

<b>Fiscal Costs</b>	FY 2020	FY 2021	FY 2022
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Person	\$0	\$0	\$0
<b>Total Fiscal Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Fiscal Benefits</b>			
State Government	\$0	\$0	\$0
Local Government	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
<b>Total Fiscal Benefits:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Net Fiscal Benefits:	\$0	\$0	\$0

**\*This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts for State Government, Local Government, Small Businesses and Other Persons are described above. Inestimable impacts for Non-Small Businesses are described below.**

R746-460 is a new rule addressing the use of utility customer lists and customer-related data, utility-related solicitation communications, the use of a utility logo for unsolicited marketing to utility customers, and other associated issues. This rule defines terms, identifies provisions under which customer information may be shared and used and how utility customers may opt out of information sharing, addresses the treatment of shared data as confidential, and identifies penalty provisions. The rule resulted as a consensus draft from extensive work of all interested stakeholders. Compliance will require refraining from prohibited practices, which generally should not create any costs. A utility that chooses to share customer information may incur costs to obtain customer consent, but those costs are not measurable and will depend on the choices and desired uses of customer information by the utility. PSC Chair Thad LeVar has reviewed and approved this fiscal analysis.

## **R746. Public Service Commission, Administration.**

### **R746-460. Rules Governing Customer Information and Marketing for Large-Scale Electric and Gas Utilities.**

#### **R746-460-1. General Provisions**

(1) Purpose - The purpose of these rules is to establish and enforce certain uniform practices governing:

(a) the sharing of Utility Customer Information or Customer Usage Data by Large-Scale Utilities with utility affiliates or third parties; and

(b) marketing to Large-Scale Utility customers whose information has been shared, when marketing materials use a name or logo that is substantially similar to that of a Large-Scale Utility.

(2) Scope - These rules shall apply to Large-Scale Utilities that are subject to the regulatory authority of the Commission.

#### **R746-460-2. Definitions**

(1) "Express Consent" means consent that is provided orally or in writing (including via electronic communication), by the consenting customer after having received notification that the utility proposes to share Utility Customer Information with an affiliate, licensee, or third party:

(a) explaining that the customer need not consent to the release of information in order to obtain utility service;

(b) explaining that the customer may subsequently opt out of such sharing of information in the future by contacting the utility; and

(c) providing clear instructions explaining how a customer may subsequently opt out of such sharing of information in the future.

(2) "Large-Scale Electric Utility" has the meaning set forth in Section 54-2-1.

(3) "Large-Scale Gas Utility" means a public utility that provides retail natural gas service to more than 200,000 retail customers in the state.

(4) "Large-Scale Utility" means a Large-Scale Electric Utility or a Large-Scale Gas Utility.

(5) "Utility Customer Information" means a Large-Scale Utility customer's name, address, telephone number, email address, or utility account number, or any combination thereof.

(6) "Customer Usage Data" means an individual utility customer's billing, consumption data, or participation in any specific utility program.

(7) "Small Business and Residential Customers" means

(a) for a Large-Scale Electric Utility, all customers taking service under a residential rate class and any nonresidential customers whose loads have not registered 1,000 kW or greater more than once in the preceding 18-month period; and

(b) for a Large-Scale Gas Utility, all customers within the GS rate classification, or, if there is no such rate classification, all customers whose usage does not exceed 1,250 dekatherms in any one day during the winter season.

#### **R746-460-3. Utility Customer Information and Customer Usage Data**

(1) Permitted Sharing - Utility Purposes. Large-Scale Utilities may share Utility Customer Information or Customer Usage Data with affiliates, contractors and subcontractors, or

other third parties without the customer's consent or permission, in any of the following circumstances:

(a) for use in activities necessary for providing tariff-based services or programs;

(b) as necessary for the operation and maintenance of the Large-Scale Utility's facilities and utility system including but not limited to physical facilities used for energy distribution;

(c) in relation to the utility's conduct of its core utility function or to maintain safe and reliable utility service to customers;

(d) to comply with a warrant, subpoena, court order, or order of an administrative agency having jurisdiction;

(e) for use in a formal proceeding before the Commission including but not limited to general rate cases, customer complaints, or tariff change proceedings;

(f) to assist emergency responders and law enforcement in situations of threat to life or property; or

(g) with the prior approval of the Commission.

(2) Sharing with Third Parties.

(a) Except as provided in Subsection R746-460-3(1), a Large-Scale Utility may share its Utility Customer Information or Customer Usage Data only if the customer provides Express Consent for such sharing to the Large-Scale Utility, its affiliates, or a third party who is seeking such information.

(b) The Large-Scale Utility must retain the following information for each instance of a customer's Express Consent for disclosure of its Utility Customer Information or Customer Usage Data:

(i) the confirmation of consent for the disclosure of private customer information;

(ii) a list of the date of the consent and the affiliates, subsidiaries, or third parties to which the customer has authorized disclosure of its Utility Customer Information or Customer Usage Data; and

(iii) confirmation that the customer's name and service address exactly match the utility's record for such account.

(3) Confidentiality.

(a) A Large-Scale Utility that shares Utility Customer Information or Customer Usage Data pursuant to Subsections R746-460-3(1)(a) through (c) or Subsection R746-460-3(2), may do so only subject to contractual provisions requiring the receiving party (and any of the contractors and subcontractors that the third party has retained to facilitate the marketing efforts) to maintain the Utility Customer Information or Customer Usage Data as confidential and prohibiting further sharing. A Large-Scale Utility that shares Utility Customer Information or Customer

Usage Data as part of a Commission proceeding, must identify the information as Confidential Information pursuant to Sections R746-1-601 through R746-1-603.

(b) Notwithstanding the requirements under this rule, a receiving party may share Utility Customer Information, subject to any available confidential protections, shared under Section R746-460-3 in order to:

(i) comply with a warrant, subpoena, court order, or order of an administrative agency having jurisdiction; or

(ii) assist emergency responders and law enforcement in situations of threat to life or property.

(4) Customer Usage Data. Except as otherwise expressly stated herein, Large-Scale Utilities may disclose Customer Usage Data without Express Consent or need to protect the information as confidential when disclosure of multiple customers' data is provided in aggregate form such that the aggregated information does not allow any specific customer to be identified. Nothing in this rule shall prevent Large-Scale Utilities from using and disclosing usage information that does not constitute Customer Usage Data.

#### **R746-460-4. Marketing to Utility Customers**

(1) If an affiliate or licensee of a Large-Scale Utility, or a licensee of a Large-Scale Utility's affiliate, engages in unsolicited marketing of products or services directed to a Large-Scale Utility's customers in Utah using a logo or name brand that is substantially similar to that of the Large-Scale Utility, any written marketing materials shall be drafted to avoid customer confusion about the licensee or affiliate relationship, and, with respect to Small Business and Residential Customers, shall also include a clear and prominent statement that:

(a) the product or service is not being offered by the Large-Scale Utility;

(b) the entity offering the product or service is separate from the Large-Scale Utility; and

(c) the decision to purchase or not purchase the product or service will not impact Large-Scale Utility service.

(2) If a Large-Scale Utility's licensee, affiliate, or affiliate's licensee fails to comply with Subsections R746-460-4(1)(a) through (c), the Large-Scale Utility will be subject to a penalty pursuant to Section 54-7-25.

(3) If written marketing materials contain the information set forth in Subsections R746-460-4(1)(a) through (c), then the Large-Scale Utility is deemed to have complied with these rules and is not subject to any penalty under this section.

(4) A Large-Scale Utility, its affiliate(s), or its affiliate(s)' licensees may utilize a logo or name brand that is substantially similar to that of the Large-Scale Utility without disclosures set forth in Subsection R746-460-4(1) for:

(a) tariff-based services or programs and programs related to the Large-Scale Utility's core utility business, including but not limited to billing services tariffs;

(b) charitable contributions or event sponsorships; and

(c) marketing relating to the Large-Scale Utility's own programs.

**KEY: public utilities, electric and gas utility customer information, utility regulation, marketing to utility customers**

**Date of Enactment or Last Substantive Amendment:**

**Notice of Continuation:**

**Authorizing, and Implemented or Interpreted Law: Section 54-4-1; Section 54-3-1; and Section 54-3-7.**