

ORDER NO. 12 323

ENTERED AUG 23 2012

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 564

In the Matter of Data Transfer
of Customer Information for Public
Purposes.

ORDER

DISPOSITION: RULES ADOPTED AND AMENDED

I. INTRODUCTION

We opened this rulemaking to facilitate the sharing of customer information between energy utilities and the public purpose fund administrator designated under ORS 757.612(3)—currently the Energy Trust of Oregon. The rules are designed to allow the Energy Trust to more efficiently and comprehensively acquire energy efficiency and promote renewable energy development.

The proposed rules contain four major features. First, the rules supersede existing information sharing provisions found in Division 038 (Direct Access) that apply only to electric utilities, and create a new Division 086 (Customer Information) that also covers natural gas utilities. Second, the rules significantly increase the amount of confidential customer specific data the Energy Trust receives from electric and natural gas utilities. Third, the rules expressly permit the Energy Trust to use the information to conduct direct marketing using the utilities' customer contact and usage data. Fourth, the rules require the Energy Trust to provide more information to the utilities about their customers' participation in Energy Trust programs.

II. PROCEDURAL HISTORY

On April 4, 2012, we filed a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact for this rulemaking with the Secretary of State. On that same day notice was provided to all interested persons on the service lists maintained as specified in OAR 860-001-0030(1)(b) and to certain legislators specified in ORS 183.335(1)(d). Notice of the rulemaking was published in the May 2012 *Oregon Bulletin*. A rulemaking hearing was held May 21, 2012; and the deadline to file comments was June 4, 2012.

Written comments were filed by Portland General Electric Company (PGE); PacifiCorp, dba Pacific Power; Northwest Natural Gas Company, dba NW Natural; Cascade Natural Gas Corporation; Idaho Power Company; the Energy Trust of Oregon; the Industrial

Customers of Utilities (ICNU); the Northwest Industrial Gas Users (NWIGU); the City of Portland; the Citizens' Utility Board of Oregon (CUB); and the Staff of the Public Utility Commission. All persons who provided oral comment at the rulemaking hearing also provided written comments reiterating their statements. CUB's written comments consisted of a letter in which it stated its support for the comments filed by Staff and the Energy Trust.

III. DISCUSSION

We address comments to the proposed rules in four parts. First, we begin by addressing two preliminary issues raised about the applicability and scope of these rules. Second, we address comments directed at the general provisions contained in OAR 860-086-0000 and OAR 860-086-0010. Third, we address comments relating to the rules applicable to electric utilities. Finally, we address comments directed at the rules applicable to natural gas utilities.

A. Preliminary Issues

1. *Jurisdiction to Adopt Rules Governing Natural Gas Utilities*

As a preliminary matter, NW Natural challenges our authority to require natural gas utilities to transfer customer information to the Energy Trust. NW Natural acknowledges that, given the statutory provisions governing direct access in ORS 757.600 *et seq.*, this Commission has express authority to regulate the relationship between electric utilities and the Energy Trust. NW Natural contends, however, that such authority does not extend to natural gas utilities, which are not subject to the direct access regulations. Without such express statutory authority, NW Natural recommends we limit the application of these customer information rules to electric utilities.

NW Natural notes that we implicitly recognized this limited authority over natural gas utilities in the notice of proposed rulemaking. There, NW Natural explains, we cited ORS 756.040—the statute that provides the Commission's "General Powers"—as the sole authority for the provisions governing natural gas utilities. NW Natural contends this general provision is insufficient to confer jurisdiction here, because "nowhere in ORS 756.040 did the legislature even mention the kind of authority the Commission is invoking here—requiring the transfer of confidential customer information to third parties."¹

NW Natural admits that, under the terms of a Commission-approved stipulation, it transferred certain conservation programs to the Energy Trust and, under an Information Transfer Agreement, it currently provides certain customer information to the Energy Trust to help administer these programs. NW Natural adds that Cascade also works with the Energy Trust under a separate negotiated agreement. NW Natural argues, however, that these acts were voluntary on behalf of the natural gas utilities and do not provide us

¹ Comments of NW Natural at 5 (Jun 4, 2012).

the necessary authority to mandate such conduct. “By approving a stipulation between a natural gas utility and the Energy Trust, the Commission cannot grant itself broader authority to regulate than the authority provided by the Legislature.”²

Instead of adopting the rules applicable to natural gas utilities, NW Natural proposes that we direct the utilities to update their individual information transfer agreements with the Energy Trust to incorporate the sections of the proposed rules that are supported by the rulemaking participants. As an alternative, NW Natural contends we could provide overall policy direction by acknowledging advisory guidelines on information sharing, similar to the guidelines adopted for natural gas utility purchased gas adjustment clauses.

No other rulemaking participant addressed this issue in their comments.

Commission Resolution

This Commission is granted general rulemaking authority to “adopt and amend reasonable and proper rules and regulations relative to all statutes administered by the commission * * *.”³ A court will uphold a Commission rule if it falls within a legislative delegation of authority and is reasonably calculated to accomplish a legislative purpose.⁴

The question presented is whether the general powers delegated in ORS 756.040 support the adoption of rules governing natural gas utilities in this proceeding. NW Natural concedes that the general powers set forth in that statute are broad. ORS 756.040(1) empowers this Commission to, among other things, represent customers, protect them from unjust and unreasonable practices, and obtain for them adequate service at fair and reasonable rates. ORS 756.040(2) further authorizes this agency “to do all things necessary and convenient in the exercise of such power and jurisdiction.” Indeed, the courts have recognized that, ORS 756.040 and other enabling statutes have given the Commission extremely broad authority “for the exercise of [its] regulatory function.”⁵

Despite the breadth of these general powers, NW Natural contends that ORS 756.040 does not provide the Commission with the clearly defined authority to require natural gas utilities to share customer information to the Energy Trust. Although it and Cascade currently provide certain customer information to the Energy Trust under separate negotiated agreements, NW Natural notes that the proposed rule’s sharing mandate “goes well beyond the scope of NW Natural’s current Information Transfer Agreement with the Energy Trust and, depending on the final wording of the rule, it may reflect terms and provisions which NW Natural believes are inconsistent with its overall agreement with the Energy Trust or to which NW Natural otherwise objects.”⁶

² *Id.* at 6.

³ ORS 756.060.

⁴ *Pacific Northwest Bell Tel. Co v Davis*, 43 Or App 999 (1979).

⁵ *Pacific Northwest Bell Tel. Co. v. Sabin*, 21 Or App 200, 214, 534 P2d 984, *rev den* (1975).

⁶ Comments of NW Natural at 5 (Jun 4, 2012).

NW Natural's objection is based on its belief that customer information is the private property of the utility, and that only the utility can dictate how the information should be used.⁷ As demonstrated by its own sharing agreement with the Energy Trust, NW Natural does not object to the sharing of customer information, so long as it is able to establish the terms and conditions of that information transfer. NW Natural's concern lies primarily with the proposed rules' regulation of the use of customer information.

Although customer information is collected and managed by the utilities, it is not private property of the utility that is exempt from regulation and control of the Commission. Rather, utility customer information is a basic building block of the regulatory framework. The information provides the foundation for ratemaking and is central to regulatory policy analysis—including conservation and energy efficiency. Although the information may be held by the utilities, it is held in trust for the utility's customers. NW Natural's own privacy policy, contained on the company's website, expressly recognizes this fact: "NW Natural (the Company) maintains Customer Information on the customer's behalf, for the purpose of providing utility services."⁸

Moreover, this Commission has long regulated the collection and use of customer information. We restrict what type of information a utility may collect from a customer when applying for service.⁹ We have enacted rules to define customer proprietary information and govern the exchange of information between telecommunications carriers, as well as between electric utilities and electric service suppliers.¹⁰ We have asserted jurisdiction over products that utilities developed using customer information.¹¹

Given our traditional oversight of customer information, we find the proposed rules requiring the use of customer information to be within the delegation of legislative authority in ORS 756.040. We further find the rules to be reasonably calculated to accomplish two legislative purposes expressed in ORS 756.040. First, by increasing the delivery of demand-side resources, the proposed rules will help reduce long-term utility costs, thereby reducing energy expenses for utility customers. Thus, the rules help meet our statutory obligation to obtain for customers adequate service at fair and reasonable rates.

Second, the rules will standardize the type of customer information a natural gas utility may share with the Energy Trust and replace the current exchange of information that occurs on a utility-by-utility basis. Thus, the rules will help protect customers from

⁷ NW Natural makes explicit this belief in comments to proposed OAR 860-086-0040(4), where it seeks language to clarify that transferred customer information remains property of the utility. Comments of NW Natural at 10.

⁸ The privacy statement can be found at NW Natural's website at <https://www.nwnatural.com/GlobalBottomFooterNavigation/Privacy>.

⁹ See, e.g., OAR 860-021-0009(3) (specifying what type of information an energy or large telecommunications utility may require of an applicant for utility service).

¹⁰ See, e.g., OAR 860-032-0510; OAR 860-032-0520; and OAR 860-038-0540.

¹¹ See *Pacific Northwest Bell Tel. Co. v Katz*, 121 Or App 48 (1993) (affirming the Commission's assertion of jurisdiction over reverse telephone directories and customer lists).

potentially unjust and unreasonable utility practices. As recognized by NWIGU in general comments to the rulemaking: “By incorporating those protections into rule language, the Commission can ensure that all customers are protected equally, regardless of which utility they happen to be a customer of.”¹²

In summary, the legislature has granted the Commission broad powers “to do all things necessary and convenient” in the exercise of its regulatory authority and jurisdiction.¹³ We conclude that these rules are an appropriate exercise of that delegation and reasonably calculated to protect customers from unjust and unreasonable practices, and to obtain for them adequate service at fair and reasonable rates.

2. *Whole Building Energy Usage*

The City of Portland supports the proposed rules, but fears that they do not go far enough to provide the Energy Trust with a comprehensive understanding of whole building energy usage. The City of Portland explains that owners and managers of buildings with submetered tenants face difficulties in determining energy performance due to differing utility policies regarding account holder privacy. The City of Portland adds that the Energy Trust has been similarly limited in understanding comprehensive building energy consumption history on account of large gaps in the information provided.

While the proposed rules would partially close those gaps, the City of Portland claims that several exemptions contained in the rules would continue to prevent the Energy Trust and its customers from fully understanding building energy performance. For that reason, the City of Portland proposes that the rules be expanded to require utilities to transfer information to the Energy Trust for the following customers:

- Electricity utility customers or groups of customers over 1 average megawatt (1aMW);
- Natural gas utility transportation customers;
- Electric and natural gas industrial customers;

The City of Portland also recommends eliminating the ability of customers to opt out of data sharing between the Energy Trust and utilities.

ICNU objects to Portland’s proposals. According to ICNU, Portland provides minimal support for its assertion of a public benefit, merely stating that the Energy Trust has limited understanding of building energy consumption history because of exemptions for large customers attributable to the availability of usage data for large customers. ICNU adds that the Energy Trust has not requested this information or stated that it is necessary to fulfill its mission.

¹² Comments of NWIGU at 1 (Jun 4, 2012)

¹³ ORS 756.040(2).

NWIGU also opposes the City of Portland's proposal. NWIGU observes that gas transportation customers do not participate in the conservation programs of the local distribution companies. Providing those customers' information to the Energy Trust would in no way relate to the purpose of the rule, which is to assist the Energy Trust in administering a utility's conservation programs. With respect to industrial gas sales customers, NWIGU believes that proposed rules provide the Energy Trust with sufficient information for administering gas conservation programs.

Staff appreciates the intent of the City of Portland's suggestions, but does not support them given the process and interests that came together to develop the proposed rules.

Commission Resolution

We decline to expand the applicability of the proposed rules as proposed by the City of Portland. We agree with ICNU that the City of Portland has failed to quantify the extent of the alleged lack of information on whole building energy usage, establish that the lack of information is causing difficulties for the Energy Trust, and explain how the proposed rule changes would address those problems and improve the implementation of cost effective conservation programs.

B. General Provisions

1. Cascade Comments

Cascade seeks clarification of the waiver provision contained in proposed OAR 860-086-0000(2). Specifically, Cascade questions when the transfer of program participation information to and from the utility would be waived or overruled by the Commission.

Commission Resolution

The waiver provision for Division 086 is a standard provision that is found in all other divisions of our rules. We cannot anticipate or speculate under what circumstances a person may request a waiver, how others might respond, or how the Commission might rule. As stated in the rule, however, a waiver will only be granted for good cause shown. The waiver provision is adopted as proposed.

2. Staff Comments

Because Idaho Power is not subject to ORS 757.612, Idaho Power customers are not eligible to participate in Energy Trust programs. For this reason, the Staff proposes to change the definition of "Electric Company" to exclude Idaho Power by referencing ORS 757.612. Idaho Power supports Staff's proposed change.

Commission Resolution

Staff's proposed change is adopted.

3. *City of Portland*

The City of Portland requests a revision to the definition of “Proprietary customer information” contained in OAR 860-086-0010(6). The City of Portland requests the definition be revised to allow the Energy Trust to make public redacted or aggregated utility customer data on a district or neighborhood scale.

ICNU opposes the City of Portland’s proposal that data be shared with third parties. According to ICNU, there are limited circumstances where it is appropriate for third parties to access a utility’s confidential customer information. However, ICNU believes “there is no reason for the City of Portland or any similarly situated third parties to be allowed to have confidential customer electric usage information.”¹⁴ ICNU also argues that Portland’s request exceeds the Commission’s authority under Oregon’s direct access and public purpose laws.

Staff also does not support the City of Portland’s proposal. Staff explains it is not prepared to recommend such a change without input from affected parties

Commission Resolution

We decline to adopt the City of Portland’s proposal. In this proceeding we balance the customers’ interest in the privacy of their usage data with the Energy Trust’s need for such information to administer its programs. The Energy Trust has agreed to the restrictions in the proposed rules. The City of Portland has not shown that the changes it proposes would help the Energy Trust perform its duties.

C. *Electric Company Transfer of Data*

The rulemaking participants who filed comments generally support the proposed rules governing the electric company transfer of customer information to the Energy Trust. Several participants recommend non-substantive amendments to clarify or make consistent certain rule provisions. Others ask for Commission clarification as to the intent of rule provisions.

1. *Energy Trust Comments*

The Energy Trust request we clarify the meaning of two rule provisions and revise another. First, the Energy Trust notes that proposed OAR 860-086-0030(9) requires an electric utility to notify large customers of the opportunity to opt in to the information transfer. Because a number of large customers have already opted in or consented to data transfer, the Energy Trust proposes that, in adopting the rules, we clarify that prior opt ins and consents remain in effect under the new rules and electric utilities are not required to provide notice to customers who already have opted in or consented to data transfer. The

¹⁴ Comments of ICNU at 4.

Energy Trust makes a similar recommendation for rules governing natural gas utilities—specifically that we clarify that natural gas utilities should continue to provide the Administrator full information for industrial customers who have already consented, notwithstanding OAR 860-086-0040(1)(b).

Second, the Energy Trust states that it does not provide utility customer data to its trade allies—many of which have their own sales and outreach methods. The Energy Trust requests we clarify that OAR 860-086-0030(15)(c)—a rule requiring the Energy Trust to agree to honor do-not-contact-customer requests—does not apply to or restrict trade allies. The Energy Trust makes a similar proposal for the rules governing natural gas utilities.

Finally, proposed OAR 860-086-0030(6) requires the utilities and the Energy Trust to negotiate data-transfer agreements. To ensure a timely and orderly transition to the new rules, the Energy Trust suggests the Commission set a deadline for the completion of such agreements. Staff supports the Energy Trust’s suggestion and recommends we adopt a 90-day deadline for the execution of the Information Transfer Agreements between the Energy Trust and the utilities.

Commission Resolution

We agree with the comments filed by the Energy Trust and, as requested, we clarify that: (a) prior opt ins and consents to data transfer remain in effect under the new rules; (b) electric utilities are not required to provide notice to customers who already opted in or consented to data transfer; and (c) natural gas utilities should continue to provide the Administrator full information for industrial customers who have already consented, notwithstanding OAR 860-086-0040(1)(b).

Also as requested, we clarify that OAR 860-086-0030(15)(c) does not apply to or restrict the Energy Trust’s trade allies, with respect to both electric and natural gas utilities.

Finally, we adopt a 90 day deadline from the date of this order for the execution of the Information Transfer Agreements between the Energy Trust and the utilities.

2. PGE Comments

PGE proposes a number of changes to the wording of specific provisions. First, PGE notes that proposed OAR 860-086-0030(2) uses both “consumer” and “customer.” PGE recommends the rule be amended to one term is used consistently.

Second, PGE notes that two provisions applicable to electric utilities differ from corresponding provisions governing natural gas utilities. PGE recommends those provisions—OAR 860-086-0030(3), which specifies information that the electric utility may not provide to the Energy Trust, and OAR 860-086-0030(5), which describes how the electric company may use the information provided by the Energy Trust—be revised

to mirror the similar provisions for natural gas utilities. Staff also recommends that OAR 860-086-0030(5) be made consistent with the corresponding provision governing natural gas utilities.

Third, PGE recommends that OAR 860-086-0030(4), which identifies the minimum participating customer information to be shared by the Energy Trust, be revised to also require the Energy Trust to share with the utility information (1) whether the customer has agreed to the company's transfer of the customer's information to the Energy Trust as part of the customer participating in an Energy Trust incentive, and (2) the expiration date of that agreement or incentive participation.

Fourth, PGE addresses OAR 860-086-0030(11)(c), which requires the electric utility to provide periodic notice to its over 1aMW customers regarding opting in to sharing information with the Energy Trust. Subsection (c) allows a customer who has opted in to subsequently opt out, with written notice to the electric company. PGE proposes adding language to subsection (c) to make it clear that the subsequent opt out will be effective only if the customer is not participating in an Energy Trust incentive that requires the customer to allow sharing of its information to monitor performance and evaluate savings.

Fifth, PGE proposes two changes to OAR 860-086-0030(13), which addresses when an electric company receives an unsolicited request from a customer to not provide their proprietary customer information to the Administrator. PGE proposes that language be inserted in the rule to clarify that the provision applies to a customer request prior to the implementation of this rule. Next, PGE proposes to amend the last sentence to help define an unsolicited request as follows:

For purposes of this subsection, an unsolicited request includes, but is not limited to, a request to opt out contained in a customer's response to a notice from the electric company that explains the customer's rights under these rules.

Staff makes similar recommendations to clarify OAR 860-086-0030(13) to ensure that customers who previously requested that their information not be shared are protected under these rules.

Finally, PGE proposes that a section in the rules governing natural gas utilities relating to fuel switching be deleted because that issue will be addressed in docket UM 1565.

Commission Resolution

We agree with PGE's recommendations to make the rules governing electric and natural gas utilities consistent, and also adopt its proposals to clarify OAR 860-086-0030(4) and OAR 860-086-0030(11)(c). In addition, we make the language of OAR 860-086-0030(2) consistent by adopting the universal use of "customer."

We also agree with PGE's recommendation to clarify OAR 860-086-0030(13) governing customer opt-outs, but adopt Staff's proposed language. Finally, for reasons provided under our discussion of the rules governing natural gas utilities, we agree with PGE's recommendation to remove paragraph (A) from OAR 860-086-0040(4)(h), which expressly requires the Administrator to ensure that its use of utility data for direct marketing does not promote fuel switching.

D. Natural Gas Utility Transfer of Data

NW Natural and Cascade oppose certain aspects of data transfer rules governing natural gas utilities. These participants raised two substantive concerns related to direct marketing activities and data security. Both also filed comments asking for clarification of minor issues or proposing non-substantive edits to help improve readability. In addition, the Energy Trust seeks clarification of provisions governing industrial customers.

1. Direct Marketing

As noted earlier, an important feature of the proposed rules is to allow the Energy Trust to conduct direct marketing using the utilities' customer contact and usage data. Although that element of the proposed rules governing electric utilities was not controversial, the natural gas utilities raised numerous concerns.

At the outset, NW Natural argues that it is premature to allow the Energy Trust to engage in direct marketing, given the pendency of docket UM 1565, a pending investigation into fuel switching. NW Natural contends that the outcome of that proceeding should be taken into account in setting limitations on the Energy Trust's authority to conduct direct marketing.

Turning to the proposed rule provisions, both NW Natural and Cascade object to language allowing the Energy Trust to develop and send direct marketing materials to customers without utility involvement. Although the rules require the Energy Trust to coordinate these activities with the utilities, NW Natural contends that coordination may be limited, and the utilities may be removed from the conversations with customers regarding energy efficiency.

NW Natural supports its comments with research from JD Power and Associates. According to NW Natural, that research shows that customers expect their natural gas utility to provide bill savings and energy efficiency information. The research further shows that NW Natural customers have become steadily less familiar with available gas energy efficiency programs since the utility transferred its energy efficiency programs to the Energy Trust in 2003.

NW Natural proposes changes to the rules to address these concerns. As part of these changes, NW Natural recommends language to require utility approval of any direct marketing activities to its customers. Similarly, Cascade believes it should be able

review and approve any Energy Trust direct marketing materials that will be circulated to natural gas customers in its service territory.

NW Natural also has concerns that direct marketing may include behavioral messaging, which it claims is complex and may inadvertently result in messaging that promotes one fuel over the other. NW Natural recommends the rules be amended to prohibit the ability of the Energy Trust to carry out behavioral programs.

The Energy Trust, ICNU, and Staff oppose the comments filed by NW Natural and Cascade. The Energy Trust does not believe that adoption of the proposed rules would prejudice the issues in docket UM 1565.

The Energy Trust disputes the implication of NW Natural's cite to the JD Power and Associates study that NW Natural customers are saving less energy under the Energy Trust's gas efficiency programs. The Energy Trust states that its gas programs have reduced gas consumption at an accelerating rate, and that, since 2007, these programs have more than doubled gas savings.

Staff does not support allowing a utility to have the authority to veto or discontinue the Energy Trust's direct marketing activities. Staff explains that if a utility is not satisfied with the Energy Trust's coordination of its direct marketing activities, it can request that Staff investigate. If the Commission determines that a formal dispute resolution protocol is required, it may provide a vehicle for resolution.

Staff does not support NW Natural's proposed changes excluding behavioral programs. Staff does not share NW Natural's view that behavioral efficiency programs should be treated differently.

Finally, although ICNU typically does not comment on natural gas related issues, it also opposes NW Natural's proposal to allow itself to dictate the Energy Trust's direct marketing activities. According to ICNU, the Energy Trust's independence has helped make Oregon a nationally recognized leader in low cost and highly effective conservation measures.

Commission Resolution

We are not persuaded that the adoption of the proposed rules will prejudice the fuel switching investigation in docket UM 1565. NW Natural's concerns about fuel switching can be raised and decided in that docket. Moreover, because that docket will include consideration of what types of direct marketing activities performed by the Energy Trust promote fuel switching, we remove the reference to fuel switching in OAR 860-086-0040(4)(h)(A).

We also decline the proposal of NW Natural and Cascade to allow the natural gas utilities to manage the Energy Trust's direct marketing activities. The Energy Trust's use of customer information to conduct direct marketing is consistent with our earlier discussion

that customer information is the most basic building block of the regulatory framework. Customers should get the full value of their information. Direct marketing enhances the value of the services provided by the Energy Trust. As noted by Staff, if a utility believes it is not being adequately coordinated with or if it has specific problems with the Energy Trust's direct marketing activities, the utility may request the Commission investigate the issue.

We similarly reject NW Natural's proposal related to behavioral efficiency programs. We are not persuaded that those programs should be treated differently than other efficiency measures.

2. *Data Security*

NW Natural is concerned that the draft rules do not adequately address potential security issues. The company proposes changes to OAR 860-085-0040(4)(i) and 860-086-0040(10)(b) to address its concerns, including language to clarify that customer information is utility property and requiring the Energy Trust's security protections meet or exceed those used by the utility. NW Natural explains that its focus on data security has been heightened by a recent breach with an Energy Trust contractor and an alert issued by the American Gas Association regarding the increased threat to cyber-security.

The Energy Trust states that it strives to manage data security consistent with industry best practices, and does not object to being held to customary and standard terms and conditions. It opposes, however, the adoption of utility-specific standards in rule. The Energy Trust notes that data security is complex and dynamic, and it believes the proposed rules provide the needed flexibility to allow the Energy Trust to properly manage data security. The Energy Trust emphasizes that the proposed rules contemplate that the Energy Trust will work with the utilities to develop common acceptable terms and conditions, and that dispute resolution provisions are available to address disagreements.

Staff recognizes that data security is an important issue, but also does not support the additional language proposed by NW Natural. Staff is satisfied that the proposed rules adequately address data security issues for the Energy Trust and its contractors. Additional details, if necessary, can be included in specific information transfer agreements between the Energy Trust and the utilities.

Commission Resolution

While we appreciate NW Natural's concerns regarding data security, we conclude that the proposed rules provide the needed protection and flexibility to enable the Energy Trust to properly manage its data security. Moreover, we note that NWIGU states, in its general comments that the proposed rules "achieves NWIGU's desired protections for sensitive customer information."¹⁵ We decline to adopt NW Natural's proposed changes.

¹⁵ Comments of NWIGU at 1 (Jun 4, 2012).

3. *Availability of Information*

NW Natural proposes to add language to OAR 860-086-0040(1) that explicitly limits the data sharing requirement to data that already is available and clarifies that the utility does not have to do any analysis or work to derive the data to be transferred under the rule.

Staff opposes NW Natural's proposed change. Staff observes that the proposed rule already includes the phrase "if such information is available."

Commission Resolution

We find NW Natural's proposed language to be redundant and do not adopt it. The proposed rule plainly limits the utilities' obligation to provide only information that is "available." There is no need to add the word "already" or otherwise modify the proposed rule as proposed by NW Natural.

4. *Industrial Customers*

Under the proposed rules, natural gas utilities are required to only provide limited information on industrial customers. The Energy Trust notes, however, that the rule does not clearly define "industrial customers," and proposes amendments to OAR 860-086-0040(1)(b) to clarify that this provision applies to non-residential and non-commercial industrial customers that do not pay public purpose charges that fund Energy Trust programs. The Energy Trust also proposes language to exclude from this definition customers who have already agreed to allow the Energy Trust access to their energy usage information. Staff supports the Energy Trust's recommendations.

NWIGU does not oppose the Energy Trust's proposal to modify the definition of industrial customer. NWIGU requests, however, that we clarify that the intent of the change is not to require a natural gas utility to provide information for any industrial customers beyond the limited set of information currently prescribed in the proposed rule.

NWIGU also does not oppose the Energy Trust's proposal that the new rule not be applied to customers that already have agreed to allow the Energy Trust access to their energy usage information. NWIGU request, however, that the exception apply only if the Energy Trust and customer have entered a written agreement to allow access to the information.

Commission Resolution

We adopt the Energy Trust's proposals and NWIGU's statement of intent regarding the change to the definition of industrial customer. We are not persuaded by NWIGU's proposal to require a written information sharing agreement and do not adopt it.

5. *Miscellaneous Issues*

Cascade first seeks clarification of the provision in proposed OAR 860-086-0040(8) that reads: “an unsolicited request must include a customer’s response to a notice from the gas utility explaining the customer’s rights.” Cascade asks whether this provision means that if a customer contacts the utility to ask to opt out, the utility would have to send the customer paperwork and have them submit a request in writing.

We agree that the language is confusing. We change the sentence to read: “An unsolicited request includes a customer’s response to a notice from the gas utility explaining the customer’s rights.”

Second, Cascade seeks clarification regarding how the Energy Trust’s policies to protect customer information will be monitored and enforced. Cascade asks what provisions will be put in place to ensure that any contractors or agents working on behalf of the Energy Trust adhere to regulations for using the highly sensitive data.

Cascade’s concerns should be addressed in the Information Transfer Agreement with the Energy Trust.

Third, Cascade notes that OAR 860-086-0040(4)(j) restricts a utility’s use of information provided to it by the Energy Trust. Cascade asks that we recognize that the utility itself already has the customer contact and usage information, but not data regarding which customers have participated in the Energy Trust conservation programs and what measures were installed. Cascade states that it would be uncomfortable if it were obligated to prove it is using non Energy Trust provided data for marketing and other legitimate purposes.

Cascade’s concerns are likely to be resolved by actual practice. There will be a clear distinction between information that originates from the utility and new information provided to the utility by the Energy Trust. We acknowledge a utility already possesses certain customer information.

Fourth, Cascade notes that OAR 860-086-0040(7) prescribes notice requirements regarding a utility’s notice to customers before the Energy Trust receives their proprietary customer information. Cascade would like more information regarding what type of notice will be required and seeks assurance that data provided to the Energy Trust prior to the implementation of this rulemaking will not be penalized retroactively.

The terms of the notice requirements should be specified in the Information Transfer Agreement. There will be no retroactive penalties relating to the good faith transfer of information by a utility to the Energy Trust prior to the implementation of this rulemaking.

6. NW Natural's Proposed Edits

In addition to its substantive concerns, NW Natural also proposed minor edits intended to improve the readability of the rules.

Having considered the changes proposed by NW Natural, we adopt its proposed revision to OAR 860-086-0010(6), the definition of "proprietary customer information." We decline to adopt other changes proposed by NW Natural.

IV. CONCLUSION

The proposed rules for data transfer by the utilities to the Energy Trust are adopted, as modified by this order.

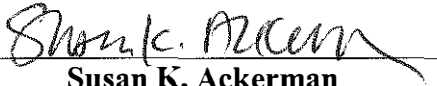
V. ORDER

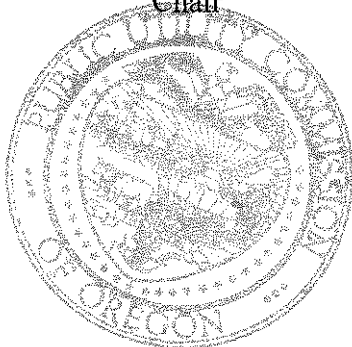
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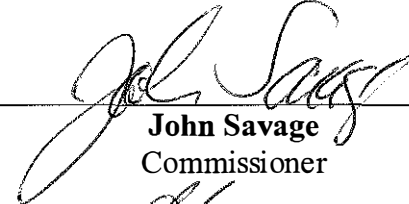
1. Oregon Administrative Rules 860-086-0000, 860-086-0010, 860-086-0020, 860-086-0030, 860-086-0040, and the modifications to 860-038-0580, as set forth in Appendix A, are adopted.
2. Oregon Administrative Rule 860-038-0540 is repealed.
3. The rule changes become effective upon filing with the Secretary of State.

4. Information Transfer Agreements between the Administrator and the energy utilities must be executed within 90 days of the date of this order.

Made, entered, and effective AUG 23 2012.


Susan K. Ackerman
Chair




John Savage
Commissioner


Stephen M. Bloom
Commissioner

A person may petition the Commission for the amendment or repeal of a rule under ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule under ORS 183.400.

860-038-0540

Consumer Information

~~(1) Subject to Commission approval, an electric company shall determine the proprietary consumer information that will be made available to its competitive operations, ESSs, affiliates and aggregators. An electric company shall file and maintain a tariff with the Commission that specifies the types of information, along with the prices, terms, conditions, and consent procedures associated with the transfer of such information to the entities described in this section. The provisions of section (1) do not apply to information transferred pursuant to section (2) of this rule.~~

~~(2) An electric company shall transfer to the entity that administers the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B), hereinafter known as the Administrator, proprietary consumer information for a consumer whose demand is less than one megawatt (1MW) unless the consumer has opted out of the information transfer pursuant to section (4) of this rule. A consumer shall be considered a less than 1MW consumer pursuant to criteria established by an electric company through its billing process. The transfer of such information shall be made pursuant to an Information Transfer Agreement, which is executed and maintained by an electric company and the Administrator. An Information Transfer Agreement shall specify:~~

- ~~(a) The necessary database format and information that will be transferred;~~
 - ~~(b) The billing period, payment arrangements, and estimations of incremental costs incurred by an electric company for the transfer of the information;~~
 - ~~(c) Timelines for an electric company to notify consumers and transfer information to the Administrator;~~
 - ~~(d) Timelines for an electric company to provide updates to the Administrator for all of the usage data and revisions to the underlying database information;~~
 - ~~(e) A general non-disclosure statement as well as a specific non-disclosure agreement that each Administrator employee and contractor employee shall sign prior to having access to consumer information, including proprietary consumer information;~~
 - ~~(f) That the proprietary consumer information will be used by the Administrator to implement, administer, and evaluate energy efficiency and renewable energy programs and will not be used for telemarketing or direct mailings to consumers;~~
 - ~~(g) That the release of proprietary consumer information by the Administrator for any other purpose or to any other party shall not be made without consent of the consumer; and~~
 - ~~(h) Provisions for modification of the Information Transfer Agreement. If the Administrator and an electric company cannot agree on the terms and conditions of an Information Transfer Agreement, the Commission shall set the terms and conditions based upon input from the Administrator and electric company.~~
- ~~(3) If the Administrator notifies an electric company that the proprietary information supplied by an electric company is insufficient, incomplete, or not usable, the Administrator and electric company will attempt to resolve the issue and if necessary, modify the Information Transfer Agreement. If the Administrator and electric company cannot resolve the issue, the electric company and the~~

~~Administrator shall promptly seek Commission resolution of the dispute. An electric company shall, at a minimum, transfer the following proprietary consumer information to the Administrator: consumer name, service address, 18 months of the most recent historical usage data provided on a per month basis, point of delivery identification number, and rate schedule for each consumer. An electric company shall also provide information about any energy efficiency program participation and type of space heat used by consumer to the extent that such information is available in the electric company's records. An electric company shall not provide social security numbers, billing and payment history, credit information, tax identification numbers, driver license numbers, life support information, or any medical information. An electric company shall also provide the Administrator with updates for all of the usage data and revisions to the underlying database information on a periodic basis subject to subsection (2)(d) of this rule.~~

~~(4) An electric company shall provide consumers whose demand is less than 1 MW an opportunity to opt out of the information transfer. An electric company shall notify the consumers of the opt out option by direct mail, company newsletter, or other acceptable communication as set forth in the Information Transfer Agreement. The notification shall at a minimum:~~

- ~~(a) Identify and explain the role of the Administrator;~~
- ~~(b) Identify the type of proprietary consumer information to be transferred by an electric company; and~~
- ~~(c) Describe the nature and use of the proprietary consumer information by the Administrator.~~

~~(5) An electric company shall notify in writing consumers whose demand is 1 MW or greater (over 1 MW consumer) to provide an opportunity to opt in to the information transfer. Consumers shall be considered an over 1 MW consumer pursuant to criteria established by an electric company through its billing process. The notice provided by an electric shall comply with the requirement of section (4) of this rule. For consumers without a usage history, demand may be estimated by an electric company for the purpose of this provision and those consumers projected to meet the 1 MW or greater demand shall be included. Consumers having multiple accounts may have their accounts treated as a group for the purpose of this rule and may include or exclude all accounts through one notification process. If the over 1 MW consumer does not opt in to the information transfer, all accounts shall be excluded from the information sharing process. The transfer of proprietary consumer information shall be in accordance with section (2) of this rule and the Information Transfer Agreement. An electric company shall also provide periodic opt in notification for the over 1 MW consumers either as a part of a standard consumer contact discussion or in writing pursuant to the timelines agreed upon in the Information Transfer Agreement and set forth in subsection (2)(e) of this rule.~~

~~(6) When an electric company has provided proprietary consumer information to the Administrator in accordance with this rule, an electric company shall not be charged with at fault complaints filed with Commission's Consumer Services Division with respect to the provision of proprietary consumer information if the~~

~~Commission finds that the electric company did not violate its tariff, Oregon Administrative Rules, Oregon Revised Statutes, or a Commission Order.~~

~~Stat. Auth.: ORS 183, ORS 756 & ORS 757~~

~~Stats. Implemented: ORS 756.040 & ORS 757.600 through ORS 757.667~~

~~Hist.: PUC 2-2001, f. & cert. ef. 1-5-01 (Order No. 01-073); PUC 4-2004, f. & ef. 1-15-04 (Order No. 04-010)~~

860-038-0580

Prevention of Cross-subsidization Between Competitive Operations and Regulated Operations

(1) Other than information that is routinely made public by an electric company, or for which a tariff has been approved subject to OAR 860-~~038-0540~~**(1)086-0020**, an electric company must not provide electric company operational or marketing information to its competitive operations unless it makes such information available to ESSs and other entities that provide electricity services or directly related products on identical terms and conditions.

(2) The electric company must identify and separately account for revenues and costs of its competitive operations.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 2-2001, f. & cert. ef. 1-5-01; PUC 25-2003, f. & cert. ef. 12-11-03; PUC 6-2006, f. & cert. ef. 5-11-06

Division 086
Customer Information

860-086-0000

Scope and Applicability of Customer Information Rules

(1) OAR 860-086-0020 through 860-086-0040 govern the transfer and use of utility customer information between investor-owned electric or natural gas companies that pay public purposes charges and a nongovernmental entity, referred to in these rules as the "Administrator," designated by the Commission under ORS 757.612(3)(d).

(2) Upon request or its own motion, the Commission may waive any of the Division 086 rules for good cause shown. A request for waiver must be made in writing, unless otherwise allowed by the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: NEW

860-086-0010Definitions

For the purposes of OAR 860-086-0000 through 860-086-0040,

(1) "Administrator" means the nongovernmental entity the Commission has designated under ORS 757.612(3)(d).

(2) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a public utility.

(3) "Aggregator" means an entity that combines retail electricity customers into a buying group for the purchase of electricity and related services.

(4) "Electric company" means an entity that is subject to ORS 757.612 and is engaged in the business of distributing electricity to retail electricity consumers in this state. Electric company does not include a consumer-owned utility.

(5) "Electricity service supplier" or "ESS" means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer. "Electricity service supplier" does not include an electric utility selling electricity to retail electricity consumers in its own service territory. An ESS can also be an aggregator.

(6) "Proprietary customer information" means any information acquired, compiled, or created by an electric or natural gas utility regarding a customer in the normal course of providing electric or natural gas services that makes possible the identification of any individual customer by matching the information with the customer's name, address, account number, type or classification of service, current or historical electricity or natural gas usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, installed appliances or equipment if any, or any other information that the customer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the customer to whom the information relates does not constitute proprietary customer information.

860-086-0020Electric Company Customer Information

An electric company must file and maintain a tariff with the Commission that specifies the types of proprietary customer information, along with the prices, terms, conditions, and consent procedures associated with the transfer of such information to its competitive operations, electricity service suppliers, affiliates and aggregators. The provisions of this rule do not apply to information transferred under OAR 860-086-0030 or OAR 860-086-0040.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: NEW

860-086-0030

Electric Company Transfer of Data

(1) This rule applies only to customers with usage less than one average megawatt (aMW) and those customers who elect to opt-in as described in Section (11).

(2) An electric company must transfer to the Administrator the following proprietary customer information for electric company customers, if available.

(a) Customer name;

(b) Service address (including apartment/unit/suite number);

(c) Mailing address;

(d) In-service or activation date;

(e) Building type (for example, multifamily);

(f) Business type (identified using a Standard Industrial Classification (SIC code) or U.S. Census Bureau NAICS code);

(g) Initially, 18 months of the most recent historical usage data on a per-billing month basis (total billed kilowatt hours and kW);

(h) Meter number and other point-of-delivery identification numbers;

(i) Rate schedule identifier for each customer account;

(j) Whether the customer is applying self-direct credits against its energy efficiency and renewable public purpose charge during each billing period;

(k) Information about any energy efficiency program participation and type of space heat used by the customer;

(l) Updates for all of the usage data and revisions to the underlying database information on a periodic basis under subsection (6)(d) of this rule.

(m) For unmetered accounts (for example, street lights, cellular towers, telephone booths, and electric utility service buildings), electric companies must transfer contracted kilowatt-hour consumption rather than actual billed consumption.

(3) An electric company may not transfer to the Administrator:

(a) Social security numbers,

(b) Billing and payment history,

(c) Credit information,

(d) Tax identification numbers,

(e) Driver license numbers,

(f) Life support information,

(g) Any medical information,

(h) Proprietary customer information protected by the password provision required under OAR 860-021-0009(6), or

(i) Proprietary customer information for customers who have requested that their information not be shared with third parties.

(4) The Administrator must transfer to the electric company information, if available, regarding electric company customer participation in electric efficiency programs where electric company funding has been applied. At a minimum, the Administrator must provide:

(a) Service address (including apartment, unit, or suite number);

(b) Meter number and other point-of-delivery identification numbers;

(c) Information about electric efficiency program participation, such as measures installed since the inception of the Administrator's delivery of the efficiency programs; and

(d) Whether a customer has agreed to the electric company's transfer of its proprietary customer information to the Administrator as a result of its participation in an electric efficiency program, and the term during which the Administrator has the right to see such information.

(5) The information provided by the Administrator to the electric company may be used by the electric company solely for utility business, may not be shared with third parties (except for those providing utility services for the electric company under contracts requiring that the information be treated confidentially and used only for providing such services for the electric company), and if used for direct marketing, such use will be made only after notice to and coordination with the Administrator.

(6) The manner by which the required information is transferred will be governed by an Information Transfer Agreement, which is executed and maintained by an electric company and the Administrator. An Information Transfer Agreement must acknowledge the Administrator's obligations to protect proprietary customer information per this rule and the Administrator's policy or policies adopted under section 15 of this rule and must specify:

(a) The database format to be used for the transfer of information;

(b) The billing period, payment arrangements, and estimates of incremental costs incurred by an electric company or, for information in section 4, by the Administrator, for the transfer of the information;

(c) Timelines for information transfer;

(d) Timelines for updates for all of the data and revisions to the underlying database information;

(e) That proprietary customer information may be used by the Administrator to implement, administer, and evaluate energy efficiency and renewable energy programs and may not be used for telemarketing; and if the Administrator intends to use the information for other direct marketing activities, the Administrator must notify the electric company whose customers are likely to be affected and coordinate such activities with the electric company;

(f) That the release of proprietary customer information by the Administrator for any other purpose or to any party (other than the electric company) who has not signed an agreement to treat such information confidentially under subsection 15(b) of this rule may not be made without consent of the customer; and

(g) Provisions for modification of the Information Transfer Agreement.

(7) If the Administrator and an electric company cannot agree on the terms and conditions of an Information Transfer Agreement, the Commission may set the terms and conditions based upon input from the Administrator and electric company.

(8) If the Administrator or an electric company notifies the other that the information supplied by the other is insufficient, incomplete, or not usable, the Administrator and electric company will attempt to resolve the issue and if necessary, modify the Information Transfer Agreement. If the Administrator and

electric company cannot resolve the issue, the electric company or the Administrator may promptly seek Commission resolution of the dispute.

(9) An electric company must notify in writing customers whose usage is 1 aMW or greater (over 1 aMW customer) of the opportunity to opt in to the information transfer.

(a) Customers are considered an over 1 aMW customer under criteria established by an electric company through its billing process.

(b) For customers without a usage history, usage may be estimated by an electric company for the purpose of this rule and those customers projected to meet the 1aMW or greater threshold must be included.

(c) An electric company may choose to treat customers having multiple accounts over 1 aMW as a group for the purpose of this rule and may include or exclude those accounts through one notification process.

(10) The notice required in section (9) of this rule must, at a minimum:

(a) Identify and explain the role of the Administrator,

(b) Identify the type of proprietary customer information to be transferred by an electric company; and

(c) Describe the nature and use of the proprietary customer information by the Administrator.

(11) An electric company must also provide periodic opt-in notification for the over 1 aMW customers either as a part of a standard customer contact discussion or in writing under the timelines in the Information Transfer Agreement and set forth in section (6) of this rule.

(a) If the over 1 aMW customer does not opt in to the information transfer, all accounts over 1 aMW must be excluded from the information sharing process, and the electric company must transfer to the Administrator only the name, service address, and whether customer is applying self-direct credits against its energy efficiency and renewable public purpose charge during each billing period, if known.

(b) The over 1 aMW customer may at any time authorize transfer by the electric company to the Administrator of other proprietary customer information described in section (2), in which case the electric company must promptly transfer to the Administrator the specified information and provide updates.

(c) If a customer opts in, it may subsequently opt out by providing written notice to the electric company, except that such notice is not effective as to information the customer previously agreed may be transferred by the electric company to the Administrator under the terms of an agreement under which the Administrator has provided an incentive to the customer.

(d) The transfer of proprietary customer information must be in accordance with the Information Transfer Agreement.

(12) Each electric company must send a notice to its customers prior to the Administrator's receipt of their proprietary customer information:

(a) Informing them of the requirements of these new rules;

(b) Explaining that the purpose of transferring customer data to the Administrator is to help ensure that the Administrator is better prepared to assist a

customer who is interested in participating in customer-funded efficiency and renewable energy programs;

(c) Asking customers if they wish to be on a “do not contact” list, in which case they will receive no unsolicited contact from the Administrator, or its contractors; and

(d) For the over 1 aMW customer, explaining that absent the customer’s consent, only the limited customer information listed in subsection (11)(a) of this rule will be transferred to the Administrator.

(13) If an electric company receives an unsolicited request from a customer to not provide their proprietary customer information to the Administrator, or if the customer has previously opted out of transfer of their proprietary information prior to the implementation of this rule, and the customer has not agreed otherwise with the Administrator, the electric company must honor that request unless the electric company subsequently receives written customer consent to transfer the proprietary customer information to the Administrator. A customer’s request to opt out in response to a notice from the electric company explaining the customer’s rights is also considered an unsolicited request for the purpose of this section.

(14) When an electric company has provided proprietary customer information to the Administrator under this rule, an electric company may not be charged with at-fault complaints filed with the Commission's Consumer Services Division with respect to the provision of proprietary customer information if the Commission finds that the electric company did not violate its tariff, Oregon Administrative Rules, Oregon Revised Statutes, or a Commission Order.

(15) Before an electric company provides the Administrator with proprietary customer information under this rule, the Administrator must:

(a) Develop and adopt in an open process a policy or policies ensuring that the confidentiality of the proprietary customer information it receives from an electric company is protected in a manner that meets the requirements of all federal, state, and local laws regarding protection for this type of information;

(b) Agree to require its employees and contractors to commit to specific non-disclosure requirements in order to gain access to proprietary customer information which, at a minimum, require that the proprietary customer information:

(A) Be used only for the purposes of a particular project or contract;

(B) Be shared with a subcontractor only under similar conditions and requirements and only upon approval of the Administrator; and

(C) Be returned to the Administrator or destroyed at the completion of the project or termination of the contract;

(c) Agree to honor any do-not-contact-customer requests; and

(d) Establish a process by which customers may require the Administrator not to use the proprietary customer information to make unsolicited contact with the customer, including, but not limited to, responding to the electric company notice in section (12) of this rule.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: NEW

OAD 860-086-0040**Gas Utility Customer Information and Transfer of Data**

(1) A gas utility that offers energy conservation programs through the Administrator must transfer to the Administrator proprietary customer information for gas utility company customers as follows:

(a) If such information is available for its residential and commercial customers in the gas utility's records:

(A) Customer name;

(B) Service address (including apartment, unit, or suite number);

(C) Mailing address;

(D) Building type (for example, multifamily);

(E) Business type (identified using a Standard Industrial Classification (SIC) code or a U.S. Census Bureau NAICS code);

(F) Initially, 18 months of the most recent historical usage data;

(G) Meter and other point-of-delivery identification number;

(H) Rate schedules for each customer;

(I) Information about energy efficiency program participation,

(J) Type of space heat used by the customer; and

(K) Updates for all of the usage data and revisions to the underlying database information on a periodic basis under subsection (4)(d) of this rule; and

(b) If such information is available for its industrial sales customers or other customers not included in section (1)(a) and not subject under the applicable utility tariff to pay a public purpose charge:

(A) Customer name;

(B) Service address;

(C) Rate schedules; and

(D) Account numbers.

(2) A gas utility may not transfer to the Administrator the following customer information:

(a) Social security numbers;

(b) Billing and payment history;

(c) Credit information;

(d) Tax identification numbers;

(e) Driver license numbers;

(f) Life support information;

(g) Medical information;

(h) Proprietary customer information protected by the password provision required per OAR 860-021-0009(6);

(i) Proprietary customer information for customers who have requested that their information not be shared with third parties; or

(j) Proprietary customer information including usage data for the gas utility's transportation customers.

(3) The Administrator must transfer to the gas utility information available in the Administrator's records regarding gas utility customer participation in gas

conservation programs where gas utility funding has been applied. At a minimum, the Administrator must provide:

- (a) Customer name,
- (b) Service address (including apartment, unit, or suite number),
- (c) Meter number; and
- (d) Information about gas efficiency program participation, such as gas measures installed since the inception of the Administrator's delivery of the gas efficiency programs.
- (4) The manner by which such information is transferred and used will be governed by an Information Transfer Agreement, which is executed and maintained by a gas utility and the Administrator. An Information Transfer Agreement must:
 - (a) Specify the necessary database format for information that will be transferred between the gas utility and the Administrator;
 - (b) Specify the billing period, payment arrangements, and estimates of incremental costs incurred by either the gas utility or the Administrator for the transfer of the information;
 - (c) Identify timelines for the transfer of information;
 - (d) Identify timelines for providing updates for data and revisions to the underlying database information;
 - (e) Acknowledge the Administrator's obligations to protect proprietary customer information per this rule and the Administrator's policy or policies adopted under section 10 of this rule;
 - (f) Acknowledge that the proprietary customer information will be used by the Administrator to implement, administer and evaluate gas efficiency programs, and the Administrator must regularly notify the gas utility of these activities;
 - (g) Acknowledge that the proprietary customer information provided to the Administrator will not be used for telemarketing to gas utility customers;
 - (h) Acknowledge that the Administrator may use proprietary customer information for the purpose of direct marketing of the Administrator's gas efficiency programs, provided:
 - (A) The Administrator has given prior notification to the gas utility whose customers are likely to be affected;
 - (B) The Administrator has coordinated the direct marketing activities with the utility; and
 - (C) Disputes regarding the direct marketing activities may be addressed under section (6) of this rule.
 - (i) Acknowledge that the release of proprietary customer information by the Administrator for any other purpose or to any other third party who has not signed an agreement to treat such information confidentially under subsection 10(b) of this rule may not be made without consent of the customer; and
 - (j) Acknowledge that the information provided by the Administrator to the gas utility may be used by the gas utility solely for utility business, may not be shared with other parties, and if used for direct marketing, such use will be made only after notice to and in coordination with the Administrator.
 - (k) Provide for modification of the Information Transfer Agreement.

(5) If the Administrator and a gas utility company cannot agree on the terms and conditions of an Information Transfer Agreement, the Commission may set the terms and conditions based upon input from the Administrator and the gas utility company.

(6) If the Administrator or the gas utility notifies the other that the proprietary customer information supplied by the other is insufficient, incomplete, not usable, or is not being used in compliance with this rule, the Administrator and gas utility company will attempt to resolve the issue and, if necessary, modify the Information Transfer Agreement. If the Administrator and gas utility company cannot resolve the issue, either party may seek Commission resolution of the dispute.

(7) Each gas utility must send a notice to its customers prior to the Administrator's receipt of their proprietary customer information:

(a) Informing them of the requirements of this rule;

(b) Explaining that the purpose of transferring customer data to the Administrator is to ensure that the Administrator is better prepared to assist a customer who is interested in participating in customer-funded energy efficiency and renewable energy programs; and

(c) Asking customers if they wish to be on a "do not contact" list, in which case they will receive no unsolicited contact from the Administrator, or its contractors.

(8) If a gas utility company receives an unsolicited request from a customer to not provide their proprietary customer information to the Administrator, and the customer has not agreed otherwise with the Administrator, the gas utility must honor that request unless the gas utility subsequently receives written consent from its customer to transfer their proprietary customer information to the Administrator. An unsolicited request includes a customer's response to a notice from the gas utility explaining the customer's rights.

(9) When a gas utility has provided proprietary customer information to the Administrator under this rule, the gas utility may not be charged with at-fault complaints filed with Commission's Consumer Services Division for the Administrator's or the Administrator's sub-contractors' access to, use or mishandling of proprietary customer information.

(10) The Administrator must:

(a) Develop and adopt in an open process a policy or policies ensuring that the confidentiality of the proprietary customer information it receives from gas utilities is protected in a manner that meets the requirements of all federal, state and local laws regarding protection for this type of information;

(b) Agree to require its employees and contractors to commit to specific non-disclosure requirements in order to gain access to proprietary customer information which, at a minimum, require that the proprietary customer information:

(A) Be used only for the purposes of particular programs, projects or contracts;

(B) Be shared with a subcontractor only under similar conditions and requirements and only upon approval of the Administrator; and

(C) Be returned to the Administrator or destroyed at the completion of the project or termination of the contract; and

(c) Establish a process by which customers may require the Administrator not to use the proprietary customer information to make unsolicited contact with the customer.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040

Hist.: NEW