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

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

A.11-06-006
(Filed June 6, 2011)

And Related Matters.

A.11-06-029
A.11-07-001

**PROTEST OF COUNTY OF MARIN, TOWN OF FAIRFAX, CITY OF MARINA, CITY
OF SEASIDE, CONSUMERS POWER ALLIANCE, PUBLIC CITIZEN, MARIN
ASSOCIATION OF REALTORS, ALLIANCE FOR HUMAN AND ENVIRONMENTAL
HEALTH, COALITION OF ENERGY USERS, EAGLE FORUM OF CALIFORNIA,
SANTA BARBARA TEA PARTY, CONCERNED CITIZENS OF LA QUINTA, PALM
SPRINGS PATRIOTS COALITION DESERT VALLEY TEA PARTY, MENIFEE TEA
PARTY - HEMET TEA PARTY – TEMECULA TEA PARTY, ROVE ENTERPRISES,
INC., SCHOONER ENTERPRISES, INC., AND EAGLE FORUM OF SAN DIEGO TO
CONSOLIDATED APPLICATIONS FOR ADOPTION OF SMART GRID
DEPLOYMENT PLANS**

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Pursuant to Rule 2.6 of the Rules of Practice and Procedure (“RPP”) of the California Public Utilities Commission (“Commission”), County of Marin, Town of Fairfax, City of Marina, City of Seaside, Consumers Power Alliance, Public Citizen, Marin Association of Realtors, Alliance for Human and Environmental Health, Coalition of Energy Users, Eagle Forum of California, Santa Barbara Tea Party, Concerned Citizens of La Quinta, Palm Springs Patriots Coalition Desert Valley Tea Party, Menifee Tea Party - Hemet Tea Party – Temecula Tea Party, Rove Enterprises, Inc., Schooner Enterprises, Inc., and Eagle Forum Of San Diego (collectively the “Joint Protestants”) hereby protest consolidated Application A.11-06-006, filed by San Diego Gas and

Electric Company (“SDG&E”), Application A.11-07-001 of Southern California Edison Company (“SCE”), and A.11-06-029 of Pacific Gas and Electric Company (“PG&E”) (collectively the “Applications”).

For the reasons set forth below, the Joint Protestants urge the Commission to dismiss the Applications due to the material failure of each to comply with the Commission’s Rules and applicable law, or in the alternative require Applicants to amend the Applications to fully comply with the requirements of RPP 2.4, the California Environmental Quality Act,¹ and the codified CEQA implementation guidelines.² Additionally, the Commission should require that any deployment plan approved in this proceeding include implementation of a Smart Meter opt-out program consistent with those ultimately adopted in A.11-03-014, A.11-03-015, and A.11-07-020.

I. INTRODUCTION AND BACKGROUND

D.10-06-0473 ordered that PG&E, SCE and SDG&E each file an Application seeking Commission approval of their Smart Grid Deployment Plan, consistent with Senate Bill 17 (Padilla), Chapter 327, Statutes of 2009. Each of the Applicants admits that its current and planned deployment of Smart Meters is a material component of its broader Smart Grid deployment plan. Each of the Applicants have deployed, and are continuing to deploy, millions of Smart Meters that utilize a wireless mesh network

¹ California Environmental Quality Act of 1970, Public Resources Code Sections 21000 *et seq.* (“CEQA”).

² California Administrative Code, Title 14, Sections 15000 *et seq.* (CEQA Guidelines”).

³ Decision Adopting Requirements For Smart Grid Deployment Plans Pursuant To Senate Bill 17 (Padilla), Chapter 327, Statutes Of 2009, *Order Instituting Rulemaking to Consider Smart Grid Technologies Pursuant to Federal Legislation and on the Commission’s own Motion to Actively Guide Policy in California’s Development of a Smart Grid System*, Rulemaking 08-12-009, June 24, 2010, at 21.

design, in which each Smart Meter transmits data from the subscriber premises to surrounding Smart Meters and each Smart Meter receives and retransmits data of other nearby subscribers. Eventually this data reaches a Data Collection Unit (“DCU”) operated by the Applicant, which then forwards the collected data to the computers of the Applicant. In addition, where not enough Smart Meters exist in a given area to form a complete overlapping “mesh” of such transmissions and retransmissions, repeaters or more powerful Smart Meters may be installed.

As a result of the deployment of millions of these wireless mesh Smart Meters and associated transmitters, escalating numbers of objections have been made by citizens on numerous grounds, including serious health impacts of their EMF emissions, utility refusals to comply with county and municipal permitting, safety requirements, violation of property rights and privacy rights of citizens, cyber security and impacts on the environment, plants and wildlife, to name a few. None of these issues has been investigated or analyzed in detail by the Commission, which has authorized these deployments on an extremely general level, and the Commission has certainly not mandated that any specific brand or design of communications wireless network equipment be used to implement the Smart Grid.

Based on the perception that these citizen and local government complaints applied only to PG&E territory, on March 10, 2011, President Peevey ordered PG&E to prepare and file an Application for Commission approval of a Smart Meter “opt-out plan” that would permit subscribers to continue to use analog meters that did not create EMF

emissions.⁴ PG&E filed its Application on March 24, 2011, and on that same day UCAN filed an Application asking that the Commission require SDG&E to also file an Application seeking Commission approval of an opt-out plan to address citizen complaints.⁵ On July 26, 2011 numerous parties filed a similar Application urging the Commission to require SCE to file a similar Application for Commission approval of a Smart Meter Opt-out Plan.⁶

II. THE DEPLOYMENT PLANS PROPOSED BY THE APPLICATIONS MUST INCLUDE SMART METER OPT OUT PLANS

These consolidated Applications do not propose any form of Smart Meter Opt-out Plan. Any Smart Grid Deployment Plan that is to be approved by the Commission must include such a plan, as determined in the three proceedings identified above. Joint Protestants assert that any such Opt-out Plan must include identified minimum components identified in the Protest of the PG&E Opt-out application filed by Marin County et al in A.11-03-014, and in A.11-07-020, which are incorporated herein by reference.⁷

⁴ See, President Peevey's Statement on Smart Meters, March 10, 2011: http://www.cpuc.ca.gov/PUC/aboutus/Commissioners/01Peevey/speeches/110310_meters.htm.

⁵ See, A.11-03-015, Application of Utility Consumers' Action Network for Modification of Decision 07-04-043 so as to Not Force Residential Customers to Use Smart Meters, March 24, 2011.

⁶ See, A.11-07-020, Application of the County of Santa Barbara, the Consumers Power Alliance, et al For Modification of D.08-09-039 and a Commission Order Requiring Southern California Edison Company (U338E) To File an Application for Approval of a Smart Meter Opt-Out Plan, filed July 26, 2011.

⁷ See, *id.* at 14-15; Protest of the County of Marin et al. to A.11-03-014 at 7-18.

III. THE APPLICATIONS VIOLATE THE REQUIREMENTS OF CEQA AND THE COMMISSION'S RULE 2.4

The consolidated Applications each request that the Commission take a discretionary action to approve the proposed Smart Grid Deployment Plans. These plans include continuing deployment of wireless mesh network Smart Meters of the same type currently being deployed, including not only Smart Meters but new and additional wireless communications facilities such as Data Collection Units and repeaters, all covering the service territories of the Applicants. This will result in new and duplicative communications networks serving over 12 million subscribers across a major portion of California's populated geography.

Yet none of the Applications comply with RPP 2.4, which requires that (a) any application for authority to undertake any project subject to CEQA shall comply with CEQA and the CEQA Guidelines; (b) any application that is not statutorily or categorically exempt shall include a Proponent's Environmental Assessment; and (c) any application that is statutorily or categorically exempt from CEQA shall so state with citation to the relevant authority.

Each Application is silent with respect to CEQA in clear violation of RPP 2.4. Either the proposed deployment plans for continuing installations of growing wireless mesh networks of Smart Meters and other related network facilities are subject to CEQA's requirements, in which case RPP 2.4(a) and (b) apply, or Applicants assert that they are not, in which case RPP 2.4(c) applies. Either way, the Applications fail to comply with RPP 2.4.

Joint Protestants believe that fundamental legal error was committed in past Smart Meter proceedings by not requiring CEQA analysis as part of the initial

deployment application proceedings for wireless mesh communications network construction, or by avoiding such analysis by flawed application of CEQA.⁸

Prior to the commencement of deployment of the wireless Smart Meter networks, there were no radio transmission network facilities of this type in existence in the Applicant networks. While meters, and even wired precursors of the current Smart Meters were in existence, it is beyond dispute that the Data Collection Units and repeaters being constructed did not exist. They are being deployed at this time, and Applicants seek Commission discretionary approval of their continued deployment, without the environmental review required by CEQA.

Finally, D.10-06-047 found that the Commission has not completed any meaningful review of the wireless mesh network technology that Applicants are

⁸ For example, PG&E's initial deployment authorization was for the use of "wired" Smart Meters not using wireless mesh transmissions. In that decision the Commission found that CEQA analysis was not required because the proposed deployment of wired Smart Meters was within the categorical exemption of either CEQA Guideline Sec. 15301(b) dealing with existing facilities of public utilities, or Sec. 15302(c) dealing with the replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity. When PG&E subsequently applied to modify its authorization to deploy millions of *wireless* Smart Meters, the Commission decision authorizing that deployment never mentions CEQA, despite the fundamental change of the requested project, which creates entirely different environmental impacts than the wired meter design. The new wireless proposal was properly subject, even if a categorical exemption applied to the wired meters, to the exceptions to all categorical exemptions set forth in Sec. 15300.2 of CEQA, including Section 15300.2(b), which provides: (b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant." And Sec. 15300.2(c), which provides: "(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." The facts that have led President Peevey to require PG&E to propose an opt-out plan for the wireless mesh Smart Meter network, as well as the records in A.11-03-014 and A.11-03-015, demonstrate such a "reasonable possibility," if not an strong probability, of such environmental and health effects. Construction of these massive new communications networks is nothing if not an unusual event.

deploying and now seek Commission authorization to continue to deploy in the future.

In discussing the required contents of the Smart Grid Deployment Plans to be filed by

July 1, 2011, the Commission stated:⁹

It is also reasonable to require that a utility's Smart Grid strategy demonstrates how the utility will evaluate whether third party communications networks can provide cost-effective communications that meet the security and performance requirements of the Smart Grid. *We expect that before the Commission approves a specific Smart Grid infrastructure investment, the Commission will wish to ascertain whether investments in Smart Grid communications are cost-effective and whether a utility has adequately considered a range of alternatives, especially those concerning the use of existing and future communications infrastructure operated by third parties.* (Emphasis added.)

Nothing in D.10-06-047 authorized or required Applicants to ignore the requirements of CEQA or RPP 2.4 when filing these Applications. The Commission cannot sweep CEQA under the rug in these consolidated proceedings. It is difficult to see how the unprecedented establishment and construction of massive new complex wireless telecommunications networks costing billions of dollars linking millions of locations and customers throughout California and the maintenance thereof can legally be, or should for public policy reasons be, exempted from the same environmental review process applied to projects of far less massive and objectionable impacts. These Applications seek Commission approval of ongoing massive deployment of these wireless mesh networks and meters before the Commission has even investigated their nature enough to know whether existing alternative networks could be more cost effective or less harmful than those being deployed by Applicants.

⁹ D.10-06-047 at 47.

Although the Commission should continue to pursue implementation of the State's Smart Grid objectives as described in D.10-06-047, achievement of none of those objectives requires the wireless mesh networks being deployed by the Applicants. Whether the alleged benefits of these new wireless communications networks outweigh the environmental consequences of their implementation is not now known by the Commission and cannot be known unless the provisions of not only SB 27's Smart Grid policies are reviewed, but also the benefits or harms to other identified state policy objectives are also determined and weighed. CEQA embodies such a state policy. Nothing in SB 27 repealed or preempted CEQA.

IV. ISSUES RAISED BY THE APPLICATIONS

Discovery has not yet commenced in this proceeding. The Applications raise material factual, legal, and policy issues which must be investigated by the Commission. While Joint Protestants list the issues that they have identified to date, additional specific issues will surely be identified as this proceeding progresses, and Joint Protestants respectfully request the right to identify additional issues as appropriate.

At a minimum, the Commission should set for hearing and fully investigate the following issues, which are discussed in further detail below:

1. Are there alternative technological advances in energy production and delivery systems that could reasonably be expected in the near future to be more cost-effective, and more beneficial to the public, and not require the wireless mesh network infrastructure proposed in the Applications, particularly in the event of large numbers of subscribers "opting out" of wireless meters for more efficient energy and technology?
2. Should the Smart Grid Deployment Plans include explicit requirements concerning the integration of Smart Meter Opt-Out Plans currently under evaluation by the Commission?

3. What modifications to the proposed Smart Grid Deployment Plans of the Applicants are required as a result of the information provided by the PEA filed by each of the Applicants and the Environmental Impact Report required by CEQA?

V. CATEGORIZATION, NEED FOR HEARING AND SCHEDULE

Joint Protestants believe that the Commission’s schedule for this proceeding should provide for full investigation of the issues presented and meaningful participation by all interested parties. Protestants assert that evidentiary hearings are required.

Joint Protestants’ Proposed Schedule

Protests Filed	August 4, 2011
Responses to Protests Filed	August 15, 2011
Prehearing Conference	August 29, 2011
Scoping Memo	September 12, 2011
Intervenor Testimony	October 10, 2011
Rebuttal Testimony	October 28, 2011
Evidentiary Hearings	November 8-10, 2011
Opening Briefs	December 2, 2011
Reply Briefs	December 30, 2011

Joint Protestants agree that the instant consolidated proceeding should be categorized as “quasi-legislative.”

VI. CONCLUSION

For the reasons set forth above, the Commission should investigate the issues raised in this Protest and those of other parties, and, upon consideration of the record,

require each Applicant's Smart Grid Deployment Plan to expressly include implementation of a Smart Meter opt-out plan approved by the Commission. In reaching its determinations concerning grant, denial, or modification of the approval sought in the Applications, the Commission should comply with all of the requirements of CEQA by not improperly granting some form of categorical exemption from CEQA to the proposed continuing deployment of wireless mesh Smart Meters and related telecommunications facilities forming a material component of the projects described in the Applications.

Dated: August 4, 2011, at Tiburon, California.

Respectfully submitted,

By: /s/ James M. Tobin

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