

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Review of the)	
Consumer Privacy Protection, Customer)	Case No. 11-277-GE-UNC
Data Access, and Cyber Security Issues)	
Associated with Distribution Utility)	
Advanced Metering and Smart Grid)	
Programs.)	

**REPLY COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

By Entry issued February 2, 2011, the Commission requested comments from interested parties regarding consumer privacy protection and data access issues concerning the implementation of advanced metering and smart grid technology. Initial comments were filed on March 4, 2011 by seventeen parties, including the Office of the Ohio Consumers' Counsel ("OCC").

By Entry issued on October 18, 2011, the Commission invited reply comments on an array of topics. The OCC takes this opportunity to provide these Reply Comments concerning select topics that were the subject of many initial comments: the protection of consumer privacy, the effect of new rulemaking, the use of existing rules, and the use of technical working groups.¹ The OCC supports further communications and the

¹ Entry at 2-3, ¶(3) (sub-parts (a), (c), (d), and (f)) (October 18, 2011).

dissemination of additional information that is the subject of the presentations mentioned in the Commission's Entry.²

II. REPLY COMMENTS

A. **“Consumer privacy should be protected from unauthorized third party access.”³**

There is little disagreement in the initial comments that consumer privacy must be protected from unauthorized third party access. However, there remains lingering questions concerning the relationship between utilities and customers with third parties, the energy management products and services that might be provided by third parties, how unauthorized access to sensitive information might occur, the specific personal identifying information and customer energy usage data (CEUD) that requires protection, the manner in which CEUD information is provided to third parties, the impact of unauthorized third party access to CEUD, and customer disclosure requirements.

While the Commission has established rules governing the protection of personal customer information and detailed energy data between utilities and third party entities such as Competitive Retail Electric Service (“CRES”) providers, it remains unclear how CRES providers, consumers, or utilities would authorize the provision of personal billing and energy consumption information to other parties.⁴ To help protect consumers in the State, the general assembly mandated that the PUCO establish minimum service requirements related to the provision of generic and customer-specific load information

² Entry at 3, ¶(5) (October 18, 2011).

³ Id. at 2, ¶(3)(a).

⁴ Ohio Adm. Code 4901:1-22.

between utilities and competitive suppliers.⁵ In addition, Ohio law prescribes a mechanism for CRES providers to be certified by the PUCO based on their managerial, technical, and financial capabilities.⁶ Regulatory standards concerning the use of CEUD by potential third party users of the information remains unclear. In addition to the laws that are designed to protect customer information, laws exist that are designed to protect the integrity of competitive offers that are made by CRES providers. For example, Ohio law requires disclosure of “adequate, accurate, and understandable pricing and terms and conditions of service. . . .”⁷ However, it remains unclear how these marketing standards would apply to other third party users of CEUD.

The potential exists for CEUD to be provided to third party providers by the utilities, CRES providers, or directly by customers. If customers are provided the ability to authorize utilities or CRES providers to provide CEUD data to third-party providers as recommended by the TIA,⁸ clear and understandable disclosure requirements must exist concerning the manner in which the information would be provided and used. Direct Energy’s position should be adopted that customer data be considered confidential and not subject to release without *explicit* customer’s permission.⁹ Such permission should only be made after providing the customer with information about the third party entity that is requesting the information, what specific personal information or CEUD information is being requested, how the information that is being requested will be used, and obligations of the third party to protect the integrity of the information. A process

⁵ R.C. 4928.10(G).

⁶ R.C. 4928.08(B).

⁷ R.C. 4928.10(A)(1).

⁸ The Telecommunications Industry Association (“TIA”) Comments at 3.

⁹ Direct Energy Comments at 3.

should also be established through which customers can communicate concerns about privacy protections. An extensive list of potential disclosure requirements and other issues involving data privacy was included in the OCC's Comments.¹⁰

AT&T states that customers should not be limited to a single option of written consent in order for customers to authorize the release of CEUD to third party providers.¹¹ While written consent has traditionally been the preferred method for customers to authorize release of customer information, other options are available in the PUCO's rules regarding customer choice of competitive suppliers for natural gas and/or electric service. These rules could be adapted for use regarding the release of information to the energy management industry. For example, the rules support telephonic authorizations where a date and time stamped audio recording exists to verify customer consent¹² or internet-based authorizations where electronic consent forms are used.¹³ As alternatives to the use of written consent forms, both of these methods could address AT&T's concern about the validity of the third party authorizations.¹⁴

Another potentially contentious issue involves how customers decide to participate in smart grid programs. In its comments, OPOWER observes that participation is expected to increase in smart grid programs, and these programs are designed such that customers are required to opt-out of program participation rather than opt-in.¹⁵ The DRSB states that the Commission should consider that consent to

¹⁰ OCC Comments at 5.

¹¹ AT&T Comments at 10.

¹² Ohio Adm. Code 4901:1-22-06(D)(2).

¹³ Ohio Adm. Code 4901:1-22-06(D)(3).

¹⁴ AT&T Comments at 10.

¹⁵ OPOWER Comments at 5.

participate in smart grid programs can be provided on either an opt-in or opt-out basis, “as long as the choice is made knowingly.”¹⁶ But opt-out programs do not require affirmative (i.e. knowing) customer consent in order for customers to participate in a program. Opt-in programs require individual customers to affirmatively opt-in for participation in a program. While the participation levels for programs may be higher for opt-out programs, the potential risk of customers not understanding the program and having their personal information placed at risk is significant. The opt-out form for enrolling customers in smart grid programs should be rejected.

Based upon research performed by the National Institute of Standards and Technology (“NIST”), “most consumers probably do not understand their privacy exposure or their options for mitigating those exposures within the Smart Grid.”¹⁷ Requiring customers to initiate actions to opt-out of smart grid programs where the details of the program are not likely to be fully understood and personal and sensitive customer information are placed at risk is contrary to sound public policy. Customers should not be enrolled in smart grid programs unless they voluntarily choose (i.e. explicitly choose) to participate in smart grid programs.

B. The Commission should not be concerned about “adverse consequences for . . . adopting additional rules or policies regarding Smart Grid privacy and data access issues” due to the potential for significant harm to customers.¹⁸

Smart grid technologies have the potential for introducing new products and services. However, the products and services must be introduced in a responsible, safe

¹⁶ Demand Response and Smart Grid Coalition (“DRSG”) Comments at 4.

¹⁷ NISTR 7628, Guidelines for Smart Grid Security: Vol. 2, Privacy and the Smart Grid, The Smart Grid Interoperability Panel – Cyber Security Working Group at 2 (August 2010).

¹⁸ Id. at 2, ¶(3)(c).

and secure manner. TIA comments that innovation should not be sacrificed at the expense of privacy protection.¹⁹ AT&T states that the imposition of privacy protections can raise costs and dampen innovation in energy management programs.²⁰ Technet states that the Commission should be careful to avoid policies that might create unintended barriers in the development and deployment of innovative smart grid technologies, products, and services.²¹ DRSB comments that issues related to privacy protection could be barriers to the adoption and effective use of smart grid technologies.²² OPOWER comments that as the Commission investigates privacy issues, it is important to balance the overall objectives of smart meter deployment and smart grid development.²³ These commentators emphasize product development without adequately emphasizing the protection of privacy.

The requirements for privacy protection should necessarily be an integral part of the design, development, and implementation of smart grid technologies. AEP's comments support a similar position where privacy protection should be valued regardless of the smart grid technology that is in place.²⁴ National level consumer organizations support positions where privacy concerns are addressed prior to smart grid rollout.²⁵

¹⁹ TIA Comments at 3.

²⁰ AT&T Comments at 3.

²¹ Technology Network ("Technet") Comments at 2.

²² DRSB Comments at 3.

²³ OPOWER Comments at 3.

²⁴ Columbus Southern Power and Ohio Power Company ("AEP") Comments at 1.

²⁵ The Need for Essential Consumer Protections, Smart Metering Proposals and the Move to Time-Based Pricing, AARP, National Association of State Utility Consumer Advocates, National Consumer Law Center, Consumers Union, Public Citizen (August 2010).

The Information and Privacy Commissioner of Ontario filed similar comments and further recommended that the Commission adopt a series of “best practices” related to smart grid Privacy by Design.²⁶ One of the best practices includes making “privacy a core functionality in the design and architecture of Smart Grid systems and practices.”²⁷ Another best practice is to ensure that “Smart Grid systems be designed with respect for consumer privacy, as a core foundational requirement.”²⁸ The Commission should develop policies that address privacy issues up front, and not as an afterthought after many Ohioans are harmed.

C. “The existing rules should be modified” and adapted to address Smart Grid consumer privacy concerns.²⁹

The comments reveal that existing privacy protection rules are insufficient to address the additional privacy concerns presented by smart grid development. An understanding of the personal household information that should be protected is revealed by the magnitude of additional energy usage information that will be collected along with the granularity of the data being collected.³⁰ The expanded amount of energy information that can be collected in near real-time opens up new opportunities for general invasion of privacy. For example, the granularity of the energy data can enable the determination of the types of activities in which customers engage within their homes as well as the time period during which the activities occurred.³¹

²⁶ Information and Privacy Commissioner of Ontario Comments at 3.

²⁷ Id.

²⁸ Id. at 4 .

²⁹ Id. at 3, ¶(3)(d).

³⁰ See, e.g., NISTR 7628 Comments at 11.

³¹ NISTR 7628 Comments at 30.

Given that existing utility privacy protection rules have been successfully developed over many years, these rules should be adapted to the extent possible to address additional privacy concerns presented by the smart grid. In its Comments, the OCC provided a table that summarized ways in which the existing PUCO rules could be adapted to address smart grid issues.³² Similarly, DP&L supports augmenting existing privacy protection rules to address AMI and smart grid applications.³³ AEP supports clarifications, as needed, in existing privacy protection rules.³⁴ While FirstEnergy does not oppose the need for additional privacy protections, its comments state that the development of such privacy rules and regulations are premature at this time.³⁵ Duke comments that it is well down the path of deploying smart grid in its service territory and that the Commission should consider expanding existing data privacy practices.³⁶

The TIA supports the Commission consideration, development, and adoption of additional policies related to privacy protection based on the capabilities provided by the smart grid.³⁷ DRSG comments that the North American Energy Standards Board (“NAESB”) is working to address a standardized approach for addressing smart grid privacy concerns.³⁸ The use of the NAESB standards has merit as a reference point for

³² OCC Comments at 15.

³³ Dayton Power and Light Company (“DP&L”) Comments at 3.

³⁴ AEP Comments at 1.

³⁵ Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company (“First Energy”) Comments at 5.

³⁶ Duke Energy Comments at 2.

³⁷ TIA Comments at 2.

³⁸ DRSG Comments at 4.

beginning more detailed state level discussions about the requirements that should surround third party access to customer energy information.³⁹

D. “[T]echnical working group[s] or educational forum[s]” should be used to gain additional understanding regarding issues and for the further development of privacy policies.⁴⁰

The initial comments are generally supportive of the Commission hosting or sponsoring technical working groups to develop a broadened and common understanding of the privacy issues associated with the smart grid. FirstEnergy commented on the need for discussions to gain a better understanding of the status of smart grid at each of the Ohio EDU’s as well as the challenges that a major deployment of smart grid would create for each EDU.⁴¹ Direct Energy commented on the use of a technical working group for the purpose of developing an overall education strategy as well as an opportunity to better understand how third party companies plan to use CEUD.⁴² The City of Wadsworth supports the Commission coordinating technical working groups as a central clearinghouse for sharing information and ideas across all segments of the electric industry.⁴³ The City of Westerville has first-hand experience in addressing the public commentary surrounding advanced metering initiatives and the need for full stakeholder involvement in the process.⁴⁴

Technical working groups should be used to improve the understanding of smart grid privacy issues by the Commission and other stakeholders and as a means by which

³⁹ National Association Electric Standards Board, Third Party Access to Smart Meter-based Information, Request R10012 (May 19, 2011).

⁴⁰ Id. at 2, ¶(3)(f).

⁴¹ FirstEnergy Comments at 4.

⁴² Direct Energy LLC Comments at 4.

⁴³ City of Wadsworth Comments at 1.

⁴⁴ City of Westerville Comments at 2.

more comprehensive privacy rules and policies are promoted.⁴⁵ Technical working groups should also be used to construct a statewide, coherent educational program for customers concerning their rights and concerns.

III. CONCLUSION

The Commission should adopt OCC's recommendations, submitted in initial Comments and these Reply Comments, for the protection of Ohio residential customers.

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⁴⁵ OCC Comments at 10.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Comments was served upon the persons listed below by Regular U.S. Mail service, postage prepaid, this 18th day of November, 2011.

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