

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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In the Matter of the Application of San Diego Gas
& Electric Company (U902E) for Adoption of its
Smart Grid Deployment Plan

Application 11-06-006
(Filed June 6, 2011)

In the Matter of the Application of Pacific Gas and
Electric Company (U39E) for Adoption of its Smart
Grid Deployment Plan

Application 11-06-029
(Filed June 30, 2011)

Application of Southern California Edison
Company (U 338E) for Approval of its Smart Grid
Deployment Plan

Application 11-07-001
(Filed July 1, 2011)

**PROTEST OF THE
DIRECT ACCESS CUSTOMER COALITION AND THE
ALLIANCE FOR RETAIL ENERGY MARKETS
TO THE APPLICATIONS OF THE INVESTOR-OWNED UTILITIES**

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Date: August 4, 2011

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**PROTEST OF THE
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The Direct Access Customer Coalition¹ (“DACC”) and the Alliance for Retail Energy Markets (“AReM”)² respectfully submit this protest to the applications of San Diego Gas & Electric Company (“SDG&E”), Southern California Edison Company (“SCE”), and Pacific Gas and Electric Company (“PG&E”) (collectively, the Investor-Owned Utilities or “IOUs”), requesting adoption of their proposed Smart Grid Deployment Plans. On July 25, 2011, Administrative Law Judge (“ALJ”) Timothy J. Sullivan issued a ruling consolidating the IOUs’

¹ DACC is a regulatory alliance of commercial, industrial and governmental customers who have opted for direct access to meet some or all of their electricity needs.

² AReM is a California non-profit mutual benefit corporation formed by electric service providers that are active in the California’s direct access market. This filing represents the position of AReM, but not necessarily that of a particular member or any affiliates of its members with respect to the issues addressed herein.

applications into one proceeding and setting this date for submission of protests. This protest is therefore timely filed.

I. INTRODUCTION

The Commission directed that the IOUs file Smart Grid Deployment Plans in Decision (“D.”) 10-06-047, in compliance with Senate Bill (“SB”) 17, and provided extensive guidance to the IOUs regarding the form of the filing and the topics to be addressed. The IOUs’ applications are lengthy and expansive. DACC and AReM appreciate the care and meticulous effort expended by each IOU in putting forth its vision and proposed programs to make that vision a reality. However, DACC and AReM have identified significant competitive issues that affect Direct Access customers, Electric Service Providers (“ESPs”), and competitive markets. For example, taken together, the proposed IOUs’ plans identify more than \$5 billion in new funding³ – a breathtaking number with serious implications for competitive retail electricity markets if the costs are to be recovered through non-bypassable charges. The Commission’s consideration and ultimate decision on these applications will significantly impact energy costs, competitive markets, and product innovation for years to come. DACC and AReM urge the Commission to approve only the portion of the proposed plans that allow competitive markets to expand and flourish and reject IOU-sponsored programs that will result in IOU domination of Smart Grid services with ratepayer-funded products and programs.

In addition, DACC and AReM are currently litigating these same competitive and cost allocation issues in A.11-03-001 through -003, in which the IOUs have submitted their proposed demand response (“DR”) programs for 2012-2014. Each of the IOU’s proposed Smart Grid

³ The \$5 billion figure is discussed in more detail below and includes funding that has already been requested by the IOUs, but not yet approved, in other proceedings, such as general rate cases and the Demand Response proceeding (A.11-03-001 through -003), as well as incremental funding requested in their applications in this proceeding.

Deployment Plans includes the IOU's proposed 2012-14 DR programs being addressed in the other proceeding. In the DR proceeding, DACC and AReM have requested that the Commission establish the principle that DR programs should be offered primarily through the competitive market and not through further proliferation of rate-payer funded programs. A corollary to DACC and AReM's advocacy for competitive DR services is that, to the extent the IOU does provide DR services to its ratepayers, the associated costs should be recovered only from those bundled customers and should not be assessed as a non-bypassable charge paid by all. Because the IOUs' Smart Grid applications appear to be litigating the same issues that are already poised for a Commission decision in the DR proceeding, DACC and AReM urge the Commission to ensure consistency between these proceedings and incorporate the Commission's determination in the DR proceeding into this proceeding.

II. GROUNDS FOR PROTEST AND EFFECT OF THE APPLICATIONS ON PROTESTANTS

DACC and AReM submit the following grounds for protest, as discussed in more detail below:

- 1. The proposed plans fail to ensure "maximum access by third parties to the grid" as directed by D.10-06-047 and will, therefore, suppress the competitive market for Smart Grid products and services.**
- 2. The proposed plans, in general, appear to establish the IOUs as the dominant provider of Smart Grid products and services, all of which are funded at ratepayer expense primarily through non-bypassable charges to customers, all to the detriment of competitive retail markets.**

The Commission issued D.10-06-047 to comply with SB 17,⁴ which required development of Smart Grid Deployment Plans by the IOUs. The statute also provides guidance on the scope of the plans, specifying that the adopted plans "may provide for deployment of cost-

⁴ Chapter 327, Statutes of 2009.

effective smart grid products, technologies and services by entities other than electric corporations.”⁵ D.10-06-047 championed this aspect of the statute by directing each IOU to address how its plan would enable “maximum access to the grid, creating a welcoming platform for deployment of a wide range of energy technologies and management services.”⁶ None of the IOUs’ plans meet this requirement. At best, the IOUs make only vague references to this requirement.⁷ In fact, SCE’s discussion of competitive services provided by third parties seems to focus on ensuring competition among vendors for sales of products and services to *SCE*, not to customers.⁸ SCE further states that the process for developing standards “needs to be integrated with and driven by the utility procurement process to form a closed loop.”⁹

In fact, the IOUs’ plans¹⁰ focus primarily on IOU-centric programs, products and services, involving load management and other DR programs, Home Area Networks (HAN), and Plug-In Electric Vehicles (PEVs). As mentioned, SCE’s references to competitively-provided services primarily address its own procurement. While PG&E states that it is “not directly investing in ‘beyond the meter’ solutions,”¹¹ it devotes extensive discussion to its proposed “Engaged Customers” projects, which include enhanced DR forecasting, DR “optimization,” and “HAN Phase II” projects, all provided by PG&E.¹² At least SDG&E states that it intends to “enable utility *and non-utility* service providers to offer competitive products and services,¹³ but,

⁵ SB 17, Public Utility Code § 8362(a).

⁶ D.10-06-047, p. 34.

⁷ See, for example, SCE’s Plan, pages 18 and 55 and PG&E’s Plan, pages 23 and 280.

⁸ SCE Plan, pps. 43-44.

⁹ SCE Plan, p. 153.

¹⁰ The IOUs’ plans also include proposed Smart Grid transmission and distribution improvements, on which DACC and AReM have no comment at this time.

¹¹ PG&E Plan, p. 35.

¹² PG&E Plan, pps. 125-126.

¹³ SDG&E Plan, p. 22.

nevertheless, provides extensive proposals for expanding IOU provision of HAN services¹⁴ to customers and argues that “behind-the-meter services” be extended to utilities.¹⁵

IOU domination of Smart Grid services with ratepayer-funded programs will create a barrier to entry for the provision of these services by the competitive market, especially if the costs of those programs are recovered through non-bypassable distribution rates.¹⁶ That form of cost recovery means that retail choice customers will pay twice for Smart Grid services, once to the competitive supplier from whom it actually receives service, and a second time to the utility from whom it receives no service whatsoever. Creating this high hurdle for competitive service reduces (and quite possibly eliminates) the level of competition that can flourish. Quite simply, third-party providers cannot compete against an IOU that makes all the rules, dominates the product offerings and has guaranteed cost recovery paid by all. Without such third-party competitors in the market, consumers are faced with fewer and more costly product offerings, less innovation, and less choice. DACC and AReM oppose that outcome.

The Commission recognized and addressed such concerns in its recent decision on PEVs (D.11-07-029), which imposes several safeguards to restrict utility actions and ensure that the nascent PEV market will flourish. Specifically, the Commission restricted utility ownership of electric vehicle service equipment¹⁷ and required competitively-neutral educational outreach to consumers.¹⁸ In restricting utility ownership of PEV equipment, the Commission found that:

[T]he potential costs savings of a “single buyer” approach would, in all likelihood, limit customer choice and, perhaps, even dampen the competition that may yield cost reducing innovation. As such, we do not find that the benefits of utility ownership of electric vehicle service

¹⁴ See, for example, SDG&E Plan, pps. 36, 27, 49, 67, and 69.

¹⁵ SDG&E Plan, p. 24.

¹⁶ These barriers are not unlike the barriers that utility ownership and contractual control of generating assets creates for merchant generating investment, which has been extensively discussed in the IOUs’ long-term procurement planning proceedings.

¹⁷ D.11-07-029, p. 49.

¹⁸ D.11-07-029, p. 66.

equipment outweigh the potential for competitive limitations resulting from utility ownership.¹⁹

Moreover, the Commission found that the IOUs' proposal to allocate the utility costs of providing PEV meters to the "general body of ratepayers" raised serious "competitiveness concerns"²⁰, and rejected that approach, finding that the proposed cost allocation "may result in unfair advantage for utilities."²¹ Instead, the Commission required that the customer procuring the service pay for it directly.²² The IOUs' Smart Grid Deployment Plans highlight these same competitive concerns and require similar Commission attention to ensure that competitive markets and product innovation can flourish for Smart Grid services.

In fact, ESPs, DR Providers, and Energy Service Companies ("ESCOs") already provide many of the energy-related services identified as "Smart Grid" by the IOUs, such as customer outreach and education, customer internet portals, integrated load management programs, and specialized customer software. These companies must recover the costs of these programs through their charges to customers procuring the service – they have no opportunity for guaranteed cost recovery as do the IOUs. Consequently, the IOUs' Smart Grid Deployment Plans and the associated cost recovery, primarily through non-bypassable distribution rates, create an unfair competitive advantage for the IOUs. Nonetheless, DACC and AReM would not oppose the IOUs' ability to engage in this market, provided they recover their costs through the services provided, just as any other market competitor does. If the IOUs are unwilling to accept this approach, then they should restrict their Smart Grid Deployment Plans solely to

¹⁹ D.11-07-029, p. 49.

²⁰ D.11-07-029, p. 47.

²¹ D.11-07-029, p. 47.

²² D.11-07-029, p. 47.

improvements required to the transmission and distribution system to facilitate products and services offered by non-utility third parties.

Finally, we address the proposed cost of these plans. Each IOU has employed a different approach for estimating costs and the time period of cost recovery. Further, SCE did not project costs beyond 2014, meaning that its total funding request is significantly under-estimated. Nevertheless, the totals are significant and require extensive Commission review, particularly to the extent they are proposed to become non-bypassable charges imposed on all ratepayers, which will impair retail electricity markets.

IOU SMART GRID FUNDING (Billion \$)			
IOU	Funding Previously Authorized	Additional Funding Proposed²³	Total
PG&E	\$1.43	\$0.83-\$1.8 ²⁴	\$2.26-\$3.23
SCE	\$0.8	\$1.04 ²⁵	\$1.84
SDG&E	\$1.04	\$2.46-\$2.56 ²⁶	\$3.5-\$3.6
Total	\$3.27	\$4.33-\$5.4	\$7.6-\$8.67

As shown in the above table, about 40% (~\$3.3 billion) of the proposed costs of the IOUs' Smart Grid Deployment Plans have already been authorized and remain to be spent through 2014. The Commission should consider whether it should approve any additional expenditures until it can assess the efficacy of funding already authorized. More importantly, the Commission must determine the competitive effect of any proposed non-bypassable charges and identify measures, as it did in the PEV proceeding, to mitigate those effects and enhance competitive markets.

²³ Many of these costs have separately been proposed in other utility proceedings.

²⁴ PG&E Plan; assumes cost recovery over 20 years; p. 156.

²⁵ SCE Plan; costs estimated only through 2014; p. 127.

²⁶ SDG&E Plan; costs estimated through 2020; p. 268.

III. ISSUES FOR CONSIDERATION

DACC and AReM have identified significant competitive issues requiring Commission consideration in this proceeding. Specifically, DACC and AReM request that the Commission address the following issues in this consolidated proceeding:

- The need for a single Smart Grid vision for the state, rather than three separate IOU-specific visions as currently proposed.
- The proper role of the IOU with respect to the Smart Grid.
- Terms and conditions under which the IOUs could be authorized to provide competitive Smart Grid services to consumers, if any.
- Principles of cost allocation for IOU Smart Grid programs to avoid impairing competitive markets, including the competitive direct access market and the competitive market for Smart Grid products and services.

IV. CONCLUSION

AReM and DACC have identified specific issues with the IOUs' Smart Grid applications that could significantly and negatively impact direct access customers and their ESPs, stifle innovation, and hinder the expansion of competitive markets in California. For these reasons and those stated above, DACC and AReM respectfully request that the Commission address these vital issues in this consolidated proceeding and ensure that the IOU' Smart Grid Deployment Plans and associated cost allocation allow competitive markets to flourish and California to meet its challenging energy goals.

Respectfully submitted,



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