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12-21-12

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

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

OPENING BRIEF OF CONSUMERS POWER ALLIANCE

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December 21, 2012

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Consumers Power Alliance (“CPA”) respectfully submits this brief in accordance with the June 8, 2012 “Assigned Commissioner’s Ruling Amending Scope of Proceeding to Add a Second Phase” (the “*Amended Scoping Ruling*”)¹ and the subsequent Ruling of the assigned ALJ deferring issues related to community opt-out proposals until issuance of a Commission Decision on these issues, and a clarifying that the recent evidentiary hearings and this briefing round is limited to material disputed cost issues related to individual opt-out rights.²

I. Introduction

CPA has been actively involved in these advanced metering deployment proceedings since shortly after the issuance of D.12-02-014 establishing the requirements for the SmartMeter Opt-out plan of Pacific Gas and Electric (“PG&E”).³ After reviewing this decision, CPA and its supporters filed Application 11-07-020 urging the Commission to require Southern California Edison (“SCE”) to implement an opt-out plan containing the material provisions of the PG&E plan, and the Commission subsequently granted this application in all material respects.⁴

¹ *Amended Scoping Ruling* at 5-6.

² See, *ALJ Ruling Granting Motion Regarding Community Opt-Out Testimony*, served via email on September 28, 2012.

³ D.12-02-014, *Decision Modifying Pacific Gas And Electric Company’s SmartMeter Program To Include An Opt-Out Option, 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)*, A.11-03-014 (Feb. 1, 2012) (“*PG&E Phase 1 Decision*”).

⁴ See, D.12-04-018, *Decision Modifying Decision 08-09-039 And Adopting An Opt-Out Program For Southern California Edison Company’s Edison Smartconnect Program, Application of Consumers Power Alliance, Public Citizen, Coalition of Energy Users*,

On June 15, 2012, CPA filed a Protest to the application of Southern California Gas Company (“So Cal Gas”) to establish an opt-out option applicable to its advanced wireless meters.⁵ The CPA Protest focused on the inequitable and non-uniform consequences of the interim rates proposed by So Cal Gas on consumers in the combined So Cal Gas and SCE service territories, since those consumers would have to pay twice as much for opting out of gas and electric wireless meters as consumers in the PG&E and SDG&E service territories. The Commission has not yet ruled on this Application or Protest.

Outside of these Commission proceedings, CPA has been actively involved in informing consumers about their rights under the SCE and PG&E opt-out plans as deployment has continued. For example, CPA has published consumer alerts, assisted consumers in interfacing with the utilities concerning such problems as proper implementation of the delay lists, proper notification of the installations, attempted installations on the premises of consumers that had opted out, billing irregularities, and similar consumer-oriented concerns. CPA members also include owners and residents

Eagle Forum of California, Neighborhood Defense League of California, Santa Barbara Tea Party, Concerned Citizens of La Quinta, Citizens Review Association, Palm Springs Patriots Coalition Desert Valley Tea Party, Menifee Tea Party - Hemet Tea Party – Temecula Tea Party, Rove Enterprises, Inc., Schooner Enterprises, Inc., Eagle Forum of San Diego, Southern Californians For Wired Solutions To Smart Meters, and Burbank Action 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, A.11-07-020 (Apr. 19, 2012) (“SCE Phase 1 Decision”). In Phase 2, these parties are participating through their membership in CPA.

⁵ See, A.12-05-016, *Application of Southern California Gas Company (U904G) to Establish an Advanced Meter Opt-Out Program*, filed May 11, 2012.

of multiple dwelling unit buildings, so CPA will have a continuing interest in the community opt-out issues still to be explored.

The Commission, starting with the *PG&E Phase 1 Decision* and continuing in its *SCE Phase 1 Decision* and comparable decision concerning SDG&E,⁶ has recognized the need to address a range of problems with deployment by the utilities of their advanced meters employing wireless mesh radio networks. These decisions have established that consumers have the freedom of choice to opt-out of a program they do not want. The decisions establish opt-out plans that must include making alternative non-wireless advanced meters available to consumers desiring them for any reason, mandate compliance with consumer notice requirements, and materially reduced the opt-out charges proposed by the utilities on an interim basis.⁷ The Commission further established this Phase 2 proceeding to explore the cost issues associated with these individual opt-out plans, as well as the feasibility of implementation of community opt-out plans. As a result of changes in the Phase 2 briefing schedule, the ALJ has delayed hearings and briefs on these community opt-out issues until the Commission has decided the issues identified in the *Amended Scoping Ruling* for resolution through briefs.

⁶ D.12-04-019, Decision Modifying Decision 07-04-043 And Adopting An Opt-Out Program For San Diego Gas & Electric Company, *Application of Utility Consumers' Action Network for Modification of Decision 07-04-043 so as to Not Force Residential Customers to Use SmartMeters*, A.11-03-015 (Apr. 19, 2012) (“SDG&E Phase 1 Decision”).

⁷ See, e.g., *PG&E Phase 1 Decision* at 33-35, 39-41.

With respect to the cost issues designated for investigation in Phase 2, the Commission's decisions have explicitly pointed out that the Commission has made no determination that any of the funds expended by the utilities in alleged connection with these opt-out plans have constituted reasonable and prudent expenditures to be included in any rate base and recovered from customers.⁸ To the extent any of these expenditures are eventually found qualified to be included in a rate base, the Commission has also not yet determined how any such amounts should be "socialized" as between all ratepayers being assessed fees for the advanced metering infrastructure deployment programs of the utilities, or any subset thereof. Finally, the Commission has not determined the permanent rate structure that should be applied to these opt-out plans, or the nature of any exemptions or waivers that should apply to such rates.⁹

As evidenced by its Application 11-07-020, CPA has not opposed the interim opt-out rates established by the Commission for PG&E, SCE or SDG&E, and has not presented expert testimony concerning specific deficiencies in the costing studies submitted by the utilities in support of their proposed permanent opt-out rates.

⁸ See, e.g., *PG&E Phase 1 Decision* at 33, n. 58 ("Authorization of a memorandum account does not necessarily mean that the Commission has decided that the types of costs to be recorded in the account should be recoverable in addition to rates that have been otherwise authorized, e.g., in a general rate case. Instead, *the utility shall bear the burden when it requests recovery of the recorded costs, to show that separate recovery of the types of costs recorded in the account is appropriate, that the utility acted prudently when it incurred these costs and that the level of costs is reasonable.* Thus, PG&E is reminded that just because the Commission has authorized these memorandum accounts does not mean that recovery of costs in the memorandum accounts from ratepayers is appropriate.") (Emphasis supplied).

⁹ At least some of these issues are encompassed in the deferred community opt-out issues which have been briefed, such as whether the Public Utilities Code or Americans with Disabilities Act preclude imposition of charges on defined classes of consumers.

For the reasons set forth below, CPA urges the Commission to apply the same cost allocation methodology adopted in D.09-03-026,¹⁰ which authorized PG&E to modify its SmartMeter program by changing to wireless mesh radio technology, including replacing recently-installed wired SmartMeters with wireless meters, and increased PG&E's revenue requirement for its SmartMeter Program by over \$466 million. As proposed by PG&E in that proceeding, D.09-03-026 held that "the total revenue requirement will be recovered in the same manner as other distribution revenue, based on the distribution revenue allocation and rate design methods authorized by the Commission [in D.06-07-027]." As applied in this proceeding, all utility costs associated with the opt-out plans should be allocated on the same basis as the other costs of the overall advanced metering infrastructure programs of the utilities. Under present circumstances, as a matter of reasonable ratemaking, the utilities do not have the information necessary to determine reasonably accurate "incremental" costs in any event. Since this proceeding involves only costs for 2012 and 2013, actual results can be reviewed for possible differential treatment in the near term.

Most importantly, the application of this cost allocation mechanism to the alleged incremental opt-out costs estimated by the utilities in this proceeding would implement the Commission's recognized requirement to include evaluation of fairness, equity, and concern for customer impact when choosing between alternative cost allocation mechanisms. But to the contrary, the allocation methodology proposed by the utilities -

¹⁰ Decision on Pacific Gas And Electric Company's Proposed Upgrade To The SmartMeter Program, A.07-12-009, *Application of Pacific Gas and Electric Company for Authority to Increase Revenue Requirements to Recover the Costs to Upgrade its SmartMeter™ Program (U 39 E)*, March 12, 2009 ("PG&E Modification Decision").

estimating incremental costs of the opt-out plans and imposing them entirely on the small number of consumers actually opting out – clearly violates these principles, particularly when the numerous material uncertainties of what these costs may actually end up to be are considered. As illustrated by D.09-03-026, there can be no assurance at this time that technological advances, or unforeseen problems with the current wireless mesh technology, will not arise sooner or more critically than anticipated by the utilities.

PG&E itself has recognized to a limited degree the public interest in the cost allocation principles advocated here by CPA by proposing that its interim rates be made permanent even though lower than its asserted incremental costs. However, this does not adequately address several consumer impact and fairness issues presented by the utility proposals.

In no event, however, should the Commission adopt permanent individual opt-out rates higher than those proposed by PG&E in order for any individual consumer to opt-out of both electric and gas wireless mesh meters, irrespective of whether provided by one or two utilities. This cap, determined from the perspective of the consumer, not the utility, would not require that any utility not recover its approved costs, since any addition utility cost recovery could be implemented through use of the distribution allocator mechanism used in D.09-03-026. Importantly, however, use of the D.09-03-026 cost allocation formula would both alleviate material disparate consumer impacts and also permit utility cost recovery consistent with the cost allocation of the overall advanced metering infrastructure programs of the utilities.

II. The General Principles Governing The Determination Of Just And Reasonable Rates Include Not Only Utility Cost Recovery, But Also Equity And Fairness To Consumers And The Public.

As the Commission stated over a decade ago in D.01-05-064:

Traditional ratemaking outcomes reflect the reasonable cost of the service supplied. Section 451; *Pacific Telephone and Telegraph v. PUC*, 62 C. 2d 634 (1965); *Pacific Telephone and Telegraph v. PUC*, 34 C. 2d 822 (1950). In practice this means that the Commission, through ratemaking, establishes rates that will generate the revenue requirement needed to supply electric service. *California Manufacturers' Association v. PUC*, 24 C.3d 251, 257 (1979). However, cost recovery as a general ratemaking goal is accompanied by other policy goals, including the equitable pursuit of the public good. *Pacific Telephone and Telegraph v. PUC*, 7 C.3d 331, 357 (1974).

The goal of equity is essentially one of fairness, viewed in a broad policy context. *TURN v. PUC*, 22 C. 3d 529, 538 (1978). We cannot precisely address the responsibility for the specific energy supply costs California bears today because CDWR has not provided us with sufficient information concerning the nature and extent of its power purchase costs to date. In any event, equity transcends the application of simple mathematical formulas. We therefore evaluate rate design proposals considering customers' ability to pay and the hardship that rate increases impose on particularly vulnerable customers. We also consider the relative hardship imposed on various customer groups.¹¹

The Commission must fully honor and implement these equitable goals and the public good when evaluating the cost allocation and related cost and rate design proposals in this proceeding.

CPA does not address here the question of whether the utilities have met their burden of proof to demonstrate that all of the costs they assert have been or will be

¹¹ Interim Opinion Regarding Rate Design, *Application of Southern California Edison Company (E 3338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs*, A.00-11-038 and consolidated cases, mailed May 16, 2001, at 13-14 (footnotes omitted).

prudently incurred and payable by ratepayers instead of shareholders. CPA addresses only the question of how costs the Commission finds prudently and reasonably incurred should be allocated amongst ratepayers.

Although the PG&E Phase 1 decision included general statements that “customers electing the opt-option shall be responsible for costs associated with providing the option,”¹² it also made clear that various cost allocation issues necessary to define such “costs associated with providing the option” were unresolved:

The proposed decision had concluded that the costs for the opt-out option should not be solely the responsibility of those electing to opt-out, since some of the costs were related to the SmartMeter infrastructure as a whole. As a result, the proposed decision recommended that a portion of the opt-out costs be allocated to all residential ratepayers. In comments on the proposed decision, some parties have raised various legal and policy arguments on why some portion, or all, of these costs should be paid by all ratepayers or PG&E shareholders. Based on these comments, we believe it is appropriate to consider allocation of costs as part of the second phase of this proceeding.¹³

The cost question of cost allocation in this Phase 2 proceeding is broad. In addition to the issue of allocation between ratepayer and shareholders, it also encompasses the fundamental underlying concept of cost causation. A cost not caused by the out-out plan, or caused by several factors besides the plan itself, is not a cost that in its entirety assigned to customers of the plan alone. The utilities have not met their burden of proof regarding either question.

¹² See, *PG&E Phase 1 Decision* at 1.

¹³ *Id.* at 30 (footnotes omitted).

III. The Utilities Have Failed to Prove Asserted Costs Are Caused Solely by Consumers Opting Out.

Ultimately, when offered for ratemaking purposes, the costs “associated with” the opt-out plans are the costs that the utility chooses to "allocate" to them. The utility's motivation behind the specific "allocations" it proposes may or may not necessarily coincide with sound public policy goals or consumer welfare. Indeed, there are at least two reasons why, all else equal, the utility would attempt to over-assign costs to the opt-out plans: (1) to affirmatively discourage opt-out; and (2) to maximize revenue. The resulting allocations may or may not include correctly identified (or in this case reasonably estimated) incremental costs “caused” by these plans. Cost causation is a complex economic concept with numerous definitions leading to vastly differing results. To what extent did the utility consider the consequences of ratepayer opt-out when it selected the wireless mesh network architecture? A wired solution, for example, might have been less objectionable to many customers and thus have resulted in few opt-outs, and where an opt-out did occur, the costs associated therewith would have been lower since there would have no been need to "fill in" the hole in the mesh network. So who is the cost causer here? If the utility had underestimated the extent of ratepayer opt-out requests and, on that basis, selected what turned out to have been a more costly architecture, the "cost" of such unanticipated opt-outs would have been "caused" by the utility's decision, not by ratepayers who had no role in making it.

Furthermore, the utilities' asserted incremental opt-out costs are incremental only because they are being added onto a deployment program that did not consider the need for such plans at an appropriate earlier stage. But rather than this being an

unknown and unknowable aspect of elections to use wireless radio technology, PG&E for example chose to ignore or oppose actions by numerous local governments seeking delayed deployment in order to review such issues,¹⁴ choosing instead to continue to deploy. This was not necessary, as demonstrated by the actions of So Cal Gas in successfully negotiating with over 50 cities and counties for placement of wireless network facilities.¹⁵ Had PG&E pursued a similar cooperative approach, it is reasonable to believe that opt-out alternatives could have been developed at an earlier stage.¹⁶

Given the options available to the utilities to schedule, structure, and modify their deployment plans, none of which were mandated in detail by the Commission, it is not reasonable for the Commission to find that the sole “cost causers” of opt-out “costs” are consumers electing to opt-out. Many of these costs are instead properly viewed as caused by decisions of the utilities to pursue their own agendas despite growing and multi-faceted concerns expressed by public bodies and consumers. This is starkly illustrated by the fact that in March of 2011 President Peevey (an advocate of the advanced metering infrastructure and smart grid programs) found it necessary to order PG&E to promptly propose an opt-out plan, and CPA found it necessary to file a formal

¹⁴ See, e.g, Protest of the Town of Fairfax, County of Marin et al to PG&E Application 11-03-014, filed April 25, 2011.

¹⁵ See, Exhibit DRA-3, page 11.

¹⁶ D.09-03-026 discusses whether costs associated with PG&E’s decision to continue deploying older wired SmartMeters even after it had filed the Application to replace them, causing millions of dollars of retrofit costs, should be recovered from ratepayers. PG&E submitted expert testimony showing the delayed benefits outweighed the added costs of such deployment, and allowed the costs to be recovered from ratepayers. See, D.09-03-026 at 50-56. There is no such utility evidence in this proceeding.

application seeking a similar order covering SCE in light of its prior public statements that it had no intention of doing so absent such an order.

In fact, many of the costs asserted by the utilities, while in some ways logically related to actions of a consumer opting out, are not *caused* solely by that consumer. The record developed in A.07-12-009 contained detailed cost-benefit analyses supporting D.09-03-026, including analyses of the costs reduced or increased and the benefits lost or gained by delayed deployment of older generation wired meters. No such analyses have been provided by the utilities here. It is not the burden of proof of consumers to demonstrate they did not cause these asserted costs; it is the burden of proof of the utilities to prove that the consumers alone did cause them. While such costs could be viewed as part of the evolution of the advanced metering infrastructure program generally, the utilities have not met their burden of proof to show causation by only those consumers opting out.

IV. The Utilities Have Failed to Prove Asserted Costs Are Incremental.

In this proceeding the utilities have attempted to identify incremental costs which can accurately be found to be caused *only* by customers electing to opt-out. However, for any cost to be truly “incremental” it must be a cost that would not have been incurred in the absence of the activity involved. Stated differently, an incremental cost must be in addition to costs that would have been incurred if the activity – in this case implementation of the opt-out plans – did not occur.

However, the utilities did not establish many such incremental costs for several reasons, primarily because of the lack of actual experience upon which to establish with

sufficient certainty the baseline costs to which the opt-out costs must be shown to be incremental. This is coupled with lack of meaningful historical data concerning probable opt-out patterns in the future.

Regarding baseline costs for example, PG&E and the Commission determined that the useful life of the initial wired advanced meters installed by PG&E was 20 years.¹⁷ As a real life evolved, however, within less than three years the Commission granted PG&E's application to consider thousands of these meters as "stranded investments" due to rapid technological advancements, and to include these costs in the rate base allocated using distribution allocators:

Electromechanical meters have been deployed in the Kern region, and, as a result of PG&E's Upgrade request, the electromechanical meter costs will become stranded once these meters have been replaced. We see the fundamental issue to be whether these stranded costs should be addressed as part of the costs of the original AMI program or as part of the costs of the Upgrade. As discussed further in this decision, we determine that the stranded costs related to the electromechanical meters should be considered as original AMI program costs, specifically under the risk based allowance for the original AMI project.¹⁸

If the opt-out plans had been in place during that period, customers electing to opt-out and retain their existing meters would in fact have saved PG&E and its ratepayers a portion of these costs, which totaled \$18.8 million after Commission adjustment of PG&E's proposed figure.¹⁹

¹⁷ D.06-07-027, Approving the *Application of Pacific Gas and Electric Company for Authority to Increase Revenue Requirements to Recover the Costs to Deploy an Advanced Metering Infrastructure* ("AMI" also known as "SmartMeters™"), issued on July 24, 2006 at 24.

¹⁸ D.09-03-026 at 56 (footnote omitted).

¹⁹ *Id.*

The utilities have presented no meaningful testimony establishing that the future operational expenses of maintaining, replacing, or updating the new wireless advanced meters will not materially exceed the historical expenses caused by existing forms of meters that will be used by customers opting out. As the actual experience with PG&E's deployment demonstrates, any such actual outcome will result in subsequent applications seeking approval of increased revenue requirements for all residential customers, in which event the alleged "incremental" costs of the opt-out plans were erroneously established.

As another example, the utilities have calculated asserted incremental costs of the opt-out plans based upon the amount of time a particular employee or vendor would need to spend on a task such as software modifications, but without demonstrating that the utilities' existing costs would necessarily be increased due to such efforts. For example, a salaried employee would be paid the same amount whether working on implementing a software modification or on some other portion of the software development for the overall advanced metering and smart grid program, and if additional hiring was not necessary as a result of this use of time for the opt-out implementation, no incremental cost was created.

In light of these significant record deficiencies, the Commission must acknowledge the implications of accepting such "incremental" cost estimates as a basis for imposing significant opt-out charges on consumers, and reject that alternative. Various parties have asserted differing bases supporting the public interest in adopting the opt-out plans, and the Commission has recognized these concerns by allowing

consumers to opt-out for any reason in its Phase 1 decisions. Furthermore, the Commission adopted interim rates substantially lower than those urged by the utilities. Nevertheless, as the Commission is aware from statements made during the Public Participation Hearings in this case, the interim rates present economic hardship to many consumers sufficient to preclude their practical ability to opt-out. If the utilities' choice of wireless web technology had been seriously reviewed by the utilities and the Commission in its earlier authorizing decisions, these opt-out plans would have been considered a reasonable component of the general advanced meter deployment program.

V. The Individual Opt-Out Plans Are A Modification Of The General Advanced Meter Infrastructure Program, Not A Separate Program Justifying Separate Cost Allocation or Ratemaking.

The fundamental approach of the utilities in developing their cost and ratemaking proposals for permanent individual opt-out rates is that the opt-out plans constitute a "program" that is separate and distinct from their overall advanced metering infrastructure and smart grid deployment programs. Only if this generic underlying assumption is accepted does it become necessary to "allocate" costs between two programs. However, this assumption is false.

The captions of these very proceedings explicitly demonstrate this point. For example, the PG&E application in this proceeding is entitled "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).(Emphasis added.)

In its initial 2006 decision D.06-07-027, authorizing PG&E deployment of its advanced metering infrastructure, PG&E proposed the use of meters that communicated customer usage data to PG&E via the power lines without the use of wireless mesh radio network technology. Just over one year later PG&E sought to modify the initial decision, not by starting a new “program” for wireless SmartMeters, but rather filing an application entitled “Application of Pacific Gas and Electric Company for Authority to Increase Revenue Requirements to Recover the Costs **to Upgrade its SmartMeter™ Program** (U 39 E).”

In D.09-03-026 the Commission granted PG&E’s application, including its request that PG&E recover the SmartMeter Program upgrade costs from customers in the same manner as adopted in D.06-07-027 for other SmartMeter Program costs:

At this point, we will continue the use of the allocation methodology that applies to PG&E’s original AMI authorization. In general, it is reasonable to allocate distribution infrastructure with distribution level EPMC related allocators, and PG&E’s methodology is consistent with how SDG&E’s AMI related costs are allocated.²⁰

When determining the cost allocation methodology to use when authorizing recovery of any incremental costs the Commission finds that the utilities have demonstrated to be (1) solely caused by the opt-out plans, and (2) in addition to costs not already included in the utility rate base, the Commission should follow the same cost allocation principles and rate design method that it has applied consistently to PG&E since the inception of its advanced metering deployment. D.09-03-026 included explicit consideration of the risk-based allowances or contingency components of approved

²⁰ *Id.* at 258.

costs.²¹ Specifically, the costs of implementing the opt-out plans should be allocated using the same distribution allocators as all other costs associated with deployment of advanced metering infrastructure by the utilities.

VI. Adoption of the Cost Recovery Proposals of the Utilities Would Be Inequitable and Unfair, and Impose Disparate Hardships on Millions of Consumers.

The utilities all propose that the costs they identify as incremental and caused by the opt-out plans should all be recovered entirely from consumers electing to opt-out, even those with substantial health and safety concerns. In addition to the cost causation and allocation principles discussed above, adopting the utility proposals would in addition violate the Commission's obligation to consider the impacts on consumers and the public generally when electing from available cost allocation methods. There are at least two fundamental reasons why this is true.

First, a large percentage of the costs asserted by the utilities are not volume sensitive to the number of consumers opting out. Examples of such costs include software modification, design of customer communications programs, and similar activities where the scope and cost will not vary by the number of consumers opting out. These cost characteristics result in increasing burdens on those consumers opting out if their number differs from that assumed. For example, recent reports indicate that less than half of one percent of SCE's approximate 5.3 million customers have opted out. SCE has estimated \$21 million in 2012 - 2013 costs for its opt-out plan.²² If opt-out

²¹ *Id.* at 56, Table 3 at 153.

²² See, SCE Direct Testimony at 10.

numbers remain low, application of the rigid cost recovery proposal of the utilities will result in unreasonable and counterproductively high opt-out rates. This will discourage consumers who would otherwise opt-out for legitimate reasons from doing so, and make the opt-out right illusory for those consumers that cannot afford it, and will fall the hardest on senior citizens and others on fixed incomes.²³

Second, for the millions of California consumers served by SCE for electricity and So Cal Gas for gas service, application of the utility proposals will result in these consumers paying twice as much as similarly situated consumers in PGE and SDG&E territories.²⁴ So Cal Gas relies on traditional cost of service arguments to support its request for charges equal to or greater than those of the electric utilities, and is indifferent to the impact of these cumulative charges on its customers. But the Commission, consistent with its obligation to include fairness and consumer impact in its cost allocation choices, should instead view the issue from the perspective of the consumer as well.

As discussed above, these inequitable and inconsistent consequences for California consumers are the inevitable consequence of the application of the traditional monofocal utility-oriented version of cost of service ratemaking proposed by the utilities, considering only utility costs. However, application of the broader equitable considerations the Commission should apply in these circumstances, through application of the same cost allocation principles applied by the Commission in

²³ As statements in recent PPH hearing illustrate, even the interim rates now in effect for SCE and PG&E have presented very real hardships to some consumers.

²⁴ See, CPA Protest to So Cal Gas application A.12-05-016, filed June 15, 2012.

D.09-03-026, substantially mitigates both of these problems. It must be noted that when PG&E was the party designing to modify its opt-out plan to suit its own purposes, it proposed, and the Commission agreed, to apply such cost allocation principles. However now, when consumers are requesting modification to the utilities' deployment plans, with the limited exception of PG&E's proposal to retain its interim rates the utilities seek to impose all costs involved on the consumers seeking the modification.

However, when the relative amounts of the costs asserted by the utilities is compared to the magnitude of the costs of the general advanced metering infrastructure programs of each utility, the impact on consumers of application of the D.09-03-026 cost allocation mechanism is minimal. For example, SCE has been authorized to recover \$1.63 billion from rate payers for its advanced metering deployment, and estimates \$21 million, or approximately a 1.2% incremental cost addition for the opt-out plan that would be allocated to 5.3 million meter accounts.

There are numerous other implications of the after the fact introduction of opt-out plan requirements by the Commission, such as the fact that consumers opting out will still be paying rates that include recovery of costs for wireless meters and the other components of the program allocated using the distribution allocators adopted by the Commission and supported by CPA. However, the requirement for memorandum accounts and the true ups, as well as further actual experience in implementation of the opt-out plans, should provide the ability in the future for the Commission to determine whether a different allocator should be used. At this point, however, the Commission should avoid the imposition of inequitable and inconsistent rates on California

consumers by following the cost allocation mechanism established in D.06-07-027 and D.09-03-026 as the implementing vehicle.

VII. Individual Opt-Out Costs Have Little or No Precedential Value Concerning The Identification Of Community Opt-Out Costs.

Assuming the Commission commences subsequent proceedings concerning community opt-out issues as envisioned in the *Amended Scoping Memo* and ALJ Ruling of September 28, 2012, the Commission should make clear that any determinations in this proceeding related solely to individual opt-out cost identification will not automatically apply to cost identification issues presented in the community phase. Instead, it shall be the burden of proof of the utilities to demonstrate both the relevance and accuracy of such determination in the dramatically different factual circumstances that will be presented in community opt-out situations.

First, the question of prudence of the costs incurred in a jurisdiction that had enacted ordinances prohibiting or opposing such deployment is not presented here with respect to the actual knowledge or negligence of a utility in determining its lawful rights or obligations under the specific factual circumstances involved.

Second, the preponderance of the costs associated with removal and replacement of wireless meters, if required by the structure of the opt-out plan for the community, will differ fundamentally from the individual meter replacement costs developed by the utilities in this Phase 2 proceedings, which are premised on separate replacements, wireless network supplementation costs, and individual meter reading costs estimated by the utilities here.

Third, since the Commission has not yet specified the definition of a “community” for purposes of such opt-out plans, the differences from the individual cost estimates here will vary as between different types of communities. For example, a single apartment complex would present different characteristics than an entire town.

For these reasons, as well as the need for discovery on different matters than has occurred in Phase 2 to date, the Commission should clearly establish that the cost determinations in this Phase 2 do not apply to the community opt-out phase unless the utilities meet their burden of proof establishing their accuracy in these significantly different circumstances.

VIII. Conclusion

For the reasons set forth above, the Commission should select the cost allocation mechanism to apply to these opt-out plans that is the most fair to consumers, does not render the freedom of choice presented by the opt-out plans illusory to lower income consumers, does not create 100 percent rate disparities between regions in the state, and is also fair to the utilities by allowing recovery of demonstrated incremental costs. In doing so, the Commission should recognize that consumers, even those opting out, are in essence forced to pay for the advanced metering program even though they don’t want the product and do not believe the utilities should be investing billions of dollars in it given other priorities.

The Commission should therefore use the same distribution allocator used in D.09-03-026 to allocate any incremental opt-out plan costs. If the Commission does not do so, it should cap any consumer charges for opt-out election at the interim rates

proposed by PG&E, but calculated on a per consumer rather than per utility basis, with any additional utility costs recovered through the D.09-03-026 cost allocation mechanism.

Dated: December 21, 2012, at Tiburon, California.

Respectfully submitted,

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