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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)
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CENTER FOR ELECTROSMOG PREVENTION REHEARING REQUEST FOR DECISION 12-04-019

Pursuant to Rule 16.1 of the California Public Utilities Commission (CPUC)'s Rules of Practice and Procedure, Center for Electromog Prevention (CEP), is applying for rehearing of Decision 12-04-019 (Decision) issued on April 19, 2012, and mailed on April 24, 2012. This rehearing request is timely because the rehearing request is due within 30 days of the day that the decision is mailed.

CEP is asking for a rehearing because:

- 1) There is no federal statutory mandate for Smart Meters to be required for every ratepayer in the San Diego Gas and Electric Company (SDG&E) service territory;¹
- 2) There are a plethora of legal, safety, and health issues that have not been addressed, as specified in the protest of Center for Electromog Prevention to Southern California Edison Company (U 338-E) Advice Letter 2718-E;
- 3) The fees are not justified and CEP maintains that these may be considered illegal. Ratepayers experiencing adverse impacts on their health because of the presence of smart meters, those who must avoid RF radiation, or who may not want a smart meter due to a medical condition, disability, or health and/or safety concern should not be required to pay for the privilege of opting out of smart meters installed in their homes, as this may be considered discriminatory and punitive.² The CPUC is charged with

¹ Federal Energy Acts of 2005, 2007

² Protection of property rights and the ability to be safe and secure in one's home is a basic right outlined in every county and municipality across this country. It is considered a founding principle upon which the Fourth and Fifth Amendments to the US Constitution were founded.

providing safe energy services for ratepayers³. State and federal laws support non-discrimination and no extra fees pertaining to medical conditions and disabilities.^{4 5} CEP opposes the statements on page 14 that the Commission will not consider health effects in the opt out program and entirely skirts the issue of safety, as if opting out solves all these problems;

- 4) The opt-out is inadequate - it does not fully address the concerns of those with medical conditions, disabilities, or health and safety issues. This has been made clear in multiple legal filings and meetings at the CPUC, with public input and testimony of multiple Parties to the consolidated opt-out proceedings. See the Prehearing Conference Transcript for May 16, 2012.
- 5) SDG&E has not effectively notified all ratepayers that they can opt-out, not to have a Smart Meter installed or to have an existing Smart Meter removed⁶. Ratepayers have not been notified of any of the reasons they may wish to opt-out, leading to confusion on the part of those who may have heard of the opt-out from another source. Most people in SDG&E's service area are unaware of the serious concerns and complaints related to the smart meters. In fact, most people seem to be unaware that they have a smart meter.
- 6) CEP also asserts that true analog (electromechanical) meters do not emit RF (radiofrequency) radiation, and therefore requests that the Commission order SDG&E to provide analog (electromechanical meters) as the only opt-out default. Therefore, CEP objects to the Decision statement on page 15: "As such, we believe that any selected opt-out option should have the capability of collecting interval energy consumption data." Some of the so-called analog opt-out meters provided to SDG&E customers already appear to be emitting RF radiation, measured with an RF field

³ Safety, security, and protection for utility customers, California, and US citizens are required by the California Public Utilities (PU) Code § 8360-69, which 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...**"

⁴ CA Public Utilities Code Section 453;

⁵ CEP Comments on March 15, 2012 PD

⁶ by way of example, the May 18th, 2012 SDG&E bill received by ratepayers does not mention an opt-out option in any insert nor in the "Energy Notes" newsletter. There has been no notice inserted into local print media or ads on TV.

meter, and Internet research reveals that these same Elster analog meters may be readily fitted with communications devices to allow AMI/AMR use.⁷

Therefore, CEP Requests:

- 1) A moratorium on all smart meter deployments;
- 2) A rehearing held on a very timely, emergency basis to address all issues raised in this document and all issues pertaining to safety and health, and all reasons that cause customers to wish to opt-out, with a full, unbiased hearing held utilizing current research on RF exposures and health implications, involving the California Department of Public Health, non-industry experts, researchers, and physicians provided or recommended by Parties.
- 3) CEP requests a moratorium on the collection of additional fees, following the example of the state of Vermont, in allowing all ratepayers to opt-out free.
- 4) CEP asks the Commission to order SDG&E to more effectively inform all ratepayers of the opt out, including notifying each through US mail, inserts, TV and print ads.
- 5) CEP asks the Commission to order SDG&E to install only true analog meters with no measurable RF radiation and with no communications devices. Ratepayers must be provided with this as the opt-out choice. Any ratepayer who detects RF radiation from a meter or requests an alternate analog must be provided with a true analog that cannot be fitted with a communications device.
- 6) CEP requests that the DRA oversee the opt-out, establishing and supporting customer rights.

BACKGROUND AND ASSERTIONS:

CEP agrees with the American Academy of Environmental Medicine⁸, which considers forced smart metering to be a public safety hazard and that this opt-out should be constituted as

⁷ <http://www.elster-americanmeter.com/en/downloads/EAMBR2100.5ENPGasMeasure810.pdf>,

⁸ [AAEM urges the California Public Utilities Commission to call for an immediate moratorium on wireless "smart meters" and for hearings on the health impact on wireless "smart meters."](http://aaemonline.org/images/CaliforniaPublicUtilitiesCommission.pdf)
<http://aaemonline.org/images/CaliforniaPublicUtilitiesCommission.pdf>

preliminary relief, with broader relief and acceptable remedies to follow rapidly, to ensure that California's utility customers are able to access gas and electric utilities in a safe and secure manner, in accordance with all protections and rights under the law. In San Diego County, 3,095,313⁹ people are now being subjected to increased, forced exposure to RF radiation in a mesh network associated with the use of the SDG&E smart meters.

CEP strongly maintains that a **NO-COST, NO FEES ANALOG OPT-OUT** is a means of providing just, equitable, and lawful options for customers.

**THE FOLLOWING ARE AREAS OF DISAGREEMENT OR STRONG CONCERN
PERTAINING TO DECISION D1204019:**

**I. CEP MAINTAINS THAT TRUE, NON-COMMUNICATING ANALOG METERS
SHOULD BE CONSIDERED THE ONLY OPTION, NOW OR IN THE
FUTURE, WHETHER OR NOT THERE ARE TIME-OF-USE (TOU) RATES
FOR RESIDENTIAL CUSTOMERS.**

The wording of the Decision infers that in the future, analog meters may not be utilized and electronic digital meters may be substituted, or that more than one option be used. Since electronic digital meters emit RF radiation and may also cause "dirty electricity" (other unwanted emissions) along home wiring, the door to that future "choice" or requirement should be eliminated. Increased RF radiation exposure is not recommended by any health authority, and in fact, decreasing RF radiation is currently recommended to all governments and has been placed on the 2B carcinogens list by WHO¹⁰. RF-emitting devices of any kind should not be considered.

**II. ANALOG METERS SHOULD BE CONSIDERED A BASIC, NOT ADDITIONAL
SERVICE**

⁹ US Census Bureau, San Diego County, 2010 <http://quickfacts.census.gov/qfd/states/06/06073.html>

¹⁰ http://www.iarc.fr/en/media-centre/pr/2011/pdfs/pr208_E.pdf

CEP disagrees with viewing the analog choice as an additional service. Federal energy laws and guidelines only provide that states consider allowing utility customers the choice to have a smart meter, describing an opt-in situation¹¹, rather than the forced installation of smart meters on the entire population of a service territory. Based on those federal guidelines, customers should have the choice to determine whether they are to have the analog or the smart meter and thus, analog metering should continue to be offered to customers without limiting the ability to have an analog, or with penalties or disincentives of any kind, which is what charging fees amounts to.

III.NO ADDITIONAL FEES CHARGED

Utility customers who select the analog option should not bear any of the costs or be charged extra. The utility company and its investors should cover any additional costs, for it is their actions and those of the CPUC, counter to federal intent and citizen rights, without adequate regard for safety or security, that have led to the need for this opt-out. Customers must not bear the brunt of mistakes that are not their own. *Safety is a right, not an extra service.*

IV. UTILITY SHALL NOT DISCOURAGE OPTING OUT

The decision does not protect the customer from any process that might deter a customer from obtaining an opt-out, provide incorrect information, or be perceived as harassment. This area needs to be improved.

V. NO CHARGES FOR SAFETY AND SECURITY

Safety, security, and protection for utility customers, California, and US citizens are required by the California Public Utilities (PU) Code § 8360-69, which 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...”and the California and US constitutions¹². Withholding these may be considered international human rights and crimes against humanity

¹¹ Federal Energy Acts of 2005, 2007

¹² Protection of property rights and the ability to be safe and secure in one's home is a basic right outlined in every county and municipality across this country. It is considered a founding principle upon which the Fourth and Fifth Amendments to the US Constitution were founded.

violations¹³. Customers will choose analog meters for a variety of reasons - including those related to health, medical, disability, the desire not to be involuntarily subjected to RF radiation in their homes and on their property. They may wish to avoid fires, which smart meters are associated with, or interference with other devices in the home, such as garage door openers, medical devices such as pacemakers, and Internet routers. They may request the analog meters to avoid invasion of privacy and data collection on their habits and movements within their own homes, now planned by utilities to be provided to third parties, also protected under the Public Utilities Code and California and US Constitutions, which may be construed as endangerment to security, invasion of privacy and illegal search, amongst other reasons.

Customers may not wish to have their appliances and thus, their lives, controlled by smart or electronic meters. Customers may not wish to be overbilled or endangered by a meter that can be externally controlled. Customers may wish to avoid the fragile smart meters due to natural or manmade electromagnetic pulse events (EMP), to which the meters are more susceptible. They may wish to avoid having their data or other information from the meter easily "hacked" to interfere with billing, determine if they are home, find out habits, or other misuses. These are some, but not all of the reasons. Customers who wish to be safe and secure or enjoy their properties and rights should not be made to pay extra to do so, in order to continue to access necessary public utilities such as electricity and gas. Again, safety is a right.

VI. REFUNDS NEEDED

Previous charges and credits that utilities benefited from pertaining to meters:

1. Customers requesting the analog meters have already been charged for the smart meters and the smart meter program, whether the smart meters are now on their homes, or not. *They should receive a refund for not using smart meters.*
2. Customers should not be charged for the analog opt-outs, as previous (or current) analogs, were also paid for by customers, with some taken out of service before their duty cycles expired.

¹³ acts which would constitute such a crime when committed in a widespread and/or systematic manner, and/or on a massive scale; torture; other inhumane acts causing serious injury to body or to mental or physical health; (United Nations) http://www.civilians.web.at.it/cache/c_23_files/a.htm

3. The utility company applied and received credits for the depreciation on the still-working analog meters that were removed, as a loss, as well, with the CPUC.

The utility company would be making money on customers and analog meters, thus, three times, unfairly, if forced to pay again.

VII. THOSE WITH ANALOG METERS ALREADY

Customers with analog meters remaining on their homes that are functioning and not at the end of the device's lifetime, should not be made to pay to sign up for the analog "option", as they already have an analog meter and require no change out. Further, those customers who had no option for a delay, whose delay request was ignored, or were refused a delay of a smart meter should not be charged for an analog "option" as they were not afforded any initial choice in delaying an installation.

VIII. RATING NOT MENTIONED

All electric rates should be continued, for those with an analog meter, based on the amount of energy used, to encourage energy conservation, using the current overall usage, tiered system of rating. Higher rates or rating systems for those with analog meters should not be allowed nor considered.

IX. CHARGING METER READER FEES IS UNACCEPTABLE

Customers have not been charged for meter readers in the past and must not be charged for these now. Particularly troubling is the inference that meter reader charges would be paid for by those with multiple meters on the property, as it is "one-stop" meter reading, and should not be charged as if it is a separate locale. For instance, if one customer opting out of smart metering pays \$10 or \$5 a month for meter reading and there are other customers at the site also opting out, why would the meter reader charges be the same, as if coming out from the office, or another locale, when he/she just has to take one, two, or no steps to read the meters? This plan provides an unfair and unjust profit for the utility, at the opting-out customers' expense. Since one-third of Americans live in multi-family dwellings, this is a significant, unfair profit to consider.

**X. ALL EXTRA FEES AND COSTS ARE ILLEGAL, PREJUDICE,
PREFERENTIAL, DISADVANTAGE, DISCRIMINATE AND BLOCK
ACCESS**

All costs in the Decision may be considered illegal under California Public Utilities Code Section 453, which subjects all customers and those with medical conditions to prejudice and disadvantage, requiring different rates and charges, giving preferential treatment to those with higher incomes.

(a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.

(b) No public utility shall prejudice, disadvantage, or require different rates or deposit amounts from a person because of ancestry, medical condition, marital status or change in marital status, occupation, or any characteristic listed or defined in Section 11135 of the Government Code...

(c) No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service. (California Public Utilities Code Section 453)

These costs and fees discriminate against utility customers as these costs are a disincentive to obtain an analog meter, which may be necessary for safety and security, guaranteed by the California Public Utilities Code, the CA and US Constitutions, and may be considered international human rights violations as indicated above, especially as analogs are intended to be standard, per federal energy guidelines.

By allowing or charging fees of any kind, the CPUC and utilities will be infringing upon the rights of all customers and citizens, noted in California Public Utilities Code Section 453. In particular, this will create a situation whereby those middle income or lower middle income families struggling to pay costs in a depressed and uncertain economy, or those with financial concerns of any kind, including those in the California Alternative Rates for Energy (CARE) program for utility customers or those outside the CARE program, will not be able to pay the extra fees and will constitute a impediment or disincentive to accessing the analog meters. In San

Diego County, 12.3% are below the poverty level, according to the US Census (2010). Even a \$10 change out fee and \$5 a month is a lot to those trying to put food on the table or gas in the car, or pay for medical needs. *They should not have to choose between being irradiated and their basic needs.* The only conclusion one can logically come to is that the fees for opt-outs are punitive and intended to dissuade customers from choosing an analog option.

Customers with physicians who have determined smart meters may be unhealthy or a risk to health should not be charged for an opt-out as California Law ¹⁴does not allow utilities to charge additional fees for medical reasons.¹⁵ In addition, they must be able to insure that their property is not irradiated by their neighbors' smart meter(s) and public access facilities are RF radiation free from metering sources so that they can avoid increased RF radiation and maintain their health and safety.

Those who are already conserving energy, and CEP has spoken to a number of these, will be unnecessarily punished by forcing payment of analog "option" fees, as the proposed monthly fees alone will double their energy bills. In that sense, the use of punitive fees, erasing the incentive to conserve, runs counter to California's energy goals.

Conclusion: People should not have to pay extra to access energy and be safe and secure, nor should smart meters be forced upon customers per state and federal laws. The poor or financially struggling should not have access blocked to analog metering. Fees of any kind must be stricken from the opt-out plan for utility customers, as these are illegal. Provide a no-cost analog option to all customers.

XI. NO PROVISION FOR AVOIDANCE OF RF RADIATION FOR THOSE WITH MEDICAL CONDITIONS AND/OR DISABILITIES

14 California Public Utilities Code Section 453

¹⁵ Ibid

No provision has been made for those with medical conditions and/or disabilities that require avoidance of RF Radiation emitted by smart meters on their property, RF transmissions trespassing on their property due to the mesh network or proximity to neighbor's smart meters, and in public access areas.

Conclusion: People with medical conditions and disabilities must be accommodated and not discriminated against, as per California Public Utilities Code Section 453 and all pertinent state and federal laws.

XII. NO PROVISION HAS BEEN MADE TO PROVIDE FOR CUSTOMERS NOT TO BE CHARGED MULTIPLE TIMES ON ONE PROPERTY FOR ANALOG METERS (EX., FOR MULTIPLE OR SINGLE GAS AND ELECTRIC METERS).

Customers electing to have an analog gas or electric meter, or with multiple meters on their property for any reason should not be assessed extra fees, both for change outs and monthly charges.

Conclusion: Do not charge extra for meter change outs and monthly fees for each of multiple meters on property, including, but not limited to, both gas and electric meters.

XIII. NO PROVISION MADE FOR CUSTOMERS TO UNDERSTAND WHY AN OPT-OUT MIGHT BE SELECTED

Utility customers have the right to be informed about all possible health effects of RF radiation exposures from smart meters, as well as related issues of safety, privacy, and security. In addition, they should be informed of pulsed radiation levels from smart meters and the fact that the FCC has no non-ionizing guidelines for at-risk populations.

Conclusion: Customers should be informed that no ionizing RF guidelines have been created for children, pregnant women, fetuses, females, the elderly, handicapped, pets, etc. All customers

should be so-notified by the utility company and CPUC, as they are presently for EMF exposures. These notifications should include all reasons why a customer might wish to opt-out.

XIV. NO PROVISION MADE FOR ALL CUSTOMERS TO KNOW THAT A SMART METER OPT-OUT IS AVAILABLE

Utility customers have the right to be continually informed, in media advertisements, in print and prominently, online, as an entire group, that a smart meter opt-out is available. An advertising campaign should occur to insure that all customers are properly informed.

Conclusion: Utility websites and billing inserts should include on-going information about analog opt-outs for customers that are prominently displayed within the billing information.

XV. CUSTOMERS MUST HAVE ABILITY TO OPT-OUT CONTINUOUSLY THROUGHOUT THE CALENDAR YEAR(S), WITHOUT LIMIT.

No limit on opting out should be placed on customers, who have many factors that could influence their opt-out situation, throughout the calendar year.

XVI. NO PROVISION FOR SOLAR CUSTOMERS TO OPT-OUT

Solar customers should be eligible for the opt-out, with analog meters provided that are two-way.

Conclusion: Provide solar customers with a no-cost analog opt-out.

XVII. NO PROVISIONS FOR COMMERCIAL CUSTOMERS TO OPT-OUT

Commercial customers should be eligible for the opt-out, with analog meters provided and should not be discriminated against.

Businesses in California may lose business or engender other costs related to the presence of a smart meter on the property, thus depressing California's economy further and driving businesses out of California.

Customers who wish to avoid RF radiation from smart meters will not wish to frequent businesses with smart meters. This will impact financially impact businesses individually and as a whole, in the utility's territory.

Customers who must avoid RF radiation for medical, health, or safety reasons may become file injury claims related to businesses with smart meters.

Businesses with workers who wish to or must avoid RF radiation will be unnecessarily exposed, potentially leading to more worker's compensation, potential injuries, and legal cases in CA. This is particularly true in situations where a business might have a bank of meters on their business wall. Recently, the Alaska Supreme Court affirmed a 100% worker's compensation disability claim involving exposure below the FCC thermal limit. (Alaska Supreme Court Case No. S-12058).

Business owners who wish to avoid smart meters in their homes are likely to want this option for their businesses as well.

There are 291,000 businesses in San Diego County¹⁶ who should have access to smart meter opt-outs.

Conclusion: Business customers should be equally eligible for analog opt-outs in this decision.

XVIII. BANKS OF METERS NOT ADDRESSED

35.5% of San Diegans live in multi-family structures.¹⁷ Customers who wish to choose the analog "option" and live in multi-family housing, including apartments, condos, townhomes, and other communities where banks of multiple meters are not all served by Judge Yip-Kikugawa's decision. Those in multifamily housing who wish to avoid RF radiation exposure are

¹⁶ US Census Bureau, San Diego County, 2010 <http://quickfacts.census.gov/qfd/states/06/06073.html>

¹⁷ Ibid

subjected to exponentially more even than a single family home dweller would receive. Some, for instance, have multiple meters (a bank of meters) on a wall or below their apartments, or facing their living quarters, with forced, increased RF radiation exposure. Many of these individuals would therefore be at risk or have complained of health effects. Arranging for one smart meter to be gone from a bank of meters is not enough due to the RF radiation exposure from the meters that remain. Forcing this large group of utility customers to wait for a solution or be subjected to the other meters is unjust and contrary to Public Utilities Code.

Meter readers will also be at risk as they read individual analog meters in banks of RF emitting smart meters.

Conclusion: CEP requests that in the short term, banks of meters shall be dismantled and changed to analog even if only one customer requests analog metering in a multi-family dwelling, and ultimately within a short period of time (several months) all banks of meters are dismantled in multi-family housing locations.

XIX. COLLECTOR METERS AND WIRELESS INFRASTRUCTURE

CEP requests that all collector meters be removed from homes and businesses and close proximity to homes and occupied buildings, that all citizens and customers be informed about the location and radiation levels of collector meters, which emit higher numbers of pulses and thus, exposure to more RF radiation. Collector meter locations and radiation levels shall be provided on a continual basis, prominently displayed upon the device and/or structure it occupies; as well as, in print and online information provided by CPUC and utilities.

Customers who choose analog meters should not be subjected to any additional wireless infrastructure or increased emissions near their residences via other smart metering devices, increased signal strengths, nor wireless on nearby poles or lines. Customers should be allowed to request that nearby collector meters be removed and non-wireless meters be substituted.

XX. SAFE ZONE TO BE ESTABLISHED

CEP requests that a safe zone of at least 2,000 feet be established around a customer's home where he/she is requesting an analog meter. The safe zone would protect against RF radiation from other smart meters which would be automatically converted to analog and other wireless utility infrastructure converted to non-wireless infrastructure or moved outside the safe zone. No measurable RF emissions should be sent via a utility mesh network through the property, a customer's home, or safe zone in order to allow the customer to remain free of increased RF radiation from utility sources.

XXI. DENIAL OF SCWSSM REQUEST FOR CA HEALTH DEPARTMENT REVIEW

CEP supports the Southern Californians for Wired Solutions to Smart Meters (SCWSSM) motion to ask the California (CA) Department of Public Health to participate in this proceeding and finds the denial very troubling and counter to Public Utilities Code, which guarantees and requires customer and utility worker safety. CPUC is not a health agency, nor are the utilities, and as such, cannot determine whether these devices are cumulatively nor individually safe in the manner in which they are being utilized, particularly since environmental and safety testing was waived by CPUC for these devices, and in the face of tens of thousands of complaints to CPUC on health and safety grounds, which have been ignored. This is particularly troubling as no FCC RF guideline addresses the entire population including those most fragile in our society, and the smart meter exposure is virtually continuous 24/7, whereas FCC guidelines were made for brief durations for a large, healthy man.

XXII. CALIFORNIA'S OVERALL ENERGY POLICY

Interpretation of California's Energy Policy must not be construed to interfere with the duty of the CPUC to protect customers, nor remove customer, citizen, or property rights, including those relating to safety and security.

XXIII. SMART GRID BENEFITS

So-called "smart grid benefits" are purely theoretical in nature. Smart grid is more fragile, more intrusive, more unsafe, and less reliable than any previous electrical grid, according to many experts. There is no evidence to show that there are benefits to customers. Teaching customers how to conserve is superior, supported by past projects such as the conservation of water in California, to any forced conservation plan, which is not supported by any data or studies. Customers never asked for these meters and the evidence shows that only a tiny percent ever use computers to access their usage. Usage data available on the SDG&E website is only available the day after use so it is not likely to provide savings in any timely manner that couldn't be better and more cost effectively achieved through conservation education.

CEP requests that all of the above be considered and added to the opt-out decision, to best protect and provide California's utility customers from safety and security issues, as much-needed relief. CEP requests that all smart meters and wireless infrastructure be removed rapidly from California's utility infrastructure, and that any and all replacements, such as fiber optic, undergo extensive public hearings, independent safety testing, and development before implementation. CEP requests that a revised decision be made with social justice, customer protections, safety, and security as the CPUC's primary considerations.

Respectfully submitted,

/S/ Martin Homec

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