

Smart Meter Opt-Out Fees: A.11-03-14 et al.
Center for Accessible Technology
October 17, 2012



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LEGAL ISSUES:

State and federal law prevent the Commission from permitting, and the regulated utilities from assessing, an opt-out fee for customers who require an analog meter rather than a smart meter for medical reasons. The relevant statutes require that a standard fee charged to customers who prefer an analog meter for non-medical reasons must be waived if a customer can make an appropriate showing of health impacts.

The Commission:

- Title II of the ADA: As a state entity, the Commission must comply with Title II of the ADA and its supporting regulations. Under Title II, no public entity may exclude or deny the benefits of its services, programs, or activities to any person on the basis of disability. Regulations implementing Title II unambiguously prohibit surcharges on people with disabilities to cover the costs of providing necessary accommodations.
- California Government Code § 11135: As a state entity, the Commission is prohibited from discriminating on the basis of disability through Section 11135 of the Government Code, which is also referenced in Public Utilities Code § 453(b). The Government Code is interpreted to be consistent with the ADA unless it provides greater protection. Thus any surcharge prohibited by the ADA is also prohibited by the Government Code.
- Independent Policymaking Authority: As an independent policymaking entity, the Commission can and should look to the same information considered by state and federal legislators and take appropriate steps to ensure that people with disabilities do not face discrimination based on Commission policy. The Commission should concur with other policymakers that no person with a disability should be assessed a surcharge for measures taken to accommodate the disability. Such a position would further general policy goals of non-discrimination, inclusiveness, and support for independent living by people with disabilities.

The Utilities:

- California Public Utilities Code § 453: Section 453(a) prohibits discrimination of any sort by regulated utilities, and Section 453(b) expressly prohibits a utility from charging a customer different rates due to a medical condition or disability. The prohibition on discrimination has been interpreted broadly by state courts. The intent of this anti-discrimination prohibition is to ensure that customers of a utility, who have no option of seeking service elsewhere, are not denied any benefits of service, including access to safe service, based on any immutable characteristic.

- Unruh Civil Rights Act: California’s sweeping civil rights acts mandates that people with disabilities are entitled to full and equal accommodation “in all business establishments of every kind whatsoever.” Consistent with the regulations of the ADA, this includes a prohibition on surcharges.
- Section 504 of the Rehabilitation Act: Any utility that receives federal funding is prohibited from discriminating on the basis of disability. The Rehabilitation Act is interpreted to be consistent with the ADA, including the prohibition on surcharges.
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FACTUAL ISSUES:

The Center for Accessible Technology (CforAT) takes no position as to whether Smart Meters cause harmful health impacts, and this issue is outside the current scope of the proceeding. Further inquiry would be necessary to reach a resolution on this issue.

- The Assigned Commissioner’s Ruling Amending Scope of Proceeding to Add a Second Phase, issued on June 8, 2012, clearly states that any review of the potential health impacts of smart meters is outside of the scope of the proceeding.
- Despite arguments by the utilities that the Commission should find that sensitivity to radio frequency (RF) radiation emitted by smart meters is not a disability or medical condition and the arguments by some other parties that the Commission should find that RF sensitivity is a recognizable medical condition that warrants enforcement of legal protections, no formal record exists in this proceeding to permit the Commission to issue any factual findings whatsoever on this question. If the Commission determines that it must answer questions regarding potential health impacts of RF radiation, further proceedings before the Commission or in some other appropriate forum will be necessary.
- Any future inquiry regarding potential health impacts of smart meters will have to answer two separate (though related) questions: First, can smart meters cause harmful health impacts at all, and second, has any particular individual demonstrated that he or she has suffered harmful health impacts. If the first question is answered “yes” through an appropriate inquiry, then an appropriate further process must be identified for a customer to answer the second question.

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