



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Application of Pacific Gas and Electric Company for approval of Modifications to its SmartMeter™ Program and Increased Revenue Requirements to Recover the Costs of the Modifications (U39M).

Application 11-03-014
(Filed March 24, 2011)

And Related Matters.

Application 11-03-015
Application 11-07-020

REPLY BRIEF OF CENTER FOR ELECTROSMOG PREVENTION ON SMART METER OPT OUT RESTRICTIONS IMPOSED BY AMERICANS WITH DISABILITIES ACT OR CALIFORNIA PUBLIC UTILITIES CODE 453(B)

Pursuant to Rule 13.11 of the California Public Utilities Commission (CPUC or Commission) Rules of Practice and Procedure, the Center for Electrosmog Prevention (CEP) is filing this reply brief pursuant to the schedule set by Assigned Commissioner's "Ruling Amending Scope of Proceeding to Add a Second Phase" issued on June 8, 2012, and the extension provided by the assigned Administrative Law Judge on June 27, 2012. The issues addressed by this brief include the Americans with Disabilities Act (ADA) or California Public Utilities code 453(b) (Section 453) limitations on Opt-out Fees and the CPUC's ability to adopt Opt-Out fees for residential customers with a disability and/or a medical condition who need an analog meter for related reasons.

It appears that there is confusion on the part of the utilities as to what constitutes a disabled person, a person with specifically covered medical conditions and other characteristics as defined in 453, and the intent of applicable discrimination laws, including ADA. There is some overlap, but each of these categories may be considered discreet from the other. The ADA and 453 are not identical and citing them both together, interchangeably, shows misunderstanding of the language, content, and intent of these laws.

The utilities are on notice through the Parties' briefs, in addition to the thousands of complaints sent in to their offices and the CPUC, that medical concerns, medical conditions, and

disabilities are a major factor in the selection of opt-out and are considered the primary reason for opting out from the use of smart meters to measure utility use and for this opt-out proceeding. No one, including the disabled and those with medical conditions, wants to be harmed or put at risk by the smart meters, which have been wrongly and aggressively forced on the public without consideration for health and medical impacts.

People who are disabled within the meaning of the ADA¹ are protected by the ADA from being adversely affected by CPUC orders if those orders prevent the disabled from having equal access to public services². The ADA is a statutory scheme designed to protect the rights of certain persons with disabilities, guaranteeing disabled people equal access to public services, covering the actions and services of state governments, public and private utilities, as are other related laws that preceded the ADA, such as Section 504 of the Rehabilitation Act of 1973. Section 453 concentrates on protecting people with a wide variety of medical conditions and other characteristics such as genetic factors from discrimination. The broader protection that Section 453 affords goes far beyond disabilities.

Recent reports^{3 4} from 40 independent experts and the American Academy of Environmental Medicine decry the use of smart meters for everyone as a very serious public health risk, directly related to the development or exacerbation of medical conditions and/or disabilities. The AAEM recommends that smart meters should not be placed in locations that could affect persons protected by the ADA, Section 504 (29 USC 794), or Section 453, such as, but not limited to:

- Neurodegenerative diseases (Parkinson's disease, Alzheimer's disease, and Amyotrophic Lateral Sclerosis),

¹ Qualified individual with a disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment. 28 CFR 35.104

² 28 CFR 35.130

³ <http://www.electrosmogprevention.org/usa-smart-meter-news/smart-meters-correcting-the-gross-misinformation/>

⁴ <http://aaemonline.org/AAEMEMFmedicalconditions.pdf>

- Neurological conditions (Headaches, depression, sleep disruption, fatigue, dizziness, tremors, autonomic nervous system dysfunction, decreased memory, attention deficit disorder, anxiety, visual disruption),
- Fetal abnormalities and *pregnancy*,
- Genetic defects and cancer, and
- Liver disease and genitourinary disease.
- Neurological conditions such as paresthesias, somnolence, cephalgia, dizziness, unconsciousness, depression
- Musculoskeletal effects including pain, muscle tightness, spasm, fibrillation
- Heart disease and vascular effects including arrhythmia, tachycardia, flushing, edema
- Pulmonary conditions including chest tightness, dyspnea, decreased pulmonary function
- Gastrointestinal conditions including nausea, belching
- Ocular (burning)
- Oral (pressure in ears, tooth pain)
- Dermal (itching, burning, pain)
- Autonomic nervous system dysfunction (dysautonomia).

The proposed opt-out is contrary to both the ADA and Section 453 of the California Public Utilities Code, because there is no provision for disabled people, or those with medical conditions, to use the public service of electric utility service without smart meters, without being charged for it⁵. This would be similar to denying a person in a wheelchair any access to services, with the exception of a "for-fee ramp" that people would use for "any reason or no reason at all".

CEP calls for the solution to be no opt-out fees or extra costs with an analog opt-out for any customers indefinitely, which is what the state of Vermont⁶ has successfully accomplished.

⁵ Decision Numbers: [D1204019](#), [D1204018](#), [D1202014](#)

⁶ <http://www.leg.state.vt.us/docs/2012/journal/SJ120502.pdf>

(State of Vermont) Pages 1905 and 1906

Sec. 15. 30 V.S.A. § 2811 is added to read:

§ 2811. SMART METERS; CUSTOMER RIGHTS; REPORTS

(a) Definitions. As used in this section, the following terms shall have the following meanings:

(1) "Smart meter" means a wired smart meter or a wireless smart meter.

(2) "Wired smart meter" means an advanced metering infrastructure device using a fixed wire for two-way communication between the device and an electric company.

The approval and collection of an opt-out fee violates the ADA and the Public Utilities Code requirement that disabled persons or people with covered medical conditions who must avoid RF radiation or RF-sensitive customers be granted “reasonable accommodation” and that they be treated in a non-discriminatory fashion. The opt-out fees in this proceeding restrict the ability of a customer to choose an analog electromechanical meter instead of a wireless SmartMeter by charging fees, and constitute an illegal surcharge. The fees discriminate against customers based on their medical status because it is medically required while all other Opt-Out Program customers pay these charges to cover Opt-Out Program costs only if they choose to do so.

(3) “Wireless smart meter” means an advanced metering infrastructure device using radio or other wireless means for two-way communication between the device and an electric company.

(b) Customer rights. Notwithstanding any law, order, or agreement to the contrary, an electric company may install a wireless smart meter on a customer’s premises, provided the company:

(1) provides prior written notice to the customer indicating that the meter will use radio or other wireless means for two-way communication between the meter and the company and informing the customer of his or her rights under subdivisions (2) and (3) of this subsection;

(2) allows a customer to choose not to have a wireless smart meter installed, at no additional monthly or other charge; and

(3) allows a customer to require removal of a previously installed wireless smart meter for any reason and at an agreed-upon time, without incurring any charge for such removal.

(c) Reports. On January 1, 2014 and again on January 1, 2016, the commissioner of public service shall publish a report on the savings realized through the use of smart meters, as well as on the occurrence of any breaches to a company’s cyber-security infrastructure. The reports shall be based on electric company data requested by and provided to the commissioner of public service and shall be in a form and in a manner the commissioner deems necessary to accomplish the purposes of this subsection. The reports shall be submitted to the senate committees on finance and on natural resources and energy and the house committees on commerce and economic development and on natural resources and energy.

(d) Health report.

(1) On or before January 15, 2013, the commissioner of health and the commissioner of public service shall jointly submit a report to the senate committee on finance and the house committee on commerce and economic development. The report shall include: an update of the department of health’s 2012 report entitled “Radio Frequency Radiation and Health: Smart Meters”; a summary of the department’s activities monitoring the deployment of wireless smart meters in Vermont, including a representative sample of post deployment radio frequency level testing; and recommendations relating to evidence-based surveillance on the potential health effects of wireless smart meters.

(2) The commissioner of public service, in consultation with the commissioner of health, shall select and retain an independent expert, not an employee of the state, to perform the research and writing of the report identified in subdivision (1) of this subsection. The commissioner of public service may allocate the costs of retaining the independent expert to electric utilities in accordance with sections 20 and 21 of this title (particular proceedings; personnel; assessment of costs).

The AAEM, in its July 12, 2012, "American Academy of Environmental Medicine Recommendations Regarding Electromagnetic and Radiofrequency Exposure" recommends⁷ to physicians and patients that no Smart Meters be on affected patients' homes, that Smart Meters be removed within a reasonable distance of patients' homes depending on the patients' perception and/or symptoms, and that no collection meters be placed near patients' homes depending on patients' perception and/or symptoms.

Briefs of SCWSSM, Network, CforAT, PIF, SSM Irvine, Marin County, and Wilner.

CEP supports the briefs and positions, in general, of Southern Californians for Wired Solutions to Smart Meters (SCWSSM), the EMF Safety Network, Center for Accessible Technology, People's Initiative Foundation, Stop Smart Meters Irvine, County of Marin, and Wilner and Associates.

Aglet Reply Comments of July 21, 2012.

We agree with Aglet that the utilities' positions that 'treating everyone the same does not constitute discrimination' are incorrect. We agree with Aglet's recommendations to eliminate fees for those who opt-out for medical reasons. However, CEP asserts *that no customer should be forced to have a smart meter*, as there are many undesirable affects and aspects (both medical and non-medical) of smart meters, not the least of which is medical risk. ***The AAEM warns that those with medical conditions may have these as a result of RF radiation exposure***⁸, just as the WHO warns that RF radiation exposure may cause cancer⁹. No one should be forced to assume that risk, just as no one should be forced to endure any potentially risky toxic exposure, such as second-hand smoke or chemicals. Opt-outs should continue to be available for anyone who wishes them, so we respectfully disagree with Aglet's conclusion that smart meter opt-outs be reserved only for those with medical reasons¹⁰.

CEP calls for an end to all fees and provision of any additional modifications to meet the needs of disabled individuals, such as the establishment of a "zone of safety" and allowances for

⁷ <http://aaemonline.org/AAEMEMFmedicalconditions.pdf>

⁸ Ibid

⁹ [IARC CLASSIFIES RADIOFREQUENCY ELECTROMAGNETIC FIELDS AS POSSIBLY CARCINOGENIC TO HUMANS](http://www.iarc.fr/en/media-centre/pr/2011/pdfs/pr208_E.pdf) http://www.iarc.fr/en/media-centre/pr/2011/pdfs/pr208_E.pdf

¹⁰ Reply Brief of Aglet p. 3

