

**M e m o r a n d u m**

**Date:** July 18, 2008

**To:** The Commission  
(Meeting of July 31, 2008)

**From:** Pamela Loomis, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject: SB 1491 (McClintock) – Electric utilities: remotely controlled  
thermostats: customer consent.  
Amended June 30, 2008**

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE**

**SUMMARY OF BILL:**

SB 1491 would prohibit an electric utility (investor-owned utility, public-owned utility and electrical cooperative) from operating a remotely controlled device that can control the functioning of a customer's appliances or equipment without the customer's consent. Additionally, the bill would allow utility customers to revoke any prior consent given to the electric utility for operation of a remote controlled device.

**SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:**

This bill is unnecessary because all IOU load control programs today are voluntary, opt-in programs. If existing participants in load control programs revoke their consent pursuant to this bill, a shortfall in the IOUs' Resource Adequacy Requirement may result – a shortfall that may have to be met via procurement of supply-side resources. This bill may also result in greater vulnerability to grid reliability since load control programs are typically used to respond to system emergencies.

**DIVISION ANALYSIS (Energy Division):**

- There are currently 700 MWs of demand response capability provided by the IOUs' load control programs. The IOUs count on load control programs to meet their Resource Adequacy Requirements (RAR). In other words, a utility counts on the MWs provided by load control programs as a resource in meeting its expected peak demand. By allowing a customer to revoke the consent they have already provided, the bill could result in a lower amount of load reduction capacity provided by the programs this summer. If that should happen, the IOU(s) would be 'short' in terms

of RAR, and are not required by existing policy to replace the lost MWs with a similar resource (another DR program for example). The IOU is required by Commission policy to demonstrate that it has closed the shortfall by its next monthly RAR filing, which would almost certainly result in the procurement of expensive supply-side resources to cover the gap. Additionally, supply side resources that are intended to meet peak loads (which load control programs are designed to address) typically have higher emissions which contribute to the state's greenhouse gas problem.

- If a portion of existing participants decide to revoke their consent, then grid reliability could be threatened this summer by the loss of demand reduction those participants provided. IOU load control programs are typically used in emergency situations such as when a CAISO Stage 2 alert is declared or when there is a local transmission line failure. Load control programs are critical to averting rotating outages as they provide near immediate demand relief when the grid is reaching its capacity limits or if there is a localized congestion caused by transmission line failure.
- The value of allowing customers the right to allow or disallow utility control of their appliances/equipment is already addressed by the voluntary nature of the IOU load control programs. All IOU load control programs today are voluntary, opt-in programs. This means that if a utility customer does not want an IOU-controlled device affecting his appliances/equipment, he/she simply chooses not to enroll in the program. For customers who are already on IOU load control programs, the IOUs have various options to opt-out. For SCE customers, they may opt-out of the program after their commitment period (one year) is over. For SDG&E customers, if they opt-out during their commitment period (the summer season), they forfeit the incentive payment. For PG&E customers, they may opt-out at any time.
- The bill could create ratepayer inequity. SCE and SDG&E provide their customers an annual bill credit for their participation in load control programs. PG&E provides a one-time enrollment incentive. The bill is silent as to whether a revocation of prior consent by the customer also means disqualification for the bill credit. The IOUs fund the incentives through rates charged to their customer base as all customers benefit from the demand reduction provided by the participants. Thus, the possibility that participants could still receive their bill credits while denying the IOU the ability to operate the control device is unfair to the IOUs' non-participating customers who are funding the incentive. Essentially IOU ratepayers are paying the costs of incentives for a sub-group of customers but with no benefit in return.

#### **PROGRAM BACKGROUND:**

- PG&E, SCE and SDG&E offer air conditioner (AC) cycling programs to their retail customers that involve the utility's remote operation of devices that can turn off (or "cycle") a customer's air conditioner or raise the thermostat a few degrees. These programs offer customer an incentive (an annual bill credit or a one-time enrollment credit) for their willingness to be cycled on and off during the summer when the IOU

needs demand reductions to maintain grid stability. The programs are voluntary in that customers enroll in the programs and customers may choose to opt-out of the programs. There are approximately 700 MWs of demand response capability provided the IOU AC cycling programs. An additional 230 MWs are anticipated in the next three years. The programs count toward meeting an IOU's Resource Adequacy Requirement.

- The costs for AC cycling programs (incentives, administration, and equipment) are recovered through rates that are spread across the IOUs' ratepayers. All of the IOUs' ratepayers benefit from these programs in that the demand reductions provided by the programs help avert rotating outages which are highly disruptive for both residential and commercial customers.
- AC cycling programs are one of many demand response programs operated by the IOUs. The CPUC has prioritized demand response as a key energy resource to meet California's growing energy needs.

**LEGISLATIVE HISTORY:**

None.

**FISCAL IMPACT:**

None.

**STATUS:**

This bill is awaiting a vote on the Assembly Floor, after which it will return to the Senate for a final vote.

**SUPPORT/OPPOSITION:** (As of 6/23/08 Asm U&C analysis)

Support: California Business Properties Association (CBPA); Southern California Edison (SCE)

Oppose: None on file.

**STAFF CONTACT:**

Pam Loomis, Director  
Office of Governmental Affairs

(916) 327-8441  
[pcl@cpuc.ca.gov](mailto:pcl@cpuc.ca.gov)

**Date:** July 18, 2008

**BILL LANGUAGE:**

BILL NUMBER: SB 1491 AMENDED  
BILL TEXT

AMENDED IN ASSEMBLY JUNE 30, 2008  
AMENDED IN SENATE MAY 14, 2008  
AMENDED IN SENATE MAY 1, 2008  
AMENDED IN SENATE APRIL 22, 2008

INTRODUCED BY Senator McClintock

FEBRUARY 21, 2008

~~An act to add Section 18934.10 to the Health and Safety Code, and~~ An act to add Chapter 5 (commencing with Section 8370) to Division 4.1 of the Public Utilities Code, relating to remotely controlled devices.

LEGISLATIVE COUNSEL'S DIGEST

SB 1491, as amended, McClintock. ~~Building standards.~~  
~~electric~~ Electric utilities: remotely controlled devices: programmable communicating thermostats.

~~The California Building Standards Law provides for the promulgation of building standards by state agencies by requiring all state agencies that adopt or propose adoption of any building standard to submit the building standard to the California Building Standards Commission for approval or adoption.~~

~~This bill would prohibit the commission from adopting or approving a building standard that requires installation of a device that may be controlled remotely by any person or entity other than the utility customer, including a programmable communicating thermostat equipped with a nonremovable radio data system communications device that is compatible with the default statewide demand reduction communications system used by utilities to send price and emergency signals, unless all of certain conditions apply to the device.~~

*(1) Under existing law, the Public Utilities Commission is vested with regulatory authority over public utilities, including electrical corporations, local publicly owned electric utilities, and electrical cooperatives.*

~~The~~

*This bill would prohibit an electric utility, defined as including electrical corporations, local publicly owned electric utilities, or electrical cooperatives, from operating a remotely controlled device, as defined, without a subscriber's consent. The bill would authorize a subscriber to revoke any prior consent given to an electric utility to operate a remotely controlled device for the subscriber's premises. By placing requirements upon local publicly owned electric utilities, which are entities of local government, the bill would impose a state-mandated local program.*

*(2) The California Constitution requires the state to reimburse*

local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~ yes .

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

~~SECTION 1. Section 18934.10 is added to the Health and Safety Code, to read:~~

~~18934.10. The commission shall not adopt or approve a building standard that requires installation of a device that may be controlled remotely by any person or entity other than the utility customer, including, but not limited to, a programmable communicating thermostat equipped with a nonremovable radio data system communications device that is compatible with the default statewide demand reduction communications system used by utilities to send price and emergency signals, unless all of the following conditions apply to the device:~~

~~(a) The device shall be installed without default settings.~~

~~(b) Only the utility customer may authorize remote control of the device by another person or entity.~~

~~(c) The utility customer retains the right to deny access to or to override a remotely controlled setpoint at any time.~~

~~SEC. 2. SECTION 1.~~ Chapter 5 (commencing with Section 8370) is added to Division 4.1 of the Public Utilities Code, to read:

CHAPTER 5. REMOTELY CONTROLLED DEVICES

8370. For purposes of this chapter, the following terms have the following meanings:

(a) "Electric utility" means an electrical corporation, as defined in Section 218, a local publicly owned electric utility, as defined in Section 9604, or an electrical cooperative, as defined in Section 2776.

(b) "Remotely controlled device" means any device that is within a customer's premises that can be operated by command communicated from outside the customer's premises by a person or entity other than the subscriber or a resident, to control the functioning of electrical equipment or appliances within the customer's premises, and includes a programmable communicating thermostat equipped with a nonremovable radio data system communications device that is compatible with the default statewide demand reduction communications system used by electric utilities to send price and emergency signals.

8372. (a) No electric utility shall operate a remotely controlled device without the subscriber's consent.

(b) A subscriber may revoke any prior consent given to an electric utility to operate a remotely controlled device for the subscriber's premises. A subscriber may deny access to, or override, a remotely controlled device, at the subscriber's discretion.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California

*Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.*