

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

Agenda ID 12290
RESOLUTION E-4590
September 5, 2013

RESOLUTION

Resolution E-4590. Resolution approving San Diego Gas and Electric (SDG&E) Advice Letter (AL) 2348-E/2109-G (Rate Schedule E-SMOP and G-SMOP for SDG&E Electric and Gas Smart Meter Opt-Out Program) and the supplements.

PROPOSED OUTCOME: This Resolution approves Advice Letter 2348-E/2109-G, as supplemented and rejects the protests of Center for Electromog Prevention and Southern Californians for Wired Solutions to Smart Meters.

SAFETY CONSIDERATIONS: This tariff permits SDG&E to operate its electric distribution system in a safe and reliable manner while still allowing residential customers to opt-out of receiving a wireless smart meter for any reason or no reason.

ESTIMATED COST: None.

By San Diego Gas and Electric Advice Letter 2348-E/2109-G filed April 25, 2012 and the supplements, AL 2348-E-A/2109-G-A, filed May 21, 2012 and AL 2348-E-B/2109-G-B filed June 4, 2012.

SUMMARY

The CPUC has reviewed the filing by SDG&E and concluded that SDG&E's AL 2348-E/2109-G, as supplemented, is in compliance with Decision 12-04-019 (Decision). The CPUC has reviewed the protests and concluded that the issues raised in the protests are without merit or not based on proper grounds for protest of an Advice Letter. The protests do not demonstrate that SDG&E's

actions would violate CPUC orders or satisfy other grounds for protests allowed by General Order 96-B (G.O. 96-B, Sections 7.6.1 and 7.4.2). Therefore, SDG&E's Advice Letter (AL) remains in effect as filed, with an effective date of April 25, 2012.

BACKGROUND

On April 25, 2012, SDG&E filed a Tier 1 AL 2348-E/2109-G, with a requested effective date of that same day, pursuant to D. 12-04-019, Ordering Paragraph 2. Decision directed SDG&E to file a Tier 1 Advice Letter to establish procedures to implement a smart meter opt-out option for customers who do not wish to have a wireless smart meter and to establish a Smart Meter Opt-Out Tariff with CPUC specified opt-out fees. The AL requested approval of its proposed tariffs for implementing gas and electric smart meter opt-out programs pursuant to directions by the Decision.

On April 30, 2012, a protest (to both the subject AL and a separate AL, 2346-E/2107G filed earlier by SDG&E on April 20, 2012) was submitted by the Center for Electromog Prevention (CEP), citing twenty-one different grounds for protesting SDG&E's proposed smart meter opt-out tariffs. All twenty-one grounds for the CEP protest are presented in the Appendix. This protest was timely filed.

On May 2, 2012, a protest (to both the subject Advice Letter and Advice Letter 2346-E/2107-G) was filed by Southern Californians for Wired Solutions to Smart Meters (SCWSSM) with three grounds for protest, and which expressed support for all of the objections raised by CEP. This protest was timely filed.

On May 17, 2012, SDG&E submitted a reply to the protests, responding to two objections raised by CEP and asserting that its filing complied with Commission orders in the Decision and that all other objections by CEP and SCWSSM are outside the scope of its Advice Letter filing and thus should be rejected by the CPUC.

On May 17, 2012, SCWSSM filed a response to SDG&E's reply. Because the CPUC's rules do not permit a protestant to respond to a utility's reply that

addresses the protests to an Advice Letter (See G.O. 96-B, General Rule 7.4.3), the CPUC did not evaluate the SCWSSM response.

At the request of Staff, on May 21, 2012, SDG&E filed a partial supplement to the Advice Letter amending the language in Special Condition #1 (Metering Equipment) of Schedule E-SMOP, in response to the Energy Division's request (See G.O. 96-B, General Rule 7.5.1). The requested change involved removal of language related to gas meters, and substituting language applying to electric meters.

Energy Division suspended the AL on May 25, 2012, to allow additional time to complete its review.

After further discussions with Staff, on June 4, 2012, SDG&E filed an additional partial supplement, amending the same language in Special Condition #1 once again. This amendment clarified that only analog meters would be used to replace smart meters in the case of a customer opt-out.

NOTICE

Notice of AL 2348-E/2109-G was made by publication in the Commission's Daily Calendar on May 4, 2012. SDG&E states that a copy of the AL was mailed and distributed in accordance with Section 4.3 and 7.2 of General Order (GO)96-B to the GO 96-B and A.11-03-015 service lists on the filing date April 25, 2012.

PROTESTS

On April 30, 2012, CEP filed a timely protest to AL 2346-E/2107G. On May 2, 2012 SCWSSM also filed a timely protest.

The CEP protest includes 21 separate objections, which are listed in the Appendix to this Resolution.

SCWSSM has three objections of its own in addition to supporting the CEP protest:

- a) the June 15, 2012 deadline to opt-out is improper;
- b) two opt-outs should be allowed per property per year; and
- c) the AL is discriminatory to the disabled.

DISCUSSION

The CPUC Energy Division Staff (Staff) has reviewed the filings by SDG&E and concluded that SDG&E's Advice Letter 2348-E/2109-G, as supplemented, is in compliance with the Decision. Staff has reviewed the protests and concluded that the protests are without merit or not based on proper grounds for protest of an Advice Letter (See General Order 96-B, Sections 7.6.1 and 7.4.2). The protests do not demonstrate that SDG&E's actions would violate CPUC orders or satisfy other grounds for protests allowed by General Order 96-B. The CEP protests are individually dealt with in the Appendix.

CEP Protest

CEP opposes SDG&E's filing based on numerous objections. None of the objections satisfy any of the six grounds allowed for protest by G.O. 96-B, General Rule 7.4.2. Some objections were to policy issues already decided by the CPUC in the Decision (or earlier decisions regarding AMI deployment). Others were outside the scope of the subject Advice Letter.

CEP's long list of objections is addressed in itemized detail in the Appendix of this resolution.

SCWSSM Protest

SCWSSM has three bases for its protest of the AL:

- a) the June 15, 2012, deadline to opt-out is improper;
- b) two opt-outs should be allowed per property per year; and
- c) the AL is discriminatory to the disabled.

Item (a) has no factual basis because there is no "deadline" to opt-out. A customer may opt-out at any time. Item (b) is outside the scope of the subject AL required by the Decision. The charges described in the subject AL and the included opt-out procedure are compliant with the Decision. Item (c) requires relitigating part of the Decision and is therefore not an allowed basis for protest. (See G.O. 96-B, General Rule 7.4.2, subdivision (6), which provides in part, "such

a protest may not be made where it would require relitigating a prior order of the Commission.”)

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the CPUC. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the CPUC's agenda no earlier than 30 days from today.

FINDINGS AND CONCLUSIONS (effective 4/25/12)

1. D.12-04-019 directed SDG&E to file a Tier 1 Advice Letter to establish procedures to implement a smart meter opt-out option for customers who do not wish to have a wireless smart meter and to establish a Smart Meter Opt-Out Tariff with CPUC specified opt-out fees.
2. SDG&E filed a Tier 1 Advice Letter 2348-E/2109-G on April 25, 2012, containing proposed opt-out procedures and four new rate schedules that allow residential electric and gas smart meter opt-out.
3. The AL filings were properly noticed and served on the A.11-03-015 and GO-96-B service lists.
4. SDG&E filed a supplemental Tier 1 Advice Letter 2348-E-A/2109-G-A on May 21, 2012.
5. SDG&E filed a second supplemental Tier 1 Advice Letter 2348-E-B/2109-G-B on June 4, 2012.

6. On April 30, 2012, Center for Electrosmog Prevention filed a timely protest to the initial AL, filed April 25, 2012.
7. On May 2, 2012, Southern Californians for Wired Solutions to Smart Meters filed a timely protest to the initial AL.
8. The protests fail to satisfy any of the grounds allowed by GO 96-B for protesting an Advice Letter and/or are out of the scope of the subject Advice Letters.¹
9. SDG&E's AL 2348-E/2109-G and the supplemental ALs 2348-E-A/2109-G-A and 2348-E-B/2109-G-B comply with the Decision.

THEREFORE, IT IS ORDERED THAT:

1. The SDG&E Advice Letter 2348-E/2109-G and the supplemental ALs 2348-E-A/2109-G-A and 2348-E-B/2109-G-B are approved.
2. The protests by Center for Electrosmog Protection and Southern Californians for Wired Solutions to Smart Meters are rejected.
3. This Resolution is effective today.

¹ The item-by-item rejection of the protests is shown in the Appendix.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on September 5, 2013; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

APPENDIX

Following is a detailed discussion of each objection raised by CEP as well as Staff's basis for rejecting each basis for protest. CPUC finds none of CEP's grounds for protest to satisfy any of the six grounds allowed by G.O. 96-B, General Rule 7.4.2 for protesting an Advice Letter.

1. CEP: SDG&E should specify the exact manufacturer and model of analog meters to be used for opt-out.

Response: SDG&E has complied with the Decision in stating that the meter for opt-out customers will be analog. The additional details requested by CEP goes beyond what is required by the Decision and is thus out of scope of what was required of the Advice Letter.

2. CEP: SDG&E should describe the exact procedures and timelines for removal of smart meters and installation of analog meters.

Response: SDG&E has complied with the Decision in describing the procedures as directed by the Decision. The additional details requested by CEP goes beyond that required by the Decision and is thus out of scope of what was required of the Advice Letter.

3. CEP: SDG&E should not charge a "change-out" fee for opt-out customers who already have analog meters.

Response: SDG&E's fee schedule proposed in the Advice Letter is in direct compliance with the Decision, which only allows different fees for low income opt-out customers. An objection to approved fee structures would relitigate elements of the Decision, in violation of G.O. 96-B, General Rule 7.4.2, subdivision (6).

4. CEP: SDG&E has no provision for assuring the CPUC and customers that opt-out request will be properly handled by the utility.

Response: SDG&E has complied with the Decision by stating the procedure required of the utility when a customer to opts-out. The utility is required to comply with the procedures specified in the Advice Letter. The possibility that the utility may in the future fail to properly execute such procedures is not an allowed basis protesting an Advice Letter listed in G.O. 96-B, General Rule 7.4.2 . The Commission has a procedure for general complaints.²

5. CEP: SDG&E should provide assurances that neighboring smart meter signals will not be enhanced to compensate for opt-out meters.

Response: The additional assurances requested by CEP go beyond that required by the Decision; thus, the objection is thus outside of the scope of the Advice Letter.

6. CEP: The opt-out fees are illegal on the basis of property rights and state law.

Response: A challenge to the authority of CPUC to set rates and fees would relitigate issues implicitly and explicitly determined by the subject Decision and prior CPUC decisions. Thus, it is not allowed by G.O. 96-B as a ground for protesting an Advice Letter.

7. CEP: Customers did not provide permission to install smart meters to begin with.

Response: A challenge to the authority of CPUC to direct smart meter deployment would require relitigating the Decision and prior orders of the Commission in violation of G.O. 96-B, General Rule 7.4.2, subdivision (6).

² California Code of Regulations, Title 20, Division 1, Chapter 1, Article 4

8. CEP: Some customers were “falsely told that there was a CPUC mandate to install smart meters”.

Response: The allegation that false information was provided to utility customers is beyond the scope of the subject matter of the Advice Letter, which was the development of opt-out processes and tariffs. Customers who wish to opt-out have a process by which to do so. If the utility violates its tariff language, CPUC Decisions or other state laws (such as by providing false information to consumers), then the customer may pursue a complaint against the utility.

9. CEP: The utility does not have easement rights to install smart meters involving “telecommunications equipment” and thus must obtain the customer’s permission to proceed with the installation.

Response: The utility is guaranteed access to its meter equipment in order to replace it with other equipment as authorized by the CPUC by SDG&E’s Electric Tariff Book Electric Rule 16.³ This objection is therefore a challenge to already existing approved tariffs and to the authority of CPUC to order smart meter deployment, and would thus require relitigating prior Commission orders in violation of G.O. 96-B, General 7.4.2, subdivision (6).

10. CEP: It is “unjust and unreasonable” to require a customer to grant access to SDG&E to install a smart meter.

Response: The utility is guaranteed access to its meter equipment in order to replace it with other equipment as authorized by the CPUC by Electric Rule 16. Challenges to already existing approved tariffs or to the authority of CPUC to order smart meter deployment would require relitigating

³ SDG&E Electric Tariff Book Electric Rules are available at <http://www.sdge.com/electric-tariff-book-rules>.

previous orders in violation of G.O. 96-B, General Rule 7.4.2, subdivision, and thus are not allowed by G.O. 96-B as grounds for protesting an Advice Letter.(6).

11. CEP: The CPUC “cannot legally order the customers... to pay extra” if they choose to opt out for a “medical condition.”

Response: Customers who choose to opt out for medical reasons are not charged higher fees than customers who opt out for other reasons (See Decision at p.21). Further, the relief requested would require relitigating previous orders in violation of G.O. 96-B, General Rule 7.4.2, subdivision (6). Therefore, this claim has no factual or legal basis.

12. CEP: No customer should be deemed to have opted-out unless they affirmatively indicate that they wish to opt-out. They may not opt-out because they are unable to afford the fees, or other reasons, but should not, by not opting out, default to receiving a smart meter.

Response: This objection involves several points, none of which meet the G.O. 96-B grounds for protest. The question of whether a non-responsive customer should receive a smart meter by default was already litigated in the proceeding leading to the Decision. The fees set in this tariff are compliant with the Decision. Thus, the question of whether they are affordable is a policy objection that would require relitigating the Decision in violation of G.O. 96-B, General Rule 7.4.2, subdivision (6).

13. CEP: The Decision does not authorize SDG&E to make a determination of the wishes of those who do not affirmatively opt-out, based on whether SDG&E is provided access to its metering equipment.

Response: The right of access to the utility’s metering equipment as well as the conditions for electric service that the customer is bound by when accepting electric service from SDG&E are defined in Electric Rules 3, 11,

and 16.⁴ These rules define reasonable access to electric metering equipment (See Electric Rule 16, subdivision (A), 11). A protest requiring relitigating these rules in the case of the instant AL is not allowed by G.O. 96-B General Rule 7.4.2, subdivision (6). Customers who accept electric service, under the terms of their service agreement, agree to provide safe, unrestricted access to metering equipment by utility personnel. The Decision and D. 07-04-043 specify that a customer will receive either a smart meter by default, or an analog meter under the opt-out program. The procedure for determining whether a customer receives or retains an existing analog meter, described in the Advice Letter, is compliant with existing tariff, the Decision and D. 07-04-043 upon which it is based. Therefore, this objection to the Advice Letter is not allowed by G.O. 96-B.

14. CEP: SDG&E erred in offering an “additional type” (non-communicating, solid-state) electric meter for opt-out.

Response: SDG&E has supplemented the Advice Letter language to delete the reference to the additional meter. The amended Advice Letter specifies that opt-out customers will receive only the analog meter.

15. CEP: SDG&E should provide more details about the costs involved with rates derived from the “Otherwise Applicable Rate Schedule (OAS).”

Response: The term OAS simply applies to the underlying rate schedules generally applicable to various customer classes. This language indicates that the tariff changes proposed in the Advice Letter are a supplement to the underlying rate schedule without any other change to the existing customers’ rates. The specificity of this language is compliant with the

⁴ SDG&E’s Electric Rules contained with its current Electric Tariff may be found at <http://www.sdge.com/electric-tariff-book-rules>

Decision, and therefore this objection is outside the scope of the Advice Letter. Any objection to the existing rate structure would require relitigation of prior Commission decisions.

16. CEP: SDG&E is not clear enough the procedure for gas meter replacement when it refers to “removing the smart meter module.”

Response: SDG&E has clarified that removal of the “Smart Meter module” from the base gas meter results in an analog meter that is technically identical to the “non-smart” analog gas meter form that is currently deployed to gas customer premises. The Advice Letter is compliant with the Decision and the request for further clarification goes beyond what was required by the Decision and is thus out of scope of the Advice Letter requirements.

17. CEP: The procedure described in the AL for signing and returning the form to select the opt-out option is not reasonable as it forces customers to accept terms they don’t understand or agree with the terms of opt-out agreement.

Response: The question of whether individual or groups of customers will or will not understand or agree with terms of the opt-out agreement is speculative because it is not supported by any evidence, and is thus not an appropriate subject for an Advice Letter protest.

18. CEP: Same complaint as Issue 17, above, applies to online procedure.

Response: Same response as for Issue 17 above.

19. CEP: Requests further elaboration of opt-out notification procedures to include a number of specific scenarios beyond what is specified in the Advice Letter.

Response: The Decision does not require description of notification procedures regarding specific scenarios as requested by CEP; thus the protest is beyond the scope of the Advice Letter.

20. CEP: Requests modification of procedure to inform Delay List Customers of the opt-out program.

Response: Modifying this procedure would involve relitigating an element of the Decision and prior orders and is therefore not an allowed grounds for protest. Previously approved methods of notifying customers may not be relitigated within the scope of an Advice Letter.

21. CEP: Objects to the opt-out structure of the program where, absent an affirmative election to enroll in the opt-out program, the customer will default to smart meter service. Asserts that not providing reasonable access to the meter should not be treated as an election to opt-out.

Response: The structure of the program described in the Advice Letter is fully compliant with the Decision, which specified that, absent an affirmative election, the customer would default to smart meter service. Thus this objection is not based on G.O. 96-B grounds for a protest, as it would require relitigation of a prior order in violation of G.O. 96-B, General Rule 7.4.2, subdivision (6).