

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

In the Matter of the Commission Review of)
Cyber Security Issues Related to Entities) Case No. 11-5474-AU-UNC
Regulated by the Commission.)

FINDING AND ORDER

The Commission finds:

- (1) On January 26, 2011, and January 27, 2011, the Commission hosted a pair of public workshops regarding the smart grid related privacy, data access, and cyber security issues addressed by the National Institute of Standards and Technology (NIST) in its Interagency Report 7628, *Guidelines for Smart Grid Cyber Security*.¹
- (2) On February 2, 2011, the Commission issued an entry in Case No. 11-277-GE-UNC (11-277), seeking comments regarding consumer privacy protection and customer data access issues associated with distribution utilities' advanced metering and smart grid programs. The Commission requested that interested stakeholders and members of the public file comments addressing whether the Commission should consider, develop, and adopt additional rules or policies or otherwise consider smart grid related privacy or data access issues at this time, as set forth in Appendix A, and, if so, what process and procedures should be used to address these issues, as set

¹ NISTIR 7628 - *Guidelines for Smart Grid Cyber Security*, The Smart Grid Interoperability Panel – Cyber Security Working Group, August 2010, available at <http://csrc.nist.gov/publications/PubsNISTIRs.html#NIST-IR-7628>.

forth in Appendix B. Further, the Commission noted that it would provide subsequent opportunities for more detailed input and that issues relating to cyber security would also be addressed in the future.

- (3) In response to the Commission's February 2, 2011, entry, comments were filed in 11-277 by the following interested stakeholders: Ann Cavoukian, Information and Privacy Commissioner of Ontario, Canada; The Dayton Power and Light Company (DP&L); City of Westerville, Electric Division (Westerville); City of Wadsworth (Wadsworth); Telecommunications Industry Association (TIA); Ohio Hospital Association (OHA); Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy); Duke Energy Ohio, Inc. (Duke); Direct Energy, LLC (Direct Energy); AT&T Entities (AT&T); Technology Network (TechNet); Columbus Southern Power Company and Ohio Power Company (jointly, AEP-Ohio); Columbia Gas of Ohio, Inc. (Columbia); Demand Response and Smart Grid Coalition (DRSG); Opower, Inc. (Opower); Ohio Partners for Affordable Energy (OPAE); and the Ohio Consumers' Counsel (OCC). Additionally, several members of the general public provided input by filing letters in the docket.
- (4) By entry issued October 18, 2011, in 11-277, the Commission noted that a number of issues recurred throughout the comments, and, accordingly, requested reply comments regarding those issues or any other relevant topic. In addition, the Commission invited interested entities that provided comments or reply comments to participate in presentations on January 11, 2012, regarding consumer privacy protection and customer data access issues associated with distribution utilities' advanced metering and smart grid programs. Finally, although 11-277 was initially opened to address consumer privacy protection, customer data access, and cyber security issues, the Commission found that cyber security

issues should be addressed in a separate docket. Because 11-277 is focused on advanced metering and smart grid programs, the Commission opened Case No. 11-5474-AU-UNC (11-5474) in order to address a broader range of cyber security issues at a later time.

- (5) In response to the Commission's October 18, 2011, entry, reply comments were filed in 11-277 by the following interested entities: DP&L; Tendril Networks, Inc. (Tendril); Columbia; OCC; DRSG; AT&T; AEP-Ohio; Retail Energy Supply Association (RESA); FirstEnergy; and Opower.
- (6) On January 11, 2012, Duke, FirstEnergy, AEP-Ohio, OCC, Tendril, and RESA provided presentations before the Commission on the subject of consumer privacy protection and customer data access issues associated with distribution utilities' advanced metering and smart grid programs.
- (7) The Commission notes that we have not attempted to summarize all of the comments for each question posed in the February 2, 2011, entry in this finding and order. Neither have we done so with respect to all of the reply comments for each issue identified in the October 18, 2011, entry. We have, however, considered all of the comments and reply comments in their entirety and included below is a summary of the more fundamental issues.

Responses to Appendix A of the February 2, 2011, Entry

Should the Commission consider, develop, and adopt additional rules or policies or otherwise consider smart grid related privacy or data access issues at this time?

- (8) Ann Cavoukian, the Information and Privacy Commissioner of Ontario, Canada, believes that it is imperative for the Commission to consider privacy protections and data access policies in the early stages of smart grid development in Ohio. Ms. Cavoukian suggests that the Commission contemplate Privacy by Design, a

methodology that Ms. Cavoukian developed and implemented with respect to Ontario's smart grid, and incorporate the methodology in the Commission's policies and rules to guide smart grid development in Ohio. Ms. Cavoukian argues that the most important privacy issue that the Commission should address at this time is ensuring that privacy is made the default standard so that consumers do not have to take action to protect their privacy, as it would already be protected by the incorporation of privacy practices into smart grid systems and programs. In terms of data access, Ms. Cavoukian asserts that the Commission should ensure that authentication and security issues related to customer access to information are addressed early in the smart grid system and program design phases. Finally, Ms. Cavoukian recommends the Commission pursue the implementation of Privacy by Design in the gas sector, if gas meters collect granular consumption data that may lead to the ability to observe activities within the home.

- (9) DP&L believes that there will likely be a need for additional guidance to address issues relating to consumer privacy with the large scale deployment of advanced metering infrastructure (AMI) and smart grid in the future, but cautions that the establishment of new rules would be duplicative of early efforts geared toward addressing privacy issues, which may lead to confusion and potential conflict between Commission rules. DP&L notes that the electric distribution utilities (EDUs) already have effective policies and procedures governing protection of consumer specific usage information in addition to the well developed rules that are in effect. DP&L recommends that the Commission develop AMI and smart grid guidelines by augmenting the existing rules to ensure that there is no conflict. In its reply comments, DP&L adds that patchwork legislation can be avoided by following the standards and guidelines developed by NIST. DP&L notes that the protection of consumer privacy from unauthorized

third-party access is the primary principle upon which any rules or policies should be based.

- (10) TIA comments that, as smart grid deployments move forward in Ohio, the Commission will need to consider, develop, and adopt additional policies related to privacy and access to customer energy usage data (CEUD) in order to appropriately fit regulation to what smart grid technologies make possible. TIA recommends the Commission take into consideration work being done at the federal level and in other states and work toward uniform policies and a common market for smart grid technologies. With respect to both privacy and data access, TIA recommends that the Commission coordinate with other states and federal policymakers with the goal of working towards a uniform national policy. As specific issues for the Commission's consideration, TIA suggests that consumers should have access to usage, pricing, and carbon-mix data in machine-readable form for use in third-party applications; consumers should be provided with uniform and consistent privacy policies; technology neutrality is critical for innovation of smart grid solutions; and voluntary standards would support innovation and maximize flexibility and choice. TIA believes the adoption of state standards is premature, given the ongoing status of the NIST process.
- (11) OHA recommends the Commission consider and begin to develop additional privacy protection and data access policies, if not at this time, then prior to the widespread deployment of AMI technology. OHA urges the Commission to begin to consider, in a thorough and deliberate manner, the rules that should govern AMI information in the early stages of the technology advancement. As electric and gas meter data begins to appear more like telecommunications usage data, becoming more personal in nature, OHA recommends that the Commission consider whether existing federal

telecommunications law is an appropriate starting point for consideration of AMI rules.

- (12) FirstEnergy states that current federal and state rules and regulations and utility practices adequately protect privacy in the current environment. FirstEnergy believes it is premature to develop additional rules or policies or to hold in depth discussions about the protection of smart grid related information until the role of smart grid in Ohio is better known. FirstEnergy also believes that a formal statewide proceeding is not appropriate at this time. Because the smart grid concept is now evolving, FirstEnergy notes that it is not too early to gather background information and have preliminary discussions about the issues that may be faced in the future. According to FirstEnergy, these discussions should occur prior to any additional deployment of smart grid technology. As specific preliminary steps, FirstEnergy recommends that relevant information from other jurisdictions should be gathered; discussions should be held regarding smart grid status, challenges, and best practices for each of the EDUs; and market research should be conducted to determine customer needs and preferences. FirstEnergy adds that common issues faced by both the electric and gas industries should have common solutions. In its reply comments, FirstEnergy reiterates its belief that it is premature to attempt to regulate access to information provided through smart meter technology, given the fact that there is no requirement in Ohio to deploy smart grid or meter technology on a wide scale and no evidence that consumers are generally in favor of such technology. FirstEnergy suggests the Commission complete the pilot programs that are currently underway in Ohio and then review and analyze the results of the pilot programs, as well as work done in other states.
- (13) Duke believes that, because many Ohio utilities have begun modernizing their distribution systems and deploying AMI, it is appropriate to consider and begin to develop

privacy protection and data access policies. Duke suggests the Commission develop precise definitions for new terms; consider expanding existing privacy and data access practices; define a process for third-party access to CEUD; define a process whereby the utilities are able to maintain full access to CEUD for their operational use; and consider eliminating the ability of consumers to opt out of sharing CEUD with their electric utility or competitive retail electric service (CRES) provider. Duke believes consideration of any of these issues in isolation could jeopardize the overall protection of consumer data and customer privacy. Duke suggests that any new rules should be flexible to allow for technology and innovation to evolve and should maintain consistency with existing Commission rules and policy. With respect to third-party data access, Duke believes it is critical for the Commission to work with all utilities to reach consensus on the costs of capturing the data, storing it, and maintaining security throughout the data chain, before any further study of downstream third-party data release and applications. Duke recommends that similar principles and policies should be considered for the electric and gas industries and any new rules for the two industries should not conflict with each other. Finally, Duke believes that all of the utilities in Ohio should participate in a statewide proceeding to consider privacy and data access issues.

- (14) Direct Energy comments that the Commission should consider and begin the development of additional privacy protection and data access policies or rules at this time. Direct Energy argues that the Commission needs to consider what data belongs to the customer and to ensure that customers have access to their data, as well as the ability to allow third parties to have access to the data. Direct Energy states that the Commission should ensure that data is considered confidential and is only used for the purpose presented in the agreement between the third party and the customer. Direct Energy believes policies and rules should apply to both the electric and gas

industries and privacy and data access issues should be considered in a statewide proceeding.

- (15) AT&T recommends the Commission spur dialogue about appropriate consumer privacy protections but forbear from imposing state specific rules, which could raise costs and dampen innovation. AT&T suggests the Commission adopt a policy of nondiscrimination with respect to data access issues. When consumers choose to release their energy usage data to a third-party provider of energy management services, AT&T contends the data should be available in real time and in a readily useable format so that third-party providers are not disadvantaged with respect to utilities in providing these services. AT&T notes that the Commission should permit, if not encourage, utilities to leverage their own extensive expertise by partnering with commercial communications operators in the development of smart grid security. According to AT&T, additional rules are not necessary at this time, although the Commission should adopt a policy favoring nondiscriminatory access to CEUD. AT&T argues that the Commission should assure protection of consumer privacy without hindering the development or operation of competitive energy management services, as well as promote robust and competitively neutral access to consumer information that occurs in a manner that is efficient and protects privacy. AT&T notes that the Commission should opt for secure and open standards and allow consumers to direct their data flows to application and service providers of their choice. AT&T recommends that policies and rules related to consumer privacy protection should be presumed equally applicable to both the electric and gas industries unless a compelling reason is shown to deviate. Finally, AT&T believes a statewide proceeding would be a logical way to propose, analyze, and adopt policies that encourage the development and expansion of smart grid technologies in the most efficient and economical way. AT&T concludes that deference to national standards and their adoption by state utilities will

allow for robust competition and the necessary economies of scale to ensure lower costs for consumers. In its reply comments, AT&T asserts that the Commission should not slow down the advancement of smart grid deployment with additional state-specific policies and rules. AT&T believes the continued work of NIST should be monitored and evaluated once it has progressed further and the Commission should also support a nationwide, industry collaborative that is currently working to draft a broad set of best practices for the use of CEUD. AT&T states that issues of access and privacy protections for consumers will be addressed through advanced technologies and business standards, noting that smart grid applications should actively engage consumers on privacy matters through online tools that allow users to customize their privacy settings to their unique preferences.

- (16) TechNet suggests the Commission ensure that consumers have access to their energy consumption data and that policies must encourage development of a broad range of energy management tools that consumers can use to better control their energy use and monthly bills. TechNet recommends the Commission avoid policies that favor one technology over another or might create unintended barriers to the development and deployment of innovative smart grid technologies, products, and services. TechNet urges the Commission to work with other states and federal policymakers to develop uniform, consistent policies that promote innovation across the country. TechNet believes the Commission should accelerate the availability of online data to consumers and authorized third parties via widely recognized industry standards. Further, TechNet suggests the Commission require that utilities provide real-time or near real-time access to smart meter data for consumers and authorized third parties as soon as practicable. If the Commission elects to adopt additional privacy requirements, TechNet notes that the Commission should do so in a manner that does not subject the emerging smart grid industry to greater privacy

regulations than exist for established industries and avoids increasing costs for ratepayers.

- (17) AEP-Ohio believes the Commission's existing electric service and safety standards (ESSS) rules already ensure that customer data is protected and that the existing rules should be clarified or revised, if deemed necessary. AEP-Ohio asserts that it would not be prudent to treat the collection of smart grid data any differently just because it is related to the smart grid. AEP-Ohio further notes that the primary oversight of practices related to customer data access and privacy protection with respect to retail electric service should remain principally within state jurisdiction. AEP-Ohio suggests the Commission could ensure that the protections in the existing rules govern smart grid issues by means of an affirmative statement in this docket and that the rules could then be clarified as necessary. AEP-Ohio believes that data protection is appropriate regardless of the type of utility but that the Commission does not need a single rule for all industries. To the extent any further mechanism is needed, AEP-Ohio contends the administrative rule promulgation process should suffice. In its reply comments, AEP-Ohio adds that adverse consequences of prematurely adopting additional rules or policies can be avoided by proceeding through the established ESSS rule review process and following the standards developed by NIST.
- (18) Columbia believes the Commission should consider and begin to develop additional privacy protection and data access policies or rules, but should consider the distinct characteristics of the different smart meter devices used by the electric and gas companies. According to Columbia, any such rules should acknowledge and consider the differences between smart grid and AMI technology and Columbia's automated meter reading (AMR) technology, which has unique security features and transmits a limited amount of sensitive data. Columbia does not believe its AMR technology presents the same privacy concerns that

exist for the AMI devices used by the electric utilities. Columbia notes that the present opt-out process in Ohio sufficiently addresses the issue of sharing gas customer information. Finally, Columbia asserts that privacy and data access issues should be considered in a statewide proceeding, but a single approach for the electric and gas industries would not be appropriate given the unique characteristics of each. In its reply comments, Columbia adds that, if the Commission adopts rules related to smart meters, those rules should only apply to the electric utilities.

- (19) DRSG recommends the Commission adopt rules that ensure customers are provided reasonable access to their detailed energy usage information in a manner that allows them to reduce energy use and manage their bills. DRSG believes the Commission should begin its examination of privacy issues by reviewing its existing rules and considering existing consumer privacy concerns in other industry sectors and how they have been addressed. DRSG asserts that the primary principle of privacy protection and data access is that the consumer and the utility share access to the energy usage information. DRSG suggests the Commission establish rules that enable customers to access their data and share it with authorized partners that will provide energy management or other service offerings and that such rules should ensure fair market access for market participants. DRSG believes a statewide proceeding is appropriate and that any adopted policies or rules should apply to both electric and gas utilities, but notes that the electric sector stands apart in terms of the additional data that will be created by smart meters and other technologies for such applications as time-based pricing. In its reply comments, DRSG states that consumer privacy should be protected from unauthorized third-party access, but CEUD should be made available to authorized third parties so that the home and business energy management market may develop. DRSG adds that it is not premature to consider privacy and

data access rules and policies related to smart grid, but it must be realized that there is considerable work that is in progress or already complete through NIST and other groups. According to DRSG, providing greater data access to customers should be the goal of any policy process, with privacy serving as the guideline by which such access is accomplished. DRSG believes a new body of rules is likely required and such rules should apply to the electric, gas, and water industries.

- (20) Opower asserts that privacy rules should enable customers to permit third parties to analyze energy usage data with cooperation from the utility, as well as allow utilities to hire third parties to provide data analysis and other information-based customer engagement tools to help the utility pursue efficiency and customer engagement strategies. Opower believes privacy rules should be crafted with the recognition that there are currently two dominant and distinct business models for third-party vendors displaying customer energy information, namely the direct-to-consumer model and the utility-contractor model. Opower also notes that the finance and health care sectors have already addressed how personally identifiable information can be safely shared with third parties while not requiring that the individual customer or patient provide consent for the third-party access. Opower suggests the Commission proceed in a manner that enables third-party vendors like Opower to take full advantage of business processes that are privacy friendly and beneficial for ratepayers, utilities, and other stakeholders. In its reply comments, Opower adds that the Commission should adopt rules that are consistent with privacy rules recently adopted in other states. Opower notes that these rules allow utilities to use customer smart meter data to accomplish primary purposes in the course of their regulated business, including the implementation of energy efficiency programs, without customer consent, and to share such data with contracted agents in order to accomplish such purposes, provided the contracts contain

adequate protections and use restrictions. Opower asserts that privacy and data access rules should not hamper the ability of utilities to implement an opt-out program design under a utility-contractor model.

- (21) OPAE believes the Commission should begin the development of additional privacy protection rules that address the functionality of smart meters and automated distribution systems and should do so before the hardware and software systems are in place. OPAE recommends that current pilot programs should not be expanded and additional pilot programs should not go forward until the Commission defines the type of data and the level of detail that smart meters and automated distribution systems must collect and be able to provide to customers, utilities, and third parties. Once that is done, OPAE believes privacy issues can then be identified and consumer protection assured. OPAE suggests the utilities must standardize the data produced by the smart meters and distribution systems on a statewide basis. OPAE notes that, although the protection of information should be universal, there are inherent differences in the fundamental operation of natural gas and electric utilities and that minimum data needs for their daily operations should be identified.
- (22) OCC believes the Commission should address smart grid related privacy issues at this time, in addition to the federal efforts that are underway. OCC asserts that the unique regulatory structure in Ohio necessitates the Commission's involvement to ensure that all customer energy choices are accompanied by sufficient privacy and data access protections. OCC believes the Commission should identify and address any gaps in its existing privacy protection rules and offers initial suggestions as to how the current rules could be amended to account for smart grid related privacy and data access issues. Noting that there are differences in the privacy threats posed by the metering infrastructure of the gas and electric utilities, OCC

recommends the Commission first address privacy and data access issues for the electric sector in a statewide proceeding before turning its attention to the gas industry. In its reply comments, OCC notes that, if customers are afforded the ability to authorize utilities or CRES providers to provide CEUD to third parties, clear disclosure requirements must be in place so that customers understand how the data will be provided and used. According to OCC, the data should be considered confidential and not subject to release to third parties in the absence of the customer's explicit permission. OCC also asserts that the opt-out form of customer participation in smart grid programs should be rejected. Due to the risk of harm to customers, OCC believes privacy issues should be addressed as part of the design, development, and implementation of smart grid technologies and the Commission should not be concerned about potential adverse consequences of adopting rules or policies at this time.

- (23) Tendril believes the existing rules are not sufficient to address smart grid related consumer privacy concerns, as the rules do not sufficiently address the issues of consumer access and control over CEUD. Tendril recommends the Commission consider the various privacy and data access frameworks being developed throughout the industry in order to help encourage consistent application of smart grid related privacy and data access policies, as well as existing privacy frameworks that are not specifically directed at the smart grid. Tendril notes that, through the adoption of precise policies and rules, the Commission can ensure that consumers have access to valuable energy products and services that will result in lower bills and greater convenience and that all types of service providers are able to cooperate and compete in offering consumers personalized products and services.
- (24) RESA states that the Commission needs to consider what data belongs to the customer. RESA suggests that

electronic meter data in its original form should belong to the customer, but once it is manipulated and made functional by an authorized company, it should be considered the company's work product. RESA recommends the Commission adopt rules to ensure that a customer's electronic meter information only be provided to market participants after obtaining the requisite authorization from the customer and develop guidelines at a later date to determine qualifications for market participants requesting access to a customer's electronic meter information. According to RESA, the rules should clarify contractual requirements between the customer and other market participants to address such issues as when and by whom the data may be used, and, in any event, should allow the customer the absolute right to permit access to such data for whatever purpose the customer deems appropriate. RESA believes the existing rules should be modified to require the EDUs to establish tariffs that address the data systems available and how to obtain the data, as well as to impose uniform minimum requirements for release forms. RESA asserts that the Commission should first focus on the electric industry, although RESA believes the knowledge gained from the electric sector may eventually be applicable to the natural gas industry.

Responses to Appendix B of the February 2, 2011, Entry

If the Commission considers smart grid related privacy and data access issues at this time, what process and procedures should be used to address these issues?

- (25) DP&L recommends that a technical working group be formed, consisting of utility and customer stakeholders and directed by Staff. After the technical working group has vetted the issues, DP&L suggests that a workshop should be convened to discuss ways to synchronize or supplement the existing rules with the issues identified by the technical working group. Finally, DP&L believes that, because AMI and smart grid technology is evolving rapidly, the

development of policies, procedures, and rules should occur slowly and be fluid in nature.

- (26) Westerville, which has begun the process of implementing an electric and water advanced metering program, states that it knows firsthand the importance of engaging stakeholders in the discussion about advanced metering and smart grid programs and offers its resources to assist the Commission in developing policies.
- (27) Wadsworth recommends the Commission coordinate working group meetings to review the technical aspects of the deployment of smart grid, which should include all sectors of the electric industry, including for-profit and non-profit utilities, technology manufacturers, customer groups, and other interested parties. Wadsworth states that these working groups should examine national standards under development, review activity as it relates to smart grid deployment in different electric industry sectors, evaluate different approaches to protecting consumer privacy and providing appropriate data access, identify areas of consensus, and make recommendations. Wadsworth further recommends the Commission hold public forums, regionally across the state, to provide the public the opportunity to offer customer input.
- (28) FirstEnergy recommends the Commission consider several different forums for both stakeholders and the general public to present their concerns and ideas, including workshops, technical working groups, focus groups, customer surveys, and local public hearings. FirstEnergy suggests that workshops would be an acceptable method by which to gather information, identify issues, and frame the charters for various technical working groups. According to FirstEnergy, these technical working groups should be focused on specific issues for the purpose of gathering information, analyzing it, and developing recommendations for the Commission's consideration. Although membership should be open to all interested parties, FirstEnergy recommends that a chair should be

appointed for each working group, which could consist of legal, technical, and customer service teams. FirstEnergy suggests that a steering committee, comprised of one representative from each major stakeholder group, be formed to evaluate the various recommendations, resolve any impasse among the working groups, and formulate a comprehensive recommendation for consideration first by all participants and then by the Commission.

- (29) Duke recommends the Commission conduct a series of technical conferences or workshops to garner input and feedback from all Ohio utilities and other important stakeholders, as well as to examine the policies and guidelines being developed by federal agencies and other states. Based upon the input obtained at these workshops, Duke states that the Commission could draft proposed rules and guidelines, which could then be circulated for formal comment by all interested parties. Duke also believes the Commission should convene technical working groups, comprised of utility members, customer groups, and technical experts. According to Duke, the technical working groups should study the cost-benefit analysis of data access provisions as well as existing law, consider policies that address the greatest amount of privacy risk first, and use a proactive approach to address potential technological and standard advancement.
- (30) Direct Energy states that the Commission should create distribution lists and an open site for reports related to collaborative or sub-group discussions, hold in-person discussions, and attend town hall meetings, trade shows, and other public events in order to educate the general public in addition to relying on traditional media, web, and marketing channels. Direct Energy suggests the Commission should hold additional workshops to invite nonutility companies that would access smart grid information to come together and address how they plan to use the data. Direct Energy believes the membership of any technical working groups should not be limited. If

companies other than the utilities are excluded, Direct Energy argues the ability of customers to access new products may be eliminated because the utilities are not the only avenue for smart grid solutions.

- (31) AT&T believes it is premature to make specific recommendations but encourages more dialogue on privacy and data access issues with care taken to ensure wide participation by the utilities, consumers, and companies in related service fields, such as energy management services. AT&T suggests the Commission can help the industry to achieve consensus by establishing an open, collaborative process to analyze the issues and reach the requisite decisions.
- (32) AEP-Ohio asserts that it would be most productive for Staff to initiate and lead a technical working group with representatives from the major stakeholders and an overall objective of recommending any necessary revisions to the existing rules. According to AEP-Ohio, the technical working group could also consider ways in which the Commission should educate the general public and recommend topics for future workshops. AEP-Ohio suggests that future workshops be considered on an as-needed basis for specific issues that may benefit from broader public input. AEP-Ohio believes the Commission should provide specific guidance to the technical working group in terms of the process and procedure to be employed.
- (33) Columbia suggests that a workshop or possibly a technical working group would be beneficial as a means to better understand the differences between the devices used by the gas and electric utilities. If a technical working group is convened, Columbia recommends that it should have a representative from each electric and gas utility.
- (34) DRSG believes a collaborative working group approach would be appropriate at the outset. DRSG recommends that separate subgroups for privacy and data access issues

be formed before combining the issues in a collective approach. According to DRSG, membership should be open to a diverse set of market participants with similar entities grouped together.

- (35) OPAE suggests that the utilities should be required to participate in the national debate and development of standards and best practices and that the Commission should initiate a Commission-ordered investigation to consider stakeholder input on these issues. OPAE notes that there are several resources that provide recommendations on privacy protection, which should be consulted to determine whether technical working groups should be established and, if so, what their focus should be.
- (36) OCC recommends the Commission establish formal proceedings to request comments on various subtopics, institute a rulemaking proceeding to establish formal standards, create working groups to address subtopics, and hold public outreach sessions. Additionally, OCC believes the Commission should host additional workshops to increase stakeholder and Commission understanding of the issues, provide a forum for discussion, offer an opportunity to propose formal policies or rules, and produce reports or educational information. OCC also suggests the Commission convene technical working groups to discuss those issues requiring technical expertise and to be comprised of representatives of all interested stakeholders. In its reply comments, OCC adds that such technical working groups should be used to improve understanding of smart grid related privacy issues, promote more comprehensive privacy rules and policies, and construct a statewide educational program for customers.
- (37) RESA suggests that, at a minimum, independent technical working groups be convened to address meters, home area networks, and data transactions.

Conclusion

- (38) In the February 2, 2011, entry, the Commission invited comments addressing whether we should consider, develop, and adopt additional rules or policies or otherwise consider smart grid related privacy or data access issues at this time, and, if so, what process and procedures should be used to address these issues. Through this preliminary step, the Commission sought input as to whether we should take action with respect to these issues, or whether the Commission's existing rules and policies are already effective in protecting the various stakeholders' interests. Our goal has been to bring to the forefront for discussion the important issues surrounding our consideration of smart grid related privacy and data access issues. Nearly all of the commenters agreed that the Commission should consider smart grid related privacy and data access issues at this time and offered a long list of privacy and data access issues that should be contemplated in conjunction with the federal process that is already underway. We believe it is evident from the comments and reply comments that there are numerous, complex issues that the various stakeholders believe should ultimately be addressed by the Commission in some fashion, and that coordination with the development of federal standards should be an important consideration as well. Not surprisingly, however, the commenters advocated several different approaches for addressing consumer privacy protection and customer data access issues.

Upon review of the comments submitted in 11-277, it is also evident that what would be most beneficial to our progress on these issues would be to follow a course in which interested stakeholders will have the opportunity to openly and fully participate in developing the process and issues. We believe this type of progression is essential for addressing the privacy and data access issues already identified in 11-277, as well as any cyber security issues to be identified in the future. To that end, as recommended

by various commenters, we believe it would be most constructive if we take a step back from the formal case procedure and our Staff moves forward to develop the appropriate next steps. Such steps may include the convening of technical working groups to explore the issues that need to be addressed pertaining to smart grid related privacy or data access issues, as well as surveys and discussions with other state and federal entities. Additionally, we find that Staff should also determine the appropriate steps for our initial consideration of cyber security issues.

The Commission appreciates the extensive remarks shared by all of the stakeholders that have participated thus far. We will continue to reflect upon the comments and reply comments that have been filed, as well as the presentations that were given, and, as noted in the February 2, 2011, entry, subsequent opportunities for more detailed input will be provided in a docket to be opened at a later time. In the interim, we direct Staff to form a proposal recommending the appropriate next steps for our review of consumer privacy protection and customer data access issues in light of the comments and reply comments and to file its proposal in a new docket. We further direct Staff to form a separate proposal regarding our initial review of cyber security issues. Rather than allow the above-captioned dockets to remain open and idle while Staff is in the process of developing its proposals, we find that it is more appropriate to close the dockets at this time. Accordingly, the Commission finds that 11-277 and 11-5474 should be closed of record.

It is, therefore,

ORDERED, That Staff form a proposal for Commission action with respect to consumer privacy protection and customer data access issues, as well as a proposal regarding cyber security issues, and file such proposed action plans in new dockets. It is, further,

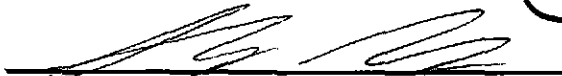
ORDERED, That 11-277 and 11-5474 be closed of record. It is, further,

ORDERED, That a copy of this finding and order be served via the Commission's gas and electric industry listserves, and upon all entities that filed comments or reply comments in this docket, all gas and electric utilities, certified competitive retail providers, governmental aggregators providing retail service, Ohio Partners for Affordable Energy, Ohio Energy Group, Ohio Manufacturers' Association, Ohio Hospital Association, Industrial Energy Users-Ohio, Ohio Electric Utility Institute, Ohio Gas Association, Ohio Home Builders Association, Building Owners and Managers Associations of Akron, Cincinnati, Cleveland, Columbus, Dayton, and Toledo, American Municipal Power, Inc., Buckeye Power Inc., Ohio Bar Association, University Clean Energy Alliance of Ohio, Ohio Board of Regents, Council of Small Enterprises, Cleveland Foundation, Ohio Farm Bureau Federation, Ohio Telecom Association, Ohio Cable Telecommunications Association, Voinovich School at Ohio University, John Glenn School of Public Affairs at The Ohio State University, John M. Ashbrook Center for Public Affairs at Ashland University, The University of Toledo College of Law, and all other interested persons of record.

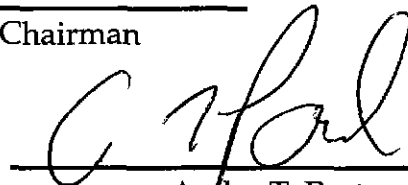
THE PUBLIC UTILITIES COMMISSION OF OHIO



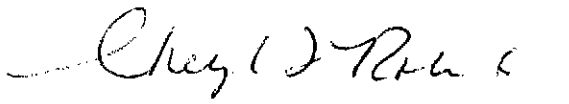
Todd A. Snitchler, Chairman



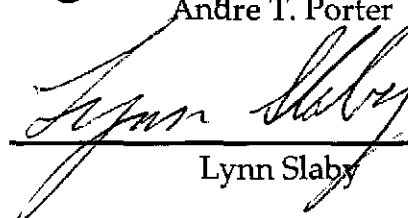
Steven D. Lesser



Andre T. Porter



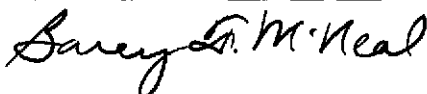
Cheryl L. Roberto



Lynn Slaby

SJP/sc

Entered in the Journal **MAY 09 2012**



Barcy F. McNeal
Secretary