

Decision **PROPOSED DECISION OF ALJ YIP-KIKUGAWA (Mailed 3/15/2012)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of 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.

Application 11-07-020
(Filed July 26, 2011)

DECISION MODIFYING DECISION 08-09-039 AND ADOPTING AN OPT-OUT PROGRAM FOR SOUTHERN CALIFORNIA EDISON COMPANY'S EDISON SMARTCONNECT PROGRAM

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DECISION MODIFYING DECISION 08-09-039 AND ADOPTING AN OPT-OUT PROGRAM FOR SOUTHERN CALIFORNIA EDISON COMPANY'S EDISON SMARTCONNECT PROGRAM

1. Summary

This decision modifies Decision 08-09-039, which adopted a settlement between Southern California Edison Company (SCE) and the Division of Ratepayer Advocates to implement SCE's Advanced Metering Infrastructure Project, known as the Edison SmartConnect Program. The Edison SmartConnect Program is modified to include an option for residential customers who do not wish to have a wireless smart meter installed at their location. This option shall have the customer retain the meter currently installed at their location or receive the meter form (i.e., an analog meter or a non-analog, non-smart digital meter) that had been at the customer's location prior to the installation of a wireless smart meter.

This new opt-out option is a service that we are adopting with this decision. This opt-out option is a service because the standard for metering has been transitioned throughout the country and for the most part the world from the older technology, analog meters, to today's technology, smart meters. In this decision we are not reversing that transition, however, we do approve an option for those customers who, for whatever reason, would prefer to not have a wireless smart meter. This option to move away from the standard will require SCE to incur costs such as purchasing and maintaining two different types of meters, the monthly cost of reading a non-communicating meter, and the development of duplicate back office systems. As a result, this decision further finds that customers electing the opt-option shall be responsible for costs associated with providing the option. Issues concerning the actual costs to be

recovered by SCE to offer the opt-out option and cost allocation will be addressed in a separate phase of this proceeding.

To allow residential customers to begin selecting the opt-out option immediately, this decision adopts interim fees and charges, which will be subject to adjustment upon conclusion of the second phase of this proceeding. A Non-California Alternative Rates for Energy (CARE) customer electing the opt-out option shall be assessed an initial fee of \$75.00 and a monthly charge of \$10.00. A CARE customer electing the opt-out option shall be assessed an initial fee of \$10.00 and a monthly charge of \$5.00.

This decision also authorizes SCE to establish a new two-way memorandum account to track revenues and costs associated with providing the opt-out option until a final decision on recoverable costs and cost allocation is adopted.

This decision further directs SCE to file a Tier 1 Advice Letter implementing the opt-out option and to establish a Smart Meter Opt-Out Tariff within 15 days of the effective date of this decision. Additionally, the September 21, 2011 Assigned Commissioner's Ruling directing SCE to establish a delay list shall no longer be in effect and all customers currently on the delay list shall be transitioned to a wireless smart meter unless they elect to participate in the opt-out option.

Finally, this decision denies *Motion to Request the California Department of Public Health to Review the Electric and Magnetic Fields Produced by Wireless Smart Meters* filed by Southern Californians for Wired Solutions to Smart Meters.

2. Background

In Decision (D.) 08-09-039, the Commission adopted a settlement between Southern California Edison Company (SCE) and the Division of Ratepayer

Advocates (DRA) to implement SCE's Advanced Metering Infrastructure Project, the Edison SmartConnect Program. As part of the program, SCE would replace existing meters with advanced digital meters capable of measuring energy usage on a time-differentiated basis and transmitting this data to SCE through radio transmission.¹

On July 26, 2011, the 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 Action² (collectively, Joint Applicants), filed Application (A.) 11-07-020 seeking modification of D.08-09-039 and an order requiring SCE to file an application for approval of a smart meter opt-out plan (Joint Application). Joint Applicants note that citizens in Santa Barbara County are served by both Pacific Gas and Electric Company (PG&E) and SCE. They contend that failing to require SCE to file an opt-out option "would result in an arbitrary denial of opt-out rights to some California citizens based solely on which side of a service territory line they live."³ SCE filed a timely response to the Joint Application.

¹ These meters are referred to in this decision as "wireless smart meters."

² The Joint Application originally included three other applicants - the County of Santa Barbara, California; Montecito Association; and Stop Smart Meters. Decision 11-11-006 granted a Motion to Amend Application, filed on August 8, 2011, to remove these three entities as applicants.

³ Joint Application at 14.

A combined workshop to consider opt-out options for SCE, PG&E, San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) was held on September 14, 2011. In response to comments made at the workshop, the Assigned Commissioner issued a ruling on September 21, 2011 specifying the minimum requirements that SDG&E, PG&E and SCE must follow in response to customer requests to delay the installation of a wireless smart meter.⁴ Additionally, the assigned Administrative Law Judge (ALJ) issued a ruling on October 18, 2011, seeking clarification concerning the frequency and duration of radio frequency (RF) emissions from wireless smart meters.⁵

On November 16, 2011, the Commission issued D.11-11-006, which directed SCE to file a proposal for Commission consideration that would provide an alternative to customers who do not wish to have a smart meter with wireless radio transmission. This decision, however, denied Joint Applicants' proposed modifications to D.08-09-039.

SCE filed its proposal on November 28, 2011. Pursuant to the assigned ALJ's electronic ruling on December 16, 2011, DRA and Consumer Power Alliance (CPA) filed comments on SCE's proposal on January 17, 2012.⁶ SCE filed reply comments on January 27, 2012.

⁴ See *Assigned Commissioner's Ruling Concerning Customer Requests to Delay Installation of a Smart Meter*, issued September 21, 2011.

⁵ See *Administrative Law Judge's Ruling Seeking Clarification*, issued October 18, 2011. This ruling also applied to PG&E, SDG&E and SoCalGas.

⁶ Southern Californians for Wired Solutions to Smart Meters (SCWSSM) submitted its comments to the ALJ in an *ex parte* communication on January 17, 2012. Pursuant to 8.3(k) of the Commission's Rules of Practice and Procedure: "The Commission shall

Footnote continued on next page

3. SCE's Proposal

Pursuant to D.11-11-006, SCE filed a compliance proposal on November 28, 2011 which included an analysis on the technological feasibility and related cost to provide the following opt-out options:⁷

1. Analog meter – Under this option, an electromechanical (analog) meter would be used in place of the wireless smart meter. This option would require the meter to be read manually every month.
2. Digital meter with no radio installed – Under this option, a digital meter, with no radio communications ability, would be used in place of the wireless smart meter. Some of these meters may be able to store interval energy consumption data. This option would require the meter to be read manually every month.
3. Smart meter with radio transmission turned off – This option would retain the existing smart meter, but have the radio transmission capability turned off. Under this option, the meter would need to be read manually every month.
4. Wired smart meter – Under this option, interval energy consumption data would be transmitted to the utility through a traditional telephone line, fiber optic, a power line carrier or other wired technologies. Since this option would allow the meter to communicate with the utility, the meters would not need to be read manually every month.

Of the four options under consideration, SCE's preferred option is "a non-communicating 'radio-off' meter ... with a monthly interval meter read

render its decision based on the evidence of record. Ex parte communications, and any notice filed pursuant to Rule 8.3, are not a part of the record of the proceeding." Accordingly, we have not considered SCWSSM's comments in this decision.

⁷ D.11-11-006, Ordering Paragraph 2.

performed by SCE's personnel."⁸ SCE states that this option "most closely supports California's Energy Action Plan (Updated)" and better integrates with the Edison SmartConnect Program.⁹

SCE states that it is not currently feasible to disable the radio transmission capability of the Edison SmartConnect meter remotely or to turn the wireless radio on remotely at specified periods to transmit usage data. It notes that since the radios on the Edison SmartConnect meters are not designed to allow these capabilities, adding these functions would require significant changes to the existing Edison SmartConnect system.¹⁰ Further, SCE states that adding these functions would "fundamentally change SCE's Edison SmartConnect back office systems" and result in significant implement costs.¹¹

SCE estimates that approximately 61,000 of its residential customers would select the opt-out option.¹² It further notes that its cost estimates assume that only one opt-out option will be offered. Finally, SCE states that its estimated costs are for the 2012-2014 time period and that any costs incurred after that period would be included in future General Rate Case applications.

SCE states that while an analog meter opt-out option is feasible, it is not consistent with California's Energy Action Plan, as "it does not provide customers with interval billing data to support time-differentiated or dynamic

⁸ *Southern California Edison Company's Smart Meter Technological Feasibility and Cost Information Compliance Proposal Pursuant to D.11-11-006 (SCE Proposal)* at 2.

⁹ *SCE Proposal* at 2-3.

¹⁰ *SCE Proposal* at 5-6.

¹¹ *SCE Proposal* at 6.

¹² *SCE Proposal* at 7, fn. 9.

rates, such as time-of-use, peak time rebate, or critical peak pricing.”¹³ SCE further notes that offering this option would require it to maintain its legacy billing systems and data gathering processes.¹⁴ Finally, SCE states that while there is a slight cost savings with customer self-reading of meter and having an SCE employee read the meter on a quarterly or semi-annual basis, there are “significant uncertainty in terms of obtaining accurate and timely customer meter reads.”¹⁵

SCE does not recommend that a wired meter opt-out option be offered. It states that this option would need to connect to its back office systems via a dedicated telephone connection or through a power line carrier (PLC) device. “[B]oth options are fundamentally different from SCE’s Edison SmartConnect system, thus these options would require significant system redesign to be able to receive such information into SCE’s back office systems.”¹⁶ SCE also notes that the telephone-based wired meter option would require the development of new security measures.¹⁷ It further states that the PLC-based wired meter option could require the installation of a pole mount collector for each customer, depending upon the physical distribution of the opt-out program participants.¹⁸ As a result, SCE estimates that the telephone-based wired meter option would

¹³ *SCE Proposal* at 12.

¹⁴ *SCE Proposal* at 8.

¹⁵ *SCE Proposal* at 10.

¹⁶ *SCE Response* at 15.

¹⁷ *SCE Proposal* at 16.

¹⁸ *Id.*

cost approximately three times more than the other opt-out options, while a PLC-based wired meter option would cost 12 times more.¹⁹

SCE states that a digital meter with no radio installed (radio-out) and a wireless smart meter with the radio turned off (radio-off) are both feasible opt-out options. It notes that while both of these options would require the meters to be read manually, SCE personnel could still collect interval energy consumption data.²⁰ SCE further states that both options would require the vendor to exchange the entire meter. Therefore, the cost to implement these options would be the same, regardless of whether the customer currently has an analog meter or a SmartConnect meter.²¹ As with the analog meter opt-out option, SCE recommends that SCE employees read the meters monthly so that interval energy consumption data can be collected. Although the radio-out and the radio-off options are fairly similar, SCE prefers the radio-off option. It states that this option “best integrates with SCE’s Edison SmartConnect Program, as authorized by the Commission in D.08-09-039, by leveraging the investments in the meter types, back office systems, and business integration processes.”²²

Based on its assumptions, SCE estimates that the costs for each of the options would be:

¹⁹ *SCE Proposal* at 17.

²⁰ *SCE Proposal* at 12, 19.

²¹ *SCE Proposal* at 13, 20.

²² *SCE Proposal* at 21.

TABLE 1
ESTIMATED COSTS FOR OPT-OUT OPTIONS²³

	Analog Meter	Radio-Out	Radio-Off
<u>Cost of Option</u>			
Total Expense	\$43,571,506	\$50,913,412	\$50,913,412
Total Capital Cost	<u>24,474,275</u>	<u>22,111,116</u>	<u>22,111,116</u>
Total Cost of Option	\$64,045,780	\$73,024,528	\$73,024,528
Initial Fee*			
Non-CARE	\$91	\$91	\$91
CARE	\$73	\$73	\$73
Monthly Fee*			
Non-CARE	\$25	\$30	\$30
CARE	\$20	\$24	\$24
Exit Fee*			
Non-CARE	\$91	\$91	\$91
CARE	\$73	\$73	\$73

Finally, SCE states that its fees assume that all costs associated with offering the opt-out option will be recovered from the opt-out customers. SCE states that if the Commission adopts a fee structure that will not allow it to recover all costs from opt-out customers, SCE should be allowed to utilize a memorandum account, with monthly transfers to SCE's Base Revenue Requirement Balancing Account, to ensure full recovery of costs.²⁴

²³ SCE Proposal at 13, 15, 21 and Attachment Summary. SCE did not provide cost estimates for offering a wired meter opt-out option.

²⁴ SCE Proposal at 22.

4. Parties' Comments

CPA proposes that SCE's opt-out plan should "include the substantive and procedural components of the PG&E PD" for purposes of statewide consistency.²⁵ It notes that this would include:

- Offering an analog meter opt-out option;
- Allowing all PG&E customers to select the opt-out option, regardless of whether they currently have a SmartMeter installed;
- Further consideration of whether to allow a community opt-out plan;
- Further consideration of cost and cost allocation issues.²⁶

CPA further asserts that there must be further investigation on the security and privacy of SCE customer data under SCE's wireless mesh network. It notes that there have been news stories discussing how various banking industry databases have been compromised.²⁷ As such, CPA believes review of SCE's opt-out proposal should include a review of SCE's, "as well as those of the other utilities implementing wireless mesh networks, evaluation of privacy and security practices."²⁸

²⁵ The proposed decision addressing PG&E's application to modify its Smart Meter Program was adopted by the Commission on February 1, 2012. This decision is D.12-02-014.

²⁶ *Comments of Consumers Power Alliance on Southern California Edison Company's Smart Meter Technological Feasibility and Cost Information Compliance Proposal Pursuant to D.11-11-006 (CPA Comments)*, filed January 17, 2012 at 6.

²⁷ *CPA Comments* at 7.

²⁸ *CPA Comments* at 8-9.

DRA urges the Commission to reject SCE's proposed cost recovery mechanism. DRA notes that while SCE does not explicitly request that the Commission approve its estimated revenue requirement for 2012-2014, the company does request a cost recovery mechanism that would allow full recovery of its costs. DRA recommends that if SCE is authorized to establish a memorandum account, "the decision should include the same protections for ratepayers as recommended in DRA's Comments on Pacific Gas & Electric's Opt-Out Program."²⁹

DRA recommends that an analog meter opt-out option should be offered as a temporary or permanent opt-out option. It believes that if PG&E's customers are offered an analog meter opt-out option, SCE customers would likely be dissatisfied if they were not offered such an option. DRA contends that such an outcome would likely lead to legal challenges, resulting in creates uncertainty for SCE's opt-out program.³⁰

DRA further notes that SCE's filing indicates that the analog meter opt-out option would cost less than radio-off and radio-out options. As such, DRA prefers this option over the radio-out and radio-off options. Further, it notes that there are no mandatory TOU rates for residential customers at this time and maintains that "allowing a small subset of residential customers to retain an analog meter and consumption meter reads may have no impact at all on California's energy policy goals."³¹ DRA also maintains that since the costs to

²⁹ *Comments of the Division of Ratepayer Advocates on Southern California Edison Company's Smart Meter Opt-Out Proposal (DRA Comments)*, filed January 17, 2012, at 4.

³⁰ *DRA Comments* at 5.

³¹ *DRA Comments* at 6.

collect interval energy consumption data increase opt-out costs, this information should not be required unless an opt-out customer participates in a time-variant pricing tariff.³²

Finally, DRA maintains that there should be further consideration of potential costs savings associated with allowing customers to self-read meters, with quarterly or semi-annual true ups. DRA believes that SCE has understated the costs associated with customer self-reads, and therefore urges the Commission to further consider the potential cost savings by allowing customer self-read of meters.³³

In response to CPA and DRA's comments, SCE states that it is impracticable to offer an analog meter opt-out option as it "has used non-analog, non-smart meters in its service territory for many years."³⁴ Therefore, SCE requests that if the Commission ultimately decides to adopt an analog meter opt-out option for SCE residential customers, it should allow SCE to "reinstall the prior meter form at the customer's premises," which in some cases would be a non-analog, non-smart meter.³⁵

SCE also rebuts DRA's assertion that interval energy consumption data should not be collected until it is necessary to support an opt-out customer's

³² DRA Comments at 7.

³³ DRA Comments at 7-8.

³⁴ Southern California Edison Company's Response to Comments on Its Smart Meter Technological feasibility and Cost Information Compliance Proposal Pursuant to D.11-11-006 (SCE Response), filed January 27, 2012, at 2. As discussed above, SCWSSM's *ex parte* comments are not part of the record and not considered in this decision. As such, we do not consider SCE responses to these comments.

³⁵ SCE Response at 2.

participation in time variant pricing tariffs. It states that most residential customers are currently enrolled in Peak Time Rebate, which is a time variant pricing program.³⁶ As such, SCE maintains that the Commission should not adopt an opt-out option that would restrict the collection of interval energy consumption data, as it would impact the Commission's Smart Grid objectives.³⁷ SCE also recommends that the Commission not allow customer self-reads. It believes that while this may result in lower meter reading costs, any savings would be offset by increased costs associated with billing exceptions.³⁸

SCE further states that it plans to file updated costs associated with offering an opt-out option in the near future and "expects the Commission will find its updated costs reasonable."³⁹ To the extent these costs are found to be consistent with the scope of offering the option, SCE asserts that they should be adopted and not subject to an after-the-fact reasonableness review.⁴⁰

Finally, SCE contends that CPA's comments regarding privacy and cyber security are outside the scope of this proceeding. It notes that the Commission "adopted rules to protect the privacy of customer data in D.11-07-056" and that cyber security is to be addressed in the Smart Grid Proceeding, Rulemaking (R.) 08-12-009.⁴¹

³⁶ Under SCE's Schedule D, Peak Time Rebate would apply "upon the installation of an Edison SmartConnect™ meter and the meter is program ready."

³⁷ *SCE Response* at 3.

³⁸ *Id.*

³⁹ *SCE Response* at 4.

⁴⁰ *Id.*

⁴¹ *Id.*

5. Discussion

The issues and concerns raised by parties in this proceeding, such as privacy, smart meter accuracy and alleged health impacts, are similar to those raised in A.11-03-014 and A.11-03-015.⁴² We have addressed many of these issues in D.12-02-014, which modified PG&E's SmartMeter Program to include an analog meter opt-out option for residential customers who did not wish to have a wireless SmartMeter installed at their location. Given the similarity of issues and concerns, we believe that there is merit to considering DRA and CPA's recommendations to apply the opt-out option adopted for PG&E in D.12-02-014 to SCE.

As noted above, there are four opt-out approaches that could be offered to residential customers who do not wish to have a wireless smart meter. SCE's preferred alternative is the radio-off option, as it believes that option would best leverage existing meters and systems. However, it states that if an analog meter opt-out option is adopted, this option be modified to allow SCE to revert customers back to the meter form (i.e., analog or non-analog, non-smart meter) that was previously installed at the customer's premises. Both DRA and CPA urge that an analog meter opt-out option be adopted on a statewide basis. DRA notes that this option is feasible at this time since there are no mandatory time-of-use (TOU) rates for residential customers. It also contends that this option should be adopted since it is the lowest cost.

⁴² A.11-03-014 addresses PG&E's application to modify its SmartMeter Program to include an opt-out option. A.11-03-015 addresses an application by the Utility Consumers Action Network to modify SDG&E's Advanced Metering Infrastructure (AMI) Project to include a smart meter opt-out option.

In determining the best opt-out option to be adopted, we must balance the concerns expressed by customers against California's overall energy policy. As such, we believe that while residential customers should have the option to opt-out of receiving a wireless smart meter, this option should not impede state energy objectives. The ability to collect interval energy consumption data is a key component to attaining California's overall energy objectives, including matching customer demand with procurement of generation resources. In D.08-09-039, we determined that SCE's selected AMI system met state energy policy objectives and the minimum functional requirements established in R.06-02-001.⁴³ These functional requirements included:

- Implementation of the following price responsive tariffs for:
 - Residential and small commercial customers (200 kilowatts (kW)) on an opt out basis:
 - Two or three period TOU rates with ability to change TOU period length;
 - Critical peak pricing with fixed (day-ahead) notification;
 - Critical peak pricing with variable or hourly notification; and
 - Flat/inverted tier rates.
 - Large customers (200 kW to 1 megawatt (MW)) on an opt-out basis:
 - Critical peak pricing with fixed or variable notification;
 - TOU pricing; and
 - Two part hourly real-time pricing.

⁴³ D.08-09-039 at 41 & 44.

- Very large customers (over 1 MW) on an opt-out basis:
 - Two part hourly real-time pricing;
 - Critical peak pricing with fixed or variable notification; and
 - TOU pricing.
- Collection of usage data at a level of detail (interval data) that supports customer understanding of hourly usage patterns and how those usage patterns relate to energy costs.
- Customer access to personal energy usage data with sufficient flexibility to ensure that changes in customer preference of access frequency do not result in additional AMI system hardware costs.
- Compatibility with applications that utilize collected data to provide customer education and energy management information, customized billing, and support improved complaint resolution.
- Compatibility with utility system applications that promote and enhance system operating efficiency and improve service reliability, such as remote meter reading, outage management, reduction of theft and diversion, improved forecasting, workforce management, etc.
- Capability of interfacing with load control communication technology.

Based on the above, we believe that any selected opt-out option should have the capability of collecting interval energy consumption data. Nonetheless, as noted by DRA, there are currently no mandatory TOU tariffs for residential customers. Further, we have recently ordered PG&E to modify its SmartMeter Program to include an analog meter opt-out option for its residential customers. As such, we find that SCE's Edison SmartConnect Program should be modified to include an "analog" opt-out option for residential customers. This option, however, does not require SCE to install an analog meter at a customer location

that previously did not have an analog meter or to replace an existing non-analog, non-smart meter with an analog meter. Rather, the opt-out option shall have the customer retain the meter currently installed at their location or receive the meter form (i.e., an analog meter or a non-analog, non-smart digital meter) that had been at the customer's location prior to the installation of a wireless smart meter.

Our decision to provide residential customers with the option to retain their analog meters at this time, however, does not diminish our commitment and support to the development of California's energy policies. As such, further review of the feasibility of continuing to offer this option may be warranted in the future to ensure that it does not impede the full implementation of net metering, demand response and smart grid.⁴⁴ At a minimum, this opt-out option should be re-evaluated once default TOU pricing is employed for all residential customers. As with our determinations in D.12-02-014, we decline to adopt more than one opt-out option at this time.

SCE requests that all costs within the scope of offering an opt-out option be found reasonable and not subject to further review. However, SCE's estimated costs provide limited information to determine that the costs included in its estimates are only incurred as a result of offering the opt-out option. Further, SCE has already stated that it is planning to file updated costs. Therefore, we find that further review of the costs associated with offering an opt-out option is warranted. Consequently, the costs associated with offering the

⁴⁴ This would include reviewing whether customers are electing the analog meter opt-out option as a means to avoid mandatory TOU tariffs and whether the opt-out fees would need to be adjusted to discourage this action.

opt-out option shall be considered in a separate phase of this proceeding. Further, as proposed by CPA, this phase shall consider whether to allow the opt-out option to be exercised by local communities and governments and, if so, whether the costs for a community exercising the opt-out option would differ from an individual customer exercising the opt-out option.⁴⁵

SCE proposes to recover the incremental costs associated with the opt-out option from those residential customers exercising the option. SCE's proposal includes an initial fee, monthly charges and an exit fee. These fees and charges would be discounted by 20% for those customers enrolled in the California Alternate Rates for Energy (CARE) program.

Since we will be considering SCE's costs and revenue requirements in a second phase of this proceeding, we do not believe that it would be reasonable to adopt SCE's proposed fees and charges at this time. Rather, we adopt interim fees and charges at this time so that the opt-out option may be implemented without further delay. The interim fees and charges adopted here will be subject to adjustment pending the resolution of this second phase. Consistent with D.12-02-014, the interim fees and charges are as follows:

For Non-CARE customers:

Initial Fee	\$75.00
Monthly Charge	\$10.00/month

⁴⁵ Consideration of a "community" opt-out option shall include issues presented by residents living in multi-family dwelling units, where large numbers of wireless smart meters are located closely together.

For CARE customers:

Initial Fee	\$10.00
Monthly Charge	\$5.00/month

In its comments on the proposed decision, Center for Electrosmog Prevention (CEP) states that customers with multiple meters on their premises associated with one account should not be charged an initial fee and monthly charge for each meter, regardless of whether the meter is gas or electric.⁴⁶ SCE believes that CEP's recommendation should be evaluated further in the second phase of this proceeding.⁴⁷ We agree that there should be further evaluation of whether the opt-out fees and charges should vary based on the number of meters located at a customer's premises. However, until that evaluation is completed, SCE shall charge a single interim initial fee and monthly charge for all electric meters at the customer's premise, provided the customer participating in the opt-out option is the customer of record, pending the resolution of the second phase of this proceeding. Since SCE does not provide natural gas service, a residential customer's ability to opt out of a gas smart meter, and the associated fees and monthly charges associated with the opt-out, are not covered by this determination.

We make no determination regarding whether to impose an exit fee at this time. The current record does not contain sufficient evidence to justify why such a

⁴⁶ *Center for Electrosmog Prevention Comments on Proposed Decision Issued March 15, 2012*, filed April 3, 2012, at 9.

⁴⁷ *Reply Comments of Southern California Edison Company on the Proposed Decision Modifying Decision 08-09-039 and Adopting an Opt-Out Program for Southern California Edison Company's Edison SmartConnect Program*, filed April 9, 2012, at 3.

fee is necessary nor the appropriate amount. Therefore, we will consider the appropriateness of an exit fee in the second phase of this proceeding.

SCE is authorized to establish a new two-way memorandum account to track revenues and costs associated with providing the opt-out option. We allow SCE to track these costs and revenues in a two-way memorandum account so that it will preserve the opportunity to seek recovery of these costs and revenues once a final decision on costs and cost allocation is issued.⁴⁸

Finally, we agree with SCE that the issues of privacy and cyber security are outside the scope of this proceeding. The issue before us is simply whether SCE should be required to offer an alternative to those residential customers who do not wish to have a wireless smart meter installed at their location. CPA's request, on the other hand, seeks to evaluate the security practices and implementation of all utilities implementing wireless mesh networks. These issues are not material to determining whether to modify the Edison SmartConnect Program to include an opt-out option.

6. Southern Californians for Wired Solutions to Smart Meters' Motion

On January 11, 2012, SCWSSM filed a motion requesting that the Commission "ask the California Department of Public Health ("CDPH") to

⁴⁸ Authorization of a memorandum account does not necessarily mean that the Commission has decided that the types of costs to be recorded in the account should be recoverable in addition to rates that have been otherwise authorized, e.g., in a general rate case. Instead, the utility shall bear the burden when it requests recovery of the recorded costs, to show that separate recovery of the types of costs recorded in the account is appropriate, that the utility acted prudently when it incurred these costs and that the level of costs is reasonable. Thus, SCE is reminded that just because the Commission has authorized these memorandum accounts does not mean that recovery of costs in the memorandum accounts from ratepayers is appropriate.

review the impacts of the electric and magnetic fields produced by the wireless smart meters proposed to be used by San Diego Gas and Electric Company, in its November 28, 2011, compliance filing responding to D.11-11-007.”⁴⁹ SCWSSM maintains that CDPH’s participation is necessary to consider the health impacts of smart meters.

SCWSSM’s motion should not even be considered in this proceeding, since the motion concerns a decision issued in a different proceeding applicable to SDG&E. But, even if we were to conclude that SCWSSM had meant to have this motion apply to SCE, we find no basis for granting the motion. In D.12-02-014, we concluded that since there were various reasons why customers would opt out of having a wireless smart meter at their location, consideration of any alleged effects of RF emissions on individuals was outside the scope of the proceeding.⁵⁰ That same reasoning also applies here. As such, the alleged effect of RF emissions on health is not material to determining whether to offer an opt-out option. More importantly, we have determined that, similar to PG&E’s residential customers, SCE’s residential customers shall be allowed to opt out of having a wireless smart meter installed in their home for any reason, or for no reason. We do not find that CDPH’s participation is necessary to assist us in determining the most reasonable opt-out solution to implement California’s energy policies nor the ratemaking issues associated with providing the adopted opt-out solution.

⁴⁹ *Southern Californians For Wired Solutions to Smart Meters (SCWSSM) Motion to Request the California Department of Public Health to Review the Electric and Magnetic Fields Produced by Wireless Smart Meters (SCWSSM Motion)*, filed January 11, 2012, at 1.

⁵⁰ D.12-02-014 at 15-16.

Based on these considerations, SCWSSM's motion is denied.

7. Next Steps

As noted above, it is our desire to have the opt-out option implemented without undue delay. Consequently, SCE is directed to file a Tier 1 Advice Letter to implement a smart meter opt-out option for the Edison SmartConnect Program and to establish a Smart Meter Opt-Out Tariff within 15 days of the effective date of this decision. This Advice Letter filing shall:

1. Establish procedures for residential customers to select the opt-out option if they do not wish to have a wireless smart meter.
2. Establish procedures to inform customers that the Edison SmartConnect Program has been modified to include an opt-out option for residential customers who do not wish to have a wireless smart meter at their location.
 - a. A customer currently on the delay list shall be informed that the customer will be scheduled to receive a wireless smart meter unless the customer elects to exercise the opt-out option.
 - b. Customers selecting the opt-out option shall be informed that they will receive the previous form of meter they had prior to the installation of a wireless smart meter. Therefore, an analog meter shall be the opt-out option for customers who previously had an analog meter at the time the wireless smart meter was installed, while the opt-out option for customers who previously had a non-analog, non-smart digital meter will be a non-analog, non-smart digital meter.
3. Adopt the following interim fees and charges for residential customers selecting the opt-out option:

For Non-CARE Customers:

Initial Fee	\$75.00
Monthly Charge	\$10.00/month

For CARE Customers:

Initial Fee	\$10.00
Monthly Charge	\$5.00/month

A single interim fee and monthly charge shall apply to all electric meters at the customer's premise, provided the customer participating in the opt-out option is the customer of record.

4. Establish a new two-way memorandum account to track revenues and costs associated with providing the opt-out option until a final decision on costs and cost allocation issues is issued.

As part of implementing the opt-out option, SCE shall comply with the following guidelines:

1. Residential customers may begin signing up to participate in the opt-out option 20 days after the effective date of this decision. SCE shall have a dedicated phone number for customers to call and sign up for the opt-out option. This number shall be staffed by customer service representatives trained to explain the opt-out option and fees.
2. Since a residential customer may opt-out for any reason, or no reason, SCE may not require a customer to explain or state why he or she wishes to participate in the opt-out option as a condition for signing up.⁵¹
3. SCE shall not charge customers the initial fee or the monthly charges until the opt-out meter has been installed at the customer's residence.
4. Customers may pay the initial fee to participate in the opt-out option over a three-month period.
5. SCE may remove a customer from participating in the opt-out option if the customer fails to pay the initial fee

⁵¹ However, SCE may ask this question if a response is optional.

within three months of installation of the opt-out meter or the monthly charge.

6. A customer may enroll in the opt-out option at any time. However, a customer shall not be allowed to request to participate in the opt-out option at the same residence more than once during any twelve-month period.
7. Customers currently on the delay list shall be individually notified of the opt-out option by certified mail, or an equivalent service that provides documented proof of delivery and receipt. Customers shall have at least 30 days' prior notice that their current meter will be replaced with a wireless smart meter unless they participate in the opt-out option.
8. Customers who affirmatively prevent the installation of a smart meter (i.e., denying access to the property or blocking access to the analog meter) shall be deemed to have elected the opt-out option.

The September 21, 2011 Assigned Commissioner's Ruling (ACR) directed the utilities to allow residential customers who had not yet received a wireless smart meter to retain their analog meter and be placed on a delay list while the Commission considered the Joint Application. Since we are now modifying SCE's Edison SmartConnect Program to include an opt-out option, the ACR is no longer in effect for SCE.

This decision determines that a second phase in this proceeding is necessary to consider cost and cost allocation issues. We anticipate that a prehearing conference to discuss the scope and schedule of this second phase will be scheduled within 45 days of the date this decision is issued. The assigned Commissioner will issue a scoping memo to reflect the issues to be considered and schedule.

8. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were timely filed by SCE, CPA, SCWSSM and CEP. The People's Initiative Foundation (PIF) requested and was granted leave by the ALJ to submit late-filed comments. Reply comments were timely filed by SCE and DRA. The proposed decision has been revised as appropriate in response to comments.

SCE requests that the proposed decision be modified in the following manner:

1. Allow SCE the flexibility to notify customers on the delay list of the opt-out program by either certified mail or an equivalent service, such as the United States Postal Service's Critical Mail service.⁵² The proposed decision requires notification by certified mail to ensure that SCE has documented proof of mailing and proof of receipt that customers have been notified of the opt-out option. Consequently, we modify the decision to allow SCE to use certified mail or an equivalent service, if the selected equivalent service will also provide documented proof of delivery and receipt.
2. Clarify that customers who do not provide reasonable access to their meter will be mandatory participants in the opt-out option.⁵³ SCE gives as example those situations where customers do not elect to participate in the opt-out option but deny access to the property or lock the meter. While we are reluctant to allow

⁵² *Comments of Southern California Edison Company on the Proposed Decision Modifying Decision 08-08-039 and Adopting an Opt-Out Program for Southern California Edison Company's Edison SmartConnect Program (SCE Comments)*, filed April 4, 2012, at 3.

⁵³ *SCE Comments* at 4.

SCE to determine what would constitute “reasonable access”, we believe that a customer should be deemed to have elected to opt out of a wireless smart meter if the customer has acted affirmatively to prevent the installation of a smart meter (i.e., denying access to the property or blocking access to the analog meter).

SCE also requests various changes to the proposed decision regarding issues in the second phase of this proceeding. Since we believe these issues require further consideration, we decline to make SCE’s proposed changes. Similarly, we reject the recommendations proposed by SCWSSM, CEP and PIF regarding the interim fees for participating in the opt-out option and cost allocation issues.

CEP requests that all Commission staff, advisors, judges and Commissioners who have been previously employed by a utility or are not United States citizens recuse themselves from smart meter-related proceedings.⁵⁴ CEP provides no evidence that any such staff, advisors, judges or Commissioners have engaged, or intend to engage in inappropriate activities or are biased as to the outcomes with respect to these proceedings. CEP has not moved for Reassignment of the Administrative Law Judge in this proceeding under the Commission’s Rules of Practice and Procedure, Rules 9.2 through 9.5. A decision maker may be disqualified “only when there has been a clear and convincing showing that the agency member has an unalterably closed mind on matters critical to the disposition of the proceeding.”⁵⁵ A party seeking to

⁵⁴ *Center for Electrosmog Prevention Comments on Proposed Decision Issued March 15, 2012*, filed April 2, 2012, at 15.

⁵⁵ *Association of National Advertisers, Inc. v. Federal Trade Commission* (D.C. Cir. 1979) 627 F.2d 1151, 1170.

disqualify a decision maker on this basis must meet the clear and convincing test in order to rebut the presumption of administrative regularity.⁵⁶ CEP has not met this burden, and has done nothing but make bald assertions without making any factual showing whatsoever. Further, Title VII of the Civil Rights Act of 1964 and the other state antidiscrimination laws prohibit discrimination against individuals employed in the United States based on their citizenship or national origin. The Commission provides equal opportunity to all its employees regardless of race, color, creed, national origin, ancestry, sex, marital status, disability, religious or political affiliation, or sexual orientation. We therefore summarily deny CEP's requests.

9. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Amy C.

Yip-Kikugawa is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Joint Applicants request that D.08-09-039 be modified and that SCE be ordered to file an application for approval of a smart meter opt-out plan.

2. D.11-11-006 denied Joint Applicants' proposed modifications to D.08-09-039, but directed SCE to file a proposal for Commission consideration that would provide an alternative to customers who do not wish to have a smart meter with wireless radio transmission.

3. The four possible alternatives for an opt-out option are: (1) smart meter with the radio transmission turned off; (2) digital meter with no radio installed; (3) analog meter; and (4) wired smart meter.

⁵⁶ D.09-08-028 at 51; see also D.10-05-023 at 4.

4. SCE's preferred solution is a smart meter with the radio transmission turned off.
5. SCE currently has customers who have non-analog, non-smart digital meters installed in their locations.
6. Analog meters are unable to track interval energy consumption data.
7. The analog meter opt-out option would not allow customers to participate in time variant pricing tariffs, such as the Peak Time Rebate program.
8. If either the radio-off or radio-out options were adopted, SCE employees could still collect interval energy usage data as part of their monthly meter reads.
9. Interval energy consumption data is a key component to attaining California's overall energy objectives.
10. D.12-02-014 modified PG&E's SmartMeter Program and adopted an analog meter opt-out option for residential PG&E customers who do not wish to have a wireless SmartMeter.
11. The issues and concerns raised by parties in the proceeding are similar to those addressed in D.12-02-014.
12. Further review of the feasibility of continuing to offer an analog meter as an opt-out option may be warranted in the future to ensure that this option does not impede the full implementation of net metering, demand response and smart grid.
13. SCE's cost estimates cover the 2012-2014 time period and are based on 61,000 customers selecting the opt-out option and assume that only one opt-out option will be offered.
14. There are currently no mandatory TOU tariffs for SCE's residential customers.

Conclusions of Law

1. A residential customer should be allowed to opt-out of a wireless smart meter for any reason, or for no reason.
2. The opt-out option adopted must balance the concerns expressed by customers against California's overall energy policy.
3. Allowing residential customers an opportunity to opt out of receiving a wireless smart meter should not impede ongoing state energy objectives.
4. It is important that the selected opt-out option has the capability to allow customers to take advantage of smart grid benefits.
5. Although a non-communicating smart meter is the preferred opt-out option, an analog meter opt-out option could be offered at this time, as there are no mandatory residential TOU rates.
6. Customers who participate in the opt-out option should retain the meter currently installed at their location or receive the meter form (i.e., an analog meter or a non-analog, non-smart digital meter) that had been at the customer's location prior to the installation of a wireless smart meter.
7. Until there is additional information on the costs to offer multiple opt-out options, only a single opt-out option should be offered.
8. Since SCE's deployment of the Edison SmartConnect Program is consistent with the requirements of D.08-09-039, it should be allowed to recover the costs associated with offering the opt-out option to the extent those costs are found to be appropriate, reasonable and not already being recovered in rates.
9. A residential customer selecting the opt-out option should be assessed an initial charge and a monthly charge.
10. A discount should be provided to customers enrolled in the CARE program.

11. There should be a second phase in this proceeding to consider cost and cost allocation issues associated with offering an opt-out option.

12. It would be appropriate to include the substantive and procedural components of D.12-02-014 in this proceeding for purposes of statewide consistency.

13. The modifications to SCE's Edison SmartConnect Program to include an opt-out program should be implemented as quickly as possible.

14. An interim initial fee and monthly charge for customers electing the opt-out option should be assessed until a final decision on cost and allocation issues is issued.

15. SCE should be authorized to establish a new two-way memorandum account to track revenues and costs associated with providing the opt-out option until a final decision on cost and allocation issues is issued.

16. The September 21, 2011 Assigned Commissioner's Ruling directing the utilities to allow residential customers to be placed on a delay list should no longer be applicable for SCE.

17. Evaluation of the security practices and implementation of all utilities implementing wireless mesh networks is outside the scope of this proceeding.

18. SCWSSM's motion should be denied.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company's Edison SmartConnect Program is modified to include an option for residential customers who do not wish to have a wireless smart meter installed at their location. This option shall have the customer retain the meter currently installed at their location or receive the meter

form (i.e., an analog meter or a non-analog, non-smart digital meter) that had been at the customer's location prior to the installation of a wireless smart meter.

2. Within 15 days of the effective date of this order, Southern California Edison Company (SCE) shall file a Tier 1 advice letter in compliance with General Order 96-B. The advice letter shall be served on the service list in Application 11-07-020. The advice letter shall include tariff sheets to modify SCE's Edison SmartConnect Program to include an opt-out option for customers who do not wish to have a wireless smart meter installed at their location and to implement a Smart Meter Opt-Out Tariff. The Advice Letter filing shall:

1. Establish procedures for residential customers to select the opt-out option if they do not wish to have a wireless smart meter.
2. Establish procedures to inform customers that the Edison SmartConnect Program has been modified to include an opt-out option for residential customers who do not wish to have a wireless smart meter at their location.
 - a. A customer currently on the delay list shall be informed that the customer will be scheduled to receive a wireless smart meter unless the customer elects to exercise the opt-out option.
 - b. Customers selecting the opt-out option shall be informed that they will receive the previous form of meter they had prior to the installation of a wireless smart meter. Therefore, an analog meter shall be the opt-out option for customers who previously had an analog meter at the time the wireless smart meter was installed, while the opt-out option for customers who previously had a non-analog, non-smart digital meter will be a non-analog, non-smart digital meter.

3. Adopt the following interim fees and charges for residential customers selecting the opt-out option:

For Non-CARE Customers:

Initial Fee	\$75.00
Monthly Charge	\$10.00/month

For CARE Customers:

Initial Fee	\$10.00
Monthly Charge	\$5.00/month

A single interim fee and monthly charge shall apply to all electric meters at the customer's premise, provided the customer participating in the opt-out option is the customer of record.

4. Establish a new two-way memorandum account to track revenues and costs associated with providing the opt-out option until a final decision on costs and cost allocation issues is issued.

3. As part of the Tier 1 Advice Letter filing, Southern California Edison Company shall comply with the guidelines stated in Section 7 of this decision.

4. The September 21, 2011 Assigned Commissioner's Ruling directing the utilities to allow residential customers who had not yet received a wireless smart meter to retain their analog meter and be placed on a delay list shall no longer be in effect for Southern California Edison Company.

5. Southern Californians for Wired Solutions to Smart Meters' *Motion to Request the California Department of Public Health to Review the Electric and Magnetic Fields Produced by Wireless Smart Meters* is denied.

6. Application 11-07-020 remains open.

This order is effective today.

Dated _____, at San Francisco, California.