

ALJ/AYK/lil

DRAFT

Agenda ID #11156 (Rev. 2)

Ratesetting

4/19/2012 Item 17

Decision **PROPOSED DECISION OF ALJ YIP-KIKUGAWA**

(Mailed 3/15/2012)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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)

**DECISION MODIFYING DECISION 07-04-043 AND ADOPTING AN OPT-OUT
PROGRAM FOR SAN DIEGO GAS & ELECTRIC COMPANY**

TABLE OF CONTENTS

<u>Title</u>	<u>Page</u>
DECISION MODIFYING DECISION 07-04-043 AND ADOPTING AN OPT-OUT PROGRAM FOR SAN DIEGO GAS & ELECTRIC COMPANY	1
1. Summary	2
2. Background	3
3. SDG&E's Proposal	5
4. Parties' Comments	9
5. Discussion	14
5.1. Opt-Out Option.....	14
5.2. Revenue Requirement.....	17
5.3. Cost Recovery.....	18
6. Southern Californians for Wired Solutions to Smart Meters' (SCWSSM) Motion.....	21
7. Next Steps.....	22
8. Comments on Proposed Decision	24
9. Assignment of Proceeding.....	26
Findings of Fact	26
Conclusions of Law.....	27
ORDER	29

**DECISION MODIFYING DECISION 07-04-043 AND ADOPTING AN
OPT-OUT PROGRAM FOR SAN DIEGO GAS & ELECTRIC COMPANY****1. Summary**

This decision grants the request of the Utility Consumers' Action Network to modify Decision (D.) 07-04-043, which adopted San Diego Gas & Electric Company's (SDG&E) Advanced Metering Infrastructure Project. D.07-04-043 is modified to include an option for residential customers who do not wish to have a wireless smart meter installed at their location. The opt-out option shall be an analog electric and/or gas 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 SDG&E to incur costs such as purchasing and maintaining two different types of meters, the monthly cost of reading the non-communicating meter, and the development of duplicate back office systems. As a result, this decision further finds that customers electing the opt-out option shall be responsible for costs associated with providing the option. Issues concerning the actual costs to be recovered by SDG&E 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 Alternate 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 SDG&E to establish two new two-way electric and gas memorandum accounts 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 SDG&E 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. Finally, the September 21, 2011 Assigned Commissioner's Ruling directing SDG&E 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 the motion of Southern Californians for Wired Solutions to Smart Meters to have the Commission ask the California Department of Public Health to participate in this proceeding.

2. Background

On March 24, 2011, the Utility Consumers' Action Network (UCAN) filed Application (A.) 11-03-015 seeking modification of Decision (D.) 07-04-043. That decision had approved a settlement between San Diego Gas & Electric Company (SDG&E), the Division of Ratepayer Advocates (DRA) and UCAN concerning SDG&E's proposed Advanced Metering Infrastructure (AMI) Project. UCAN's application requests that D.07-04-043 be modified to order SDG&E to develop a proposal or proposals to provide residential SDG&E customers an alternative to

the installation of a digital electric or gas smart meter that transmits customer usage data through radio transmission.¹ The offering of such an alternative has been referred to as an “opt-out” option.

UCAN states that its request is based on numerous communications from consumers who have expressed aversion to the installation of wireless smart meters for a variety of reasons including health and privacy. It further notes that Pacific Gas and Electric Company (PG&E) had been directed by Commission President Peevey to submit a proposal that would allow some form of opt-out for PG&E customers who did not wish to have a wireless smart meter based on similar concerns. UCAN maintains that all utility customers should be provided an option to opt-out the installation of a wireless smart meter.

SDG&E filed a timely protest to UCAN’s application. DRA filed a timely response. Prehearing conferences were held on May 6, 2011 and July 27, 2011. Finally, a combined workshop to consider opt-out options for SDG&E, PG&E, Southern California Edison Company (SCE) 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.² Additionally, the assigned Administrative Law Judge (ALJ) issued a ruling on October 18, 2011,

¹ These meters are also referred to as “wireless smart meters.”

² See *Assigned Commissioner’s Ruling Concerning Customer Requests to Delay Installation of a Smart Meter*, issued September 21, 2011.

seeking clarification concerning the frequency and duration of radio frequency (RF) emissions from wireless smart meters.³

On November 16, 2011, the Commission issued D.11-11-007, which directed SDG&E 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. SDG&E filed its proposal on November 28, 2011. Pursuant to the assigned ALJ's electronic ruling on December 16, 2011, UCAN, DRA and the Center for Electrosmog Prevention (CEP) filed comments on SDG&E's proposal.⁴ SDG&E filed reply comments on January 27, 2012.

3. SDG&E's Proposal

Pursuant to D.11-11-007, SDG&E's opt-out proposal included an analysis on the technological feasibility and related cost to provide the following opt-out options:⁵

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.

³ See *Administrative Law Judge's Ruling Seeking Clarification*, issued October 18, 2011. This ruling also applied to PG&E, SCE and SoCalGas.

⁴ UCAN and DRA's comments were filed on January 17, 2012. CEP's comments were filed on January 9, 2012.

⁵ D.11-11-007, Ordering Paragraph 2.

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, SDG&E's preferred solution is "a non-communicating solid state meter with interval read capability."⁶ SDG&E states that this option "provides the future functionality that would allow [it] to meet future tariff changes."⁷ It further notes that both a digital meter with no radio installed and a smart meter with the radio transmission capability turned off are warranted products with long-term availability.⁸

SDG&E states that it does not consider an analog option viable because these meters are no longer being produced by the major meter manufacturers and, thus, would not have satisfactory warranty terms and other conditions.⁹ It

⁶ SDG&E *Proposal* at 19.

⁷ *Id.*

⁸ *Id.* at 17-19.

⁹ *Id.* at 16-17.

further contends that since analog meters cannot record interval energy consumption data, offering this option could “provide the mechanism to opt-out of future mandatory tariffs” and result in additional costs.¹⁰

SDG&E notes that a wired smart meter opt-out option would be the most expensive option to implement, as communication to the meter would need to be through a dedicated communication line. It further notes that this would not be a viable option for its gas meters. Consequently, if this option were adopted for the electric meters, SDG&E would be required to adopt a different opt-out option for its gas meters.

SDG&E estimates that approximately 3,000 residential customers could potentially opt out.¹¹ It further states that radio transmission capability of the smart meter cannot currently be turned off remotely and that there is no capability for the smart meter to be programmed to perform a “snap read” (i.e., remotely turn radios on and off at pre-determined periods to transmit data).¹²

SDG&E states that it identified seven different cost categories that may apply to all or some of the opt-out options. Its proposal provides a general description of the estimated costs associated with each category, but notes that the actual implementation and other associated costs will depend on the specific opt-out option adopted by the Commission and the actual number of residential customers electing the option. Further, SDG&E’s proposal is based on offering a single opt-out option. It states: “If residential customers have the choice of

¹⁰ *Id.* at 17.

¹¹ *Proposal of San Diego Gas & Electric Company for Customers to Opt-Out of Wireless Smart Meters (“SDG&E Proposal”),* filed November 28, 2011 at 5-6.

¹² *SDG&E Proposal* at 6-7.

multiple opt-out alternatives, then SDG&E's opt-out program costs will increase.”¹³ Based on its assumptions, SDG&E estimates the costs as follows:

TABLE 1
ESTIMATED COSTS FOR OPT-OUT OPTIONS¹⁴

	Radio Out	Radio Off	Analog	Wired
<u>Cost of Option</u>				
Total Expense	\$2,669,800	\$2,737,993	\$2,605,629	\$6,793,759
Total Capital Cost	<u>\$440,366</u>	<u>\$354,828</u>	<u>\$397,597</u>	<u>\$2,672,944</u>
Total Cost of Option	\$3,110,166	\$3,092,821	\$3,003,226	\$9,466,703
Initial Fee*	\$223	\$219	\$202	\$1,082
Monthly Fee*	\$15	\$15	\$15	\$49
Exit Fee*	\$78	\$78	\$78	\$78

* SDG&E proposes a 20% discount of this cost for CARE customers.

SDG&E requests that its proposed initial and monthly fees be found reasonable. Further, it seeks authority to establish two new two-way interest-bearing balancing accounts to record the up-front charges, on-going fees and actual operations and maintenance and capital costs associated with the adopted opt-out option. SDG&E proposes that recovery of costs in the memorandum account be addressed in its annual Electric and Gas Regulatory Account Balance Update filings, or a proceeding determined by the Commission.

¹³ SDG&E *Proposal* at 20.

¹⁴ SDG&E *Proposal*, Attachment A3.

4. Parties' Comments

UCAN agrees with SDG&E that a digital meter with no radio installed is an appropriate option to offer residential customers. However, it believes that an analog meter opt-out option could be accommodated at this time. UCAN maintains that SDG&E's concerns about customers using analog meters to avoid mandatory tariffs are premature, as there are currently no mandatory real-time pricing tariffs in place. Additionally, it states that in the future, the opt-out fees could be adjusted to discourage customers from selecting the opt-out option to avoid these tariffs.¹⁵ UCAN further states that if an analog option is adopted for PG&E customers, that option should also be available for SDG&E customers. Finally, UCAN opposes the wired smart meter opt-out option, as it considers such an option to be overly expensive and a bad choice for customers.

UCAN believes that SDG&E has underestimated the number of customers who could potentially opt-out. As such, it maintains that the actual costs associated with offering an opt-out program could vary significantly from SDG&E's estimates. Furthermore, UCAN states that it is unable to determine the reasonableness of SDG&E's cost estimates. Consequently, UCAN argues that recovery of SDG&E's costs should be treated similarly to what had been proposed for PG&E – namely, revenues and costs associated with providing the opt-out option should be tracked in a memorandum account and recovery in SDG&E's annual Energy Resource Recovery Account application.

Similar to UCAN, DRA argues that ratemaking and cost recovery issues cannot be decided without further hearings. Further, DRA challenges SDG&E's

¹⁵ *Comments of UCAN on Proposal of SDG&E for Customers to Opt-Out of Wireless Smart Meters (UCAN Comments)*, filed January 17, 2012, at 3.

proposed “two-step” approach to implement a radio off opt-out option on the grounds that there would be additional costs when SDG&E transitions from the near-term to the long-term approach for disabling the smart meters and that this cost is not included in the cost estimates.¹⁶ DRA also recommends that SDG&E be authorized to track costs associated with the opt-out option in a two-way memorandum account and seek recovery of these costs in a future application, subject to a reasonableness review.¹⁷ Finally, DRA recommends that the Commission consider the feasibility of allowing customers to conduct self meters-reads as a means of reducing costs.¹⁸

DRA also maintains that an analog meter opt-out option should be offered. It notes that based on SDG&E’s cost estimates, this option is the least expensive solution and believes that the costs for this solution should be even less than the SDG&E estimates.¹⁹ DRA further asserts that allowing residential customers to retain an analog meter “may have no impact at all on California’s energy policy goals.”²⁰

CEP also opposes SDG&E’s preferred solution and argues that an analog meter opt-out option should be offered. It maintains that a non-communicating meter with interval read capability would not address concerns raised by those customers who want an opt-out option that does not emit “electromagnetic

¹⁶ *Comments of the Division of Ratepayer Advocates on San Diego Gas & Electric Company’s Smart Meter Opt-Out Proposal (DRA Comments)*, filed January 17, 2012, at 4-6.

¹⁷ *DRA Comments* at 6.

¹⁸ *Id.* at 9.

¹⁹ *Id.* at 7.

²⁰ *Id.* at 8.

radiation.”²¹ CEP also asserts that since PG&E had stated that it was willing to provide analog meters to its residential customers, SDG&E should also be willing to do so.²²

CEP opposes charging customers for selecting the opt-out option. It believes that this would “discourage opting out and unnecessarily punish disabled, elderly, and concerned customers who select an opt-out plan.”²³ Rather, CEP maintains that costs associated with offering an opt-out option should be borne by “investors and the company.”²⁴ CEP also proposes that an opt-out program include “a smart meter free zone” and allow participation by commercial customers.²⁵

In response to comments, SDG&E asserts that an opt-out solution should provide interval data collection capabilities. It maintains that smart meters with interval data collection capabilities let customers participate in peak-time rebate plans, help them manage consumption with online power-use data and increase outage restoration.²⁶ Although SDG&E agrees that an analog meter opt-out option is a workable short-term alternative, it believes that adopting such an option “is only deferring tough decisions on interval metering, which as a result,

²¹ *Center for Electrosmog Prevention Comments on D.11-11-007 Compliance Filing by San Diego Gas and Electric Company (CEP Comments)*, filed January 9, 2012, at 1.

²² *CEP Comments* at 4.

²³ *Id.*

²⁴ *Id.* at 5.

²⁵ *Id.* at 6.

²⁶ *Response of San Diego Gas & Electric Company To the Comments Filed January 17, 2012 (SDG&E Response)*, filed January 27, 2012, at 1-2.

could potentially impact future incremental energy usage and cost.”²⁷

Nonetheless, SDG&E now requests that the Commission adopt a decision that would allow customers to select either an analog meter opt-out option or a radio-off opt-out option.

SDG&E continues to believe that a two-way interest-bearing balancing account is the most appropriate cost recovery mechanism, as the opt-out option is mandated by the Commission, and the actual costs are unknown and will vary based on participation. It argues that “[a] two-way balancing account will also eliminate the possibility that ratepayers pay for more than the actual costs and that shareholders wholly fund this program in the interim while the regulatory process takes effect.”²⁸ Further, it notes that entries into the balancing account “would be subject to a CPUC reasonableness review at the time SDG&E requests to dispose of the balance.”²⁹

SDG&E also addressed various cost information in response to UCAN and DRA’s comments. These include:

- Revising existing processes to allow gas and electric meter changes be performed by a single SDG&E technician, thus reducing the number of SDG&E technicians needed to perform out-out related field visits.³⁰
- Revising the initial opt-out and exit fees to take into account whether the customer: (1) opts out of just the gas smart meter or does not have a gas smart meter on their premises; (2) opts out of

²⁷ SDG&E Response at 2.

²⁸ *Id.* at 3.

²⁹ SDG&E Response at 3.

³⁰ *Id.* at 4.

just the electric smart meter; or (3) opts out of both a gas and an electric smart meter.³¹

- Clarifying that network enhancements costs per customer would not decrease significantly if the opt-out participation rate were higher than the estimated 3,000 customers. SDG&E notes that these costs were based on the assumption that 2% of the meters related to opt-out would create a “break in the mesh.” SDG&E states that if the opt-out participation were higher than its estimate, there would be more “break in the mesh” and additional network enhancement costs.³²

As a result, SDG&E adjusted its proposed fees and charges as follows:

TABLE 2
Revised Fees and Charges

	Radio Out	Radio Off	Analog	Wired
Initial Fee*				
Gas meter only	N/A	\$151	N/A	N/A
Electric meter only	\$182	\$178	\$158	\$1,048
Dual commodity	\$198	\$193	\$174	\$1,082
Monthly Fee*	\$15	\$15	\$15	\$49
Exit Fee*				
Gas meter only	N/A	\$33	N/A	N/A
Electric meter only	\$35	\$35	\$35	\$61
Dual commodity	\$53	\$53	\$53	\$78

* SDG&E proposes a 20% discount of this cost for CARE customers.

³¹ *Id.* at 5.

³² *Id.* at 8.

SDG&E further clarifies that its two-step approach for the radio-off option does take into account near-term and long-term costs. It notes that any radios turned off via the near-term approach would not require any additional field visits as a result of the transition to the long-term approach.³³ Additionally, SDG&E refutes DRA and UCAN's assertions that the costs associated with customer self-reads would result in lower costs.³⁴ Finally, it provides further explanation to support its proposal to identify the meters of those customers electing the opt-out option.³⁵

5. Discussion

The issues and concerns raised by parties in this proceeding are similar to those addressed 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 smart meter installed at their location. As such, we believe that this decision provides guidance on how to resolve this proceeding.

5.1. Opt-Out Option

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. While SDG&E maintains that a meter with interval data collection capability is the desired opt-out solution, it concedes that an analog meter opt-out solution is workable at the current time. UCAN, DRA and CEP all advocate that an analog meter opt-out option be offered. In advocating for an analog meter option, these

³³ *Id.* at 7.

³⁴ *Id.* at 6-7.

³⁵ *Id.* at 9-10.

parties have asserted that the option is necessary to address the alleged effect of RF emissions on human health. However, as we stated in D.12-02-014, “the issue of whether RF emissions from smart meters have an effect on individuals is outside the scope of this proceeding. Further, as we determined in D.10-12-001 that PG&E’s SmartMeter technology complies with Federal Communications Commissions requirements.”³⁶ Moreover, no party has proposed that eligibility to elect the opt-out option be solely predicated on whether the meter has affected the customer’s health. In D.12-02-014, we determined that PG&E residential customers should be allowed to select the opt-out option for any reason, or for no reason. We believe that this determination should also apply to SDG&E residential customers.

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.07-04-043, we noted that the deployment of smart meters would

... improve customer service by providing customer premise endpoint information, assist in gas leak and electric systems outage detection, transform the meter reading process and provide real near-term usage information to customers. AMI will

³⁶ D.12-02-014 at 15-16.

also support such technological advances as in-house messaging displays and smart thermostat controls.³⁷

As such, we believe that any selected opt-out option should have the capability of collecting interval energy consumption data. Nonetheless, as noted by UCAN, there are currently no mandatory time of use (TOU) tariffs for residential customers. As such, we agree that an analog meter opt-out option could be accommodated at this time.

Based on these considerations, and consistent with our decision to allow PG&E to offer an analog meter opt-out option to its residential customers, we find that UCAN's application should be granted. SDG&E's AMI Project shall be modified to include an analog meter opt-out option for SDG&E residential customers who do not wish to have a wireless smart meter. This determination, 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 an analog meter opt-out option may be warranted in the future to ensure that this opt-out option does not impede the full implementation of net metering, demand response and smart grid.³⁸ 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. As with PG&E, we believe that further

³⁷ D.07-04-043 at 2.

³⁸ 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.

examination of the additional costs associated with offering multiple opt-out options is warranted before more than one opt-out option is offered.

We reject CEP's proposal that the opt-out option include a "smart meter free zone." As discussed in this decision, we have determined that a residential customer may opt out for any reason, or no reason at all. Once that choice is made, the opt-out customer will be assessed an initial opt-out fee, monthly charges and an exit fee. Adopting CEP's proposal would in effect remove a customer's ability to make such a choice and allow an opt-out customer to impose additional costs on his or her neighbors. We note, however, that in the second phase of A.11-03-014 (PG&E's SmartMeter Opt-Out Application), we will be considering whether to allow the opt-out option to be exercised by local entities and communities in PG&E's service territory. We believe that consideration of such an issue would also be appropriate in this proceeding.³⁹

We also reject CEP's proposal that the opt-out option be extended to commercial customers. CEP provides no support of why this proposal is warranted. More importantly, many commercial customers take service on mandatory TOU tariffs, which necessitate meters capable of capturing interval energy consumption data. As such, extension of the opt-out option to commercial customers could conflict with California's ongoing energy policies.

5.2. Revenue Requirement

SDG&E requests that the estimated revenue requirement in its proposal be adopted and that the proposed initial and exit fees and monthly charges be found reasonable. It further requests that it be authorized to establish two new

two-way interesting-bearing balancing accounts to track the costs associated with providing a gas and an electric opt-out option. However, as evidenced by the cost adjustments made in response to UCAN and DRA's comments, we agree with UCAN and DRA that further consideration of SDG&E's cost estimates is warranted. Consequently, the costs associated with offering the analog opt-out option shall be considered in a separate phase of this proceeding. Further, 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.

5.3. Cost Recovery

SDG&E proposes to recover the incremental costs associated with the opt-out option from those residential customers exercising the option. SDG&E'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.

CEP maintains that all costs should be recovered from SDG&E or its shareholders. We disagree with CEP's position. The Commission authorized SDG&E's AMI Project in 2007 and SDG&E has almost completed its deployment of smart meters. Consequently, the standard for metering in SDG&E's territory is now a wireless smart meter. Requiring SDG&E to provide an option that deviates from the standard will require the company to incur additional costs, as identified in the November 28, 2011 filing. As discussed in this decision, we are

³⁹ As part of this consideration, we will address issues presented by multi-family

Footnote continued on next page

not changing the standard adopted in D.07-04-043. Rather, we are granting UCAN's request to modify that decision to provide an option for those customers who, for whatever reason, would prefer to not have a wireless smart meter. Therefore, any customer electing the opt-out option is electing to not have the standard meter. As such, costs associated with providing an opt-out option should be the responsibility of those customers opting-out.

Since we will be considering SDG&E's revenue requirements in a second phase of this proceeding, we do not believe that it would be reasonable to adopt SDG&E's proposed fees and charges at this time. Rather, as we did in D.12-02-014, 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 the second phase. Further, while we agree with SDG&E's proposition that the initial fee should take into consideration whether the customer is opting-out of one (single commodity) or two (dual commodity) smart meters, we adopt a single interim fee and monthly charge applicable to all customers at this time to avoid further confusion. The interim fees and charges are as follows:

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

dwelling units, where multiple smart meters may be located closely together.

In its comments on the proposed decision, SDG&E requests clarification on whether the interim fee and monthly charges apply on a meter-by-meter basis, on a customer account basis, or on a premise basis regardless of the number of meters at the premise.⁴⁰ As discussed above, a single interim fee and monthly charge should be utilized at this time. Therefore, on an interim basis, the fee and monthly charge shall apply to all gas and/or electric meters at the customer's premise, provided the customer participating in the opt-out option is the customer of record. The question of whether different fees and charges should be imposed on customers with multiple meters at the same premise will be addressed in the second phase of this proceeding.

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

SDG&E is authorized to establish new two-way electric and gas memorandum accounts to track revenues and costs associated with providing the opt-out option. We allow SDG&E 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.⁴¹

⁴⁰ *Comments of San Diego Gas & Electric Company on Proposed Decision*, filed April 4, 2012, at 2.

⁴¹ 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

Footnote continued on next page

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

On January 9, 2012, SCWSSM filed a motion requesting that the Commission "ask the California Department of Public Health (CDPH) to 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."⁴² SCWSSM maintains that CDPH's participation is necessary to consider the health impacts of smart meters. SDG&E filed a response opposing this motion.

As previously discussed, the alleged effect of RF emissions on health is not material to determining whether to offer an opt-out option. We have determined that 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.

Additionally, UCAN's application notes that consumers have expressed a variety of reasons to not want the installation of wireless smart meters including health and privacy. Therefore, 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.

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, SDG&E 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.

⁴² *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 9, 2012, at 1.

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, SDG&E is directed to file a Tier 1 Advice Letter to implement a smart meter opt-out option for its AMI Project 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 AMI Program has been modified to include a smart meter opt-out option. 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.
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

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

4. Establish new two-way electric and gas memorandum accounts to track revenues and costs associated with providing the opt-out option until a final decision on costs and cost allocation issues associated with providing an analog meter opt-out proposal is issued.

As part of implementing the opt-out option, SDG&E 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. SDG&E 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, SDG&E 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.⁴³
3. A customer may request to participate 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.
4. Customers may pay the initial fee to participate in the opt-out option over a three month period. If the customer does not pay the fee within this period, the customer will be removed from participating in the opt-out option and returned to the wireless smart meter.
5. SDG&E shall not charge customers the initial fee or the monthly charges until the analog meter has been installed at the customer's residence.
6. Customers currently on the delay list shall be individually notified of the opt-out option by certified mail and shall have at least 30 days prior notice that their analog meter will be replaced with a wireless smart meter unless they contact SDG&E to participate in 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

⁴³ However, SDG&E may ask this question if a response is optional.

smart meter to retain their analog meter and be placed on a delay list while the Commission considered UCAN's application. Since we are now modifying SDG&E's AMI Project to include an opt-out option for smart meters, the ACR is no longer in effect for SDG&E.

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 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 SDG&E, UCAN, CEP and SCWSSM. No reply comments were filed. The proposed decision has been revised as appropriate in response to comments.

In comments, SDG&E requests that the proposed decision be modified to allow the dedicated phone number to handle opt-out inquiries to be phased out over time so that any future opt-out inquiries would be handled through the utility's standard customer contact center line. SDG&E believes that the associated ongoing costs to maintain a dedicated opt-out line may not be

warranted in the long-term based on its estimated volume of participants.⁴⁴ We decline to modify the proposed decision to include a phase-out of the dedicated line at this time. It is premature to conclude that a dedicated line will not be warranted on an ongoing basis. However, SDG&E may request that this be considered in the second phase of this proceeding.

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.⁴⁵ 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 decisionmaker 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."⁴⁶ A party seeking to disqualify a decisionmaker on this basis must meet the clear and convincing test in order to rebut the presumption of administrative regularity.⁴⁷ CEP has not met this burden, and has done nothing but make bald assertions without making

⁴⁴ *Comments of San Diego Gas & Electric Company on Proposed Decision*, filed April 4, 2012, at 2.

⁴⁵ *Center for Electromagnetic Prevention Comments on Proposed Decision Issued March 15, 2012*, filed April 2, 2012, at 13-14.

⁴⁶ *Association of National Advertisers, Inc. v. Federal Trade Commission* (D.C. Cir. 1979) 627 F.2d 1151, 1170.

⁴⁷ D.09-08-028 at 51; see also D.10-05-023 at 4.

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 ALJ in this proceeding.

Findings of Fact

1. UCAN requests that D.07-04-043 be modified to provide residential SDG&E customers an alternative to installation of a wireless gas or electric smart meter.
2. D.11-11-007 directed SDG&E to file a proposal for Commission consideration that would provide an alternative to those residential 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 with wired transmission capability.
4. SDG&E's preferred solution is a non-communicating solid state meter with interval read capability.
5. Analog meters are unable to track interval energy consumption data.
6. A non-communicating opt-out option would disable certain electric smart meter functions.

7. Interval energy consumption data is a key component to attaining California's overall energy objectives.
8. A wired smart meter option is not available for gas smart meters.
9. 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 smart meter.
10. The issues and concerns raised by parties in this proceeding are similar to those addressed in D.12-02-014.
11. Further review of the feasibility of continuing to offer an analog meter opt-out option may be warranted in the future to ensure that this opt-out option does not impede the full implementation of net metering, demand response and smart grid.
12. The issue of whether RF emissions from smart meters have a health impact on individuals is outside the scope of this proceeding.
13. SDG&E's cost estimates are based on 3,000 customers selecting the option and assume that a single opt-out option would be offered.
14. There are currently no mandatory TOU tariffs for 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 best opt-out option to be 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. The wired smart meter opt-out option is not cost effective or currently technologically feasible compared to the other options.
6. Although a non-communicating 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.
7. It would not be reasonable to extend the opt-out option to commercial customers.
8. Until there is additional information on the costs to offer multiple opt-out options, only a single opt-out option should be offered.
9. Since SDG&E's deployment of its AMI Project is consistent with the requirements of D.07-04-043, it should be allowed to recover the costs associated with the opt-out option to the extent those costs are found to be appropriate, reasonable and not already being recovered in rates.
10. A residential customer selecting the opt-out option should be assessed an initial charge and a monthly charge.
11. A discount should be provided to customers enrolled in the CARE program.
12. There should be a second phase in this proceeding to consider cost and cost allocation issues associated with offering an opt-out option.
13. It would be appropriate to consider whether to allow the opt-out option to be exercised by local entities and communities in the second phase of this proceeding.
14. The modifications to the SDG&E's AMI Project to include an opt-out option should be implemented as quickly as possible.

15. An interim initial fee and monthly charge for customers electing the opt-out-option should be assessed until final decision on cost and allocation issues is issued.
16. SDG&E should be authorized to establish new two-way electric and gas memorandum accounts to track revenues and costs associated with providing the opt-out option until final decision on cost and allocation issues is issued.
17. The September 21, 2011 ACR directing the utilities to allow residential customers to be placed on a delay list should no longer be applicable for SDG&E.
18. SCWSSM's motion should be denied.

O R D E R

IT IS ORDERED that:

1. San Diego Gas & Electric Company's Advanced Metering Infrastructure Project is modified to include an option for residential customers who do not wish to have a wireless smart meter installed at their location to have an analog meter.
2. Within 15 days of the effective date of this order, San Diego Gas & Electric Company (SDG&E) 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 11-03-015. The advice letter shall include tariff sheets to modify SDG&E's Advanced Metering Infrastructure Project 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:

- a. Establish procedures for residential customers to select the option to have an analog meter if they do not wish to have a wireless smart meter.
- b. Establish procedures to inform customers currently on the delay list that a smart meter opt-out option is available and that the customer will be scheduled to receive a wireless smart meter unless the customer elects to exercise the opt-out option.
- c. Adopt the following interim fees 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

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

- d. Establish new two-way electric and gas memorandum accounts to track revenues and costs associated with providing the smart meter opt-out option.
3. 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 to be placed on a delay list shall no longer be in effect for San Diego Gas & Electric Company.
4. San Diego Gas & Electric Company shall comply with the guidelines stated in Section 7 of this decision.
5. The motion of Southern Californians for Wired Solutions to Smart Meters to have the Commission ask the California Department of Public Health to participate in this proceeding is denied.

6. Application 11-03-015 remains open.

This order is effective today.

Dated _____, at San Francisco, California.