in approval;

2. Mailed or e-mailed separately from any other communication from the utility;
 3. Explaining clearly the effect of the customer's opt-in approval choices, including a list of the agents, affiliates, associates, or third parties for which disclosure has been authorized and a list of the purposes for which use or disclosure has been authorized; and
 4. Informing the customer of a toll-free telephone number, and any other available method, through which the customer can notify the utility if the utility has made an error regarding the customer's opt-in approval status or the customer desires to revoke or limit the customer's opt-in approval.
- B.** Before a utility uses, or discloses private customer information as authorized by a customer's opt-in approval, the utility shall verify that the name, service address, and account number for the customer as provided in the opt-in approval matches the utility record for the customer's account.
- C.** A utility shall retain, maintain, and provide to the customer or the Commission upon request the following documentation concerning each customer's opt-in approvals:
1. A true and complete copy of each opt-in notice provided to the customer;
 2. A true and complete copy of each opt-in approval provided by the customer;
 3. A true and complete copy of each written confirmation sent to the customer;
 4. A list of the opt-in approvals provided by the customer, including for each:
 - a. The date the opt-in approval was received by the utility;
 - b. A list of the agents, affiliates, associates, or third parties for which disclosure was authorized; and
 - c. A list of the purposes for which use or disclosure was authorized;
 5. A true and complete copy of each confidentiality agreement executed as required by R14-2-2203(C);
 6. A true and complete copy of each confidentiality agreement executed as required by R14-2-2205(F); and
 7. Documentation of the utility's verifications completed as required by subsection (B).

R-14-2207. Annual Reminders to Customers.

At least every 12 months, a utility that has obtained opt-in approval from a customer shall send the customer an annual reminder:

1. By mail or electronic mail with return receipt requested to ensure that the customer receives the annual reminder;
2. Separately from any other communication from the utility;

3. Explaining clearly the customer's current opt-in approval status, including a list of the agents, affiliates, associates, or third parties for which disclosure has been authorized and a list of the purposes for which use or disclosure has been authorized; and
4. Informing the customer of a toll-free telephone number, and any other available method, through which the customer can notify the utility if the utility has made an error regarding the customer's opt-in approval status or the customer desires to change the customer's opt-in approval.

R14-2-2208. Duration of Opt-In Approval.

A customer's opt-in approval shall be automatically renewed and shall remain in effect until the customer revokes, modifies, or limits the opt-in approval.

R14-2-2209. Exceptions to Opt-In Approval Requirements.

- A.** Notwithstanding the other Sections in this Article, a utility may use or disclose, without customer opt-in approval, a customer's private customer information for the following purposes:
1. To protect the utility's rights or property;
 2. To protect another customer's rights, property, or utility service;
 3. To protect another utility from fraudulent, abusive, or unlawful use of, or subscription to, the utility's services;
 4. To comply with federal law or state law requiring or permitting disclosure of private customer information under specified circumstances that are applicable to the use or disclosure involved;
 5. In the case of emergency where such information is necessary for the protection of life or property of the customer or another and it is not possible to obtain the customer's consent beforehand;
 6. To comply with federal or state law, where the release of private customer information is necessary to carry out the provisions of such law, such as Blue Stake laws; or where such information is necessary to enforce specific provisions of state or federal law; or
 7. To comply with a subpoena, court order, civil investigatory demand, Commission Order, or Commission data request.
- B.** A utility shall create and maintain a record of each disclosure made under this Section, which shall include:
1. What private customer information was disclosed;
 2. To whom the disclosure was made;
 3. For what purpose or purposes the disclosure was made, including a reference to the subsection authorizing the disclosure;

4. The date of the disclosure; and
 5. Whether the disclosure was made voluntarily or in response to a request or order.
- C. A utility shall, within 10 days after each disclosure made under this Section, send notice of the disclosure to the Commission and to each affected customer, with the notice to include, at a minimum, the information listed in subsection (B). Notwithstanding, a notice of disclosure need not be provided to the customer when it would interfere with a legitimate law enforcement purpose.
- D. A utility shall disclose a customer's private customer information to any person identified by the customer, upon request from the customer received in either a written or electronic format.

R14-2-2210. Marketing Information.

These rules do not preclude a utility from inserting marketing information into a customer's billing package. However, if the utility uses private customer information to target such marketing, and such marketing is not necessary for the provision of utility service, the customer's opt-in approval is necessary.

R14-2-2211. Aggregate Information.

A utility may gather and disclose aggregate information.

R14-2-2212. Security Measures for Wireless Transmission of Private Customer Information.

- A. A utility shall continuously review and evaluate for use emerging security practices, technologies, protocols, and controls as necessary to update the security practices, technologies, protocols, and controls implemented by the utility.
- B. 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.

R14-2-2213. Prior Commission Approval and Customer Consent Needed for the Collection of Certain Private Customer Information.

These rules do not authorize measurement from meters specific to any particular appliance or electrical device unless approved by the Commission as a specific tariff, and the customer requests to be on such tariff.