## BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of Chapter 4901:1-10, Ohio Administrative Code, Regarding Electric Companies

Case No. 12-2050-EL-ORD

Comments of Opower, Inc.

#### I. Introduction

Opower, Inc. ("Opower"), a behavioral energy efficiency and smart grid software company, respectfully submits these comments to the Public Utilities Commission of Ohio (the "Commission") in response to the Commission's November 7, 2012 entry in the Matter of the Commission's Review of Chapter 4901:1-10, Ohio Administrative Code, rules regarding electric companies. Opower shares the Commission's concern for security of customer energy usage data and appreciates the opportunity to comment on regulatory policies that will afford continued protection for Ohio ratepayers.

These comments focus on the Commission's request for comments on the proposed revisions to provide safeguards for disclosure of customer energy usage data. The proposed revisions may unintentionally hinder the ability of utilities and their contractors to carry out energy efficiency programs previously approved by the Commission. Opower believes that that the Commission should instead revise these rules in a way that clearly continues to enable utilities to share customer energy usage data with their contractors in order to provide energy efficiency services to utility customers. In so doing, the Commission will be creating rules that are consistent with those that other leading states have established to safeguard customer energy usage data while encouraging innovations that improve energy efficiency and enhance customer engagement.

#### II. About Opower

Opower is the global leader in behavioral energy efficiency and smart grid customer engagement. We currently partner with over 75 utilities, including AEP Ohio, to deliver energy savings to residential households in twenty-six US states and the United Kingdom, Canada and Australia. Opower works as a contracted agent to help utilities motivate customers to use less energy and save money on their monthly bills by providing customers with better information about their energy use and personalized energy savings advice. Our programs, so far, have saved customers over \$187 million on their energy bills – and saved enough energy to take a city the size of 340,000 people off the grid.

Opower's program typically saves between 1.5-3.5%, across geographies and demographic groups, leading to significant energy and pocketbook savings at scale for consumers. To date, these results have been verified by twenty independent evaluations by academics, economists, and consultants (such as Navigant, PowerSystems

Engineering and others). In addition, the Department of Energy's State & Local Energy Efficiency Action Network (SEE Action) —a consensus group including utilities, evaluators, policymakers, commission staff, and program vendors—recently released a study on M&V best practices for behavioral programs and awarded the methodology that Opower uses the top rating of 5 stars.<sup>1</sup> Our approach is also consistent with the National Action Plan for Energy Efficiency guidelines,<sup>2</sup> the California Evaluators Manual,<sup>3</sup> and The Brattle Group's M&V Principles for Behavior-Based Energy Efficiency.<sup>4</sup>

# **III.** Protecting Privacy

Protecting privacy is central to the design of Opower's products, processes, and business model. As a utility contractor with access to personal data, we understand how much our utility partners and their customers value privacy, and we have built privacy into our product design from the beginning.

Opower is an industry leader in ensuring data security. Opower employs a defense-in-depth data security strategy relying on a set of safeguards consistent with federal laws, state laws, and industry best practices. Our approach to security is consistent with the National Institute of Standards and Technology (NIST) Risk Management Framework, including the recently released NISTIR 7628 Guidelines for Smart Grid Cyber Security. Opower also shares expertise and best practice knowledge as an active member of NIST's Smart Grid Interoperability Cyber Security Working Group (CSWG), Privacy Subgroup and SmartGrid Awareness and Training Subgroups.

In June 2012, Opower was pleased to announce that it is has embedded the principles of Privacy by Design, an internationally recognized privacy standard developed by Dr. Ann Cavoukian, Information and Privacy Commissioner for Ontario, Canada, into its company privacy principles. The objective of Privacy by Design is to ensure organizations design a proactive and preventative system that protects both the security and privacy of consumers at every stage.

## IV. Comments

Protecting customer energy usage data is of paramount importance. We believe that the following additions and clarifications to the proposed rule revisions will provide safeguards for disclosure of customer energy usage data while at the same time ensuring

<sup>&</sup>lt;sup>1</sup> State and Local Energy Efficiency Action Network. 2012. "Evaluation, Measurement, and Verification (EM&V) of Residential Behavior-Based Energy Efficiency Programs: Issues and Recommendations." Prepared by A. Todd, E. Stuart, S. Schiller, and C. Goldman, Lawrence Berkeley National Laboratory. http://behavioranalytics.lbl.gov.

 <sup>&</sup>lt;sup>2</sup> National Action Plan for Energy Efficiency. "Model Energy Efficiency Program Impact Evaluation Guide."
November 2007. Available online at: http://www1.eere.energy.gove/office\_eerre/pdfs/napee\_evaluation\_guide.pdf

<sup>&</sup>lt;sup>3</sup> California Public Utilities Commission. "California Energy Efficiency Evaluation Protocols: Technical, Methodological, and Reporting Requirements for Evaluation Professionals." April 2006. Available Online at: http://www.calmac.org/events/EvaluatorsProtocols\_Final\_AdoptedviaRuling\_06-19-2006.pdf

<sup>&</sup>lt;sup>4</sup> Sergici, Sanem and Ahmad Faruqui. "Measurement and Verification Principles for Behavior-Based Efficiency Programs." May 2011. Available online at: http://opower.com/uploads/library/file/10/brattle\_mv\_principles.pdf

that energy efficiency goals can continue be met. The following additions and clarifications will also better align Ohio's privacy rules with those of other states that have adopted comprehensive rules for protecting customer energy usage data.

# a. Any energy usage data privacy rules should allow utilities to share data with their contractors in order to provide valuable services to their customers.

The Commission's revised rules on utility customer data privacy should clearly exempt from the customer consent requirement the transfer of customer energy data from utilities to their contracted agents in order to accomplish the utility's primary purposes, including demand response, energy management or energy efficiency programs. A contracted agent describes any third-party entity that has been contracted to assist the utility in the provision of regulated utility services or in the aggregation of customer data. Because Opower operates as a utility-contractor, data privacy is provided for in the contract with the utility, which is itself subject to the jurisdiction of the Public Utilities Commission. Contracted agents are separate and distinct from third-parties that retain customer data from customers rather than utilities.

Utility-contractor partnerships offer broad benefits for customers, utilities, and the public. Opower's program with AEP Ohio has delivered strong energy and bill savings to Ohio households—an independent evaluation found that average program savings for the program in its first year was 1.69%.<sup>5</sup> Opower is able to drive broad-based energy savings in part because of its program design. Opower's program is administered in partnership with utilities typically using an opt-out model. For this reason, it enjoys high levels of customer engagement, delivering real, broad-based energy savings that provide significant benefits to utilities, the public at large and individual customers. The key benefits of an opt- out, utility-contractor program, such as Opower's, are: utility retention of the customer relationship; ease of administration; low administrative costs; reliable measurement and verification; and significantly increased customer participation (a recent study in Germany found that changing a green power-pricing program from opt-in to opt-out had the effect of increasing participation in the program from 1% to 94%).<sup>6</sup> The benefits of allowing opt-out program design under a utility-contractor model were discussed in greater detail in Opower's March 2011 comments submitted pursuant to Case 11-277-GE-UNC.

If there were a legal requirement that utility contracted agents obtain an individual's consent in order to access a customer's data, energy efficiency contractors like Opower would not be able to operate under an opt-out design, resulting in much lower aggregate savings and engaging only a small percentage of customers. Clarifying that customer energy data can be shared with a contracted agent for the purposes of

<sup>&</sup>lt;sup>5</sup> Navigant Consulting, Inc. "AEP Ohio Program Year 2011 Evaluation Report: Home Energy Reports Program." 2012. Prepared by Bill Provencher, Bethany Glinsmann and Paul Wozniak.

<sup>&</sup>lt;sup>6</sup> Pichert, Daniel, and Konstantinos Katsikopoulos, *Green Defaults: Information presentation and pro- environmental behavior*, October 2007, Journal of Environmental Psychology, at:

ftp://papers.econ.mpg.de/IMPRS/SumSchool2009/priv/Katsikopoulos/ABC%20Read%205.2.pdf

demand response, energy efficiency and energy management programs will ensure that mandated energy efficiency goals can continue to be met while also ensuring that customer data is safeguarded.

# b. In implementing rules, Ohio should look to other states, in particular California, to take advantage of emerging consensus in this area.

Several states have adopted rules regarding smart grid privacy and the protection of customer energy usage data. Each of these states allows utilities to share customer data with contractors to implement innovative energy efficiency programs like Opower's. The Commission should adopt rules that are consistent with this emerging consensus.

California has enacted both state law and regulation regarding smart meter data privacy. In 2010, Governor Schwarzenegger signed into law Senate Bill 1476, the nation's first Smart Grid Data Privacy law. SB 1476 establishes the basic principle that personally identifiable smart meter electric or gas usage data may not be shared without a consumer's permission, except where necessary to accomplish a primary utility purpose. The legislation also defines the limited range of primary utility purposes for which a utility and its contracted agents may use smart meter data without the prior permission of a customer. The range of primary purposes includes "system, grid, or operational needs, or the implementation of demand response, energy management, or energy efficiency programs," provided that the contracts a utility has with any third party agent contain adequate safeguards and similar restrictions on the use and sharing of customer data.

Also in 2010, the California Public Utilities Commission embarked on a thorough proceeding regarding smart grid data privacy, including, once the law was enacted, issues of compliance with SB 1476.<sup>7</sup> That proceeding, in which more than 60 interested parties submitted lengthy comments, culminated in the July 2011 publication of a 160-page decision.

The rules adopted by the decision cover a broad range of topics, including notice, access, purpose specification, data integrity, data security and data minimization. Like SB 1476, the CPUC rules contemplate utilities working with contractors to accomplish a limited number of primary purposes, including the implementation of energy efficiency programs. Utilities may use customer data, without customer permission, to accomplish primary purposes, and may share customer data with their contractors, as long as the data is used only to accomplish the contracted primary purpose and the contract provides for adequate privacy safeguards. Contractors with whom data is shared are required to maintain the same minimum security standards, and to abide by the same use and disclosure limitations (and insist on these in any contracts with their own subcontractors) as the utility itself, and failure to abide by these limitations or to maintain adequate security safeguards must be defined as a material breach of contact.

Both SB 1476 and the CPUC rules strike an important balance, respecting the principle of consumer choice while still allowing utilities to use data, as they always

<sup>&</sup>lt;sup>7</sup> California Public Utilities Commission, Docket R 08-12-009

have, where necessary to accomplish their primary purposes. Equally importantly, the California law and rules properly define the implementation of energy efficiency programs as one of these primary purposes. In so doing, the CPUC is recognizing both an important policy priority for the state of California, and the fact that utilities and their contractors are uniquely positioned to deliver the potential efficiency gains made possible by AMI data. Under the California rules, innovative programs like Opower's are able to use an opt-out program design to achieve significantly higher customer participation and engagement.

The California approach has served as a model for other states considering the question of data privacy, including Oklahoma<sup>8</sup> and Colorado,<sup>9</sup> which have both recently enacted legislation (in Oklahoma), and rules (in Colorado), governing the permissible use, storage and sharing of smart meter data. In both states, as in California, utilities may use customer data in the course of their regulated business, including the implementation of energy efficiency programs, and they may share customer data with contracted agents in order to accomplish these purposes, so long as their contracts contain adequate protections and use restrictions.

#### 4. Conclusion

As Ohio considers implementing new rules, Opower respectfully urges the Commission to ensure the rules clearly continue to enable utilities to share customer energy usage data with their contractors in order to provide energy efficiency services to utility customers. In so doing, the Commission will be creating rules that are consistent with those that other leading states have established to safeguard customer energy usage data while encouraging innovations that improve energy efficiency and enhance customer engagement.

Respectfully submitted,

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<sup>&</sup>lt;sup>8</sup> Oklahoma HB 1079, approved by Governor May 20, 2011.

<sup>&</sup>lt;sup>9</sup> Colorado PUC decision no. C11-1144, Docket no. 11R-799E, October 2011.

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Summary: Comments electronically filed by Ms. Emma L Berndt on behalf of Opower, Inc.