

Decision No. C10-1192

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 10R-799E

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

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**NOTICE OF PROPOSED RULEMAKING**

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Mailed Date: November 4, 2010  
Adopted Date: November 3, 2010

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Submitted to Colorado PUC E-Filings System

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

1. The Colorado Public Utilities Commission hereby issues a Notice of Proposed Rulemaking (NOPR) regarding its Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (CCR) 723-3.

2. The statutory authority for the proposed rules is found in §§ 29-20-108, 40-2-108, 40-2-126, 40-3-102, 40-3-103, 40-3-111, 40-3-114, 40-4-101, 40-4-108, 40-5-101, 40-5-103, and 40-9.5-107, C.R.S.

**B. Policy objectives****1. Overview**

3. In this NOPR, the Commission makes certain findings and introduces proposed Smart Meter data privacy and disclosure rules in large part based on input provided by interested parties in Docket Nos. 09I-593EG and 10I-099EG. The Commission finds the input provided in the workshops and written comments conducted in these dockets was helpful and will discuss such input below as it relates to specific issues.

4. The draft rule language presented in this NOPR was developed by Commission Staff, reflecting the input received in the above-referenced dockets. As draft language it is now presented to the public through this NOPR with the specific intent of stimulating discussion.

5. “Smart” meters will allow collection of data at a new level of granularity and may create new, previously unanticipated markets. The Commission concludes that added protections for personal information are essential in order to protect customer privacy. In addition, an effective privacy policy needs to be thoughtful and pro-active rather than just-in-time and reactive.

## **C. Description of Individual Rule Changes**

### **1. Rule 3001 Definitions**

6. We propose to define the following terms in the Smart Meter data privacy and disclosure rules: “personal information,” “retail electric energy information,” “restricted release,” “smart meter,” “smart meter data,” and “unrestricted release.” The current Commission definitions are either too limited or non-existent. Adding these definitions will provide further guidance in how these new rules will be applied.

7. The definition of “personal information” is expanded to include a customer’s household in addition to the customer individually. Additionally, the definition allows for the use of personal information if the information is redacted, aggregated, or organized in such a way that the customer’s personal identity is indiscernible.

8. The definition of “restricted release” provides a category for the release of smart meter data, which allows use of Smart Meter data for a limited purpose. The limited purpose, which will be described prior to obtaining the customer’s approval, will be part of the notification process required for customer approval.

9. The definition of “unrestricted release” provides another category for the release of smart meter data, which permits unrestricted use the of smart meter data after receiving consent.

10. The definitions of restricted release and unrestricted release are intended to encourage customer participation in the defining access to potentially private information. Utilities should involve the individual in the process when they use customer information and, to the extent practicable, seek ratepayer consent for the collection, use, dissemination, and maintenance of customer information.

## 2. Rule 3011 Smart Meter – Personal Information - Collection

11. Rule 3011 sets forth the standards for the collection of personal information prior to the installation and use of a smart meter. This rule mirrors many of the same protections that are espoused in Rule 1103 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1. Section (a) requires the utility to inform the customer of the new technology being installed, as well as the granularity of data that can now be collected. Further, the utility must obtain consent prior to collection of this information. This consent controls only the collection of personal information, and does not provide consent regarding any particular use of that data. This rule seeks to provide transparency regarding data collection and management practices by requiring meaningful, clear, full notice to the consumer regarding the collection, use, dissemination, and maintenance of customer information.

12. Section (e) requires that the utility provide relevant data to both the customer and individuals or entities with release approval the information in an electronic machine-readable form that is in conformity with nationally recognized open standards. The rule requires that delivery be in a timely and convenient manner while still providing security and privacy of the customer's personal information. This rule seeks to encourage data security. Utilities must protect customer information through appropriate security safeguards against risks of loss, unauthorized access or use, destruction, modification, or unintended or inappropriate disclosure, and smart grid technologies and services must be capable of implementing these security safeguards.

13. Section (e) also states that customers are to be able to receive their data for free. However, should the customer choose to give the information to a third party, then the utility may charge a reasonable fee for the service of providing the data. The intent is to encourage

customer use of their own data, while permitting utilities to charge a fee to cover reasonable costs associated with security and privacy measures necessitated by third party access. Utilities should, to the extent practicable, ensure that data is accurate, relevant, timely and complete. Additionally, utilities should provide consumers with tools or processes to correct mistakes or challenge information provided in their customer profile.

### **3. Rule 3012 Smart Meter – Personal Information - Disclosure**

14. Rule 3012 sets forth standards for the release of smart meter data, including the use of electronic signatures to gain consent. This rule mirrors many of the same protections that are espoused in Rule 1104, 4 CCR 723-1.

15. Section (a) of this rule also requires the utility to maintain records logging the date, time, and nature of information released. This section is influenced by the concept of accountability and auditing. Utilities should be accountable for complying with these principles, should provide appropriate training to all employees and contractors who use customer information and should audit the actual use of that information to demonstrate compliance with these rules.

### **4. Rule 3013 Smart Meter – Obtaining Customer Approval to Use, Disclose, or Permit Access to Smart Meter data to Affiliates, Joint Ventures Partners and Independent Contractors Providing Regulated Utility-Related Services**

16. Rule 3013 is the process by which a third party providing utility-related service may gain access to a customer's personal information. Section (a) provides the default status of customer in regards to releasing smart meter data. Except for purposes of billing, no data may be accessed. Section (b) provides a utility, its agents, affiliates, partners, and independent contractors a method to access a customer's smart meter data. Section (c) and Sections (e)-(g) describe the notification process and elements the notification must contain. These sections are

intended to require utilities to specifically articulate the purpose or purposes for which customer information will be used. Further, only data directly relevant and necessary to accomplish a specified purpose should be collected, and data should only be retained for as long as necessary to fulfill the specified purpose. Finally, customer information should be used solely for the purposes specified in the notice. Disclosure of customer information should only occur to carry out purpose for which the data was collected.

17. Section (d) instructs the utility to execute proprietary agreements with affiliates, partners, and independent contractors who are given access to Smart Meter data. This section is influenced by the concepts of accountability and auditing.

18. Sections (h)-(l) state that the utility must verify that customers have given consent to the access and use of their Smart Meter data. Section (m) describes the confirmation process the utility will use after verifying the customer's approval. Sections (h)-(m) are all influenced by the concepts of accountability and auditing, purpose specification, transparency, and individual participation.

**5. Rule 3014 Smart Meter – Obtaining Customer Approval to Use, Disclose, or Permit Access to Smart Meter data to Third Parties and Affiliates That Do Not Provide Utility Services**

19. Rule 3014 sets forth the process by which a third party not providing utility-related service may gain access to a customer's personal information. The rules are similar to Rule 3013, 4 CCR 723-3.

20. Section (c) requires that the third parties be specifically identified. Additionally, the purposes for which the information will be used must be specifically identified. Section (c) is heavily influenced by the concepts of accountability and auditing, purpose specification, transparency, and individual participation.

21. Section (c) also provides a vehicle for cost recovery for the utility for providing this service.

**6. Rule 3310 Meter Reading – Smart Meter**

22. We propose to limit smart meter reading to kilowatt and kilowatt-hours. Currently there is an exception that may swallow the rule prohibiting access to personal information and Smart Meter data. The exception is found in Rule 3401, 4 CCR 723-3 (Billing and Service), and the subsequent definition of Meter Reading in Rule 3309, 4 CCR 723-3. Rule 3401(a)(I), 4 CCR 723-3 indicates that billing is based on “[t]he dates and meter readings beginning and ending the period during which service was rendered.” Rule 3309(a), 4 CCR 723-3, reads, “[u]pon a customer’s request, a utility shall provide written documentation showing the date of the most recent reading of the customer’s meter and the total usage expressed in kilowatt-hours or other unit of service recorded.” Thus, the old rule may inadvertently provide access to a customer’s personal information or Smart Meter data. The new rule would allow for only a single number to represent a customer’s usage. The removal of “other unit of service recorded” would remove any potential inappropriate access to personal information or smart meter data while retaining the utility’s prerogative to bill for services rendered.

**7. Rule 3976 Regulated Electric Utility Rule Violations, Civil Enforcements, and Civil Penalties.**

23. This rule describes the violation and penalties associated with each violation.

**D. Miscellaneous**

24. Rules not specifically discussed in this NOPR do not constitute a portion of this NOPR. The Commission is not proposing any changes to the rules not specifically discussed in this NOPR.

25. The proposed rules will be published in the November 25, 2010 edition of *The Colorado Register*. Interested persons may acquire a copy of the proposed rules, either in hard-copy from the Commission's Administrative Service Section, which may be contacted by phone at 303.894.2884 or by email at elizabeth.hayes@dora.state.co.us. The proposed rules will also be available through the Commission's Electronic filing system.

26. The Commission requests comments from interested parties on the goals expressed in the rules, the specific information that should be provided with the filings, and the relationship between different types of filings. The Commission also requests that interested parties limit their comments to the proposed rule changes only. The instant rulemaking should not be construed as an opportunity to reopen issues resolved in preceding rulemakings.

27. The Commission will conduct a hearing on the proposed rules and related issues at the below-stated time and place. Interested persons may also submit written comments on the proposed rules, including data, views, or arguments, and present these orally at hearing unless the Commission deems oral presentations unnecessary. The Commission encourages interested persons to submit written comments before the hearing scheduled in this matter. If interested persons wish to file comments before the hearing, the Commission requests that such comments be filed no later than January 6, 2011. Reply comments should be submitted by January 20, 2011. The Commission will consider all submissions, whether oral or written.

**I. ORDER**

**A. The Commission Orders That:**

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the November 25, edition of *The Colorado Register*.



2. A hearing on the proposed rules and related matters shall be held before the Commission as follows:

DATE: January 27, 2011  
TIME: .9:00 A.M.  
PLACE: Commission Hearing Room A  
1560 Broadway, Suite 250  
Denver, Colorado

3. The Commission may set additional hearings, if necessary.

4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Commission finds oral comments are unnecessary. Interested persons may file written comments in this matter before hearing. The Commission requests that such pre-filed comments be submitted no later than January 6, 2011 and that reply comments should be submitted by January 20, 2011.

5. This Order is effective upon its Mailed Date.

**E. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
NOVEMBER 3, 2010.**

(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

RONALD J. BINZ

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JAMES K. TARPEY

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MATT BAKER

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Commissioners