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## Time to Get Smart, Louisiana: Addressing Regulation of Smart Meter Data

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## INTRODUCTION

In the Spring of 2019, Kelly Farrar, a Louisiana resident, filed suit against his natural gas utility company alleging that the company’s metering technology was collecting private information about his home life.<sup>1</sup> Farrar claimed the utility company collected more information about him than necessary for billing purposes including details of activities within his home, the likely ages and genders of persons residing in his home, and other private information.<sup>2</sup> Ultimately, the Louisiana Second Circuit Court of Appeal determined that the technology installed onto Farrar’s home was not actually capable of the things he claimed, and

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1. See *Farrar v. Centerpoint Energy Res. Corp.*, 269 So. 3d 1149 (La. Ct. App. 2d Cir. 2019).

2. *Id.* at 1151.

judgment was rendered in favor of the defendant utility company.<sup>3</sup> However, Farrar's concerns were not far off, as almost all Louisiana energy consumers can expect to have the type of technology Farrar feared placed on their homes and businesses by the end of 2021.<sup>4</sup> The technology is called an advanced meter, or more fondly, a "smart meter."<sup>5</sup>

The advent of smart meters, which can collect near real-time and load signature specific data, has serious potential costs to the consumer.<sup>6</sup> The information gleaned from an individual's smart meter can reveal a person's daily schedule, such as when they are away from home or are asleep.<sup>7</sup> Analyses of smart meter data can even discern how many people normally occupy a building and whether more people than usual are inside.<sup>8</sup> Smart meter data can also signal whether a home is equipped with an alarm system or whether the home contains expensive electronic equipment or certain medical equipment.<sup>9</sup> Artificial neural networks analyzing smart meter data can detect heavy-load appliance usage with up to 90 percent accuracy.<sup>10</sup> As smart meters within a grid become more advanced, it will become easier for outsiders to identify individual

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3. *Id.* at 1159.

4. Katherine Mozzone, *Entergy Installing New Technology Across La., Some Choose to Opt Out*, WAFB9 (Mar. 16, 2019, 8:39 PM), <https://www.wafb.com/2019/03/17/entergy-installing-new-technology-across-la-some-choose-opt-out/> [<https://perma.cc/2HRP-495K>]. It should be noted that the events of COVID-19 may have set back installment dates, but smart meters are continuing to be installed through 2021. See Blake Paterson, *Baton Rouge Residents Not Happy as Entergy Boxes Show Up; Here's What the Boxes Do*, ADVOCATE (Jan. 13, 2021, 10:27 AM), [https://www.theadvocate.com/baton\\_rouge/news/article\\_93939756-545e-11eb-b92c-c349e9818355.html](https://www.theadvocate.com/baton_rouge/news/article_93939756-545e-11eb-b92c-c349e9818355.html) [<https://perma.cc/DY7R-93EC>]; Brittany Weiss, *Entergy Customers Concerned About High January Bills After Meter Switch*, WBRZ2 (Jan. 28, 2021, 6:16 AM), <https://www.wbrz.com/news/entergy-customers-concerned-about-high-january-bills-after-meter-switch/> [<https://perma.cc/B8EC-CDUA>] [hereinafter Weiss, *Entergy Customers Concerned*]; Brittany Weiss, *DEMCO to Start Installing New Smart Meters Later This Month*, WBRZ2 (Feb. 4, 2021, 5:23 PM), <https://www.wbrz.com/news/demco-to-start-installing-new-smart-meters-later-this-month/> [<https://perma.cc/S8YY-L8MZ>].

5. Mozzone, *supra* note 4.

6. U.S. DEP'T OF ENERGY, DATA ACCESS AND PRIVACY ISSUES RELATED TO SMART GRID TECHNOLOGIES 2 (2010), [https://www.energy.gov/sites/prod/files/gcprod/documents/Broadband\\_Report\\_Data\\_Privacy\\_10\\_5.pdf](https://www.energy.gov/sites/prod/files/gcprod/documents/Broadband_Report_Data_Privacy_10_5.pdf) [<https://perma.cc/TTJ7-337N>].

7. *Id.*

8. BRANDON J. MURRILL ET AL., CONG. RESEARCH SERV., R42338, SMART METER DATA: PRIVACY AND CYBERSECURITY 4 (2012).

9. U.S. DEP'T OF ENERGY, *supra* note 6, at 2.

10. MURRILL ET AL., *supra* note 8, at 4.

appliances in the home in greater detail.<sup>11</sup> While smart meter data collection has the laudable and necessary goals of sustainable energy and reduced consumption,<sup>12</sup> the detailed information collected can potentially reveal behavior patterns of persons inside the household or business.<sup>13</sup>

Many utility companies across the United States have already completed smart meter installation.<sup>14</sup> In 2010, lawmakers and energy industry participants agreed that consumer education and autonomy over smart meter data was critical for consumer acceptance of smart meters.<sup>15</sup> Despite congressional recommendations over a decade old, there is still no uniformity in how smart meter data is controlled in the United States.<sup>16</sup> Louisiana has recently decided to follow the nationwide move towards energy conservation and efficiency, which includes the use of smart meters.<sup>17</sup> Currently in Louisiana, the Louisiana Public Service Commission (“LPSC”) regulates utility company collection and use of smart meter data.<sup>18</sup>

The LPSC is an independent regulatory agency dedicated to serving the public interest by assuring safe, reliable, and reasonably priced services provided by public utility companies and motor carriers.<sup>19</sup> The LPSC consists of five elected Commissioners who confer in Baton Rouge<sup>20</sup> and serve overlapping terms of six years, as well as a staff of 92 people.<sup>21</sup> Created by Article VI, sections 3 through 9 of the Louisiana Constitution of 1921, the LPSC succeeded The Railroad Commission of Louisiana, which was created by the Louisiana Constitution of 1898.<sup>22</sup> The Louisiana Constitution of 1974, in Article IV, Section 21, reaffirmed the

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11. U.S. DEP’T OF ENERGY, *supra* note 6, at 9.

12. MURRILL ET AL., *supra* note 8, at 1; *id.* at 7.

13. MURRILL ET AL., *supra* note 8, at 4; U.S. DEP’T OF ENERGY, *supra* note 6, at 9.

14. Mozzone, *supra* note 4.

15. U.S. DEP’T OF ENERGY, *supra* note 6, at 7.

16. *Id.* at 10–13, 15–16, 34; Daniel Shea & Kate Bell, *Smart Meter Opt-Out Policies*, NAT’L CONF. OF ST. LEGISLATURES, (Aug. 20, 2019), <https://www.ncsl.org/research/energy/smart-meter-opt-out-policies.aspx> [<https://perma.cc/VRZ7-JH9J>].

17. U.S. DEP’T OF ENERGY, *supra* note 6, at 7.

18. *See* LA. CONST. art. IV § 21(A)(1).

19. Welcome to the Louisiana Public Service Commission Website, La. Pub. Serv. Commission, <http://www.lpsc.louisiana.gov/Default.aspx> [<https://perma.cc/9BQQ-8LKN>] (last visited Jan. 23, 2021).

20. LA. CONST. art. IV § 21(A)(1).

21. *Welcome to the Louisiana Public Service Commission Website*, *supra* note 19.

22. *Id.*

LPSC's constitutional authority and still gives it authority today.<sup>23</sup> As a regulatory agency, the Public Service Commission exists within the executive branch of Louisiana's government.<sup>24</sup> The overall goals of the LPSC are to ensure a regulatory balance that enables utility companies to provide customers with safe, adequate, and reliable service, at rates that are just, reasonable, equitable, and economically efficient, and that allow utility companies an opportunity to earn a fair rate of return on their investment.<sup>25</sup> In addition, the LPSC continues to take an active and cautious role in the development of a competitive, market-based approach to utility regulation whenever such an approach is in the public interest.<sup>26</sup> The LPSC regulates "all common carriers and public [utility companies]."<sup>27</sup> The LPSC is permitted to "adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties."<sup>28</sup> The LPSC has jurisdiction over utility companies providing electric, water, wastewater, natural gas, and telecommunication services, as well as all of the electric cooperatives in Louisiana.<sup>29</sup> The LPSC can exercise all necessary power and authority over any local public utility company for the purpose of fixing and regulating the rates charged and service furnished by such public utility companies.<sup>30</sup> To ensure consumers pay reasonable costs for electricity, the LPSC conducts biannual audits on public electric utility companies in the state and exercises its modification authority where necessary.<sup>31</sup> The LPSC has sole jurisdiction for utility company regulation on the state level, but several agencies on the federal level perform similar regulatory functions.<sup>32</sup> These include the Federal Communications Commission, the Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, and the Department of

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23. *Id.*

24. LA. CONST. art. IV § 21(A)(1).

25. *Welcome to the Louisiana Public Service Commission Website*, *supra* note 19.

26. *Id.*

27. LA. CONST. art. IV § 21(B).

28. *Id.* ("and shall have other powers and perform other duties as provided by law").

29. *About the Louisiana Public Service Commission*, LA. PUB. SERV. COMMISSION, <http://www.lpsc.louisiana.gov/aboutlpsc.aspx> [<https://perma.cc/V4WG-7BA5>] (last visited Jan. 23, 2021).

30. LA. REV. STAT. § 45:1163(A)(1) (2019).

31. *Id.* § 45:1163(C).

32. *About the Louisiana Public Service Commission*, *supra* note 29.

Energy (“DOE”).<sup>33</sup> The LPSC works with these agencies via its Legal Department.<sup>34</sup>

Louisiana consumers who are eligible for a smart meter have privacy concerns,<sup>35</sup> and rightfully so. It is no secret that a smart meter is capable of revealing intimate information about the persons and activities inside a home or business.<sup>36</sup> Although the LPSC claims it “wants everyone to have as much control as possible”<sup>37</sup> over the decision of whether to have a smart meter, realistically Louisiana consumers hardly have a choice in the matter. Currently the LPSC regulation permits utility companies to install smart meters without prior consent.<sup>38</sup> Once the smart meter is installed, consumers who wish to “opt out” may face a monthly fee<sup>39</sup> or cancellation of their utility service<sup>40</sup> depending on their service provider. In contrast, if a consumer wishes to be released from his current utility provider in favor of another provider—perhaps one that waives the monthly opt-out fee—the consumer must apply to the LPSC.<sup>41</sup> The LPSC will serve the utility with an order to show cause why the consumer should not be released; and if the Commission finds the service inadequate and cannot be rendered adequate within a reasonable time, the release shall be granted.<sup>42</sup> Currently, some Louisiana energy utility companies have explicitly promised not to sell smart meter data to third parties,<sup>43</sup> but such a decision is not required by the LPSC. Thus, utility companies have the option to freely turn over or sell smart meter data to private and public entities.<sup>44</sup>

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33. *Id.*

34. *Id.*

35. Mozzone, *supra* note 4.

36. U.S. DEP’T OF ENERGY, *supra* note 6, at 2, 4, 9.

37. Mozzone, *supra* note 4.

38. *Farrar v. Centerpoint Energy Res. Corp.*, 269 So. 3d 1149, 1152 (La. Ct. App. 2d Cir. 2019).

39. *Entergy Future Louisiana FAQ*, ENTERGY, <http://energyfuturelouisiana.com/#faq> [<https://perma.cc/YWD6-K6Q3>] (last visited Jan. 23, 2021) (scroll down to the question “Do I have to get a new advanced meter?”).

40. *See Farrar*, 269 So. 3d 1149.

41. LA. REV. STAT. § 45:123 (2019).

42. *Id.*

43. *Entergy Future Louisiana FAQ*, *supra* note 39; *Entergy – Privacy Policy*, ENTERGY, <https://www.entergy.com/privacy-policy/> [<https://perma.cc/Z2WU-6627>] (last updated Aug. 6, 2019).

44. It is not the Author’s assertion that any utility companies in Louisiana currently plan to sell or provide consumer data to third parties for commercial or other gain outside of what is necessary for the natural course of business. Rather, it is the Author’s position that with new technology comes uncharted legal territory that is best navigated with preventive measures. The transition towards

Louisiana should not be left behind in the nationwide energy reform. However, smart meter regulation in Louisiana should reflect the intimacy of smart meter data, echo the concerns of industry participants, and embrace congressional recommendations over a decade old. It is imperative that Louisiana conducts an audit of its current smart meter regulation to assess effectiveness, legal consequences, and areas in need of improvement.

In Part I, this Comment will briefly explore the current need for smart meters nationwide and in Louisiana; how smart meters work compared to traditional meters and other advanced meters; and the growing installation of smart meters across the United States. In Part II, this Comment will compare the current state of smart meter regulation and case law in Louisiana against the decade old congressional recommendations and industry leaders' concerns. In Part III, this Comment will identify potential solutions the State should consider moving forward as smart meter implementation continues to grow in Louisiana, the simplest and most effective method being additional, explicit regulation from the Louisiana Public Service Commission.

## I. SMART METER BACKGROUND

### *A. What is a Smart Meter and Why Do I Need One?*

America's power grid is aging out of usefulness.<sup>45</sup> The average age of a power plant in the United States is over 30 years but was only intended to last for about 40 years.<sup>46</sup> Similarly, electric transformers are averaging over 40 years of age, while 70 percent of transmission lines are at least 25 years old.<sup>47</sup> As these critical infrastructure components age, they must be replaced. Replacing infrastructure with automated systems capable of two-way communication can improve the system's capability and longevity.<sup>48</sup> The need for component replacements has triggered a series of changes in federal and regulatory law that support a transition towards a "nationally interconnected system, capable of accommodating massive transfers of

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renewable energy technologies requires the law to act as guideposts for both utilities and consumers. This Comment aims to provide context for what those guideposts may look like in Louisiana law for smart meters.

45. RICHARD J. CAMPBELL, CONG. RESEARCH SERV., R41886, THE SMART GRID AND CYBERSECURITY – REGULATORY POLICY AND ISSUES 2 (2011).

46. *Id.*

47. *Id.*

48. *Id.*

electrical energy between regions of the United States.”<sup>49</sup> A transnational goal of such magnitude requires various information processing tools, including smart meters.<sup>50</sup>

A smart meter is an advanced form of a traditional meter, used by a utility company to determine how much electricity or gas is used over a billing period.<sup>51</sup> A traditional meter records the total energy used over a one-month period and a utility employee then records the total by manually reading the meter.<sup>52</sup> A traditional meter has a lifespan of about 30 years.<sup>53</sup> In contrast, smart meters provide a slightly more accurate reading of energy consumption.<sup>54</sup> Instead of recording total usage over a one-month period, smart meters record the amount of electricity used in short intervals, as frequently as every fifteen minutes or even every minute.<sup>55</sup> The smart meter has two-way communication capabilities allowing it to relay the data and receive information between it and the smart grid or utility company.<sup>56</sup> The continuous recordation of electricity usage allows those interpreting the data to detect specific load signatures of appliances and duration of use in the home or business.<sup>57</sup>

The primary purposes of smart meter data are grid management, outage notification, and billing.<sup>58</sup> Smart meter data can “provide[] utility companies with detailed outage information in the event of a storm or other system disruption, helping utility companies restore service to customers quickly and reducing the overall length of electric system outages.”<sup>59</sup> Smart meters increase energy efficiency among consumers

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49. *Id.*

50. *Id.*

51. Katherine Tweed, *Are Traditional Electricity Meters Accurate?*, GREENTECH MEDIA (March 30, 2010), <https://www.greentechmedia.com/articles/read/are-traditional-electricity-meters-accurate#gs.5kwv0c> [<https://perma.cc/FL2J-79AQ>].

52. MURRILL ET AL., *supra* note 8, at 3–4.

53. Tweed, *supra* note 51.

54. *Id.* (About five percent of traditional meters tested are found to be off by a few percentage points, usually due to old age.).

55. MURRILL ET AL., *supra* note 8, at 3–4.

56. Isma Farah Siddiqui et al., *Optimizing Lifespan and Energy Consumption by Smart Meters in Green-Cloud-Based Smart Grids*, 5 IEEE ACCESS 20934, 20936 (2017).

57. *Id.*

58. MURRILL ET AL., *supra* note 8, at 1.

59. Alexander Mey & Sara Hoff, *Nearly Half of All U.S. Electricity Customers Have Smart Meters*, U.S. ENERGY INFO. ADMIN. (Dec. 6, 2017), <https://www.eia.gov/todayinenergy/detail.php?id=34012> [<https://perma.cc/6EHN-NU3U>].



who can now see their energy consumption on a micro level.<sup>60</sup> Providing consumers with the ability to understand and manage their own energy consumption eases the integration of renewable energy resources like wind and solar power into the nation's overall energy system.<sup>61</sup> Utilizing smart meters as a component of a smart grid can reduce energy costs for individual consumers and support a nationwide goal of creating high-quality jobs and sustaining economic growth.<sup>62</sup> Smart meters also pave the way for a reward system that encourages consumers to reduce energy usage during critical peak-load times.<sup>63</sup> Abstaining consumers are spared the higher costs of using energy during high demand times, which typically require expensive generation methods.<sup>64</sup> A nationwide shift away from consumption during high demand times will inevitably reduce the overall costs of generating electrical power.<sup>65</sup> Even new stressors from the rise in electrical vehicles can be managed and minimized through consumer and utility tracking of energy use via smart meters.<sup>66</sup> The move toward cleaner, more sustainable, and more secure energy production and consumption depends heavily on access to real-time, accurate data that smart meters can provide.<sup>67</sup>

#### *B. Do I Have a Smart Meter?*

In 2016, electric utility companies had installed approximately 71 million smart meters, covering 47 percent of the 150 million electricity consumers in the United States.<sup>68</sup> States with the highest percentage of smart meters include California, Nevada, Oklahoma, Georgia, Michigan, Maine, and Vermont.<sup>69</sup> Overall, Washington, D.C., has the highest percentage of smart meters.<sup>70</sup> States with extremely low percentages of smart meters include New York, New Jersey, and West Virginia.<sup>71</sup>

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60. MURRILL ET AL., *supra* note 8, at 1.

61. U.S. DEP'T OF ENERGY, *supra* note 6, at 7.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. Mey & Hoff, *supra* note 59.

69. *Id.*

70. *Id.*

71. *Id.*

In 2016, less than 20 percent of household energy consumers in Louisiana had a smart meter.<sup>72</sup> However, “by 2021, nearly everyone in Louisiana will have smart meters that collect data on electricity and gas usage.”<sup>73</sup> The initiative will cover nearly all parishes in the state.<sup>74</sup> All utility companies that use meters for billing purposes must “furnish to every patron a meter properly tested and in good order, and shall arrange the meter so that the consumer can, at any time, see the meter dial and ascertain how much gas, electricity, or water is being consumed, and the amount for which he is liable.”<sup>75</sup> One energy utility company, Entergy New Orleans, started installing smart meters in February 2019 and planned to finish all installations by the end of 2020.<sup>76</sup> The Entergy smart meters in Louisiana give consumers the ability to see their electricity usage every 15 minutes, and their gas usage every hour.<sup>77</sup> However, it should be noted that Louisiana consumers who already have a smart meter are shocked to discover their energy bills are higher than ever before.<sup>78</sup> While the price change is likely the difference in accuracy between traditional meters and smart meters, at least one utility company is using both traditional and smart meter readings during the transition to be sure.<sup>79</sup>

In addition to price concerns, Louisiana consumers who are eligible for a smart meter have health and privacy concerns.<sup>80</sup> However, Entergy New Orleans Public Affairs Manager, Toni Green-Brown, has indicated that both the World Health Organization and the Food and Drug Administration approve the use of smart meters.<sup>81</sup> While smart meters do

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72. *Id.*

73. Mozzone, *supra* note 4. It should be noted that the events of COVID-19 may have set back installment dates, but smart meters are continuing to be installed through 2021. *See supra* note 4.

74. Mozzone, *supra* note 4.

75. LA. REV. STAT. § 45:845 (2019).

76. Mozzone, *supra* note 4. It should be noted that the events of COVID-19 may have set back installment dates, but smart meters are continuing to be installed through 2021. *See supra* note 4.

77. Mozzone, *supra* note 4.

78. Katherine Mozzone, *Some Residents Blame Smart Meters for High Energy Bills, Entergy Responds*, FOX 8 LIVE (July 18, 2019), <https://www.fox8live.com/2019/07/19/some-residents-blame-smart-meters-high-energy-bills-entergy-responds/> [<https://perma.cc/84VW-LTU8>]; Paterson, *supra* note 4; Weiss, *Entergy Customers Concerned*, *supra* note 4.

79. Mozzone, *supra* note 4.

80. Mozzone, *supra* note 4.

81. *Id.* The American Cancer Society has echoed the same sentiment, finding that while “it is possible that smart meters could increase cancer risk[,] . . . it is very unlikely that living in a house with a smart meter increases risk of cancer.”

use radio frequencies to communicate with utility companies, “they use the same radio frequency as some of household appliances, like microwaves, baby monitors, [televisions], and even less than cell phones.”<sup>82</sup>

Other utility companies in Louisiana are utilizing a device with capabilities between traditional meters and smart meters, called encoder receiver transmitters (“ERT”).<sup>83</sup> An ERT works in conjunction with the traditional meter by recording the total amount of energy used within a specified time period.<sup>84</sup> Unlike a smart meter, which has two-way communication between the meter and the utility company,<sup>85</sup> an ERT has one-way communication.<sup>86</sup> A utility company’s recordation of the total energy used is semi-manual because a representative must still be in close proximity to the ERT to retrieve the data.<sup>87</sup> However, the data is transmitted from the ERT to a utility vehicle via radio frequency.<sup>88</sup> Unlike smart meters, ERTs do not allow the consumer to see any data other than their billing information, and the data is deleted from the ERT after 40 days.<sup>89</sup> Utility companies are prohibited from knowingly constructing, using, or furnishing to the consumer any false meter or any other false system for measuring electricity.<sup>90</sup>

Similar to the benefits of smart meters already discussed, smart meters in Louisiana will help consumers cut electricity costs by giving them real-time information necessary to make adjustments in their energy consumption.<sup>91</sup> The smart meters will also help Entergy and other Louisiana utility companies communicate with the meters directly to detect power failures and connect or disconnect power where necessary.<sup>92</sup> The direct communication between a utility and its smart meters will reduce the time between an outage and repairs, as the utility will know the

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AM. CANCER SOC’Y, SMART METERS 2, <https://www.cancer.org/content/dam/CRC/PDF/Public/7964.00.pdf> [<https://perma.cc/TM47-3HRR>] (last updated Sept. 24, 2014).

82. Mozzone, *supra* note 4.

83. *See* Farrar v. Centerpoint Energy Res. Corp., 269 So. 3d 1149 (La. Ct. App. 2d Cir. 2019).

84. *See id.* at 1153.

85. Siddiqui et al., *supra* note 56, at 20936.

86. *See* Farrar, 269 So. 3d at 1153.

87. Siddiqui et al., *supra* note 56, at 20936.

88. *Id.*

89. *Id.*

90. LA. REV. STAT. § 45:847 (2019).

91. Mozzone, *supra* note 4.

92. *Id.*

exact location of an outage rather than having to rely solely on telephone communications.<sup>93</sup> While the topic of smart meters is receiving marginally more attention, most consumers are unaware they even have a smart meter or that access to near real-time data on their energy usage even exists.<sup>94</sup>

## II. UNANSWERED DATA QUESTIONS

### A. *Privacy Concerns in the Wake of Farrar v. Centerpoint*

Due to the intimate information smart meters can collect, a private smart meter operator is capable of intrusion on seclusion, a tort “involving intrusions into physical spaces or places such as office[s], houses, [and] lockers.”<sup>95</sup> The seclusion is not limited to physical spaces and can extend to an individual’s private affairs.<sup>96</sup> An individual may expressly or impliedly give consent, thereby preventing any later assertion of his right to privacy.<sup>97</sup> Furthermore, “[t]he right [to privacy] is not absolute; it is qualified by the rights of others.”<sup>98</sup> Louisiana courts distinguish between actionable and non-actionable invasions to determine if a defendant’s conduct is unreasonable such that it seriously interferes with a plaintiff’s privacy interest.<sup>99</sup> To determine unreasonable conduct, Louisiana courts balance a defendant’s interest in pursuing its course of conduct against a plaintiff’s interest in protecting his privacy.<sup>100</sup>

Persons coerced into consent waive potential actionable claims and subject themselves to a variety of dangers.<sup>101</sup> Observers of smart meter data can make calculated inferences to determine times people are at home, sleeping routines, specific appliance types used in the home, charging data for plug-in vehicles, and more.<sup>102</sup> Such intimate data can be

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93. *Id.*

94. Mey & Hoff, *supra* note 59.

95. JOHN M. CHURCH, WILLIAM R. CORBETT & DARREL PAPILLION, *INVASION OF THE PRIVACY SNATCHERS: COMMON LAW AND STATUTORY CLAIMS FOR INVASION OF PRIVACY* 7 (2015), <https://lajudicialcollege.org/wp-content/uploads/2015/03/Torts-Privacy-Issues.pdf> [<https://perma.cc/NEK3-2C8S>]; *see, e.g.*, *K-Mart Corp. Store No. 7441 v. Trotti*, 677 S.W.2d 632 (Tex. Ct. App. 1984).

96. *Parish Nat’l Bank v. Lane*, 397 So. 2d 1282, 1286 (La. 1981).

97. *Id.*

98. *Id.*

99. *Jaubert v. Crowley Post-Signal, Inc.*, 375 So. 2d 1386, 1389 (La. 1979).

100. *Gerard v. Parish of Jefferson*, 424 So. 2d 440, 445 (La. Ct. App. 5th Cir. 1982); *Lane*, 397 So. 2d at 1286.

101. CHURCH, CORBETT & PAPILLION, *supra* note 95, at 7.

102. *Naperville Smart Meter v. City of Naperville*, 900 F.3d 521, 524, 526 (7th Cir. 2018).

used in predictive analytics, computational politics, locational surveillance, and law enforcement surveillance and monitoring.<sup>103</sup> Furthermore, if utility companies struggle to keep up with data protection, data breaches expose homeowners to serious abuses of intimate details about their lives.

In Louisiana, the Second Circuit has previously considered whether an energy utility company's installation of an ERT, the lesser form of a "smart meter," constitutes an invasion of privacy against an individual homeowner.<sup>104</sup> The plaintiff, Kelly Farrar, had not given permission for the ERT's installation on his home,<sup>105</sup> but the utility company had authorization to install the ERT under the Standard Gas Tariff filed with LPSC.<sup>106</sup> Farrar alleged that his privacy was invaded because the ERT collected more information about him than necessary for billing purposes, including details of activities within his home, the likely ages and genders of persons residing in his home, and other precise information.<sup>107</sup> The utility company asserted that Farrar did not have an actionable claim, and that "nothing in the [Standard Gas] Tariff requires particular metering or measuring devices or regulates the frequency with which [the utility company] may collect or store data measuring gas usage by a customer."<sup>108</sup>

As previously discussed, an ERT works in conjunction with the wheel on a standard meter and "counts each revolution of the wheel in order to determine the amount of gas passing through the meter."<sup>109</sup> The ERT stores the data it collects for 40 days.<sup>110</sup> On the 41st day, the oldest data is deleted and replaced with the newest data.<sup>111</sup> Once a month, a representative from the utility company passes by in his truck and receives the data via radio transmission. This allows the utility company to reduce costs and collect data more efficiently, compared to the previous method of manually reading, recording, and uploading the information from each home individually.<sup>112</sup>

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103. CHURCH, CORBETT & PAPILLION, *supra* note 95, at 3–5.

104. *Farrar v. Centerpoint Energy Res. Corp.*, 269 So. 3d 1149, 1151 (La. Ct. App. 2d 2019).

105. *Id.*

106. *Id.* at 1152.

107. *Id.* at 1151.

108. *Id.* at 1152.

109. *Id.*

110. *Id.* at 1152–53.

111. *Id.*

112. *Id.*

The Second Circuit analyzed the tort claim by balancing the individual's privacy interest against the utility company's interest in pursuing its course of conduct.<sup>113</sup> Ultimately, the Second Circuit correctly found that Farrar could not meet his burden of proof to show that the ERT provided precise, detailed information about activities within his home.<sup>114</sup> The court determined that where the invasion of privacy was minimal and based on a reasonable course of conduct, the plaintiff did not have an actionable claim of intrusion on seclusion.<sup>115</sup> But would the court have ruled the same if the ERT was a "smarter" technology actually capable of collecting more intimate details about the homeowner? Should such an intrusion still be considered minimal and non-actionable in Louisiana?

*B. Picking Up Where Congress Left Off*

*1. Prior Discussion*

In 2010, the U.S. DOE published a report highlighting energy industry consensus, disagreements, and recommendations for nationwide adoption of smart grid technologies, including smart meters.<sup>116</sup> The report detailed eight key findings regarding education, collection, use, and accessibility of smart meter data.<sup>117</sup> The report also posed 18 questions left unanswered at the time of publication regarding smart meter data ownership rights, privacy protections, accountability, security, and opt-out options.<sup>118</sup> Although the report may have served its federal purpose of "facilitat[ing] the adoption and deployment of various Smart Grid technologies,"<sup>119</sup> smart meter data continues to be treated with irregularity across the United States even today.<sup>120</sup>

The majority opinion from energy industry participants in 2010 was that "consumers should be *required* to take part in smart meter deployment and allow utility companies access to energy consumption data."<sup>121</sup> This stance has merit based on the country's need for sustainable renewable energy and a utility company's right to conduct its regular course of business. It would be unfair and infeasible to demand more reliable

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113. *Id.* at 1158.

114. *Id.*

115. *Id.* at 1159.

116. U.S. DEP'T OF ENERGY, *supra* note 6, at 1.

117. *Id.* at i–ii.

118. *Id.* at ii–iii.

119. *Id.* at 1.

120. *Id.*

121. *Id.* at 10–13, 15–16, 34 (emphasis added).

renewable energy without participation in the transition, which includes smart meter installations. Nonetheless, consumers should still have a choice in the matter, and “commenters were universal in agreeing that consumers would have control over whether their individual energy consumption data was shared with third parties.”<sup>122</sup> Others believed that consumers should be allowed to preemptively opt out of smart meter deployment altogether,<sup>123</sup> rather than having to request removal from the utility provider.

Commenters also had conflicting views on who the true owners of smart meter data are, and whether or not that data is subject to the view of or sale to third parties.<sup>124</sup> There are three camps of thought regarding ownership of smart meter data: (1) those who say the data is owned wholly by the consumer; (2) those who say the data is owned wholly by the utility; and (3) those who say the data is owned jointly by both.<sup>125</sup> The argument for consumer-only ownership is that the consumer pays for the infrastructure that collects the data, and the consumer’s actions actually create the data.<sup>126</sup> If a consumer owns his data privacy outright, then the consumer is solely in control of whether that information is given to a third party.<sup>127</sup> Some believe the consumer and utility company jointly own the data, where the “personally-identifiable, individual data [is] owned by the consumer,” and “the aggregate data [from multiple consumers is] owned by the utility.”<sup>128</sup> Others believe the utility company solely owns the smart meter data because the utility company “installs, maintains, and operates the infrastructure by which the energy consumption data is generated.”<sup>129</sup> Although most believe that consumers should have access to their usage data regardless of ownership,<sup>130</sup> a utility company with sole ownership of smart meter data would have the freedom to distribute or withhold the data.<sup>131</sup>

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122. *Id.* at 34.

123. *Id.*

124. *Id.* at 10–13, 15–16, 26–27.

125. *Id.*

126. *Id.* at 27.

127. *Id.* at 10–13, 15–16, 26–29.

128. *Id.* at 27.

129. *Id.*

130. *Id.*

131. *Id.*

## 2. *Statewide Differences*

In twenty-two states, utility regulators are allowed to rule on whether a utility can implement an opt-out program.<sup>132</sup> Others address the issue using statewide legislation.<sup>133</sup> At least seventeen states have considered smart meter opt-out legislation in the past four legislative sessions.<sup>134</sup> As of 2019, at least seven states have enacted legislation to allow consumers to opt out of having a smart meter installed on their home or business.<sup>135</sup> In unique fashion, New Hampshire legislation requires customer consent prior to smart meter installation, while Pennsylvania law explicitly prohibits consumers from opting out.<sup>136</sup> Some states still have no regulation in place addressing a consumer's ability to opt out of having a smart meter.<sup>137</sup>

Allowing consumers to access and share their energy data with third parties supports the goal of energy conservation and the implementation of renewable resources.<sup>138</sup> Without statutory or other legal assertion to the contrary, utility companies are deciding for themselves whether or not they own, share, or have no ownership rights in the smart meter data they collect. States like Texas allow consumers considerable autonomy over their data, giving them the ability to share their data with third persons.<sup>139</sup> However, in other states without explicit ownership provisions, a utility company is free to claim sole ownership of smart meter data and allow or

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132. Shea & Bell, *supra* note 16.

133. *Id.*

134. *Id.*

135. *Id.* The number of states who engage in smart meter opt-out programs is expected to grow exponentially in the near future. For example, in 2019 Arkansas consumers using Entergy now have the ability to opt out of the smart meter program. See *Entergy Future Arkansas FAQ*, ENTERGY, <http://energyfuturearkansas.com/#faq> [<https://perma.cc/T3BH-WNDY>] (last visited May 9, 2021) (scroll down to the question “Do I have to get a new advanced meter?”).

136. Shea & Bell, *supra* note 16. An example of total utility company control, Pennsylvania consumers must petition their public utility commission for removal of their smart meter, even when questions arise of a smart meter's potential to impair the disabled. See *Povacz v. Pa. Pub. Util. Comm'n*, 241 A.3d 481 (Pa. Commw. Ct. 2020) (case was remanded to the public utility commission for determination of appropriate accommodation pending sufficient proof of potential harm).

137. Shea & Bell, *supra* note 16.

138. U.S. DEP'T OF ENERGY, *supra* note 6, at at 7; MURRILL ET AL., *supra* note 8, at 1.

139. *FAQ*, SMART METER TEXAS, <https://www.smartmetertexas.com/faqs> (last visited May 9, 2021).



withhold access to individual consumer data.<sup>140</sup> This can be seen in Louisiana, where some utility companies have made the choice not to share smart meter data with third parties but are not prohibited from such action.<sup>141</sup> As Congress discussed over a decade ago, data ownership is directly tied to autonomy over data distribution to third parties.<sup>142</sup> Therefore, where Louisiana utility companies are not prohibited from distributing smart meter data to third parties, the LPSC has taken an ambiguous stance that smart meter data may be owned by both the consumer and the utility company, or perhaps even solely owned by the utility company. This approach reveals the problem with the lack of uniformity: Consumers in Louisiana with different utility company providers have differing ownership rights over their smart meter data.

### 3. Louisiana

Louisiana Public Service Commissioner for District 3, Lambert C. Boissiere, III, supports the implementation of smart meters but “wants everyone to have as much control as possible” over their decision to have one.<sup>143</sup> Boissiere has stated that he wants “to make it as easy as possible for people to opt out” of having a smart meter,<sup>144</sup> but choosing to opt out of having a smart meter does have consequences. Currently, Entergy consumers who opt out of having a smart meter are charged an additional monthly fee of \$14.35.<sup>145</sup> This additional monthly fee, approved by the LPSC, is intended to “pay the costs associated with the operation and maintenance of additional infrastructure and manual processes that are required to serve opt-out customers and read the meter manually each month.”<sup>146</sup> The “additional infrastructure and manual processes” likely

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140. Avista Corporation, Comment in Response to Request for Information by Department of Energy on Implementing the National Broadband Plan by Empowering Consumers and the Smart Grid: Data Access, Third Party Use, and Privacy (May 11, 2010), [https://www.energy.gov/sites/prod/files/gcprod/documents/Avista\\_Comments\\_DataAccess.pdf](https://www.energy.gov/sites/prod/files/gcprod/documents/Avista_Comments_DataAccess.pdf) [<https://perma.cc/N3MT-EP29>] (in response to 75 Fed. Reg. 26,203).

141. *Entergy – Privacy Policy*, *supra* note 43.

142. U.S. DEP’T OF ENERGY, *supra* note 6, at 10–13, 15–16, 34 (as the Congressional Report shows, the issue of whether or not utility companies can share smart meter data with third parties depends on the ownership rights utility companies and consumers have in the data).

143. Mozzone, *supra* note 4.

144. *Id.*

145. *Entergy Future Louisiana FAQ*, *supra* note 39.

146. *Id.*

refers to the current method of an Entergy employee manually reading, recording, and inputting the traditional meter data each month.<sup>147</sup>

While this fee seems relatively inexpensive at \$172.20 per year, the fee is essentially an extra charge for the services Entergy already offers and that consumers already pay. Where the median age of a Louisiana resident is 34,<sup>148</sup> and the life expectancy of a Louisiana resident is 70 years,<sup>149</sup> Louisiana consumers opting out of a smart meter can expect to pay at least an additional \$6,199.20 over their lifetime for services they were already receiving. It follows that this fee will increase once the implementation of smart meters is complete and both the state and the nation rely more heavily on smart grids.<sup>150</sup>

While the LPSC has approved a monthly opt-out fee, there is no indication that utility companies *have* to offer the option to opt out in Louisiana. At least one utility company in Louisiana has terminated services with persons who requested advanced meter removal.<sup>151</sup> Furthermore, in *Underwood v. Southern Cities Distributing Co.*,<sup>152</sup> plaintiffs sued the natural gas utility company for refusing service and the court found the utility company was within its right to refuse service where the plaintiffs failed to pay an upfront deposit. The Second Circuit noted that as a natural gas provider to the city of Shreveport, the utility company had the authority to “require its charges to be paid for . . . in advance or to be secured by a reasonable deposit from the consumer, and [to] enforce such a requirement by the refusal of service to persons who do not comply.”<sup>153</sup> The court recognized that “[a] gas company would have to go

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147. *Id.*

148. BUCHER, WILLIS, & RATLIFF CORP., PARISH OF EAST BATON ROUGE, LOUISIANA – BREC STRATEGIC PLAN, CHAPTER 2 – DEMOGRAPHIC REPORT, at 2-6, [http://www.brec.org/assets/PlanningandEngineering/IYP1\\_Final/iyp1\\_chapter2.pdf](http://www.brec.org/assets/PlanningandEngineering/IYP1_Final/iyp1_chapter2.pdf) [<https://perma.cc/C27K-U8JX>].

149. Hristina Byrnes & Thomas C. Frohlich, *Life Expectancy in the U.S.: You're Most Likely to Live a Long Life in Hawaii and California*, USA TODAY (Feb. 21, 2019, 8:58 AM), <https://www.usatoday.com/story/money/2019/02/21/average-life-expectancy-in-the-us-hawaii-top-state-for-a-long-life/39018551/> [<https://perma.cc/5FH6-2QEE>].

150. Adding to the uncertainty of an opt-out fee, it should be noted that opt-out fees are not uniform. For example, in Arkansas, Entergy customers are required to pay “a one-time service and administration fee of \$63.50, in addition to a monthly manual meter-reading fee of \$21.80, which will be added to [the] monthly bill.” See *Entergy Future Arkansas FAQ*, *supra* note 135.

151. See *Farrar v. Centerpoint Energy Res. Corp.*, 269 So. 3d 1149, 1151 (La. Ct. App. 2d Cir. 2019).

152. 157 So. 160 (La. Ct. App. 2d Cir. 1934).

153. *Id.* at 161.

out of business or else increase the rate charged to paying consumers to meet the loss of revenue through the failure of others to pay, if it could not legally protect itself against such loss by requiring cash deposits.”<sup>154</sup> If a consumer similarly refuses to pay the opt-out fee for a service already being rendered, Louisiana courts may rely on *Underwood* to uphold the LPSC’s authorization of opt-out fees. This ambiguity leaves consumers who oppose smart meters at a disadvantage. Louisiana energy consumers are therefore not given a fair opt-out choice. Citizens who oppose smart and advanced meters have the option to: (1) pay a monthly opt-out fee that can be expected to increase in the future; (2) risk termination of utility services; or (3) continue having a potentially harmful smart meter collect sensitive data against their wishes.

At first glance, Louisiana appears to be in favor of consumers and utility companies sharing ownership of smart meter data. Louisiana utility companies promise interactive data management to allow customers to respond to price changes and larger system loads in real time.<sup>155</sup> It is important to note that access can take as long as several months after the installation of a smart meter.<sup>156</sup> However, most consumers are unaware of their new smart meter or of the ability to view their data,<sup>157</sup> and others have only noticed increased bills since the smart meter installations.<sup>158</sup> Thus Louisiana consumers are not being given sufficient education or access to their smart meter data, which may signal that Louisiana is actually in favor of sole utility ownership of smart meter data. Without clear legislation or orders from the LPSC, however, it is impossible to concretely know Louisiana’s stance on the issue.

In 2018, Louisiana Governor John Bel Edwards signed an amendment to Louisiana’s Database Security Breach Notification Law (“SBNL”), which took effect on August 1, 2018.<sup>159</sup> To be protected, the personal information must be the first name or first initial and last name of an individual in combination with one of the following: social security number; driver’s license number or state identification card number;

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154. *Id.*

155. Mozzone, *supra* note 4.

156. *Entergy Future Louisiana FAQ*, *supra* note 39.

157. Mey & Hoff, *supra* note 59.

158. Mozzone, *supra* note 78.

159. LA. REV. STAT. §§ 51:3071–:3077 (2019); Jessica C. Engler, *Louisiana Governor Signs Significant Changes to Louisiana’s Database Security Breach Notification Law*, KEAN MILLER, LLP: LA. LAW BLOG (May 29, 2018), <https://www.louisianalawblog.com/data-security-and-privacy/louisiana-governor-signs-significant-changes-louisianas-database-security-breach-notification-law/> [<https://perma.cc/KFS2-JK2G>].

account number, credit or debit card number, in combination with any required password or code that would permit access to the financial account; passport number; or biometric data such as fingerprints, voice prints, eye retina or irises, or other unique biological characteristics used to authenticate an individual's identity.<sup>160</sup> The purpose of the act is to make citizens aware of when there has been a "compromise of the security, confidentiality, or integrity of the computerized data" that results in unauthorized access to personal information, and to prevent authorized persons from disclosing the personal information to unauthorized persons.<sup>161</sup> The information recorded and transmitted to and from the smart meter is computerized data; however, the expanded definition of "personal information" protected by the amendment does not include all smart meter data. Specifically, the law's narrow definition of personal information indicates that the law does not protect the large amounts of smart meter data collected daily on devices used within the home. Therefore, while a consumer's account number, payment method, and passwords connected to her smart meter are protected, she is still exposed to having her intimate information analyzed by unauthorized parties. Electric utility companies are only bound to let consumers know if there has been a breach of smart meters in regards to their narrowly defined personal information.<sup>162</sup> Furthermore, a right of action exists only to recover for actual damages resulting from the failure to disclose the breach of a smart meter security system in a timely manner resulting in the disclosure of a consumer's personal information.<sup>163</sup> Moreover, the narrow language of the amended SBNL suggests that the legislative intent is to protect citizens from common identity theft rather than to protect citizens from invasive behavioral analytics. While identity theft is certainly a part of the concern for smart meter data, the SBNL only covers a small portion of the dangers posed by the collection of smart meter data.

### III. POTENTIAL SOLUTIONS

#### *A. Privacy Concerns in the Wake of Farrar v. Centerpoint*

Smart meters help utility companies track energy usage by allowing for continuous data collection and wireless transmission of an individual's energy use inside a home or business. It is undeniable that data collection in the energy sector is necessary to reduce costs, streamline correction of

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160. LA. REV. STAT. § 51:3073(4)(a)(i)-(v).

161. *Id.* § 51:3073.

162. *Id.* § 51:3074.

163. *Id.* § 51:3075.

problems, manage energy bottlenecks, and conserve energy.<sup>164</sup> However, these benefits come at a cost to consumers. Louisiana consumers like Farrar are understandably concerned about privacy issues surrounding smart meter data. However, without education on both the risks and the benefits of smart meters and similar devices such as ERTs, the concept of a smart meter or a smart grid will see unwavering distrust and rejection.<sup>165</sup>

Indeed, despite the rapid growth of smart meters in Louisiana, the state lacks an adequate educational and legal foundation to protect citizens from potential abuse. *Farrar v. Centerpoint Energy Resources Corp.* depicts the lack of understanding Louisiana consumers have about smart meters.<sup>166</sup> Farrar believed the ERT installed on his home had the capabilities of a smart meter, causing him concern and distress.<sup>167</sup> As previously explained, an ERT collects *total* data usage over a long period of time and only has the capability to send the data to utility personnel within a short range of the device.<sup>168</sup> Without a knowledgeable foundation of this, Farrar alleged that the ERT was capable of collecting “precise and detailed measurements about customers’ activities within their homes, to collect and store that data, and to communicate data to and from customers’ meters.”<sup>169</sup> While the allegation is true of smart meters in Louisiana, such capability is far beyond Farrar’s device, allowing the court to ignore the issue of whether smart meters are an actionable invasion on seclusion.<sup>170</sup>

Furthermore, as *Farrar* exhibits, not all consumers in Louisiana are readily accepting of the consequences of smart meters, and not all consumers have a true choice on whether a smart meter is installed. While some utility companies offer consumers to “opt out” of having a smart meter installed,<sup>171</sup> Louisiana utility companies charge a monthly rate to consumers who do opt out, or require the installation of smart meters at the risk of losing consumer access to the utility altogether.<sup>172</sup>

Although the Second Circuit did not comment on the potential success of Farrar’s claim if the ERT had smart meter capabilities, it is reasonable to assume the analysis would have a similar result where the smart meter

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164. *Naperville Smart Meter v. City of Naperville*, 900 F.3d 521, 528–29 (7th Cir. 2018).

165. U.S. DEP’T OF ENERGY, *supra* note 6, at 2–3, 10–13, 15–16.

166. 269 So. 3d 1149 (La. Ct. App. 2d Cir. 2019).

167. *Id.* at 1151.

168. *Id.* at 1152–53.

169. *Id.* at 1151.

170. *Id.* at 1158.

171. *Naperville Smart Meter v. City of Naperville*, 900 F.3d 521, 529 (7th Cir. 2018).

172. *Farrar*, 269 So. 3d at 1151; *Entergy Future Louisiana FAQ*, *supra* note 39.

data is critical for advancing utility services.<sup>173</sup> Whether a Louisiana court will find the information to be minimally intrusive as others have<sup>174</sup> or consider the information to be so intimate that it requires additional protections can be speculated on, but courts have not yet answered this question. To ensure that consumer privacy is protected as smart meters become more commonplace throughout Louisiana, legislative action or additional LPSC regulation should supplement current tort law, or at least take a stance on smart meter data ownership and distribution to third parties.

A legislative act or Public Service Commission regulation acknowledging and admitting to the intimate information collected by smart meter data would signal to Louisiana courts that the information collected constitutes more than a minimal intrusion. Had such a legislative piece been in place during the *Farrar* case, the plaintiff would have had a stronger case against his utility company since the utility company's need for conducting regular business would not immediately outweigh Farrar's personal right to privacy.

#### *B. Picking Up Where Congress Left Off*

Louisiana entrusts the state's Public Service Commission with the regulation of smart meter implementation and data collection. The currently sanctioned opt-out fee should be replaced with allowing consumers to opt out without consequences, including the risk of utility termination. Permitting utility companies to terminate consumers who desire to opt out of smart meters appears industry-friendly on its face. However, if all utility companies adopted such a policy, Louisiana could experience frequent dark spots without energy, inhibiting energy progress in the state. Regarding opt-out fees, whether utility companies are trying to realize economies of scale or are financially coercing consumers into consenting to data collection, consumers abstaining from smart meter use should not be paying extra for a service already being rendered and paid for.

Although utility companies still in the smart meter implementation phase may be struggling to give consumers access to their smart meter data, Louisiana should make ownership rights to smart meter data explicitly clear. It makes sense that both utility companies and individual consumers have respective ownership rights in smart meter data as both parties create the data. The individual consumer generates her own

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173. *Naperville Smart Meter*, 900 F.3d at 528–29.

174. *See id.*

personally identifiable data, while the utility company generates the aggregate data from all consumers it services. Therefore, consumers and utility companies should share ownership. A shared ownership interest ensures that consumers get to access the data they personally created to help manage their energy consumption and reduce their energy bills. A shared ownership interest also ensures that utility companies are able to aggregate their consumer data for purposes of energy efficiency. A shared ownership interest is ideal because it prevents either party from having too much autonomy over smart meter data. A consumer would not be able to arbitrarily withhold permission from the utility company to share smart meter data with third parties that help the utility company perform necessary services in the pursuit of business, just as a utility company would not be able to arbitrarily share smart meter data with third parties outside of necessary services in the pursuit of business. As for what are considered “necessary services” for a utility company, the LPSC is the most qualified to make such determinations. Ideally, it should be the LPSC, rather than the State legislature, who promulgates an order on smart meter data ownership and third party distribution because the LPSC is vested with the specific goal of ensuring safe and adequate services for Louisiana consumers and has the requisite experience in regulating Louisiana utility companies. Moreover, the LPSC should feel incentivized to promulgate an order on this issue *before* the State legislature does, thereby taking away the LPSC’s ability to regulate the matter effectively and placing the matter in the hands of the courts more often.

#### CONCLUSION

As the entire nation—including Louisiana—experiences rapid growth in smart meter implementation, the actionable data collected from smart meters similarly grows in usefulness. Smart meter education is a major component in garnering acceptance of such technology; however, in Louisiana, understanding of smart meter capabilities and advantages is limited at best. Furthermore, existing smart meter regulations in Louisiana address only utility company profitability while failing to recognize the intimate collectable data.

Louisiana is on track to have the majority of energy consumers equipped with smart meters in just a few years. Therefore, Louisiana courts must be prepared to address privacy concerns that will inevitably arise in areas with little smart meter education or regulation. Current tort law analysis may yield a presumption in favor of utility companies that the smart meters are not an invasion on seclusion. This presumption would effectively remove the cause of action that consumers have against utility

companies over smart meters. Such a decision would create inequitable results for consumers. Specifically, it minimizes the fact that smart meters collect numerous amounts of intimate data, which, if analyzed, could reveal private information about consumers in their homes. Louisiana should proactively address this issue by either legislative action or Public Service Commission regulation recognizing the inherently personal information collected by smart meters. Acknowledging that smart meters are more than a minimal intrusion into privacy but can still be used to further the goal of energy sustainability, so long as smart meters are used appropriately, balances both parties' interests in smart meter data.

The LPSC should also reconsider its current regulation of smart meter opt-out procedures. Louisiana citizens are effectively being coerced into allowing smart meter data collection out of fear of either monthly payments or termination of utility services for requesting to opt out. At the very least, the LPSC should recognize that consumers should not have to pay twice for a service they already receive. Where consumers are already being charged for the manual reading of their traditional meters in their monthly billings, it is neither equitable nor sensible to add an extra charge for this service simply because the consumer does not want to switch to a smart meter.

Finally, addressing ownership of smart meter data in Louisiana can proactively prevent issues in the future regarding sharing smart meter data with third parties. Although energy industry participants disagree on whether smart meter data is owned by the consumer, the utility company, or both, Louisiana currently has the opportunity to make that decision and act accordingly. Ideally, Louisiana should recognize that both consumers and utility companies help create and thus jointly own smart meter data. Shared ownership will bring balance by not allowing one party to have more autonomy over the other in deciding whether or not to share smart meter data. The consumer will retain the right to protect their intimate data from third parties, while the utility company will retain the right to share smart meter data with third parties as necessary in the pursuit of business. Shared ownership would also prevent frivolous litigation in the future and further the goals of responsible energy consumption, renewable energy substitutions, and streamlined business processes. The LPSC should take advantage of this opening to make such a regulation before the State legislature decides to address the issue instead.



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