



BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO  
COMMISSION MEETING

- - -

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

- - -

PROCEEDINGS

before Todd A. Snitchler, Chairman; Paul A.  
Centolella, Steven D. Lesser, and Andre T. Porter,  
Commissioners, at the Public Utilities Commission of  
Ohio, 180 East Broad Street, Room 11-B, Columbus,  
Ohio, called at 1:30 p.m. on Wednesday, January 11,  
2012.

- - -

ARMSTRONG & OKEY, INC.  
222 East Town Street, 2nd Floor  
Columbus, Ohio 43215  
(614) 224-9481 - (800) 223-9481  
Fax - (614) 224-5724

- - -

I. Introduction

- **Thank you for this opportunity to discuss privacy concerns related to Smart Grid development.**
- **My name is Jeff Small, and I am counsel for the Office of the Ohio Consumers' Counsel.**
- **My comments are presented on behalf of the residential customers of Ohio's investor-owned utilities.**

II. Argument

A. General Problem

1. The Privacy Problem (personal information, but also behavioral privacy)
  - **The modernization that is referred to as "Smart Grid" is composed of three main components:**
    - **New digital metering**
    - **Connections between in-home equipment and the new metering, and**
    - **New communications capabilities for the utilities' "wires" systems that are subject to monopoly control.**
  - **The new technologies present opportunities to increase choices for customers and improve the reliability of service, but also present risks related to the privacy of customers:**
    - **Abuses can take place if access to customer information is permitted and used for purposes unrelated to utility service – which can take place by the release of information or by hacking**
    - **Proper long-term regulatory scrutiny should be a priority that prevents complacency over time regarding unauthorized access to customer information**

2. The Customer-Oriented Approach
- **The OCC submitted Comments on March 4, 2011 and Reply Comments on November 18, 2011; I will not repeat those comments other than to emphasize that:**
    - **The Commission should act expeditiously to develop privacy protection and data access policies, and**
    - **Additional investigation should be undertaken into standards developed elsewhere, for example:**
      - **The National Institute of Standards and Technology (NIST)<sup>1</sup> is working on cyber security standards, and**
      - **The FTC has stated principles in its Fair Information Practice Principles (“Principles”) that are instructive for the development of privacy protections for utility customers in Ohio -- these Principles were used in developing legislation such as:**
        - **The Fair Credit Reporting Act (regarding credit reporting), and**
        - **The Right to Financial Privacy Act (that restricts government access to financial records).**

---

<sup>1</sup> The Energy Independence and Security Act (“EISA”) of 2007 provides that the NIST has the “primary responsibility to coordinate development of a framework . . . for information management” related to the Smart Grid, including “full cyber-security.” EISA, Section 1301.

**B. Recommendations: O.A.C. Examples**

- **I will illustrate Smart Grid privacy concerns using the FTC's Principles -- especially looking at Ohio's Electric Service and Safety Standards (the "S-Rules") located in O.A.C. 4901:1-10 and the Competitive Retail Electric Service Rules (the "CRES-Rules") located in O.A.C. 4901:1-21.**

**notice/awareness**

- **The FTC's 1<sup>st</sup> Principle provides that customers should receive notice of the type of data collected, how it will be used, and who will use it.**
  - **S-Rule 12 was not designed to require notice regarding the collection of detailed Smart Grid information. Considerable, detailed account information -- including "historical consumption data" -- must be released to CRES providers according to S-Rule 29(E) without notice to customers.**
  - **S-Rule 12(F)(5) requires notice that the PUCO Staff may access records for monitoring purposes and S-Rule 12(F)(1) requires notice of other persons who may gain access to records (for credit reporting, administering low income programs, and for governmental aggregation).**
- **The rules were not drafted with notice regarding the collection of Smart Grid information and its dissemination in mind, and they could be revised with this new purpose in mind.**

**choice/consent**

- **The FTC's 2<sup>nd</sup> Principle provides that customers should be able to consent to certain uses of their personal information.**
  - **S-Rule 12(F)(1) refers to written consent to reveal customer account numbers; (F)(2) refers to written consent to reveal the customer's social security number; and (F)(4) refers to the customer's right to prohibit a name going to CRES providers (the "opt-out" form of consent).**
  - **CRES-Rule 10(D) also prohibits the release of account numbers and social security numbers by CRES providers without written consent.**
  - **S-Rule 24(F)(3) refers to the customer's right to prohibit the release of "customer-specific information to CRES providers," again the "opt-out" form of consent.**

- **More emphasis should be placed on consent to distribute detailed usage information -- more than affirmative consent to distribute account numbers that grew out of concern over slamming rather than customer privacy. There does not seem to be much protection in the O.A.C. against the release of person information by either EDUs or CRES providers.**

#### **access/participation**

- **The FTC's 3<sup>rd</sup> Principle provides that customers should be able to view data within a reasonable timeframe at minimum cost, and be allowed to correct incorrect information.**
  - **S-Rule 12(F)(3) requires the EDU to provide notice that a customer may request 24 months of usage history and "detailed consumption data" "without charge."**
  - **CRES-Rule 10(A) requires a CRES provider to send "up to twenty-four months of the customer's payment history without charge."**
- **No timeframe is provided in the rules, nor is there a chance for customers to correct incorrect information; but the rules provide good customer access to usage information.**

#### **enforcement/redress**

- **Skipping to the FTC's 5<sup>th</sup> Principle, it provides for the enforcement of limitations on releasing customer information; but the emphasis in the Principles and legislation developed based upon the Principles is "self-regulation," which means the system is enforced largely by customers choosing to deal with persons who protect their information.**
  - **This approach will not work for enforcement of limitations on access to detailed Smart Grid information because the EDUs that collect the information provide monopoly "wires" service.**
  - **Effective enforcement requires legally enforceable limitations on access to Smart Grid information that are stated in statutes and regulatory rules.**
- **S-Rule 12(I) shows particular concern over "slamming" complaints -- beyond the general complaint procedures state in S-Rule 21. The Commission should also consider special attention in the rules to behavioral privacy concerns, not just concern over personal information that could be used to "slam" customers.**

**integrity/security**

- **The FTC's 4<sup>th</sup> Principle provides that data on customers should be accurate, stored for an appropriate period, and secured using greater resources where there is a greater potential harm associated with disclosure of personal information.**
  - **S-Rule 3 addresses records retention, which appears to have been drafted to deal with "compliance with the rules" (S-Rule 3(A)(2)) rather than customer privacy issues.**
- **The rules do not deal with the greater harm possible with the release of more detailed customer information. The Commission should develop rules -- similar to S-Rule 27 that addresses measures for ensuring distribution service reliability -- but that address EDU protocols for limiting access to customer information and cyber-security measures that thwart hacking.**

**III. Conclusion**

- **I hope that the Commission takes quick action to revise its rules and develops new rules to deal with Smart Grid privacy issues.**
- **This concludes my prepared remarks.**