



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Application of Pacific Gas and Electric Company for approval of Modifications to its SmartMeter™ Program and Increased Revenue Requirements to Recover the Costs of the Modifications (U39M).

Application 11-03-014
(Filed March 24, 2011)

And Related Matters.

Application 11-03-015
Application 11-07-020

Peoples Initiative Opening Brief on Smart Meter Opt out Fees

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INTRODUCTION AND SUMMARY

Pursuant to Rule 13.11 of the California Public Utilities Commission (CPUC or Commission) Rules of Practice and Procedure, the Peoples Initiative Foundation is filing this opening brief pursuant to the schedule set by Assigned Commissioner’s “Ruling Amending Scope of Proceeding to Add a Second Phase” issued on June 8, 2012, and the extension provided by the assigned Administrative Law Judge on June 27, 2012. The issues addressed by this brief include the Americans with Disabilities Act (ADA) or California Public Utilities code 453(b) (Section 453), violation of SB 17, violates the Constitution of the state of California: Article 1, Section 1, violates federal Constitutional law regarding the 5th and 14th amendment, California and international law regarding the Nuremberg Code, RICO, Coercion and extortion and The Energy Policy Act of 2005 whereby the entire smart meter program was to be “voluntary” and the

customer was to be “offered a smart meter”, as opposed to “charged for refusal of a smart meter”. Further Peoples Initiative asserts that the entire process of these hearings to be invalid as President of the CPUC, Michael Peevey, who wrote the scoping of this hearing has an innate conflict of interest, having served as President of Edison for nearly 2 decades, may be enjoying a pension and retirement accoutrements from Edison, have personal relationships with Edison staff and employees and may own stock in the company.

Recusal of Judge...

The [Code of Judicial Conduct](#), a judicial ethics code drafted by the [American Bar Association](#) in 1972 and adopted by most states and the federal government, outlines situations in which a judge should disqualify himself from presiding over a matter. Canon 3C of the Judicial Code outlines these situations, including **the judge's personal bias or prejudice toward a matter or its participants**, personal knowledge of the facts that are disputed in a case, **a professional or familial relationship with a party** or an attorney, **or a financial interest in the outcome of the matter**. Most interpretations of the code mandate a judge's disqualification or recusal if any of these factors are present.

In the case of Michael Peevey and the CPUC hearings on smart meters and smart grid, we may have not one, but 3 of the reasons listed above, for a judge's recusal from participation in hearings. Therefore, Peoples Initiative asserts that these hearings on smart meters and smart grid are invalid as there has been an innate conflict of interest with Michael Peevey and SCE Edison and Michael Peevey did not recuse himself from the proceedings. Further evidence of these lies in the fact that entire, world renowned and highly respected medical bodies, such as the World Health Organization (WHO) and the American Academy of Environmental Medicine (AAEM) have spoken specifically on the issue of dire health effects from smart meters. Yet President Peevey refuses to conduct hearings on this matter, even in the face of having been in receipt of thousands of CA customer complaints of health effects directly attributable to smart meter installation.

The fact that these meters HURT many people and cause them to be unable to inhabit their homes, neighborhoods or cities is *a bit if a deterrent to the whole program*. Edison and the

CPUC may also be held liable for coercion and extortion regarding fees to “opt out” of a voluntary, “opt in” program.

Coercion ( [/koʊˈɜːrʃən/](#)) is the practice of forcing another party to behave in an involuntary manner (whether through action or inaction) by use of [threats](#) or [intimidation](#) or some other form of pressure or force. In law, coercion is codified as the [duress](#) crime. Such actions are used as leverage, to force the victim to act in the desired way. Coercion may involve the actual infliction of physical pain/injury or psychological harm in order to enhance the [credibility](#) of a threat. The threat of further harm may lead to the [cooperation](#) or [obedience](#) of the person being coerced. [Torture](#) is one of the most extreme examples of coercion i.e. severe pain is inflicted until the victim provides the desired information.

Edison rate payers who are sensitive to RF, digital and smart meters, are in some cases, forced by Edison and the CPUC to *break the law* in order to escape torment from the smart or RF meters, by sleeping in their car on the street and over night, which is a misdemeanor in Los Angeles.

Extortion (also called **blackmail**, **shakedown**, **outwresting**, and **exaction**) is a [criminal offence](#) of [unlawfully](#) obtaining money, property, or services from a person, entity, or institution, through [coercion](#). Refraining from doing harm is sometimes [euphemistically](#) called [protection](#). Extortion is commonly practiced by [organized crime groups](#). The actual obtainment of money or property is not required to commit the offense. Making a [threat](#) of [violence](#) which refers to a requirement of a payment of money or property to halt future violence is sufficient to commit the offense. Exaction refers not only to extortion or the unlawful demanding and obtaining of something through force, ^[1] but additionally, in its formal definition, means the infliction of something such as [pain and suffering](#) or making somebody endure something unpleasant.^[2]

Forcing RF, digital and smart meter pulsed microwave radiation exposure unless paid a hefty fee plus monthly fees is in our opinion, extortion and coercion by definition above.

Further, in the face of the study in the CPUC’s possession, showing the majority of people will not opt out if charged a mere \$5.00, we feel the CPUC’s suggestion of charging fees (as evidenced in an email written by Marzia Zafar to a utility) to be a purposeful act against the people of CA could fall under RICO, aiding and abetting and accomplice in the crime of extortion and coercion with the utility.

Further, Peoples Initiative asserts that both the CPUC and the utility companies are liable for any and all harm or deaths that have come or will in the future, due to smart meter and smart grid roll out.

Smart meters and smart grid violate NIH interpretation of the international law...

The ten points of the Nuremberg Code

The 10 points are, (all from United States National Institutes of Health) ^[2]

1. The voluntary [consent](#) of the human subject is absolutely [essential](#). This means that the person involved should have [legal](#) capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him/her to make an understanding and enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonable to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment. The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.
2. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not [random](#) and unnecessary in nature.
3. The experiment should be so designed and based on the results of [animal experimentation](#) and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.
4. The experiment should be so conducted as to avoid all unnecessary [physical](#) and [mental](#) suffering and injury.
5. No experiment should be conducted where there is a prior reason to believe that death or disabling [injury](#) will occur; except, perhaps, in those experiments where the experimental physicians also serve as subjects.
6. The degree of risk to be taken should never exceed that determined by the [humanitarian](#) importance of the problem to be solved by the experiment.
7. Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.
8. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.
9. During the course of the experiment the human subject should be at [liberty](#) to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.

10. During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has [probable cause](#) to believe, in the exercise of the good faith, superior skill and careful [judgment](#) required of him that a continuation of the experiment is likely to result in injury, [disability](#), or [death](#) to the [experimental subject](#).

Reprinted from *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10, Vol. 2, pp. 181–182*. Washington, D.C.: U.S. Government Printing Office, 1949. Note that complete electronic copies of the *Trials of War Criminals Before the Nuernberg [Nuremberg] Military Tribunals Under Control Council Law No. 10* ^[3] are available online, as are most of the other proceedings from the Nuremberg Trials.^[4]

Smart Meters and smart grid violate all of the above NIH interpretations of the Nuremburg Code. Therefore, charging fees to “opt out” would push the utilities and the CPUC for condoning fees into the category of extortion and coercion.

The Energy Policy Act of 2005 whereby the entire smart meter program was to be “voluntary” and the customer was to be “offered a smart meter”, not “charged for refusal of a smart meter”. Charging people to “opt-out” of this debilitating and deadly program is in violation of the Energy and Policy Act of 2005. Federal funding was received by the utilities for smart meters and smart grid. Therefore, the utility companies must adhere to the parameters set up by the Energy Policy Act of 2005.

SEC. 1252. SMART METERING.

(a) IN GENERAL.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

“(14) TIME-BASED METERING AND COMMUNICATIONS.—(A) Not later than 18 months after the date of enactment of this paragraph, each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance, if any, in the utility’s costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

CALIFORNIA PUBLIC UTILITIES CODES, SECTION 328-328.2

CA Public Utility Code 328.2 (b) No customer should have to pay separate fees for utilizing services that protect public or customer safety.

Although the code refers specifically to gas, Peoples Imitative Foundation maintains there is no germane difference between water, gas or electricity when it comes to paying fees to protect public health and safety. Therefore, these codes should apply also to electricity and any and all public utilities, utilized by the public in the state of CA.

California Public Utilities Code Section 453

(a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.

(b) No public utility shall prejudice, disadvantage, or require different rates or deposit amounts from a person because of ancestry, medical condition, marital status or change in marital status, occupation, or any characteristic listed or defined in Section 11135 of the Government Code. A person who has exhausted all administrative remedies with the commission may institute a suit for injunctive relief and reasonable attorney's fees in cases of an alleged violation of this subdivision. If successful in litigation, the prevailing party shall be awarded attorney's fees.

(c) No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

Charging fees to “opt out” of smart meters is in violation of the above listed codes. Opt out fees clearly violate the disabled AS WELL as the non-disabled.

Constitutional law regarding the 5th Amendment

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.**" (emphasis added)

ADA

Charging peoples to “opt out” of smart meters violates ADA and Section 453 of the California Public Utilities Code, as well as other discrimination laws. Additionally, no provisions have been made for disabled people, people with medical devices or on medications whereby this radiation would affect them, people who are already sensitive to these meters and experience physical pain and/or mental anguish in either cities where there are smart meters and smart grid or in residential homes and neighborhoods. An example of this would be, if someone is in a wheelchair, is it legal to charge them to use the ramp? Well not only is there no “ramp” for those who are sensitive to this radiation or those who do not wish to become sensitive or be exposed to this potential human carcinogen, but whoever is charging them to use the wheelchair ramp would be subject to civil fines and possible criminal fines and penalties including possible jail time.

CPUC must be in compliance with the ADA, Section 453, the CA Public Utility Code, and other discrimination laws as a state agency. The Investor Owned Utilities (IOU)s must also comply with the ADA, Section 453, the CA Public Utility Code, and all federal and state discrimination laws, as California corporations providing public utilities and quite notably, with federal funding. CA Public Utility Code Section 453 forbids prejudice and disadvantage, which these opt-out fees clearly violating for the non-disabled as well as the disabled. We call for the solution to be the immediate halt to the entire smart meter program with no cost analog retention, and replacement of hazardous smart meters with TRUE analog, as opposed to the “new Edison approved RF

chipped analog” or “RF ready analog”. The state of Vermont has successfully instituted a no cost “opt out” program which the CPUC would be well advised to follow.

The CPUC has shown to be irresponsible at best and aiding and abetting the utilities in criminal negligence and crimes against humanity. Nothing short of a halt to this irresponsible and dangerous program is acceptable, but certainly charging anyone a fee of ANY kind in order to maintain their health and well being is extortion and should be punishable by jail time and fines. Further, if someone lives in an apartment and they wish to “not opt in” to this program (how can you “opt out” of something you were never in, in the first place?) Edison and all utility companies should be made to insulate the owner of the smart meters for the people who wish to “opt in” to the smart meter program, so that the pulsed radiation and dirty electricity does not contaminate the air space of those who do not wish to be exposed to the radiation the smart meters emit.

CA Government Code Section 12948¹ states:

"It is an unlawful practice under this part for a person to deny or to aid, incite, or conspire in the denial of the rights created by Section 51 of the Civil Code." The CPUC may be violating Section 51 by refusing to acknowledge and take into consideration health and medical conditions or disabilities regarding smart meters and entire communities opting out in addition to individuals, businesses and people who already have a wireless, RF, digital meter.

1. Cost and cost allocation issues, including:

- a. What are the utility costs associated with offering an analog meter opt-out option?

Peoples Initiative asserts that there are already fees embedded within the utility bill which are associated with the smart meter program. Those who are either sensitive to the smart meters, do not want their privacy invaded or do not want them “for any reason or no reason” are actually paying for them anyway with this embedded fee within the bill. Those who do not wish to participate in the smart meter program should be given credits for these embedded fees and taxes and have the money credited back into their account. Further, the utilities are enjoying the

¹ <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=12001-13000&file=12940-12951>

cost savings of firing meter readers throughout the state of CA. It is not necessary to hire meter readers for analog meters, rather customers who wish to retain their analog meters can take their own readings every month and send a check in, or take pictures of their meters and send a check in with the picture. Spot checks can be done on analog meters and fines can be imposed for inadequate payment. But the utilities could feasibly be able to maintain their “meter reader free” status by simply employing the modern technology of most customers owning cell phones or cameras and are perfectly capable of taking pictures or just simply reading their own meters and sending in a check. Late fees or fines for incorrect payment would be a way the utilities could generate even more revenue, since clearly they are not making enough as it is.

b. Should more than one opt-out option be offered to customers who do not wish to have a wireless smart meter (e.g., a digital, non-communicating meter)? Consideration of this issue will include determining whether different fees should be assessed based on the type of opt-out meter selected by the customer and, if so, the level of these fees.

Peoples Initiative asserts it is illegal to charge any customer anything amount of money in order to protect their health, safety, well being and property. There have also been well publicized news reports all over the country of smart meters being a known fire hazard due to electrical wiring incompatibility. However, in the interest of freedom and choice, Peoples Initiative believes customers should be able to have a wireless smart meter if the utilities can figure out a way to keep the pulsed microwave radiation restrained to within the dwelling of the owner of the smart meter, rather than have the emission permeating surrounding apartments or households and entire neighborhoods. Additionally, the dirty electricity created by the switching mode power supply within the smart meter should also be restrained to the home owners or apartment dweller who owns the smart meter or RF/digital meter. If neither of these goals can be achieved, Peoples Initiative asserts that utility companies must not be granted the right to permeate anyone’s household or neighborhood with the pulsed microwave radiation emissions from the smart meters, nor subject households to the invasion of privacy, danger of hacking and thereby break ins into people’s homes, fire hazards or over billing the smart meters are also notorious for.

c. Should all costs associated with the opt-out option be paid by only those customers electing the option, or should some portion of these costs be allocated to all ratepayers and/or to utility shareholders?

Again, Peoples Initiative asserts that although people wishing only to have an analog meter, a TRUE analog meter, not a “new Edison/PG&E or SDG&E approved analog

meter”, that is RF chipped or RF chip ready, be able to retain their old analog meter or get back their analog meter now that they have been made aware of the health effects, privacy invasion, fire hazard, rate increase and hacking hazard at no additional cost.

Further, preventing people from protecting their life and property by retaining or switching back to genuine analog meters, as opposed to “RF chipped or RF ready analog meters” is also a violation of all the laws mentioned in this brief. Rate payers who wish to have true analog meters are already being charged fees and therefore also taxes associated with the smart meter program and smart grid, should be issued credits on their bills for the fees for these programs which they do not support, do not wish to be exposed to, will not be utilizing and therefore should not be charged for.

It is the responsibility of the IOUs to deliver safe services to Californians and the responsibility of the CPUC to ensure that happens. Neither the CPUC nor Edison, SDG&E or PG&E are in compliance with these laws. But colluding to charging fees on top of derelict of duty puts the entire issue into another category...

RICO

The **Racketeer Influenced and Corrupt Organizations Act**, commonly referred to as the **RICO Act** or simply **RICO** is a [United States federal law](#) that provides for extended criminal penalties and a civil [cause of action](#) for acts performed as part of an ongoing [criminal organization](#).

Peoples Initiative believes that the CPUC and the utility companies may have colluded together to charge fees to customers to “opt out” of smart meters.

ACCOMPLICE

At law, an **accomplice** is a person who actively participates in the commission of a crime, even though they take no part in the actual [criminal offense](#). For example, in a bank robbery, the person who points the gun at the teller and asks for the money is guilty of [armed robbery](#). However, anyone else directly involved in the commission of the crime, such as the [lookout](#) or the getaway car driver, is an accomplice, even though in the absence of an underlying offense keeping a lookout or driving a car would not be an offense.

An accomplice differs from an [accessory](#) in that an accomplice is present at the actual crime, and could be prosecuted even if the main criminal (the [principal](#)) is not charged or convicted. An accessory is generally not present at the actual crime, and may be subject to lesser penalties than an accomplice or [principal](#).

We believe that the CPUC may be an accomplice with the utilities to the crime of charging customers fees to opt out of smart meters.

ACCESSORY AFTER THE FACT, AIDING AND ABETTING

Also, under [federal](#) and most [state](#) laws, a person can be held criminally liable as an "**accessory after the fact**" if she has knowledge that a crime was committed and assists the offender to hinder his apprehension, trial or punishment. You can also be guilty of [aiding and abetting](#) a crime if you help another person in committing the crime, with knowledge of the criminal nature of the act they're committing. Additionally, a person who agrees with another person to commit a crime, after which the other person commits a criminal act to further their agreement, may be guilty of [conspiracy](#).

We believe the CPUC is aiding and abetting in the crime of extortion and coercion regarding charging fees not to put people in harms way.

d. What fees should be assessed on customers who elect the opt-out option and should the fees be assessed on a per meter or per location basis?

Please see my above statements.

e. Should there be different fees based on whether the customer is selecting to opt-out of a single commodity or two commodities?

All above statements apply to all questions regarding this issue.

f. Should there be an "exit fee" imposed on customers who elect the opt-out option and return to a wireless smart meter?

In the Mafia, once you're in, you're in. There is no exiting anything. This is the stance Edison has proclaimed if the customer ever ordered a digital meter, even though they were not at that time, cognizant of the health effects. So according to Edison, no one should ever be allowed to exit the damaging and debilitating RF/ digital meter, for any reason whatsoever, even upon discovery of cancer associated with the meters, heart arrhythmia, birth defects, head ache, nose bleeds, birth defects, fire hazard, privacy

invasion or hacking. That is like saying if you discover lead or dioxin (lead and dioxin are also class 2b carcinogens just as smart meters are) in your child's MANDATORY toy that they had to play with 24 hours a day, 7 days a week and you wished to trade in that the leaded or dioxin laden toy for a non leaded or non dioxin laden toy, tough luck, you can't because you already bought the leaded or dioxin laden toy.

Additionally, Edison claims business owners are NOT ALLOWED TO HAVE A SAFE ANALOG METER UNDER ANY CIRCUMSTANCES AT ALL, much like the lucky owners of digital meters are not allowed to go back to analog. For their Mafia like tactics and criminal like behavior, this company should be prohibited from doing any business at all with the good people in the state of CA. So business owners and owners of digital meters should be included in the same category as smart meters regarding these proceedings people SHOULD be allowed to exit an RF meter "for any reason or no reason". Of course anyone should be allowed to exit any hazardous product, for any reason or no reason, without having a penalty of any kind imposed. Rate payers who do not wish to be part of the smart meter program should be given the money back they have been charged on their bills thus far for this program, plus interest and money borrowed from the Federal Reserve, which tax payers will have to pay back, should be calculated regarding those who do not wish to be part of this "smart death program" and be redistributed by Edison to rate payers not wishing to be involved in the smart meter program. Edison should be fined and jailed for their criminal like behavior.

2. Should the opt-out option be extended to local governments and communities?

Peoples Initiative asserts that it is incorrect to refer to not having or wanting anything to do with smart meters or smart grid as "opting out". That term falsely assumes that the rate payer has already "Opted in". Whole communities have been lied to about these meters and their emissions and have not been told of the hazards these meters impose. We continue with the assertion that the smart meter program and its federal stimulus grants were given to the utility companies per the Federal Energy Act of 2005 under the

terms, “voluntary” and customers are to be “offered” a smart meter. It is a violation of law and misuse of their monopoly on our utilities to charge ANYONE ANYTHING AT ALL if they do not want a smart or digital meter. IN addition to that, NO RATE PAYERS HAVE BEEN ADEQUATELY INFORMED ABOUT THE POTENTIAL HEALTH EFFECTS from smart meters and may be lied to when they inquire about it as I was by Maria Zafar.

Further individuals homes are being used to relay other individuals’ energy usage. This is an intrusion of ratepayers’ property on the receiving end of these transmissions and of the ratepayers’ privacy on the transmitting end of these transmissions. Were I to offer the cell phone companies use of my home to transmit wireless data through an antenna or transmitter, I would be offered a hefty fee by the telecommunication company for the privilege to utilize my property and air space for this purpose.

- a. Will the costs associated with this option, and the fees to be charged to community opt-out participants, be different than those assessed for individual opt-out participants?

Extortion fees not to harm entire communities should be punishable by fines and jail time for all involved with the perpetration of this crime against the people of CA. Owners of properties have the duty to assure safety to their tenants. Owner’s property rights and obligations to their tenants are being violated by the utilities and the CPUC. Tenants who become injured by smart meters could have a basis to sue landlords who expose their tenants to hazardous smart meters. So Edison and CPUC are in effect also placing property owners in jeopardy and should be liable for this as well.

- b. Are there statutory or contractual restrictions associated with allowing local governments or multi-unit dwellings to participate in a community opt-out option?

The utility companies did not create smart meters to keep their radiation within the

dwelling of the owner of the smart meter. Therefore, if one neighbor does not want a smart meter, but the other neighbor does, the neighbor who does not want a smart meter will be exposed to the neighbor who does want a smart meter's emissions. The rate payer who does not want the smart meter needs to be compensated for the pain and suffering they will have to endure due to their neighbor's smart meter being unable to keep it's radiation within the confines of the rate payers dwelling.

c. How would non-residential customers, or customers who wish to have a wireless smart meter, be accommodated?

The utilities need to come up with a way to accommodate the person who actually WANTS a smart meter. Safety should be the first priority, so the utilities need to figure out a way to keep the pulsed microwave radiation of a smart meter confined to the owner of the smart meters dwelling. Until that happens, no smart meters should be allowed on dwellings where rate payers are not willing to voluntarily and cognizant, be exposed to the pulsed microwave radiation or the dirty electricity the smart meters create.

“Further, although I find that the scope of this phase should not be expanded to include the consideration of health issues, I believe that parties should brief the issue of whether the Americans with Disabilities Act or Pub. Util. Code § 453(b) limit the Commission's ability to adopt opt-out fees for those residential customers who are required to have an analog meter for medical reasons. Consequently, parties are requested to brief the following questions. For each of the questions, the party shall cite to the specific legal or statutory authority in support of its response.’

How can President Peevey formally ask the question on the above CPUC code or the ADA yet in the same ruling discount all issues regarding health effects as unworthy of hearings and essentially telling us we must go to Washington and deal with the FCC on

the matter?

President Peevey's contradictory actions and statements of not addressing any health and safety concerns yet inquiring if the ADA or Pub. Util. Code § 453(b) are being violated is reflective of an even deeper problem with these hearings...“conflict of interest”.

President Peevey enjoys a pension, may have many relationships with Edison employees, past and present and possibly owns stock in SCE, Edison, a company which he was the president of for many years, yet now expects us to believe him capable of ruling on issues relating to Edison's bottom line profit margins in relation to public health and welfare in a fair and balanced and unbiased manner. In a court of law, Judges who own stock in a company or have any other obvious conflicts of interest, recuse themselves. We believe CPUC President and ex SCE President, Michael Peevey, incapable of acting as an unbiased judge in these matters and should be replaced immediately by a party who is unrelated to any utility company but has acted in the interest of the public health, welfare and safety in order for the public to get any fair rulings out of this proceeding. Because of this conflict of interest, all hearings and decisions from the CPUC, including the decision to allow utilities to charge customers for “opting out” of an “opt in: program”, should be invalidated.

1. Does an opt-out fee, which is assessed on every residential customer who elects to not have a wireless smart meter installed in his/her location, violate the Americans with Act or Pub. Util. Code § 453(b)?

OBVIOUSLY.

2. Do the Americans with Disabilities Act or Pub. Util. Code § 453(b) limit the Commission's ability to adopt opt-out fees for those residential customers who elect to have an analog meter for medical reasons?

YES.

3. Can the Commission delegate its authority to allow local governments or communities to determine what type of electric or gas meter can be installed within the government or community's defined boundaries? If so, are there any limitations?

No one should be able to dictate anything that will ever compromise health, safety and well-being.

4. How should the term "community" be defined for purposes of allowing an opt-out option?

More than one person.

a. Would the proposed definition require modifications to existing utility tariffs?

No tariffs should be placed on anyone needing to protect health and safety. Tariffs should be billed to the utility companies and given back to the rate payers to compensate victims for pain and suffering due to smart meter and smart grid exposure.

b. Would the proposed definition conflict with existing contractual relationships or property rights?

Smart meters conflict with existing property rights.

5. If a local government (town or county) is able to select a community opt-out option on behalf of everyone within its jurisdiction and the opt-out includes an opt-out fee to be paid by those represented by the local government, would this fee constitute a tax?

"Opt out" fees should be illegal. Anyone trying to charge them should be fined and jailed.

1. What requirements and procedures should the Commission establish to ensure that a community has properly elected to opt-out? Should there be an appeals process before the Commission if a customer within the community's boundaries challenges the determination?

Any customer should be able to have a smart meter, even in a community wide opt out, provided they are able to prove that the radiation emissions from their meter will be confined to their own home or dwelling. If the customer cannot prove this, then they should be denied the smart meter within a community wide opt out or under any other scenario where they will be exposing their neighbors or the public, involuntarily, to the radiation emissions from their smart meters or smart grid infrastructure.

2. How will a community electing to opt-out accommodate residential customers who wish to retain their smart meters (i.e., not opt-out) and commercial customers within its boundaries?

Please see above answer.

1. Does an opt-out fee, which is assessed on every residential customer who elects to not have a wireless smart meter installed in his/her location, violate the Americans with Disabilities Act or Pub. Util. Code § 453(b)?

Peoples Initiative Foundation also believes that people who are disabled within the meaning of the ADA² are protected by the ADA from being adversely affected by CPUC orders if those orders prevent the disabled from having equal access to their own private inhabitation

² Qualified individual with a disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment. 28 CFR 35.104

and to any and all public space and services³. Imposing an opt-out fee on every residential customer includes imposing an opt-out fee on disabled people who are at this time being offered no accommodation either in their own home or their own neighborhood or city. This is referred to as “discrimination”.

The CPUC, allegedly in accordance with SB17, now chaptered into the CA Public Utilities Code Section 8360 - 8369, has authorized regulated utility companies to install wireless smart meters in place of traditional electromechanical analog meters in most residences and businesses in California. The utility meter is not part of the residence but is property owned by the utility company, authorized, ordered, and regulated by the CPUC as part of a public utility service, as a device required to access and participate in the use of public utilities (commodities) such as gas or electricity⁴.

An August 2, 2010, letter from CPUC Chief Counsel to City of Fairfax states that meters are part of the utility distribution network⁵ and subject to CPUC regulations not municipalities'. See California Constitution Article 12, section 8 (regulation of utilities by CPUC) and D.06-07-027 (CPUC Decision authorizing advanced metering) and PU code section 761 (CPUC authority to correct problems) and 701⁶.

So the meter emitting the wireless signal is part of a state-regulated service selling a commodity to the public, owned by the independently operated utility, not part of the residence. We believe this means that the CPUC must follow the mandate⁷ of the ADA related to disabled persons who

³ 28 CFR 35.130

⁴ CA Public Utility Code Section 216

⁵ California Public Utilities Code Section 217

⁶ The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction. CA PUC Section 701

⁷ “Public entity means—

(1) Any State or local government;
(2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and” 28 CFR 35.104

reside in California residences and may wish to opt-out. The opt-out must be provided free to these disabled persons but also free to those who do not wish to be harmed by the smart or RF meters as the utility companies are under legal obligation to deliver “safe” utility services. Thus far, smart meters pose dramatic health risks to all those who are exposed to them, both voluntarily and involuntarily.

Section 453 (b) states that "No public utility shall prejudice, disadvantage, or require different rates or deposit amounts from a person because of ... medical condition ... or any characteristic listed or defined in Section 11135 of the Government Code⁸ [which states "(c)(1) As used in this section, "disability" means any mental or physical disability, as defined in Section 12926".]. Also, Section 453 provides that no utility shall require different rates or deposits from a person because of a medical condition (or other named characteristic or disability).

Thus, disabled persons and those with medical conditions may not be charged for accommodating their disability and or medical condition or choosing to opt-out due to a medical condition or disabling condition, as set forth in the ADA and California Utility Code 453. However, per CPUC law, the CPUC is responsible for making sure the utilities provide “Safe” and the utilities who serve the people of CA are also responsible for to provide “safe” utility services. Smart meters have been proven to be unsafe in many regards including health impacts, fire hazard and hacking.

Avoidance of smart meter RF emissions is especially damaging to people with particular disabilities or medical conditions, for a variety of reasons but damaging to all people for basically the same reason...compromises human health.

⁸ (b) With respect to **discrimination** on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision

(a) shall be subject to the stronger protections and prohibitions. (c) (1) As used in this section, "disability" means any mental or physical disability as defined in Section 12926

A recent letter to the CPUC and a position paper by the American Academy of Environmental Medicine (AAEM) ⁹ discusses harmful effects from smart meters and recommends a moratorium on smart meter use.

The American Academy of Environmental Medicine, a prominent, highly regarded, authoritative international association, established for over fifty years, with thousands of physician members, has called for "immediate caution regarding smart meter installations. Citing several peer-reviewed scientific studies, the AAEM concludes that "significant harmful biological effects occur from non-thermal RF exposure" showing causality (April, 2012). The AAEM also expresses concern regarding significant EMF, ELF, and RF fields on human health.

The impact of these biological and/or health effects may be considered pertinent to a disability within the meaning of the ADA or a medical condition per 453b, or other applicable discrimination laws.

AAEM calls for:

- Immediate caution regarding "Smart Meter" installation due to potentially harmful RF exposure
- Accommodation for health considerations regarding EMF and RF exposure, including exposure to wireless "Smart Meter" technology", amongst other conclusions. ¹⁰

AAEM has also directly warned CPUC Commissioners about smart meter environmental hazards and public health risks in a resolution and letter dated January 19, 2012:

"Dear [CPUC] Commissioners:

The Board of the American Academy of Environmental Medicine opposes the installation of wireless "smart meters" in homes and schools based on a scientific assessment of the current medical literature (references available on request). Chronic exposure to wireless radiofrequency radiation is a preventable environmental hazard that is sufficiently well documented to warrant immediate preventative public health action.

⁹ <http://aaemonline.org/pressadvisoryemf.pdf>

¹⁰ AAEM Press Release, April 12, 2012 <http://aaemonline.org/pressadvisoryemf.pdf>

As representatives of physician specialists in the field of environmental medicine, we have an obligation to urge precaution when sufficient scientific and medical evidence suggests health risks which can potentially affect large populations. The literature raises serious concern regarding the levels of radio frequency (RF – 3 KHz – 300 GHz) or extremely low frequency (ELF – 0- 300 Hz) exposures produced by “smart meters” to warrant an immediate and complete moratorium on their use and deployment until further study can be performed. ”¹¹

CA Public Utilities Code Section 453 further states, in Sections (a) and (c):

(a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.

... (c) No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service. ¹²(California Public Utilities Code Section 453)

These costs and fees provide prejudice and unfair advantage against non-disabled utility customers who cannot afford the fees and extra costs, as these costs constitute a disincentive to obtain an analog meter /opt-out option, which may be desired for reasons for the protection of health, property, safety and security, rights assured by numerous state and federal laws. These fees and costs are unreasonable.

Americans with Disabilities Act - Title II and III

42 USC 12132 in Title II of the ADA, provides protection for disabled persons for public services furnished by governmental entities (state and local governments) (Title II, §§ 12131-12165). Electric utility service is considered to be within that class of public services (CA PUC 216).

42 USC 12132 is the federal statute most likely to address the issue of the-opt out fee:

"Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U. S. C. § 12132

¹¹ <http://www.scribd.com/doc/79470430/AAEM-Resolution>

¹² California Public Utilities Code Section 453 <http://law.onecle.com/california/utilities/453.html>

Title II of the ADA, in the definition section, states that "public entity" includes "any State or local government," and "any department, agency, [or] special purpose district." §§12131 (1) (A), (B) The same section defines "qualified individual with a disability" as "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." § 12131(2).

Section 504 of the Rehabilitation Act of 1973 provides protection from discrimination based on disability to individuals receiving program benefits and services from all organizations that received financial assistance from federal sources, in addition to educational and workplace applications.

"RIGHTS UNDER SECTION 504 OF THE REHABILITATION ACT"¹³

Section 504 of the Rehabilitation Act of 1973 is a national law that protects qualified individuals from discrimination based on their disability. The nondiscrimination requirements of the law apply to employers and organizations that receive financial assistance from any Federal department or agency, including the U.S. Department of Health and Human Services (DHHS). ...

Section 504 forbids organizations and employers from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services. It defines the rights of individuals with disabilities to participate in, and have access to, program benefits and services.

Who Is Protected from Discrimination?

Section 504 protects qualified individuals with disabilities. Under this law, individuals with disabilities are defined as persons with a physical or mental impairment which substantially limits one or more major life activities. People who have a history of, or who are regarded as having a physical or mental impairment that substantially limits one or more major life activities, are also covered. Major life activities include caring for one's self, walking, seeing, hearing, speaking, breathing, working, performing manual tasks, and learning. Some examples of impairments which may substantially limit major life activities, even with the help of medication or aids/devices, are: AIDS, alcoholism,

¹³ <http://www.hhs.gov/ocr/civilrights/resources/factsheets/504.pdf>

blindness or visual impairment, cancer, deafness or hearing impairment, diabetes, drug addiction, heart disease, and mental illness."

Utilities such as SDG&E, SCE, and PG&E, which received **federal Stimulus Act funding** for the smart meters and smart grid from opt-out fees are subject to Title 10 of the Energy Act¹⁴. These utilities, by charging fees, may violate section 504 of the Rehabilitation Act of 1973, as amended, Pub. L. 93–112; the Age Discrimination Act of 1975, Pub. L. 94–135, discriminating on the basis of handicap, or age, being excluded from participation in and denied the benefits of, subjected to discrimination under and thus, the CPUC and utilities are subject to a formal complaint with the US DOE and US DOJ. Under the terms of Title 10, those found to violate these discrimination laws may have financial assistance terminated and other sanctions applied.¹⁵

From the list of "Nondiscrimination in Federally Assisted Programs"

Assurances in the Application for Federal Assistance SF-424, the laws included in Federal Assurances that were agreed to and signed by the utilities, for instance:

The Civil Rights Act of 1964 (Public Law 88-352); Section 16 of the Federal Energy Admin Act of 1974 (Pub.L. 93-275); Section 401 of the Energy Reorganization Act of 1974 (Pub. L 93-438); Title IX of the Educational Amendments of 1972, as amended PL 92-318; PL 93-568; PL 94-482; Section 504 of the Rehabilitation Act of 1973 (PL 93-112), the Age Discrimination Act of 1975 (PL 94-135); Title VIII of the Civil Rights Act of 1968 (PL 90-284); the Dept of Energy Organization Act of 1977 (PL 95-91); and the Energy Conservation and Production Act of 1976, as amended (PL 94-385); and Title 10. Code of Federal Regulations Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be

¹⁴ 10 C.F.R. PART 1040—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES, Title 10 - Energy <http://law.justia.com/cfr/title10/10-4.0.3.5.19.html#10:4.0.3.5.19.4.114.2>

¹⁵ 10 C.F.R. PART 1041—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF ENERGY
Title 10 - Energy <http://law.justia.com/cfr/title10/10-4.0.3.5.20.html#10:4.0.3.5.20.0.124.18>

otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.¹⁶

The required nexus between the ADA and the other discrimination laws as stated in the application above is found in the IOU's project objectives as follows, as an example. Each of the IOU's received similar US DOE financial assistance (grants) for their smart grid projects.

Peoples Initiative asserts that **age discrimination** may also be occurring when fees are charged to avoid RF/EMF emissions as older citizens are more likely to have medical conditions that preclude exposure to RF radiation, such as, but not limited to, neurological or cardiac conditions, metal implants that can attract and become antennae for RF radiation, and interference with pacemakers, deep brain stimulators and other medical devices. In addition, seniors have less income as a group and have less ability to pay extra fees and costs. Lastly, seniors have an increased need to heat and cool their homes with changes in temperature, and extra costs and fees cause them to be less able to do so, impacting their safety and health. Forcing seniors to choose between radiation exposure and fees is discrimination.

On redress for violations of § 12132's discrimination prohibition, Congress referred to remedies available under § 505 of the Rehabilitation Act of 1973, 92 Stat. 2982, 29 U. S. C. § 794a. See § 203, as set forth in 42 U. S. C. § 12133 ("The remedies, procedures, and rights set forth in [§ 505 of the Rehabilitation Act] shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.").¹⁷

¹⁶ p. 8 of 109 (List of "Nondiscrimination in Federally Assisted Programs" Assurances)
San Diego Gas & Electric Company

¹⁷ Section 505 of the Rehabilitation Act incorporates the remedies, rights, and procedures set forth in Title VI of the Civil Rights Act of 1964 for violations of § 504 of the Rehabilitation Act. See 29 U. S. C. § 794a(a)(2). Title VI, in turn, directs each federal department authorized to extend financial assistance to any department or agency of a State to issue rules and regulations consistent with achievement of the objectives of the statute authorizing financial assistance. See 78 Stat. 252, 42 U. S. C. § 2000d-1. Compliance with such requirements may be effected by the termination or denial of federal funds, or "by any other means authorized by law." *Ibid.* Remedies both at law and in equity are available for violations of the statute. See § 2000d-7(a) (2).

The United States Attorney General issued Title II regulations, see 28 CFR pt. 35 (2010), including called the "integration regulation," it reads:

"A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 CFR § 35.130(d) (2010).

Another regulation requires public entities to "make reasonable modifications" to avoid "discrimination on the basis of disability," unless those modifications would entail a "fundamental alteration"; called here the "reasonable-modifications regulation," it provides:

"(7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 CFR § 35.130(b) (7) (2010)

28 CFR part 35 does not mention electric, gas, or water utility services as being protected but does not exclude it either. However, the August 2, 2010, CPUC letter to the City of Fairfax completes the reference showing that although the ADA does not apply to private residences, it does apply to the utility interconnections between the private residence and the utility company distribution facilities.

The public policy stated by the United States Supreme Court is that the ADA is intended to eliminate discrimination against disabled individuals.

"The statute as a whole is intended "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." § 12101(b) (1)¹⁸
Olmstead v. LC, 527 US 581, 590 - Supreme Court 1999

Title III of the Americans with Disabilities Act provides for protection against discrimination by those private corporations who provide Public Accommodations (Sales or Rentals Establishments), or residential facilities with places of public accommodation on the

¹⁸ The ADA defines "disability," "with respect to an individual," as

"(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

"(B) a record of such an impairment; or

"(C) being regarded as having such an impairment." § 12102(2). There is a dispute about whether people who are adversely affected by smart meters are disabled within the meaning of the ADA.

premises (device accessing public utilities on premises of residence). Although title III does not apply to strictly residential facilities, it covers places of public accommodation within residential facilities, including services. Additionally, a public utility is considered a Commercial Facility under Title III, with the upgrade considered a renovation that must be made accessible by the disabled.¹⁹

California Public Utility Code section 453 (b)

“The Supreme Court has called section 453, subdivision (a), an "explicit statutory prohibition of discrimination by a public utility" (Gay Law Students Assn. v. Pacific Tel. & Tel. Co. (1979) 24 Cal.3d 458, 475 [156 Cal.Rptr. 14, 595 P.2d 592].) Although the statute does not use the term "discrimination," its import is clear: "No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage." (Pub. Util. Code, § 453, subd. (a).) This broad language prohibits many forms of arbitrary discrimination, including rate discrimination (e.g., United States Steel Corp. v. Public Utilities Com. (1981) 29 Cal.3d 603, 610-611 [175 Cal.Rptr. 169, 629 P.2d 1381]) and discrimination in hiring (see Gay Law Students Assn. v. Pacific Tel. & Tel. Co., supra, 24 Cal.3d at pp. 475-486). Andersen v. Pac. Bell, 204 Cal. App. 3d 277 (Cal. App. 6th Dist. 1988)

This means that ratepayers who require an opt-out because of a medical condition should not have to pay fees, charges or higher rates than ratepayers who do not have those medical conditions. However, being that smart meters actually can cause medical conditions to occur that had not been there prior to exposure, Peoples Initiative still maintains that smart meters are illegal based on the CPUC and utilities obligation to provide “safe” utility service to the public, therefore, no one, even non disabled people, should be charged a penny to preserve their own health, well being and safety.

The California Unruh Civil Rights Act (California Civil Code section 51) is also applicable because it prohibits arbitrary discrimination based on disability²⁰. The meaning of the

¹⁹ Americans with Disabilities Act ADA Title III Technical Assistance Manual Covering Public Accommodations and Commercial Facilities, <http://www.ada.gov/taman3.html>

²⁰ Unruh Civil Rights Act (CC § 51) This sort of discrimination is not arbitrary because it is based on a compelling societal interest and does not violate the act. Koire v. Metro Car Wash (1985) 40 Cal 3d 24, 219 Cal Rptr 133, 707 P2d 195, 1985 Cal LEXIS 394.

Unruh Civil Rights Act is that discrimination arbitrarily imposed on persons with a disability is prohibited.

We assert that the Unruh Civil Rights Act is important to consider because persons with a medical condition requesting an analog meter because of that medical condition can easily be accommodated. D.12-04-019 states on page 15 that a purpose of the smart grid and smart meters is:

In determining the best opt-out option to be adopted, we must balance the concerns expressed by customers against California's overall energy policy. As such, we believe that while residential customers should have the option to opt-out of receiving a wireless smart meter, this option should not impede state energy objectives. The ability to collect interval energy consumption data is a key component to attaining California's overall energy objectives, including matching customer demand with procurement of generation resources.

California's energy objectives clearly do not take precedence over existing Constitutional, civil rights and/or disability laws²¹. Nor does CA law trump federal law, (Energy Policy Act of 2005) as CA utilities have drawn vast sums of money for smart meters from federal funds. This determination of California's energy objectives does not mean that wireless smart meters must be placed on each residence in order for the electrical grid to function. For example, data request responses by SCE, SDG&E, and PG&E to questions submitted and answered during Rulemaking 10-05-006 indicate that these regulated utility companies do not anticipate any adverse effects on their operations caused by ratepayers opting out from using smart meters. Even if this wasn't so, disability discrimination, prejudice and disadvantage is not intended to be tolerated in Federal and California law.

The Unruh Civil Rights Act (CC § 51, prohibiting arbitrary discrimination by business establishments) is to be liberally construed with a view to effectuating the purposes for which it was enacted and to promote justice. As with all statutes, it must be construed in the light of the legislative purpose and design. In enforcing the command of a statute, both the policy expressed in its terms and the object implicit in its history and background should be recognized. *Rotary Club of Duarte v. Board of Directors* (1986, Cal App 2d Dist) 178 Cal App 3d 1035, 224 Cal Rptr 213, 1986 Cal App LEXIS 2722, aff'd (1987) 481 US 537, 107 S Ct 1940, 95 L Ed 2d 474, 1987 US LEXIS 5218.

(CC § 51, prohibiting arbitrary discrimination by business establishments). *Rotary Club of Duarte v. Board of Directors* (1986, Cal App 2d Dist) 178 Cal App 3d 1035, 224 Cal Rptr 213, 1986 Cal App LEXIS 2722, aff'd (1987) 481 US 537, 107 S Ct 1940, 95 L Ed 2d 474, 1987 US LEXIS 5218.

²¹ CA Civil Code 52.1

Therefore we conclude that the solution is to immediately institute a no-fee electromechanical analog meter, free of charge, for every Californian and that the CPUC and utilities remove all wireless smart meters immediately.

Smart meters on smart grid violate SB 17: On October 11, 2009, SB 17 was signed into law by former California Governor Arnold Schwarzenegger. The bill states that it is the policy of California to “modernize the states electrical transmission and distribution system **to maintain safe, reliable, efficient and secure electrical service**”. (emphasis added) Smart meters are NONE of those mentioned in SB 17.

2)Violates the Constitution of the state of California: Article 1, Section 1, "All people are by nature free and independent and have inalienable rights. Among these **are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.**" (emphasis added)

4) Violation of ADA (Americans with Disabilities Act) Americans with disabilities must be accommodated. Although with difficulty, people with EHS (electrohyper-sensitivity, a functional impairment) can potentially avoid places with WIFI and also with great difficulty, can try and avoid cell towers, with the absolute ubiquitous blanketing of the wireless smart grid, people who are sensitive to RF EMF will not be able to go **ANYWHERE AT ALL without being exposed to painful, debilitating, carcinogenic and genotoxic RF EMF.**

Ours and our children’s Constitutional rights to life, liberty and procreation under the Fifth Amendment are being denied by being forcibly irradiated via smart meters and smart grid. Our property rights are also being violated.

Parent’s basic rights and liberties under the Fourteenth Amendment regarding care and control of our children’s health and their continued well being are being violated by the forced installation of smart grid in our neighborhoods and smart meters on ours and our neighbor’s homes. While people may be able to “opt out” of their own smart meter, the utility companies have not yet

figured out a way whereby the neighbors smart meter emissions won't travel into the analog meter customer's home.

People v. Pierson, 176 NY 201, 68 NE 243 (1903): Children have the right to be free from ill health and death.

Meyer v. Nebraska, 262 US 390 (1923). In 1923: The Supreme Court first recognized family autonomy and the right of parents to control the upbringing of their children.

Prince v. Massachusetts, 321 US 158, 15 (1944): In 1944, the Supreme Court recognized the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder (emphasis added). And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.

Troxel v. Granvill, 530 US 75,66 (2000): In 2000, the Supreme Court held: In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decision concerning the care, custody and control of their children.

2. Do the Americans with Disabilities Act or Pub. Util. Code § 453(b) limit the Commission's ability to adopt opt-out fees for those residential customers who elect to have an analog meter for medical reasons?

The ADA and/or Section 453 limit the Commission's ability to adopt opt-out fees for all customers, including persons who are disabled by the definition of the ADA and for persons with medical conditions and other named characteristics by the definitions used by Section 453. Section 453 does not allow any citizens, disabled or not, to be subjected to prejudice or disadvantage, and paying an opt-out fee is prejudicial and is a disadvantage, economically. Title II of the ADA does provide protection for disabled persons from discrimination by state and local authorities in the provision of public services and this could be interpreted as an ADA prohibition. This interpretation would prohibit the CPUC from imposing fees on persons with a disability requiring the persons to have analog utility meters on their residences. Title III of the ADA may also apply, to prohibit the utilities from charging fees for disabled persons. Further, other discrimination laws, such as those named above in question #1, are applicable to the CPUC as a California state government agency.

The United States Department of Justice is enforcing the ADA. A recent enforcement action²² imposed a settlement of \$10,250,000 for an accessibility fund to provide retrofits at properties and a \$250,000 civil penalty. This is the largest civil penalty the Justice Department has obtained in any Fair Housing Act case.

3. Can the Commission delegate its authority to allow local governments or communities to determine what type of electric or gas meter can be installed within the government or community's defined boundaries? If so, are there any limitations?

It is the position of Peoples Initiative that exposure of the general public, those with certain medical conditions, and disabled persons to involuntary exposure RF radiation (whether from a primary location or secondary location or in public places) is a violation of state and federal laws, cited in #1 and 2, above. The Commission is given broad jurisdiction, under the law, to regulate and institute safe utility practices. Local communities should be allowed to designate the type of non-RF emitting meters they would like to have in place, with reliable safety assurances in place. Since there have been many safety issues brought up by independent experts, making decisions on the side of precautionary approaches and safety is most desirable. Electromechanical analog meters should immediately replace all smart meters to resolve the smart meter problems for everyone.

4. How should the term "community" be defined for purposes of allowing an opt-out option?

Community should be defined as any residential, geographical, social, or commercial aggregate involving multiple housing of any amount such as, but not limited to: multi-family housing like duplexes, multi-plexes, apartments, condos, townhomes, intentional or residential communities, dormitories, subdivisions, streets, sections of streets, section of neighborhood, neighborhoods, municipalities, towns, cities, counties (or portions thereof, unincorporated municipalities, other geographical, social, or political subdivisions of the state, or even, the entire state.

a. Would the proposed definition require modifications to existing utility tariffs?

²² <http://www.justice.gov/opa/pr/2012/June/12-crt-802.html>

Peoples Initiative maintains that any and all charges currently and in the passed, relating to smart meters and/or smart grid, be credited back to those customers who are opposed to smart metes and smart grid and wish to have analog only. Additionally, those opting out should not be subjected to higher rates, which also might be considered to constitute additional discrimination. Incentive to saving energy may come from tiered rating (as we now have) and increased consumer conservation education.

b. Would the proposed definition conflict with existing contractual relationships or property rights?

Peoples Initiative Foundation believes that original utility easements, right-of-ways, and property rights are currently being violated because the utilities are exceeding the scope of the original agreements, by installing the equivalent of a cell tower and/or a communications and control radio device that not only causes physical and mental harm to rate payers and disturbs their right to “enjoyment of their property” but also violates their privacy and is a known fire hazard. Additionally, all of this is happening without written notification of health effects, fire hazard or privacy invasion, without compensation or permission and using every inch of private and public property for their communications related to corporate, billing, and electrical and other utility use. Property owners should not be subjected to the trespass of RF radiation on their properties from neighboring meters, nor the pulsed microwave radiation emitted from the smart grid in their neighborhoods and city streets.

5. If a local government (town or county) is able to select a community opt-out option on behalf of everyone within its jurisdiction and the opt-out includes an opt-out fee to be paid by those represented by the local government, would this fee constitute a tax?

Peoples Initiative maintains that opt-out fees are illegal under state and federal law. No opt-out fees of any kind should be charged. Further Peoples Initiative Foundation maintains that rate payers who do not wish to be involved or exposed to the smart meter or smart grid program, be issued back credits on their bill for the embedded fees they are currently and have been paying in passed bills.

1. What requirements and procedures should the Commission establish to ensure that a community has properly elected to opt-out? Should there be an appeals process before the Commission if a customer within the community's boundaries challenges the determination?

Peoples Initiative maintains that should anyone be able to have a smart meter on their own property, provided they are able to restrain the pulsed microwave radiation emissions to their own property and/or dwelling and not contaminate other properties and/or dwellings with this radiation and not contaminate electricity in the neighborhood by making it dirty through the switching power supply mode. If they are unable to keep their smart meter radiation emissions restrained to their own home, property or dwelling, then they should be made to have a safe, electromechanical meter until such time as they can prove that their radiation emissions are not contaminating other people's air space.

2. How will a community electing to opt-out accommodate residential customers who wish to retain their smart meters (i.e., not opt-out) and commercial customers within its boundaries?

Please see above answer to this question.

_____/S/

July 15, 2012

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