

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



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Application of Utility Consumers' Action Network
for Modification of Decision 07-04-043 so as to Not
Force Residential Customers to Use Smart Meters

Application 11-03-015
(Filed March 24, 2011)

**PROTEST OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) TO THE
APPLICATION OF UTILITY CONSUMERS' ACTION NETWORK FOR
MODIFICATION OF DECISION 07-04-043**

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April 25, 2011

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**I.
INTRODUCTION**

In accordance with Rule 2.6 of the California Public Utility Commission's ("Commission" or "CPUC") Rules of Practice and Procedure, San Diego Gas & Electric Company ("SDG&E") hereby protest and request dismissal of the March 24, 2011 Application of Intervenor Utility Consumers' Action Network ("UCAN") for Modification of Decision 07-04-043 pursuant to Rules 2.1 and 16.4 of the Commission's Rules of Practice and Procedure ("Application"). The Application requests that the Commission "Compel SDG&E to develop a proposal or proposals by which residential SDG&E customers may choose to opt-out of the mandatory use of smart meters at their residences."¹

**II.
PROCEDURAL BACKGROUND**

For the last several years, this Commission has encouraged California's investor-owned energy utilities to increase demand response ("DR") and implement dynamic pricing tariffs as a means of reducing energy demand during peak periods. In order to implement dynamic pricing,

¹ Application, p. 1.

utilities must deploy Advanced Metering Infrastructure (“AMI”) that can measure energy usage on a time-differentiated basis. In Decision 01-05-032, the Commission adopted a proposal for implementing real-time energy meters for SDG&E’s large customers with peak demand of 100 kilowatts (kW) or more. The Commission stated, “real-time energy meters will provide accurate and meaningful price signals” as opposed to the current system where customers pay an average rate determined for all customers in their rate group.

In June 2002, the Commission initiated Rulemaking (R.) 02-06-001, with the goal of increasing the level of DR “as a resource to enhance electric system reliability, reduce power purchase and individual consumer costs, and protect the environment.”² The Rulemaking clarified that the “Commission anticipates that full scale implementation of AMI will provide all customers in all rate classes with the option to choose between dynamic and static rate structures.” AMI consists of metering and communications infrastructure as well as the related computerized systems and software. SDG&E filed its AMI Application 05-03-015, March 15, 2005 in response to the directives of this Rulemaking.

On February 9, 2007, in accordance with Rule 12.1(a) of the Commission’s Rules of Practice and Procedure (Rules), SDG&E, UCAN and the Division of Ratepayer Advocates (DRA) (Settling Parties) filed a Joint Motion for Adoption of Settlement. On February 16, 2007, ALJ Gamson issued a Ruling seeking further information about, and setting an evidentiary hearing on the Settlement Agreement. The Settling Parties provided their response to the ruling on February 23, 2007. The evidentiary hearing was held February 27, 2007, and the case was re-submitted that day. The February 9, 2007 Motion to accept the Settlement Agreement among

² Decision 02-06-001, p. 1.

SDG&E, UCAN, and DRA was granted by this Commission in Decision 07-04-043, dated April 12, 2007, and the Application for SDG&E's proposed AMI Project was approved. This Commission ruling also proclaimed that the "decision is part of our effort to transform California's investor-owned utility distribution network into an intelligent, integrated network enabled by modern information and control system technologies."³

III.
UCAN'S ASSERTIONS CONCERNING HEALTH AND PRIVACY ISSUES ARE UNFOUNDED AS SDG&E'S AMI PROGRAM CONFORMS WITH ALL APPLICABLE LAWS

SDG&E fully recognizes its historic obligation to provide safe, reliable, reasonably priced electric service that extends to all consumers within the boundaries of its designated franchise.⁴ The utilities' obligation to serve their customers is mandated by state law and is part and parcel of the entire regulatory scheme under which the utilities received a franchise and under which the Commission regulates utilities under the Public Utilities Act.⁵ The obligation to serve under the traditional compact requires the utility to provide service on demand according to rates, terms and conditions approved by this Commission. The duty to serve represents one of the most important components of the regulatory compact and significantly differentiates the utility from its non-utility competitors.

The technology chosen by SDG&E to implement AMI, including "Smart Meter" technology, was approved by this Commission in Decision 07-04-043, dated April 12, 2007, and is entirely consistent with that obligation. Furthermore, as explained in Decision 10-12-001, this Commission has previously determined there is "no reason to reopen our prior Smart Meter decisions to address these alleged health concerns at this time given the relatively tiny

³ Decision 07-04-043, p. 2.

⁴ See Decision 02-12-069 at 7-8.

⁵ See, e.g., Pub. Util. Code §§ 451, 761, 762, 768, and 770.

contribution Smart Meters will make to RF exposure relative to other sources in our modern environment. Parties who believe the limits the Federal Communication Commission (FCC) has set for RF exposures from Smart Meters are too high relative to the alleged health threat should direct their arguments to the FCC, not to this Commission in the context of the Smart Meter program.”⁶

There simply is no scientifically credible evidence for an assertion that the extremely low power and intermittent radio frequency (RF) transmissions produced by the Smart Meter devices installed by SDG&E have any adverse health impact on any customer. The use of the AMI devices is approved under the standards for RF set by the FCC, the entity charged by Congress with ensuring the safety of transmitting devices; the levels are far below those found by the FCC to be safe for radio frequency (RF) exposure. Hence, the Smart Meter devices installed by SDG&E are designed with the FCC’s strict standard of safety and security.

When it comes to the safety of wireless devices and systems, there are three key areas to consider: proximity to the device; intensity of the transmission; and duration of the transmission. For example, a person speaking on a cell phone has 3.3 to 1,100 times more RF exposure than a person standing two feet from an active smart meter. Similarly, a person using a laptop computer can experience up to 2.2 times more RF exposure than a person standing 2 feet from a smart meter.⁷ SDG&E has selected a technology that uses RF fields at very low power to transmit information on an infrequent basis. Additionally, RF fields from these devices typically weaken dramatically at a distance of just a few feet. In fact, based upon equation 7 published in

⁶ See Decision 10-12-001 at 9.

⁷ Source: Richard Tell Associates, Inc., available at: <http://www.radhaz.com/>.

the FCC Office of Engineering and Technology (“OET”) Bulletin 65,⁸ the RF field from an SDG&E Smart Meter, compared with the value at a distance of one inch, is 97% lower at six inches and 99% lower at 12 inches. Furthermore, the RF exposure created by Smart Meter infrastructure is much less than many devices customers already use in and around the home. For example, typical microwave ovens are over 550 times more.⁹

In response to public concerns over the safety of Smart Grid infrastructure, on July 30, 2010, California Assembly Member Jared Huffman wrote to the California Council on Science and Technology (CCST) to request that the Council perform an “independent, science-based study...[that] would help policy makers and the general public resolve the debate over whether smart meters present a significant risk of adverse health effects.” California Assembly Member Bill Monning signed onto the request with his own letter to CCST on September 15, 2010. The CCST issued its final report in April, 2011. Among the findings of that report were that the Smart Grid infrastructure being deployed throughout California **does not** pose a health risk based on current scientific knowledge, and the RF exposures are significantly below the guidelines adopted by the FCC. Additional key report findings include:

1. Wireless smart meters, when installed and properly maintained, result in much smaller levels of radio frequency (RF) exposure than many existing common household electronic devices, particularly cell phones and microwave ovens.
2. The current FCC standard provides an adequate factor of safety against *known thermally* induced health impacts of existing common household electronic devices and smart meters.
3. To date, scientific studies have not identified or confirmed negative health effects from *potential non-thermal* impacts of RF emissions such as those produced by existing common household electronic devices and smart meters.”

⁸ FCC OET Bulletin 65, Edition 97-01, *Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields*, August 1997, p. 21, available at: http://www.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet65/oet65.pdf.

⁹ Tell, *Op. cit.*

4. Not enough is currently known about potential non-thermal impacts of radio frequency emissions to identify or recommend additional standards for such impacts.

The full report may be viewed at CCST's website at:

<http://ccst.us/publications/2011/2011smart-final.pdf>

As well, a comprehensive December 2010 study by the Electric Power Research Institute demonstrated that the RF fields from SDG&E's Smart Meters, measured either individually or in banks of meters, were far lower than the FCC exposure guidelines. This was also the case even when meters were measured in a test environment operating in an unrealistic condition of continuous transmission.¹⁰

Notwithstanding SDG&E's compliance with the FCC RF standards, and the consistent conclusions from reviews of scientific research that the RF fields at the levels produced by common wireless devices such as AMI devices have not been shown to pose a threat to human health, and notwithstanding this Commission's Opinion approving SDG&E's AMI infrastructure project, following a comprehensive and thorough review, UCAN now asks the Commission to consider modifying SDG&E's Smart Meter deployment pursuant to Decision 07-04-043, claiming that SDG&E's customers have "expressed aversion to the installation of smart meters for a variety of reasons including health and privacy concerns."¹¹ The basis for this request relies completely on unsupported anecdotal expressions of residential customer "concern," misstatements of AMI issues or actions elsewhere, and opt-out proposals that are at odds with the regulatory goals and great weight of scientific research concerning medical conditions that are neither widely accepted nor otherwise generally recognized under any diagnosis based on a

¹⁰ Electric Power Research Institute. *An Investigation of Radiofrequency Fields Associated with the Itron Smart Meter*, December 2010.

¹¹ Application, pp. 2-3.

causal relationship to RF, and cannot form the basis for any coherent determination that the AMI Program should be curtailed or modified to accommodate those alleged sensitivities.

In addition, the issue of customer data privacy and protection is not an issue that is specific to Smart Meters. On a daily basis, SDG&E currently manages billing, usage and personal identifiable information (PII) for its approximate 1.4 million customers. Additionally, SDG&E works with the Commission, customers and third party providers to coordinate customer authorization for the appropriate release of customer information. This is not a new issue and it will not change as a result of SDG&E's use of Smart Meters. Customer privacy protections are well defined in the Commission's rules, regulations and guidelines, the Company's internal policies, and at both the federal and state law levels. SDG&E is in full compliance with these policies, rules and laws today and will continue to be compliant with these rules with the deployment of Smart Meters. Thus, there is simply no logical reason for the Commission to allow residential customers to reject the installation of SDG&E's Smart Meter equipment based on any perceived privacy concerns.

**IV.
THE RELIEF SOUGHT BY UCAN IS UNWARRANTED BY THE EVIDENCE AND
WOULD, IF GRANTED, BE COSTLY AND FRUSTRATE THE OBJECTIVES OF
SDG&E's AMI PROGRAM**

As SDG&E demonstrates with respect to each issue below, the Application should be promptly dismissed on the grounds it is an impermissible attack on a final Commission decision, is brought without justification and has no merit, and the ultimate relief sought is contrary to this Commission's previous determination that there is no evidence that would warrant either

modifying or reopening prior Smart Meter decisions to investigate the health impacts of emissions from Smart Meters.¹²

First, an option for customers to not be served by smart meters is unwarranted because the concerns raised by UCAN, on behalf of certain residential consumers, have been fully addressed by the FCC during their approval of Smart Meter technology, or by this Commission's approval process for SDG&E's AMI and the related Commission policies and directives on Smart Meter RF emissions. Accordingly, the Application seeking to modify Decision 07-04-043 is an impermissible collateral attack on one or more final Commission decisions.

Second, any customer opt-out would result in additional costs and would have substantial and potentially unknown ramifications that will frustrate the regulatory objectives of SDG&E's approved AMI program. The design of SDG&E's AMI deployment project was premised on full scale deployment in SDG&E's service territory, with each meter forming an integral part of the overall communications network. Requiring an "opt-out" could undermine the benefits of AMI and the reliability and performance of the system by potentially creating gaps in the communication network coverage.

Moreover, universal coverage is critical to the operational and business models of SDG&E's program. If coverage gaps are created, SDG&E would have to staff additional resources to support the operational services assumed to be performed by the system, including meter reading, service connection and disconnection, and any resident changes. Also, based on the number of customers that choose to opt-out, the overall communications network would require strengthening and mitigation by installing additional network devices such as RF range extenders and more expensive stand-alone direct connect meter devices. This will increase the

¹² See Decision 10-12-001 concluding that "[i]t is not reasonable to re-open the Commission's review of Smart Meters for the purpose of considering the alleged health impacts of RF emissions from Smart Meters at this time".

overall cost of installing, maintaining and operating the system while not insuring any reduction in RF exposure. Further resources may also be required to support opt-out customers since these customers would be managed as exceptions, which tend to be a manual, less efficient and more costly process requiring redundant information technology systems and other infrastructure to satisfy SDG&E's obligation to serve those customers.

Aside from these operational impacts and inefficiencies, if opt-outs are permitted, there could also be impacts to the enhanced reliability of the system. Enhanced system reliability is one of the key goals of the Commission in achieving full scale implementation of AMI to increase the level of DR, and the more future looking Smart Grid.

In its Petition, UCAN specifically requests that the Commission make the following changes to Decision 07-04-043:

A. Findings of Fact

UCAN requests the following Finding of Fact be added to Decision 07-04-043: *It is in the public interest that the concerns of SDG&E customers regarding the installation and utilization of smart meters be addressed.*

B. Conclusions of Law

UCAN requests that the following Conclusion of Law be added to Decision 07-04-043: *It is reasonable to require SDG&E to adopt a proposal or proposals to allow SDG&E customers to opt-out of smart meter installations by declining the smart meter installation or having an already installed smart meter removed.*

C. Ordering Paragraph

UCAN requests that the following Ordering Paragraph be added to Decision 07-04-043: *SDG&E within 14 days of the effective date of this order shall develop a proposal or proposals for residential SDG&E customers to opt-out of the installation of a smart meter at their residences, if the opting-out customers agree to pay the reasonable costs SDG&E incurs to read and maintain the old electromechanical meters.*¹³

¹³ Application, p. 4.

It would therefore represent a waste of this Commission's scarce resources to open a proceeding to consider these issues or any proposed language for residential SDG&E customers to opt-out of the installation of a smart meter at their residences.

Given this Commission's clear approval of SDG&E's AMI Program and resolute policies and directives on alleged RF exposure relative to Smart Meter, which are firmly based upon the current facts of science and the Commission's comprehensive and thorough review of these matters, SDG&E will address briefly below the clear procedural weaknesses of the Application, and generally reserve any further substantive arguments pertaining to UCAN's specific proposal to "[d]evelop a cost-based tariff by which residential customers may decline a smart meter installation or switch out the new meter with an old electromechanical meter"¹⁴ to a more appropriate time and place, if any. However, it suffices to say herein that SDG&E not only believes the UCAN opt-out proposal is premature and inappropriate because it seeks to require SDG&E to offer a solution before there is any credible, factual, or scientific evidence that an actual problem exists with SDG&E's Smart Meters; but further, the UCAN proposal, "of reinstallation of an electromechanical meter and for the monthly reading of such meters",¹⁵ neither meets the goals of the Commission as stated above, nor is sustainable from an ongoing operations and maintenance perspective because it is completely dependent on equipment considered by the utility industry as obsolete and technologically incompatible with the system being deployed.

¹⁴ Application, p. 3.

¹⁵ Application, p. 1.

V.

**THE APPLICANT HAS FAILED TO MEET THEIR REQUIRED BURDEN OF PROOF
NECESSARY TO DEMONSTRATE THAT A MODIFICATION OF
A FINAL COMMISSION DECISION IS WARRANTED**

Intervenor UCAN filed the above captioned Application specifically seeking a “Modification of Decision 07-04-043 pursuant to Rules 2.1 and 16.4 of the Commission’s Rules of Practice and Procedure. Decision 07-04-043 approved a settlement between San Diego Gas & Electric Company (“SDG&E”), the Division of Ratepayer Advocates (“DRA”) and UCAN allowing \$572 million in funding for SDG&E’s proposed Advanced Metering Infrastructure (“AMI”) Project. UCAN requests that the Commission modify Decision 07-04-043 to compel SDG&E to develop a proposal or proposals by which residential SDG&E customers may choose to opt-out of the mandatory use of smart meters at their residences.”¹⁶

Public Utilities Code Section 1709 provides that “[i]n all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.”¹⁷ Although currently styled as an Application, UCAN, an Intervenor Applicant, originally filed their pleading as a Petition to Modify Decision 07-04-043,¹⁸ and was subsequently directed by the CPUC docket office to change the caption and refile as an Application. Nonetheless, the substance of UCAN’s request for relief remains the same: “for Modification of Decision 07-04-043 pursuant to Rules 2.1 and 16.4 of the Commission’s Rules of Practice and Procedure”,¹⁹ the CPUC’s final decision granting the Motion to accept a settlement agreement between SDG&E and several parties, including UCAN, regarding the

¹⁶ Application, p. 1.

¹⁷ See California Public Utilities Code Section 1709.

¹⁸ On March 21, 2011 Intervenor UCAN submitted to the CPUC docket office for filing a Petition for Modification of Decision 07-04-043. The docket office rejected the pleading and directed UCAN to refile the document as an Application. Consistent with the docket office guidance, on March 24, 2011, Intervenor UCAN refilled the pleading as *Application of UCAN for Modification of Decision 07-04-043 So As To Not Force Residential Customers to Use Smart Meter*.

¹⁹ Application, p. 1.

Application of San Diego Gas & Electric Company (U-902-E) for Adoption of an Advanced Metering Infrastructure Deployment Scenario and Associated Cost Recovery and Rate Design.

As such, the Applicant's pleading is substantively either a collateral action to attack and modify a final Commission decision, an untimely Application for Rehearing by a person who is a settling party governed by the Commission Rule of Practice and Procedure (Rule) 16.1, or an improper Petition for Modification by a settling party to the proceeding governed by Rule 16.4.

Given the relief sought, and the pleading language, which on its face clearly states in the Introduction that the "Modification of Decision 07-04-043"²⁰ be governed by Rule 16.4, Rule 16.4 provides, in part, that:

(b) A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. *Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed.* Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

(d) *Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision.* If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.

(Emphasis added.)

The Application does not include specific citations to the record and lacks any explanation why the petition for modification could not have been presented within one year of the effective date of the decision as required by Rule 16.4. In fact, the Application specifically states that "[t]he Commission acknowledged UCAN's concern back in 2007".²¹ In addition, the

²⁰ Application, p. 1.

²¹ *Id.*

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served a true copy of the foregoing **PROTEST OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) TO THE APPLICATION OF UTILITY CONSUMERS' ACTION NETWORK FOR MODIFICATION OF DECISION 07-04-043** on the service list by serving a copy to each party by electronic mail, or by mailing a properly addressed copy by first-class mail with postage prepaid to each party unable to accept service by electronic mail.

Copies were also sent via Federal Express to the assigned Administrative Law Judge and Commissioner.

Executed this 25th day of April 2011 at San Diego, California.

/s/ Jenny Norin
Jenny Norin



CALIFORNIA PUBLIC UTILITIES COMMISSION Service Lists

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