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

Application Consumers Power Alliance, Public Citizen, Coalition of Energy Users, Eagle Forum of California, Neighborhood Defense League of California, Santa Barbara Tea Party, Concerned Citizens of La Quinta, Citizens Review Association, Palm Springs Patriots Coalition Desert Valley Tea Party, Menifee Tea Party - Hemet Tea Party – Temecula Tea Party, Rove Enterprises, Inc., Schooner Enterprises, Inc., Eagle Forum of San Diego, Southern Californians for Wired Solutions to Smart Meters, and Burbank Action for Modification of D.08-09-039 and A Commission Order Requiring Southern California Edison Company (U338E) to File an Application for Approval of A Smart Meter Opt-Out Plan.

A.11-07-020

**COMMENTS OF CONSUMERS POWER ALLIANCE ON SOUTHERN CALIFORNIA EDISON COMPANY'S (U338E) SMART METER TECHNOLOGICAL FEASIBILITY AND COST INFORMATION COMPLIANCE PROPOSAL PURSUANT TO D.11-11-006**

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Attorneys for Joint Applicants

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OF THE STATE OF CALIFORNIA**

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EDISON COMPANY'S (U338E) SMART METER TECHNOLOGICAL FEASIBILITY  
AND COST INFORMATION COMPLIANCE PROPOSAL PURSUANT TO D.11-11-006**

Consumers Power Alliance<sup>1</sup> hereby submits its Comments on the “Smart Meter Technological Feasibility And Cost Information Compliance Proposal Pursuant To D.11-11-006” filed by Southern California Edison Company (U338E) (“SCE”) on November 28, 2011, in the above-captioned matter (“SCE Proposal”).

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<sup>1</sup> Consumers Power Alliance (“CPA”) is a coalition of concerned citizens and organizations dedicated to the promotion and support of America's safe, reliable, cost-efficient and secure energy production, supply and delivery systems who have banded together to oppose the deployment of the smart meter program as implemented by SCE and PG&E and similar programs of other utilities.

## I. PROCEDURAL BACKGROUND

D.11-11-006 granted an Application filed by CPA and other joint applicants<sup>2</sup> requesting that the Commission, in light of the then-pending PG&E Application for such a plan, A.11-03-014, expeditiously require SCE to file an Application seeking Commission approval of a Smart Meter opt-out plan. The Application included the following essential components that the Applicants urged be included in SCE's Opt-out plan, which would be more fully developed, supplemented, and supported through testimony:

1. Immediate compliance with all local governmental ordinances, resolutions, and permitting and licensing requirements applicable on their face to further construction of Smart Meter and wireless mesh network facilities pending the decision of the Commission adopting the SCE opt-out plan. The Commission should clarify that it has not preempted such local government jurisdiction.
2. Preservation in inventory of all analog meters removed and replaced with Smart Meters to ensure availability for the opt-out program ultimately adopted.
3. No installation of any further wireless mesh Smart Meters or associated wireless mesh network facilities without consent of the affected customers or communities. If wireless mesh Smart Meters are used, a community can exercise the right to opt out.
4. The Opt-Out Plan should not impose additional charges on those opting out.

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<sup>2</sup> Joint Applicants also included Public Citizen, Coalition of Energy Users, Eagle Forum of California, Neighborhood Defense League of California, Santa Barbara Tea Party, Concerned Citizens of La Quinta, Citizens Review Association, Palm Springs Patriots Coalition Desert Valley Tea Party, Menifee Tea Party - Hemet Tea Party – Temecula Tea Party, Rove Enterprises, Inc.; Schooner Enterprises, Inc., Eagle Forum of San Diego, Southern Californians For Wired Solutions to Smart Meters and Burbank Action.

5. The plan must include the right of all subscribers or communities electing to opt out to retain, or have re-installed, analog meters of the type in use prior to Smart Meters and not utilizing wireless transmissions.
6. The opt-out plan must apply to all customers and communities, not only those where wireless mesh Smart Meters have not yet been installed.

In its Comments on the initial Proposed Decision in the PG&E Opt-out proceeding, CPA pointed to the lack of information in the PG&E proposal concerning the susceptibility of the PG&E wireless mesh SmartMeter network:

PG&E's Opt-Out Program is not a reasonable solution because:

The wireless mesh network used by PG&E apparently does not encrypt individual customer information collected by a SmartMeter on the wireless transmission path of that customer data from the SmartMeter to the PG&E distant Access Point, which is a radio transmitter and receiver which only at that location apparently encrypts individual customer data for further transmission to PG&E. This enables anyone to receive, record, and use such individual customer data while in the coverage area of the wireless mesh network. Such data can be sorted by individual meter and made available to anyone desiring it. This network design is unreasonable because it violates the privacy rights of individual subscribers as established by federal and state law, as well as the Commission's Rules. It is further unreasonable because it enables the "hacking" of the SmartMeter wireless web with possible consequences of grid security breaches as well as alteration of SmartMeter data.<sup>3</sup>

Subsequent to the filing of these Comments and the Application in this proceeding, the Commission released a revised Proposed Decision in the PG&E Opt-out proceeding, which differs materially from the initial Proposed Decision in that case.<sup>4</sup> Among other things, the PG&E PD includes an analog meter alternative opt-out option

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<sup>3</sup> A.11-03-014, Comments of CPA et al, at 12.

<sup>4</sup> See, Proposed Decision of Commissioner Peevey (Rev. 1), mailed January 13, 2011, [http://docs.cpuc.ca.gov/WORD\\_PDF/AGENDA\\_DECISION/157397.pdf](http://docs.cpuc.ca.gov/WORD_PDF/AGENDA_DECISION/157397.pdf) ("PG&E PD").

not included in PG&E's original proposal;<sup>5</sup> establishes a Phase 2 in that proceeding to investigate the feasibility of community-wide opt-out rights,<sup>6</sup> and includes as well in the scope Phase 2 investigation of the appropriate costs of the program.<sup>7</sup> With respect to costs, the PG&E PD also makes very clear that whether or not some or all of the costs being incurred by PG&E will be includable in its rate base, and how any such allowed costs will be recovered, has not been determined.<sup>8</sup> The PG&E PD continues to deny that CEQA or that the Americans with Disabilities Act are relevant to the Commission's decision.<sup>9</sup>

## II. THE SCE PROPOSAL

The SCE Proposal states:

SCE expects that this compliance filing provides sufficient cost and technical feasibility information for the Commission to order SCE to file its own application for its preferred opt-out proposal including costs and a cost recovery mechanism by the end of this year. SCE expects that such an application can be processed on an expedited basis so that SCE's preferred option can be implemented by the end of the first quarter in 2012. As such, SCE will continue to evaluate potential opportunities for a residential opt-out program that could provide a lower cost option for opt-out program participants and other SCE customers that can be included in SCE's application for a final opt-out program.<sup>10</sup>

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<sup>5</sup> *Id.*, at 2.

<sup>6</sup> *Id.* at 23-24.

<sup>7</sup> *Id.*, at 28.

<sup>8</sup> *Id.*, at 34-35, note 71.

<sup>9</sup> *Id.*, at 17-18.

<sup>10</sup> SCE Proposal at 4.

The SCE Proposal was prepared and filed prior to the PG&E PD, and while PG&E itself remained opposed to implementing an analog opt-out alternative. Since the PG&E PD now includes such an option, as well as other modifications to PG&E's position that are responsive to consumer and public concerns, these improvements must, as a matter of statewide consistency, also be made applicable to SCE.

**III. THE COMMISSION SHOULD REQUIRE SCE TO INCLUDE IN ITS OPT-OUT APPLICATION ALL OF THE SIGNIFICANT COMPONENTS AND PROCEDURAL REQUIREMENTS IMPOSED ON PG&E**

The PG&E PD addresses several of the concerns reflected in the minimum components of an opt-out plan urged by CPA in its Application through implementing an analog option, making it available to all PG&E subscribers whether or not SmartMeters have already been installed on the same terms, commencing further proceedings concerning community opt-out plans, and investigating cost definition, cost allocation and ratemaking issues. All of these and the other procedural and substantive components set forth in the PG&E PD should be imposed on SCE and required as part of its Opt-out Application. The Opt-out rights of SCWE customers should be no less than those of PG&E Customers.

CPA continues to assert its position that the Commission should review and revise its positions as stated in the PG&E PD that CEQA and ADA do not apply to utility construction and implementation of wireless mesh networks as part of their smart meter programs. If the Commission is truly intending to preempt the authority of local governments to enforce these statutes upon request by utility customers in their jurisdictions, then it must do so itself.

**IV. THE COMMISSION SHOULD FURTHER INVESTIGATE THE SECURITY AND PRIVACY OF SCE CUSTOMER DATA UNDER THE WIRELESS MESH NETWORK CONFIGURATIONS SCE IS IMPLEMENTING**

SCE has stated that:

Security protocols for Edison SmartConnect™ are adapted from the banking and defense sectors in order to ensure the highest levels of security and privacy. All information transmitted between meters and the utility is encrypted using U.S. government-approved and recommended standards, and SCE works with federal and state agencies to stay ahead of cyberthreats.<sup>11</sup>

This statement, of course, does not assert that these actions are effective to any particular degree, or that parties intent on defeating these attempts to preserve customer privacy and network safety have not or cannot do so. The press is full of examples of how banking industry data bases, despite their use of what these large institutions deemed adequate security measures, have been “hacked” or compromised, with the result that private information of millions of citizens have been compromised.<sup>12</sup> There is also information purporting to show the efforts at security are easily defeated.<sup>13</sup>

While CPA recognizes that public discussion of security measures could impede their effectiveness if not properly conducted, the Commission remains subject to statutory obligations to ensure the safety and reliability of the systems of SCE and other

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<sup>11</sup> See, <http://www.sce.com/info/smartconnect/facts/privacyfaq.htm>.

<sup>12</sup> See, e.g., New York Times article from June, 2011, describing theft of personal data of 200,000 credit card holders despite its security efforts. Available at <http://www.nytimes.com/2011/06/10/business/10citi.html?pagewanted=all>.

<sup>13</sup> See, e.g., <http://www.greenbiz.com/blog/2009/09/01/four-ways-hack-smart-grid>; <http://www.out-law.com/en/articles/2012/january-/smart-meter-technology-is-privacy-intrusive-researchers-claim>.

electric utilities. At a bare minimum the Commission should seek comment on, and implement, a requirement that utilities conduct frequent periodic independent field testing of the inability of third parties to gain access to, alter, or replicate wireless mesh smart meter information transmissions, and that the installation, repair, and maintenance of these network components ensures the ongoing privacy of such data. For example, when a meter is repaired or reactivated, what steps are taken to ensure that the encryption capabilities of the meter (if any) are properly activated and tested?

CPA is also concerned about the potential for harm to the grid and other subscribers if such incidents occur. While perhaps the Commission itself cannot become the ultimate evaluator of complex security practices, PG&E and SCE have both asserted the broad and pervasive regulation of the Commission as the reason what concerned local governments cannot intervene in these questions when their constituents raise concerns.

## **V. CONCLUSION**

CPA therefore urges the Commission to require SCE's Opt-out plan to include the substantive and procedural components of the PG&E PD, and that the Commission include in its review of SCE's opt-out Application, as well as those of the other utilities

implementing wireless mesh networks, evaluation of privacy and security practices as implemented and periodic confirmation of the safety and privacy of customer data.

Dated: January 17, 2012, at Tiburon, California.

Respectfully submitted,

By:  /s/ James M. Tobin

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