



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

12-31-12
04:59 PM

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
CENTER FOR ELECTROSMOG PREVENTION**

December 31, 2012

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OPENING BRIEF OF CENTER FOR ELECTROSMOG PREVENTION

I. SUMMARY

The Center for Electromog Prevention (CEP) submits this opening brief according to the California Public Utilities Commission's Rules of Practice and Procedure, Rule 13.11. This brief is submitted before the date established by the assigned Administrative Law Judge during the evidentiary hearings. The briefing schedule was established on November 8, 2012, during the evidentiary hearing.

CEP wants an opt-out program allowing all electric and natural gas customers of Pacific Gas and Electric Company (PG&E), the Southern California Gas Company (SoCalGas), the Southern California Electric Company (SCE), and the San Diego Gas and Electric Company (SDG&E) to decline the use of smart meter technology, utilizing analog meters¹ on their premises without being charged an initial or exit fee and with no monthly meter reading fees. CEP suggests, due to the need for an immediate fix, that the opt-out be paid for in similar fashion to the one in Vermont, Title 30, Public Service :

“§ 2811. SMART METERS; CUSTOMER RIGHTS; REPORTS b. (2) allows a customer to choose not to have a wireless smart meter installed, at no additional monthly or other charge; and (3) allows a customer to require removal of a previously installed wireless smart meter for any reason and at an agreed-upon time, without incurring any charge for such removal.”².

Electric and natural gas ratepayers with medical conditions should not be charged fees for opting out of having a smart meter placed on their residence. No ratepayers choosing to opt-out should be charged fees if they are opting-out because they fear that the smart meters are harmful. The real issue is that the smart meters were installed without first conducting a health impacts or environmental review³. There was no pilot program to allow ratepayers to live with the new

¹ CEP defines "analog" to be used in this document: exclusively electro-mechanical, not electronic, no chip inserted, non-hybridized, zero RF radiation or EMF emissions.

² <http://www.leg.state.vt.us/docs/2012/journal/HJ120504.pdf#page=152>

³ D.06-07-048, p. 60 **“Environmental Review**
There is no need for an analysis of PG&E's AMI deployment pursuant to the requirements of the California Environmental Quality Act (CEQA). The AMI deployment falls within the exceptions found in either or both CEQA Guideline § 15301(b), for existing facilities of public utilities, and § 15302(c) for the replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity. Therefore, the

meters for a year to determine whether there were any unexpected impacts. The American Academy of Environmental Medicine (AAEM)⁴ has identified adverse health impacts from exposure to the smart meter and other emissions of radio frequency electromagnetic emissions so ratepayers who want to avoid these emissions should not have to pay to do so.

CEP's position on the opt-out fees has been and remains that there should be none paid by customers, and that shareholders and the utilities should pay. At the same time, CEP recognizes that there is a compelling situation at hand involving people with RF⁵ exposures who may have urgent medical reasons for wishing to opt-out to non-RF-emitting, non-wireless electromechanical analog metering, cannot afford the opt-out fees, and may also be surrounded by smart meters at close range, that calls for *immediate* relief.

In the interest of providing relief, CEP proposes sharing the cost of reasonable "capped" opt-out costs across the customer base, as is customary when providing accommodations to

Commission is under no legal obligation to undertake any environmental review before approving this application."

⁴ <http://aaemonline.org/AAEMEMFmedicalconditions.pdf>

⁵ **WHAT ARE "RADIOFREQUENCY" AND MICROWAVE RADIATION?**

Electromagnetic radiation consists of waves of electric and magnetic energy moving together (*i.e.*, radiating) through space at the speed of light. Taken together, all forms of electromagnetic energy are referred to as the electromagnetic "spectrum." Radio waves and microwaves emitted by transmitting antennas are one form of electromagnetic energy. They are collectively referred to as "radiofrequency" or "RF" energy or radiation. Note that the term "radiation" does not mean "radioactive." Often, the terms "electromagnetic field" or "radiofrequency field" may be used to indicate the presence of electromagnetic or RF energy.

The RF waves emanating from an antenna are generated by the movement of electrical charges in the antenna. Electromagnetic waves can be characterized by a wavelength and a frequency. The wavelength is the distance covered by one complete cycle of the electromagnetic wave, while the frequency is the number of electromagnetic waves passing a given point in one second. The frequency of an RF signal is usually expressed in terms of a unit called the "hertz" (abbreviated "Hz"). One Hz equals one cycle per second. One megahertz ("MHz") equals one million cycles per second.

Different forms of electromagnetic energy are categorized by their wavelengths and frequencies. The RF part of the electromagnetic spectrum is generally defined as that part of the spectrum where electromagnetic waves have frequencies in the range of about 3 kilohertz (3 kHz) to 300 gigahertz (300 GHz). Microwaves are a specific category of radio waves that can be loosely defined as radiofrequency energy at frequencies ranging from about 1 GHz upward.

<http://transition.fcc.gov/oet/rfsafety/rf-faqs.html#Q1>

people with medical conditions and disabilities. In the interest of consistency and simplicity, CEP proposes providing this free opt-out for all customers who wish to opt-out for any reason, recognizing that the majority of people interested in the opt-out that we hear from are those with medical concerns. CEP further proposes that the free opt-out be identical for PG&E, SCE, SoCalGas, and SDG&E, with no punitive higher rates⁶ for those opting out, using non-RF-emitting, non-wireless electromechanical analog metering as the option, and that additional wireless nor electronic infrastructure not be added to these replacement meters, nor placed near the residences of those who opt-out as this would expose those opting out and the public to more RF. CEP requests that all customers be continually, prominently advised of the options in the utility newsletters and on their websites. CEP further asserts that utility customers have already paid for and are currently paying for the smart meters and that program, and should receive full credit for this, without being expected to pay for two programs.

II. COST ALLOCATION ISSUES

METER READING COSTS

The opt-out program costs should be included in the general rate case proceedings because it is an integral part of the Investor Owned Utility Companies (IOU) s utility services metering program and is not a new program incremental to the smart meter programs already established before this proceeding began.⁷ The programs proposed by the IOUs in this proceeding are not new programs offering ratepayers a benefit because the programs aren't affordable. The monthly costs are not within the financial means of customers who want to opt-out of receiving a smart meter.

The general rate cases for the IOUs include authorization for meter costs and expenses.⁸ The IOUs opening testimony in this proceeding explain that the opt-out program is a new

⁶ **LOW RATES:** No associated extra costs for those opting out, including punitive or increased rates. Tiered rating system shall remain in place for those using analog meters, to reward conservation. Those opting out for medical reasons who use electricity associated with medical condition during daytime hours or extra electricity shall receive lowest and discounted rates. (CEP Settlement Proposal, p. 1 Nov. 2012)

⁷ by Decision (D.) 07-0-043 for San Diego Gas and Electric Company (SDG&E), D.08-09-039 for Southern California Edison Company (SCE), D. 06-07-027 for Pacific Gas and Electric Company (PG&E)'s SmartMeter™ Program, and Southern California Gas Company (SoCalGas)'s in Application (A.) 12-05-016.

⁸ For example, the PG&E General Rate Case, A.12-11-009 Exhibit PG&E-5, Chapter 5.

program that should be analyzed to determine the total cost of replacing already installed meters or authorizing the use of the already installed meters, then ratepayers should be charged for the benefits of that new program⁹. Then the costs of using the meters are evaluated and the IOUs ask for authorization to collect their costs in rates.

The IOUs opening testimony (PG&E-1, SCE-1, SDG&E-1, and SOCAL-1) stated the costs of acquiring new meters and the costs of providing utility services to the opt-out customers, but the analyses did not include the costs of allowing the opt-out customers to read their own meters and send the data to the IOUs providing their utility service. CEP believes that, as one option for customers, this would make the program less costly for the utilities and help solve access issues. The opt-out ratepayers should be able to read their own meters on a purely voluntary basis, and send the data by electronic means or by postcard with a backup photo if desired. Several times a year, by appointment, a meter reader could access the analog meter for a "true-up" (actual read by utility).

SCE stated¹⁰ that the analog meter self-reading program is not acceptable because the company anticipates problems with customers reporting inaccurate information which would cause additional expenses for "truing up" the accounts for the opt-out customers. PG&E¹¹ and SDG&E¹² agreed that they did not want to allow opt-out customers to read their utility meters and send the data to them although they did not state the same reasons for that preference.

CEP recommends a self-reading option for opt-out customers on a purely voluntary basis.

It is important to provide an affordable opt-out option for customers who wish to opt-out. CEP wants a no-cost program allowing ratepayer to opt-out of having a smart meter installed close enough to them to adversely affect them to start as soon as possible. The best way to do that is to charge no fees and include the costs of the program in the utility company's general rates as overhead for the cost of providing the utility service.

⁹ RT, November 7, 2012, p. 346. Lines 26-28, RAYMOND BLATTER, PG&E. Exhibit PG&E-2, p. 4-3, answer to question 5.

¹⁰ RT, November 8, 2012 pp. 575 et seq. Testimony by Lawrence Oliva, SCE, and pp. 510 et seq. Testimony by James Meadows, PG&E.

¹¹ RT November 8, 2012 pp. 584 - 587

¹² RT November 5, 2012, p.34 line 1 thru p. 37 line 9

The consumer groups regularly representing ratepayers in the CPUC proceedings do not support the no cost opt-out recommended by CEP. The Utility Reform Network (TURN) believes that the self-read option won't work. CEP does not believe that Exhibit TURN-10, a data request to PG&E, TURN DR 01-10, about the Plastic Card self-read program, shows that the self-read option won't reduce costs. PG&E's witness Phillips agreed with TURN¹³ that a meter reader has to make a monthly visit to each analog meter even if the customer has read the meter, written the data to a plastic card and placed it in a visible location to be read. This self-read program is for analog meters that are not accessible to an IOU meter reader.

SDG&E's witness Charles Snyder testified¹⁴ that the costs for a customer using an analog meter would be about the same whether the customer read the meter and sent a post card to SDG&E's billing office or SDG&E sent a meter reader to the customer's premises and read the meter in the traditional manner.

CEP believes that customers who do not wish a smart meter based on risk or any other reasons, including a potential or existing adverse effect on individuals with a medical condition, should not be charged a fee to opt-out. IOU customers who have medical conditions associated with, made worse, or that may be made worse by use of a RF-radiation-emitting technology, warned about, or with prescribed avoidance provided by many physicians, or who fear for their health or do not wish to assume risk because of a RF-radiation-emitting technology used to provide utility service, should not have to pay to opt-out of using that technology, which clearly, according to hundreds of independent experts¹⁵, physicians, and the World Health Organization¹⁶, emits RF radiation considered to be a health risk associated with well-known bio effects, development of cancer, and electrosensitivity¹⁷. No safe levels have been established, or

¹³ RT November 6, 2012 p. 271 lines 5-9.

¹⁴ RT November 5, 2012 pp. 33-34 line 15

¹⁵ Smart Meters: Correcting the Gross Misinformation (July 11, 2012), <http://www.electrosmogprevention.org/usa-smart-meter-news/smart-meters-correcting-the-gross-misinformation/>

¹⁶ IARC CLASSIFIES RADIOFREQUENCY ELECTROMAGNETIC FIELDS AS POSSIBLY CARCINOGENIC TO HUMANS (May 31, 2011) http://www.iarc.fr/en/media-centre/pr/2011/pdfs/pr208_E.pdf

¹⁷ Smart Meters: Correcting the Gross Misinformation (July 11, 2012), <http://www.electrosmogprevention.org/usa-smart-meter-news/smart-meters-correcting-the-gross-misinformation/>

according to experts, can be established, to avoid these effects. CEP further asserts that on this basis, verified by the overwhelming self-reporting of the general public pertaining to these biological and health impacts mentioned in the public hearings over and over, and in communications to the CPUC for the past 3+ years, all smart meters and electronic, RF-emitting-meters should be removed and banned, ultimately, as rapidly as possible.

CEP also disagrees with the methodology used to calculate the fees charged to opt-out customers. Smart meters cost more than the replaced technology. Yet, the smart meters are not being used for the purposes that they were installed and cannot be, safely, as noted above. The witnesses questioned at the evidentiary hearings said that they did not know how the smart meters were to be used for anything except for replacement of the analog meters. The witnesses were only experts on the meter costs, the installation costs, the operational costs, and how the costs were recovered through rates or fees. The alternatives to smart meters and questions about whether the smart meters were functioning as expected when they were installed were declared to be outside the scope of the proceeding.

III. QUESTIONS POSED IN AMENDED SCOPING MEMO

The June 8, 2012, Phase 2 Scoping Memo listed specific issues to be addressed in the Phase 2 testimony. This was modified by an e-mail message on September 28, 2012, from the assigned administrative law judge.

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

The costs are:

- 1) record keeping practices necessary for operating the utility companies' utility distribution systems pursuant to the recommendations of the CPUC's Consumer Protection and Safety Division (CPSD)'s made in Investigation (I.) 11-02-016,
- 2) cost of purchasing a meter if needed,
- 3) cost of installing the meter,
- 4) cost of meter reading,
- 5) cost of billing.

Cost of Meters

Analog meters are available for about \$15 on the market, according to our initial research. Utility companies are replacing a smart meter valued at approximately \$125 that the customer has already paid for and won't be using, which may be reused.

Analog meters have often lasted 50-60 years, with little to no maintenance.

Smart meters last 5-10 years, according to our initial research, with high maintenance, as they are a new, untested technology with many defects already noted. They can cause fires, cease to work in various high temperatures, overbill, **and have been known already, as a new, untested device, hurriedly rushed to market**, to malfunction frequently. It is very likely cheaper for the company to allow customers to have an analog for a variety of reasons.

Back Office Costs

There are no necessary "back office" costs because there is no need to oversee these analog meters except for the purpose of billing customers. There should be no added record keeping costs because the utilities record keeping systems for the electric and gas distribution systems would not have to be modified to include the customers who choose to opt-out of the use of smart meters if the record keeping systems are properly designed or use what has been already developed and used for the past century. The costs of maintaining smart meters and oversight of the California electric grid caused by using smart meters before the California Independent System Operator has the capability of using the smart meters for electric grid operations is far greater than the costs of using analog meters. Analog meters have been successfully used for decades - actually, up to a century or more - with the California electric grid. Analog meters do not interfere with the functioning of the smart electrical grid, according to all four utility company executives at the Sept. 14, 2011 Opt-out Workshop.

SB 17, codified and chaptered into California Public Utilities (PU) Code § 8360-69, states, **“It is the policy of the state to modernize the state's electrical transmission and distribution system to maintain safe, reliable, efficient, and secure electrical service...”** CEP believes that these requirements have not been met, and the CPUC has not required adequate proof of meeting these criteria. On the contrary, the CPUC appears to be accepting unsubstantiated claims of safety, without supportive data and is ignoring all evidence to the

contrary, including widespread reports of harm to health¹⁸, smart meter fires¹⁹, massive power outages²⁰, and the dire warnings of independent experts and scientists related to safety, reliability, efficiency, and security²¹.

The CPUC has a statutory obligation to oversee the utilities' operations for consumer protection and safety. California PU Code section 330 (f) and (g), section 334, and section 364. Section 364 requires the CPUC to adopt inspection, maintenance, repair, and replacement standards for the distribution systems of investor-owned electric utilities.

The CPUC cannot “cherry-pick” the portions of the SB 17 statute to apply to the smart grid plans, especially ignoring the safety mandates. At the CPUC Business Voting Meeting held on February 1, 2012²², a number of citizens have even called the actions of the CPUC Commissioners in not providing safety related to serious harm being perpetrated on customers without taking appropriate preventative or responsive action “crimes against humanity”²³. During 5 statewide Public Participation Hearings in December, 2012, Judge Yip-Kikugawa

¹⁸ Dec. 2012 California PPH transcripts reflect virtually all comments substantiate harm to health and bio effects.

¹⁹ EMF Safety Network archive of press coverage of smart meter fires and explosions
http://emfsafetynetwork.org/?page_id=1280

²⁰ FEDERAL REGULATORS PINPOINT THE CAUSE OF THE GREAT SEPTEMBER 2011 BLACKOUT
<http://www.ferc.gov/legal/staff-reports/04-27-2012-ferc-nerc-report.pdf>

²¹ Smart Meters: Correcting the Gross Misinformation (July 11, 2012), <http://www.electrosmogprevention.org/usa-smart-meter-news/smart-meters-correcting-the-gross-misinformation/>

²² CPUC Commission Business Voting Meeting - February 1, 2012

²³ Wikipedia: **Crimes against humanity**, as defined by the Rome Statute of the International Criminal Court Explanatory Memorandum, "are particularly odious offenses in that they constitute a serious attack on human dignity or grave humiliation or a degradation of one or more human beings. They are not isolated or sporadic events, but are part either of a government policy (although the perpetrators need not identify themselves with this policy) or of a wide practice of atrocities tolerated or condoned by a government or a de facto authority. Murder; extermination; torture; rape; political, racial, or religious persecution and other inhumane acts reach the threshold of crimes against humanity only if they are part of a widespread or systematic practice. Isolated inhumane acts of this nature may constitute grave infringements of human rights, or depending on the circumstances, war crimes, but may fall short of falling into the category of crimes under discussion."^W

heard from virtually 100% of the speakers about how unsafe the smart meters are and how negatively they are impacting health, quality of life, and ability to use one's property, even to the point of near-death for some speakers, complete or partial debilitation, and homelessness²⁴.

At the very least, the CPUC has a statutory obligation to oversee the utilities' operations for consumer protection and safety. California PU Code section 330 (f) and (g)²⁵, section 334, and section 364²⁶. Section 364 requires the CPUC to adopt inspection, maintenance, repair, and replacement standards for the distribution systems of investor-owned electric utilities.

²⁴ EVIDENTIARY HEARINGS TRANSCRIPTS, PPH, San Clemente, Los Angeles, Bakersfield, Santa Barbara, Santa Rosa Dec. 2012

²⁵ PUC section 330 (f) The delivery of electricity over transmission and distribution systems is currently regulated, and will continue to be regulated to ensure system safety, reliability, environmental protection, and fair access for all market participants.

(g) Reliable electric service is of utmost importance to the safety, health, and welfare of the state's citizenry and economy. It is the intent of the Legislature that electric industry restructuring should enhance the reliability of the interconnected regional transmission systems, and provide strong coordination and enforceable protocols for all users of the power grid.

²⁶ Public Utilities Code section **364**.

(a) The commission shall adopt inspection, maintenance, repair, and replacement standards for the distribution systems of investor-owned electric utilities no later than March 31, 1997. The standards, which shall be performance or prescriptive standards, or both, as appropriate, for each substantial type of distribution equipment or facility, shall provide for high quality, safe and reliable service.

(b) In setting its standards, the commission shall consider: cost, local geography and weather, applicable codes, national electric industry practices, sound engineering judgment, and experience. The commission shall also adopt standards for operation, reliability, and safety during periods of emergency and disaster. The commission shall require each utility to report annually on its compliance with the standards. That report shall be made available to the public.

(c) The commission shall conduct a review to determine whether the standards prescribed in this section have been met. If the commission finds that the standards have not been met, the commission may order appropriate sanctions, including penalties in the form of rate reductions or monetary fines. The review shall be performed after every major outage. Any money collected pursuant to this subdivision shall be used to offset funding for the California Alternative Rates for Energy Program.

CPUC Oversight

CEP is concerned with the issues of CPUC oversight of the functioning of the Smart Customer/Utility/Market:

How will the CPUC monitor the deployed smart grid for safety, as well as the efficiency and security, and to determine whether the electrical grid is functioning as it should function, to meet the needs of Californians?

The recent problems with the natural gas pipeline infrastructure in California show that the CPUC Consumer Protection and Safety Division²⁷ (CPSD) has not overseen the current, traditional utility infrastructure. How will the CPUC analyze the smart grid for errors or faults? Where is the inventory of each component of the smart grid so that it can be monitored? Who will monitor them? A similar problem with the lack of records for the natural gas pipeline infrastructure is the subject of a current CPUC proceeding: Order Instituting Investigation (I.) 11-02-016²⁸.

The CPSD staff report in the I.11-02-016 proceeding states that: “This review has used the "Generally Accepted Record-keeping Principles®" (GARP®)²⁹ and the Information Maturity Model³⁰ defined by ARMA International³¹ as the basis of an assessment and evaluation of PG&E’s records management activities.” The CPSD report finds that current California utility records management activities didn’t meet legal and regulatory standards in that proceeding. Yet the CPUC staff report on the smart grid doesn’t address the records keeping legal and regulatory standards in this proceeding.

²⁷ <http://www.cpuc.ca.gov/PUC/aboutus/Divisions/Consumer+Protection/>

²⁸ <http://docs.cpuc.ca.gov/published/proceedings/I1102016.htm>

²⁹ www.arma.org/garp

³⁰ www.arma.org/garp/metrics.cfm

³¹ ARMA International was previously known as Association of Records Managers and Administrators, and is the authority on managing records and information in the USA (www.arma.org)

What changes does the CPUC need to make to ensure safe and efficient operation of the electrical grid? CEP feels that implementation of the smart grid is premature, as the technologies selected are inherently unsafe and insecure, and as such, must be rethought, with implementation halted, for the protection of the health and welfare of all citizens of the state, and the United States of America, which may be negatively impacted by what occurs with our electrical grid. CEP feels that the CPUC has shown itself to be extremely negligent in its role as protector of customers and citizens of the state with regards to safety of the emerging smart grid.

The CPUC staff recommends that approval of Deployment Plans should be based on strict and complete compliance with the requirements of SB 17 and D.10-06-047. However, CEP notes that the CPUC is required to comply with its statutory mandate too. CEP believes that this means that the CPUC must adopt independent inspection, maintenance, repair, and replacement standards to maintain safety for the distribution systems of investor-owned electric utilities. This could be done by adopting a new general order or by amending an existing general order. General Orders 165, 166, and 167 appear to be the current regulations addressing these issues, but they have not been updated to address the operation of the Smart Customer/Utility/Market or the smart grid.

The addition of smart meters and supporting equipment must be addressed by the CPUC to ensure reliable operations. The current CPUC oversight consists entirely of levying fines and operations orders after a malfunction occurs. This should not continue. Instead, the CPUC should issue **effective** operational and safety orders as soon as possible.

Since CPUC cannot and has not monitored the smart meters safety issue properly, and has received overwhelming indications from the public that public safety is not possible with smart meters, CEP calls for complete banning and removal of all smart meters, at no extra cost to the rate-payers, who are not the cause of this problem.

Reliability

The smart grid plans make it apparent that **this is an experiment**, that no one knows how it really should unfold, or whether it will work as planned. The plan so far has failed to produce confidence, and with good reasons. A recent demonstration of the fragility and unreliability of

the new smart grid was seen in September, 2011, when large parts of California, Arizona, and New Mexico experienced an unprecedented and poorly understood blackout that seriously impacted the safety and economy of those regions. The smart grid cannot be reliable or safe if it is insecure. Former CIA Director Woolsey says the federal government's oversight of grid security is inadequate and attacks on the grid are "entirely possible". He further said, "No one appears to be in charge of security for the grid, whether it's cyber or transformers or whatever. You can search forever through the federal code to try to find who that person might be. And a so-called 'Smart Grid' that is as vulnerable as what we've got is not smart at all, it's a really, really stupid grid."³²

Cost of Meter-Reading

Analog meters can be read by meter readers as historically provided, with costs covered by general rates. Readings by some of the utilities' customers on a voluntary basis will also reduce the cost of service. Currently, some of the analog meters provided for electric utility service in California are read by customers and some of the utilities that are Parties in this proceeding have allowed this, historically, and even recently. The Plumas-Sierra Rural Electric Cooperative, a California utility, has a website explaining that self-reading is easy and is a method to save money for the electric customers:

http://www.psrec.coop/electric_read_meter.php?sec=elecser&pag=elecread

The utility companies (IOU) s did not have a good reason to deny opt-out ratepayers the self-read option to reduce their monthly opt-out costs. CEP questioned the witnesses at the evidentiary hearings to determine why the self-reading option wasn't addressed in the IOU's testimony.

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)?

No, there should only be an analog (purely electromechanical) meter offered. The analog meter is the best choice as it does not emit RF radiation nor increased EMF's on the home wiring

³² Woolsey interview with Energy Now <http://youtu.be/rIFD1sUTGX8>

(is compatible with older home wiring also), and will be readable by those customers who wish to do so, to resolve access or other issues, and reduce costs of meter reading. Analog meters may be visually self-read and recorded on a postcard (as has been in current practice in SDG&E territory), with backup dated photo and/or by computer (a future option to be explored).

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?

All costs should be paid by the company and all shareholders including those costs associated with a customer's special circumstances, for the reasons given above. All costs associated with accommodation of customers with medical conditions or disabilities that could be impacted by RF radiation or who are in the categories or risk groups that doctors recommend should avoid RF radiation should be paid as required by legislation or per current practice. All costs should be born by the company and shareholders as smart meters that are not mandated by law (state or federal), have safety, privacy, and security issues that customers were not informed about and did not choose to be subjected to. State law forbids charging extra for safety.

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?

There should be no fees at all for customers who opt-out, for the reasons stated previously. No one should have to pay not to be irradiated or to preserve their privacy. If customers are allowed to read their own meters and other efficiency methods are utilized, the costs to the companies would be greatly reduced. If fees are charged despite the above, born by the company and its shareholders alone, costs should reflect the reduced trips required by the people reading meters, with highly efficient methods used by the company. Fees should not ever be charged for the opt-outs, but if so, born by the company and its shareholders alone, they should be assessed by location - not per meter - and that would include multi-family dwellings. If those opting-out also read their meters, there would not be a meter reading except for annual or semi-annual meter reading visits by their electric service provider or gas company.

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

CEP asserts that no fees should be charged, for any reason. The fees and costs (if any), born by the company and its shareholders alone, should be determined by the number of required, very efficiently planned, occasional, short trips made to each property, not on unnecessary, inflated or duplicative costs.

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

No, all costs related to opting out or opting back in should be paid by the utility's owners and shareholders. This will reduce the likelihood of the utility putting pressure on customers to opt-in or opt-back-in to smart meters and will eliminate the burden of yet another unfair fee for customers.

II. CEP PROPOSAL ³³

1. **NO-COST OPT-OUT:** Immediate free, self-read³⁴ opt-out for anyone requesting for reason of medical condition or risks, with "zone-of-safety"³⁵ to the degree customer requests., including all wireless infrastructure and collector meters to be removed within the distance requested by customer with medical condition reason for opting out.
2. **LOW RATES:** No associated extra costs for those opting out, including punitive or increased rates. Tiered rating system shall remain in place for those using analog meters, to reward conservation. Those opting out for medical reasons who use electricity associated with medical condition during daytime hours or extra electricity shall receive lowest and discounted rates.
3. **REFUND:** A full refund or credit for anyone who has paid for opt-out previously.

³³ based on accommodations, discrimination, safety, environmental considerations

³⁴ The utility ratepayers should not have to pay for meter reading, instead the CPUC should allow self-reading on postcard to be sent in to utility by customers (or by computer), with meter readers to go to residence or commercial property 2-4 times yearly to verify, using appointment method if customer desires.

³⁵ "Zone of safety", recommended as medically necessary by AAEM.)www.aaemonline.org/AAEMEMFmedicalconditions.pdf;

4. **ESTABLISH COMMERCIAL OPT-OUT:** Immediate inclusion of no-cost commercial opt-out to be able to accommodate disabled and medically ill in public places.
5. **REDUCTION OF RF RADIATION EXPOSURES STATEWIDE:**
 - a. **REMOVAL OF BANKS OF METERS:** Removal of all banks of meters and replacement with analogs as a precautionary measure to prevent increased RF exposures for sensitive populations.
 - b. **2ND RADIO NOT ACTIVATED:** Second radio (Zigbee, or for HAN) not be activated (or be deactivated immediately) in any neighborhoods or communities anywhere in the state, permanently.
 - c. **SYSTEMATIC TRANSITION OF ALL AMI/AMR SMART OR ELECTRONIC METERS TO ANALOG**
 - d. **EXPLORE USE OF FIBEROPTIC NETWORK FOR COMMUNICATIONS, UTILIZING CEQA**
 - e. **ADOPT AND APPLY PRECAUTIONARY PRINCIPLE³⁶ - INSTITUTE A BIOLOGICALLY-BASED GUIDELINE**

Apply biologically-based public exposure RF guidelines, per BioInitiative Report³⁷, adopting the recommendations of the related Seletun Scientific Panel³⁸ as the initial maximum for exposure to wireless and RF/EMF, with continuous efforts to lower RF exposures further, with even lower and more flexible levels for more sensitive populations, w/ natural background levels as goal.

6. **CUSTOMER INFORMATION:** Continuous, prominent, positive advertisement of the opt-out program so all customers know about it, especially those with medical conditions and disabilities mentioned in the AAEM and scientific literature who might benefit from RF avoidance.

³⁶ CPUC adopts a policy of utilizing and enforcing the use of the Precautionary Principle³⁶ with regards to safety, defined as the following: "*When an activity raises threats of harm to human health or the environment, precautionary measures should be take even if some cause and effect relationships are not fully established scientifically, with the addition: "When the science is conflicted or unresolved the most restrictive approach in favor of a precautionary shall be taken."*

³⁷ <http://www.bioinitiative.org/freeaccess/index.htm>

³⁸ • **Based on power density measurements**, the Seletun Scientific Panel finds sufficient evidence for a whole-body scientific benchmark for adverse health effect exists down to 0.17 mW/m² (also 0.000017 mW/cm² = 0.017 μW/cm²). It is approx. 50,000 – 60,000 times lower than the current ICNIRP/FCC standards. This may need to be lowered in the future [and adjusted for sensitive populations]. <http://electromagnetichealth.org/electromagnetic-health-blog/the-seletun-statement/>

7. **REIMBURSEMENT:** Payment for associated costs, losses, suffering related to smart meter for anyone with a medical condition or disability who was impacted by that RF exposure.

The California Public Utilities Code section 701.1 (701.1) states in part: “701.1(a) The Legislature finds and declares that, in addition to other ratepayer protection objectives, a principal goal of electric and natural gas utilities' resource planning and investment shall be to minimize the cost to society of the reliable energy services that are provided by natural gas and electricity . . .” And, further states in 701.1(c): “In calculating the cost effectiveness of energy resources, including conservation and load management options, the commission shall include, in addition to other ratepayer protection objectives, a value for any costs and benefits to the environment . . .”

CEP believes that allowing opt-outs without charging fees will comply with section 701.1 while forcing ratepayers to accept placement of smart meter technology at their premises will violate section 701.1. This is because an opt-out from using smart meters improves the environment by reducing RF radiation emissions which constitute a form of manmade electrosmog pollution. So, the monetary cost of removing a smart meter is offset by the environmental benefits of not having smart meter emissions. Significantly, CA State Public Utility Code 328(b) clearly forbids charging separate fees for utilizing services that protect public or customer safety.³⁹ Since physicians recommend avoidance of RF radiation for certain medical conditions and disabilities, fees *must* be stricken for those reasons. RF radiation, the same type emitted virtually constantly by smart meters into residences and commercial buildings is considered to be a potential carcinogen⁴⁰ by the World Health Organization, for instance. This is just one of many safety reasons to avoid RF radiation, based on clear medical recommendations and tens of thousands of independent peer-reviewed studies. Forcing people to be exposed to a potential carcinogen or agent that they should avoid for medical reasons, or when they do not wish it for safety's sake, and making them pay to avoid it is clearly illegal under multiple California laws. This concern is corroborated by the recent position statement " Smart Meters: Correcting the Gross Misinformation" signed by 54(+) independent, international

³⁹ [Section 328\(b\)](#) of the CA Public Utility Code states: **“No customer should have to pay separate fees for utilizing services that protect public or customer safety.”**

⁴⁰ http://www.iarc.fr/en/media-centre/pr/2011/pdfs/pr208_E.pdf

researchers with peer-reviewed published articles concerning RF radiation⁴¹, as well as the recent Italian Supreme Court decision⁴² that addresses the health risks associated with longer exposure to RF radiation from cell phones, which are voluntary and exposure is still only a portion of the day vs. virtually 24 hours, 7 days a week⁴³ for smart meters....

The charges for the meters, meter reading and related charges that would not be incurred but for the opt-out should be paid for by the utility company and its investors, without any extra costs to those opting out. Both federal⁴⁴ and state⁴⁵ discrimination laws state that services provided to the public must be available to everyone regardless of their disability to the extent that it is practical. This means that people who may not wish to use RF-emitting utility technologies associated with services, for medical reasons, should be accommodated if there is a practical means to do so. Allowing a no-cost smart meter opt-out is a practical solution to the problem.

CEP asserts that neither *the CPUC nor the utilities have the authority to delay or deny rights secured under discrimination and other laws*, but rather *must* recognize these without any further delay and follow-up with directives and policies in alignment with the clear intentions of these statutes, including approval of an immediate settlement plan that recognizes and applies these broadly, *forthwith*. Indeed, several of the discrimination laws essentially inform agencies that they must follow them, without any *conspiring* or question.⁴⁶

⁴¹ <http://maisonsaine.ca/smart-meters-correcting-the-gross-misinformation/>

⁴² <http://microwavenews.com/news-center/italian-supreme-court-affirms-tumor-risk>

⁴³ "SDG&E's document reveals technical data showing that its customers are being subjected to virtually continuous pulses of microwave radiation (up to 23,000+ pulses in a 24 hour period, up to every 3 seconds)." http://lamesa.patch.com/blog_posts/revealed-sdge-smart-meter-technical-data-and-bio-effects-of-microwave-radiation#_ftn1, RESPONSE OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) ON THE ADMINISTRATIVE LAW JUDGE'S RULING SEEKING CLARIFICATION (Nov. 1, 2011)

⁴⁴ 28 CFR 35.130

⁴⁵ California Public Utilities Code 453, CA Civil Code Section 51 (Unruh Civil Rights Act), Government Code Sections 11135 and Section 12926

⁴⁶ CA Government Code Section 12948 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." (no immunity provided for CPUC staff who violate this law)

A substantial segment of the population, considered as people with disabilities (on record or regarded as having physical or mental impairments), and/or medical conditions, and/or specific mental and physical characteristics are clearly protected by either or both the ADA and California Public Utilities Code 453(b) (Section 453), as well as a host of other, similar federal and state discrimination laws, including, but not limited to CA Government Codes Civil Code Section 51 (Unruh Civil Rights Act), Section 11135, Section 12926, Section 508 of the federal Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations, and section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794), as amended, from being charged extra fees and costs to opt-out from wireless smart meters.

California Public Utilities Code 453 additionally protects every individual or corporation from prejudice or disadvantage, so it is protective of non-disabled as well as disabled persons. CEP asserts that all citizens and thus, all residential customers, are protected from paying opt-out fees by California Public Utilities Code 453. Therefore, any ratepayer who desires an analog meter instead of a smart meter should be given an analog meter without any charge or change in rates.

A. TURN

CEP is concerned that TURN doesn't address the reason for ratepayers wanting to opt-out from smart meter use.

CEP has the following comments on the Errata to TURN's Testimony, Exhibit No. TURN-2.

- 1) CEP disagrees with paragraph 3 on page 2, where it states: "TURN strongly opposes both PG&E's cost forecast as well as its suggestions to charge its body of ratepayers for the net costs of SOP [proposed SmartMeter Opt-Out Programs] that are not recovered in opt out fees." CEP believes that all opt out costs should become part of the utility's overhead costs and charged to all ratepayers.
- 2) CEP disagrees with the statement on page 3 that "The important question to answer is "are the costs that form the basis of the current rates sufficient to

cover the SOP costs being forecast in this proceeding?” CEP believes that the important question is whether the fees are preventing customers from opting out of the use of SmartMeters.

- 3) CEP agrees with TURN’s recommendations concerning cost of customer inquiries, program management, meter exchange and purchase, information technology, and meter reading devices. These costs should be included in PG&E’s current general rate case proceeding, A.12-11-009, for review in the context of the other distribution system costs.
- 4) CEP disagrees with the TURN recommendation for meter reading costs as stated on TURN-2 page 24 in the first sentence on the page. CEP opposes meter reading fees.
- 5) CEP disagrees with the TURN recommendation on page 27 of TURN-2: “TURN supports Edison and the Sempra Utilities’ proposals to recover SOP costs in SOP charges.” CEP opposes SmartMeter opt-out fees and charges established anywhere except in the general rate case proceedings in the context of other distribution system costs.

B. AGLET

CEP disagrees with AGLET’s recommendation number 1 for a minimum opt-out charge. CEP disagrees with AGLET’s recommendations stated on pages 1 – 3 of AGLET-1 that recommend fees and charges for opt out customers. Specifically, CEP disagrees with recommendations a, e, f, and y.

C. CLECA

CEP disagrees with the CLECA recommendation to separate costs of residential and non-residential ratepayers.

D. DRA

CEP is concerned that the CPUC’s Division of Ratepayer Advocates (DRA) doesn’t address the reason for ratepayers wanting to opt-out from smart meter use.

- 1) CEP agrees with DRA’s statement on Exhibit No. DRA-1, page 1-2, lines 1 – 3 that the regulated utility companies should minimize the costs to SmartMeter opt out

customers, but CEP believes that the costs should all be included in the general rate case proceedings for the utility companies and the costs should be allocated the same as the other distribution system costs. The costs should not be charged to opt out customers.

- 2) DRA-1, page 1-4, lines 34-35 and page 1-9, lines 15-19, state that the monthly fees are a significant problem and CEP believes that these charges will discourage customers from opting out.

E. EMF SAFETY NETWORK

CEP supports EMF Safety Network's position.

Respectfully submitted,

/S/

December 31, 2012

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