

**STATE OF MARYLAND  
OFFICE OF PEOPLE'S COUNSEL**

**Paula M. Carmody, People's Counsel**

6 St. Paul Street, Suite 2102  
Baltimore, Maryland 21202  
410-767-8150; 800-207-4055  
[www.opc.state.md.us](http://www.opc.state.md.us)

**BILL NO.:** **House Bill 331**  
**Electricity – Smart Meters – Disclosure of Usage Data**

**COMMITTEE:** **Economic Matters**

**HEARING DATE:** **March 6, 2014**

**SPONSOR:** **Delegate Glass, et al.**

**POSITION:** **Support with Amendments**

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House Bill 331 prohibits an electric company from disclosing energy usage data obtained from a smart meter to a third party without the written consent of the customer, with certain exceptions. The Bill also provides an explicit right of a customer to file a complaint about improper data disclosure with the Public Service Commission and a monetary provision.

**Proposed Amendment**

While OPC supports the codification of the data privacy principle, the Bill does contain a problematic exception to the disclosure prohibition for data obtained for purposes of “preparing a customer bill” or “supporting customer choice.” (7-302.1(b) (2)) (page 2, lines 13-16). The first exception is unnecessary, since current law permits disclosure of billing and payment information by utilities for bill collection purposes. PUA §7-505(b) (6). The second exception not only is ambiguous, it has the clear

potential of allowing the exception to swallow the general rule, by allowing the release of data without consent to retail energy suppliers or any third party that claims data disclosure would encourage customer choice, for example, by the purchase of HVAC equipment, energy management systems, energy efficiency measure installation or installation of solar PV. The Office of People's Counsel would support the Bill if amended to delete the disclosure exception provision.

## **Discussion**

OPC has consistently opposed the release of any personal information, including energy usage data, of residential customers by a regulated utility without the customer's affirmative consent. The Public Service Commission has explicitly declined to authorize release of customer information, such as account numbers and energy usage data, without the express permission of the customer. In addition, the electric utilities have existing policies against disclosure of such information without customer consent. However, there are no laws or regulations expressly prohibiting the disclosure of this utility data.<sup>1</sup>

Consumer concerns about release of household energy usage data have been heightened in the face of deployment of "smart meters" in Maryland and elsewhere. Utilities collect such information for billing purposes and to ensure that customers' energy demands can be met. However, detailed usage data can not only be used for marketing and solicitation purposes by a company, it can reveal both aggregate usage and daily household usage patterns, and eventually, the use of specific appliances or equipment in the household. Consumers should be able to control access to this type of

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<sup>1</sup> There is some question as to whether PUA §7-505(b)(6), which prohibits the disclosure of billing, payment and credit information without consent, except for bill collection or credit rating reporting purposes, inherently prohibits the release of energy usage data. This Bill's express prohibition would remove any uncertainty.

information, and allow such access to third parties, including energy suppliers, only if and when they want to.

The national “smart grid” discussion has produced greater recognition of the importance of ensuring that the consumers control, in an informed and transparent way, the access to this information, particularly as we proceed with deployment of digital meters. In its Privacy Report<sup>2</sup>, the Department of Energy (DOE) observed that “[s]tudies conducted by utilities and consumer advocates have consistently shown that *privacy issues are of tremendous import to consumers of electricity*” and found substantial consensus on the following privacy principles:

- Utilities should not disclose consumer information to third parties without *affirmative consent* of the customer, through an opt-in process that reflects and records the informed consent of the customer;
- The opt-in process should require the third parties to identify the purpose for access to the data, the term for the consent, and the means for customer withdrawal of that consent;
- The third parties should be required to protect the privacy and security of the information and use it only for the designated purposes.

The importance of customer privacy and control over release of customer information and data also has been recognized by national organizations of consumers, utility regulators and utilities. For example, the Critical Consumer Issues Forum (CCIF), a joint initiative of the National Association of Regulatory Utility Commissions (NARUC), the National Association of State Utility Consumer Advocates (NASUCA), and the Electric

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<sup>2</sup> DOE, Data Access and Privacy Issues Related to Smart Grid Technologies, October 5, 2010, pages 3, 14-16. Available at: [http://www.gc.energy.gov/documents/Broadband\\_Report\\_Data\\_Privacy\\_10\\_5.pdf](http://www.gc.energy.gov/documents/Broadband_Report_Data_Privacy_10_5.pdf).

Edison Institute (EEI) (an association of regulated utilities), representatives of these groups achieved an agreement on a number of principles related to smart meters and modernization of the electricity grid, and specifically agreed:

Utilities and utility contractors must have *affirmative consent* of consumers prior to disclosure of a consumer's personally identifiable energy usage data to any third party.<sup>3</sup>

A person or business needing utility service has no choice but to apply for and receive such service (at least distribution service) from the regulated distribution utility. Historically gas and electric utilities have protected the customer information and data they collect in order to provide service and bill for it. Utility consumers therefore have no expectation that their personal information or usage data will be given or sold to other businesses by their utilities without their express permission. House Bill 331 merely codifies this expectation and current practice with regard to energy usage data from smart meters.

With the amendments to delete the exceptions, as proposed in Attachment A, OPC recommends a favorable report.

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<sup>3</sup>CCIF Report, "*Grid Modernization Issues with a Focus on Consumers (July 2011)*", Principle 12, p. 4 at <http://www.criticalconsumerissuesforum.com/wp-content/uploads/2011/09/CCIF-Grid-Modernization-Report-July2011-Final.pdf>. NARUC also passed a resolution on smart grid principles which recognized the need for consumers' informed consent and authorization for release of utility data. See page 3 at <http://www.naruc.org/Resolutions/Resolution%20on%20Smart%20Grid%20Principles.pdf>.