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March 18, 2014

Arizona Corporation Commission
Utilities Division, Steven Olea, Director
1200 West Washington Street
Phoenix, Arizona 85007

Re: Formal Complaint Against APS

Mr. Olea,

Since my informal complaint of March 4th was ignored, consider this a formal complaint.

For several years, APS has been distributing a “Myth vs Fact” sheet about “smart” meters to their ratepayers. APS also has a “Myth vs Fact” page at their “Meter Information Center” website, apsmeters.com.

Unfortunately, almost every “Myth vs Fact” claim made by APS is either misleading or an outright lie.

In my opinion, these APS deceptions are in clear violation of consumer fraud statute A.R.S. 44-1522. Note that there is no exception made for utilities in the statute.

44-1522. Unlawful practices; intended interpretation of provisions

A. The act, use or employment by any person of any deception, deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely on such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

Despite being made aware of most these lies over the years, and despite both A.R.S. 40-203 and A.R.S. 40-422, the Arizona Corporation Commission (ACC) has done nothing.

40-203. Power of commission to determine and prescribe rates, rules and practices of public service corporations

When the commission finds that the rates, fares, tolls, rentals, charges or classifications, or any of them, demanded or collected by any public service corporation for any service, product or commodity, or in connection therewith, or that the rules, regulations, practices or contracts, are unjust, discriminatory or preferential, illegal or insufficient, the commission shall determine and prescribe them by order, as provided in this title.

40-422. Action by commission to enjoin violations or threatened violations; venue; time for answer; joinder of parties

A. When the commission is of the opinion that a public service corporation is failing or about to fail to do anything required of it by law or an order or requirement of the commission, or is doing or about to do or permitting or about to permit anything to be done contrary to law or any order or requirement of the commission, it shall commence a proceeding in the name of the state to have such violations or threatened violations prevented, either by mandamus or injunction. The commission shall bring the action in the superior court in the county in which the claim arose, or in which the corporation complained of has its principal place of business or an agent for any purpose, or in which the commission has its office.

How can ratepayers make an informed choice when their utility is allowed to mislead, lie and defraud them with impunity?

As we review the lies and deceptions, note that APS also calls “smart” meters “automated meters”. Both terms, however, are industry “public relations” terminology and are misleading. While having metering capabilities, the devices are actually utility networking equipment, antennas and transceivers (they receive and transmit other people’s data as well as that of the location where they are installed). By calling the devices “meters”, utilities have been able to skirt the fact that they are taking the antenna/transceiver siting rights of property owners without compensating those property owners. Shouldn't that be considered theft?

Utilities have easements for meters, simple place-specific measuring devices, not for transceivers or antennas that are installed without permission or compensation and for the purpose of moving data from other locations to implement the utility's business plan. It's as though a company branch office, albeit “automated”, has been set up on each customer's property.

From APS:

MYTH: Automated meters pose a safety risk to APS customers

FACT: Automated meters are safe. They use wireless technology to communicate information about electricity usage to APS. The meters transmit this information through radio frequency signals. Wireless smart meters result in much smaller levels of radio frequency than many existing common household electronic devices such as cell phones and microwave ovens. According to a study by the Electric Power Research Institute, a cell phone held against one's ear exposes someone to more than 1,000 times the radio frequency as an APS automated meter from a distance of 10 feet.

The Actual Truth: APS's claim that “Automated meters are safe” is unsubstantiated. “Smart” meters have not been proved safe. The Arizona Corporation Commission docket has numerous testimonials from Arizonans injured by “smart” meters. Doctors have also posted to the docket advising against “smart” meters.

In testimony to the Maine Public Utilities Commission, Dr. De-Kun Li, MD, PhD, MPH, senior research scientist at the Division of Research, Kaiser Permanente Northern California, stated:

“I am not aware of any studies that have shown that exposure to smart meters is safe for the human population. Anyone who wants to install smart meters to every household needs to demonstrate that such massive installation is safe”

The Electric Power Research Institute (EPRI) is an industry advocacy group. Their “study” mentioned by APS is not a peer-reviewed scientific study. It is seriously flawed.

Daniel Hirsch of U. C. Santa Cruz found that EPRI had neglected to consider the duty cycle of cell phones. Also according to Hirsch, “EPRI ... compared a *whole body average* exposure to SmartMeter radiation to *peak exposure to the ear* for the cell phone. One needs to compare apples and apples, or whole body exposures to whole body exposures.” [Italics in original]

Taking those factors in account, Hirsch found that, from a distance of 10 feet, “smart” meters actually expose people to over 5 times the microwave radiation of a cell phone. In short, APS is misleading the public by repeating EPRI's industry propaganda that, “... a cell phone held against one's ear exposes someone to more than 1,000 times the radio frequency as an APS automated meter from a distance of 10 feet.”

Read Hirsch's 11 page document here:

<http://www.ccst.us/projects/smart2/documents/letter8hirsch.pdf>.

Additionally, the “common household devices” to which APS compares their “smart” meters are used voluntarily. “Smart” meters are forced on people. No one tells you the only way you can not have a microwave oven or a cell phone is to “opt out”.

Also, unlike other “common household devices” “smart” meters are often in close proximity to people for long periods of time (such as on a bedroom wall). “Smart” meters are in use 24/7/365, not infrequently like the other “common household devices”. So APS's comparison is misleading in many ways.

By clicking “Learn more” at the APS site (or on the flip side of APS's “Myth vs Fact” sheet), APS claims their “smart” meters transmit at a strength of .0009 milliwatts per centimeter squared measured at 10 feet away. I disproved that by measuring APS “smart” meters using a Gigahertz Solutions HF35C microwave analyzer. I found APS “smart” meters transmitting at 432% more than what APS claimed. Search Youtube for **APS Caught Lying** to see the video proof (or click here: http://www.youtube.com/watch?v=z_TLCd3Litg).

APS claims their “smart” meters “... send signals at brief intervals throughout the day, averaging just a few minutes exposure over a 24-hour period.” That is misleading. Because “smart” meters transmit in bursts measured in milliseconds, “just a few minutes” can mean hundreds of thousands of transmissions per day. For example, PG&E “smart” meters transmit as many as 190,000 times per day, and those of Sacramento Municipal Utility District transmit as many as 240,396 times per day. APS has avoided giving a specific number of transmissions.

Also, on the “Myth vs Fact” webpage is a video by Peter Valberg. According to APS:

“Dr. Peter Valberg, Ph.D. of Gradient Corp discusses the health effects of Smart Meters and Radio frequencies. Gradient is an environmental and risk science consulting firm.”

Gradient could be more accurately described as a product defense firm employing scientists-for-hire. Valberg is quite literally a “tobacco scientist” having worked for Phillip Morris in their “light cigarettes” lawsuit. He also worked for R.J. Reynolds.

From APS:

MYTH: APS will use automated meters to monitor customers.

FACT: Automated meters do not have this capability. Like the old mechanical meters, automated meters measure how much energy customers use, not how they use energy. The automated meter does not store or transmit any personal identification information. The automated meters give APS no indication of who our customers are, what they are doing, nor can they determine what appliances customers are using.

The Actual Truth: If the meters did not “transmit any personal identification information” or gave “no indication of who our customers are” then how would APS know who to bill?

More importantly, it is an established fact that “smart” meters are surveillance devices. Read the Congressional Research Service's 45 page report, *CRS Report for Congress, Prepared for Members and Committees of Congress, Smart Meter Data: Privacy and Cybersecurity* (here: <http://www.scribd.com/doc/84773482/Smart-Meter-Data-Privacy-and-Cybersecurity-2-3-2012>).

From the CRS report: “By examining smart meter data, it is possible to identify which appliances a consumer is using and at what times of the day, because each type of appliance generates a unique electric load “signature.””

From APS:

MYTH: Customer usage data collected by APS will be sold or accessible to third parties

FACT: APS places the highest priority on the security of customer account information. We continue to work with automated meter vendors, electric utilities and governmental agencies to refine security standards and practices to ensure that security remains at the highest level. APS also has outside security firms audit and review our automated meter system to validate our security practices. APS does not sell customer automated meter data. The usage data collected is intended for customers to make choices that enable them to pay the least amount possible for their electric service. APS considers all customer information to be confidential.

The Actual Truth: Note how cleverly misleading this portion of the “Myth vs Fact” sheet is. APS has proclaimed data sharing with third parties to be a “myth”. But nowhere in the “FACT” part is this explained or substantiated. Instead there are many high sounding words and phrases carefully crafted to create a favorable impression. However, on APS bills there is an asterisk next to Metering, Meter Reading, and Billing

(as well as other categories). The asterisk corresponds to: "These services are currently provided by APS but may be provided by a competitive supplier." A "competitive supplier" *is* a third party.

More cleverly misleading language: "APS considers all customer information to be confidential." APS may *consider* it confidential but is it really? Also, confidential does not mean private. Once your information leaves you it is no longer private.

APS's promises of "security standards" and "security practices" are what's myth. According to the previously mentioned Congressional Research Service report, "Even privacy safeguards, such as "anonymizing" data so that it does not reflect identity, are not foolproof. By comparing anonymous data with information available in the public domain, it is sometimes possible to identify an individual—or, in the context of smart meter data, a particular household."

Moreover, the Congressional Research Service warns, "... consumer data moving through a smart grid becomes stored in many locations both within the grid and within the physical world. Thus, because it is widely dispersed, it becomes more vulnerable to interception by unauthorized parties and to accidental breach. The movement of data also increases the potential for it to be stolen by unauthorized third parties while it is in transit, particularly when it travels over a wireless network"

APS has admitted in front of the ACC that they do not have the source codes for their "smart" meters. So APS cannot say with certainty what data is being gathered or who has access.

From APS:

MYTH: Automated meters will drive up my bill.

FACT: APS customer rates have not gone up due to the installation of automated meters. In fact, APS expects that over time the meter reading charge on the customer monthly statement will be reduced as the company's costs to read the meters are reduced. As always, it is 100 percent up to our customers to choose the service plan they use, no matter which meter is installed on their home or business. APS customer associates are always available to help our customers select the service plan that is best for their lifestyle.

The Actual Truth: Over-billing is a common problem of "smart" meters.

California's KION/FOX35 TV did a three month side-by-side comparison of a "smart" meter and a calibrated mechanical analog meter. After three months the "smart"

meter showed an extra 37 kilowatt hours. (“PG&E Smart Meter Side By Side Test Final Results” – <http://kion.membercenter.worldnow.com/story/14016659/pge-smart-meter-side-by-side-test-final-results>)

The test result is consistent with anecdotal over-billing reports I receive from Arizonans.

Over-billing, even slight over-billing, adds up. With 1.1 million customers, APS has likely received many, many millions of unearned dollars due to inaccurate “smart” meters.

APS claims, “... customer rates have not gone up due to the installation of automated meters.” True (so far), but if APS is getting extra – and “free” – multimillions of dollars per year due to faulty meters then they are already getting a hefty cash injection without having to apply for a rate increase at the ACC.

Finally, while choosing a service plan *is* '100% up to the customer', can paying APS's proposed fee of \$75 up front and \$30 per month to keep a dependable, safe analog meter and avoid the harm of a “smart” meter really be considered a choice? Or is it extortion?

Sincerely,

Warren Woodward