

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of the County of Santa Barbara,
the Consumers Power Alliance, et al 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 on July 26, 2011)

**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON
SOUTHERN CALIFORNIA EDISON COMPANY'S
SMART METER OPT-OUT PROPOSAL**

Pursuant to the December 15 and December 16, 2011 Rulings of the Assigned Administrative Law Judge (ALJ) Yip-Kikugawa served by e-mail on the parties to the above-captioned proceeding, the Division of Ratepayer Advocates (“DRA”) respectfully submits Comments on Southern California Edison Company’s Smart Meter Technological Feasibility and Cost Information Compliance Proposal Pursuant to D.11-11-006 (Nov. 28, 2011) (“SCE Opt-Out Proposal”).

1. Any mechanism for SCE to recover opt-out program costs should provide an opportunity for hearings and a reasonableness review.

The Commission should not approve an opt-out program revenue requirement or guarantee recovery by SCE of all opt-out program costs based solely on SCE’s Opt-Out Proposal or the comments filed in response. While SCE does not expressly ask the Commission to pre-approve a revenue requirement in its opt-out proposal, it states that if the Commission adopts a fee structure that does not allow for full recovery of program costs from opt-out participants, then SCE will require a cost-recovery mechanism “that

will ensure all opt-out program costs are recovered by SCE.”¹ The Commission should reject this assertion. Instead, any approved cost recovery mechanism for SCE’s Smart Meter opt-out program should protect the due process rights of ratepayers and other interested parties and not pre-approve recovery of any program costs in rates without opportunity for a hearing.

First, DRA urges the Commission to follow the dictates of the Public Utilities Code and its own Rules of Practice and Procedure (the “Rules”) in this and the other Investor Owned Utilities opt-out proceedings. The Commission ratified the preliminary categorization of this proceeding as ratesetting and determined that hearings would be necessary.² If the assigned Commissioner decides that hearings are not needed, he should adhere to the Rules for changing the preliminary determination. Changes by the assigned Commissioner to the preliminary determination on need for hearing must be issued by a ruling (specifically the scoping memo for the proceeding) that “shall be placed on the Commission’s Consent Agenda for approval of that change.”³ The Assigned Commissioner has not issued a scoping memo at all, let alone one that seeks to change the preliminary determination on need for hearing. Unless the Commission issued a ruling changing the preliminary determination, parties are entitled to be heard and to introduce evidence at hearing.⁴

Second, if the Commission ultimately decides ratemaking issues in this proceeding, it must establish a record of evidence that is legally sufficient to support the findings and decision. In a judicial review of a Commission decision on a ratemaking

¹ SCE’s Opt-Out Proposal, p. 22. SCE takes the position that the filing is only a “compliance proposal” and would be followed by a filing of “its final opt-out program proposal.” SCE thus reserves the right to modify the costs “detailed in this compliance proposal in its opt-out program proposal.” See SCE Opt-Out Proposal, p. 3. SCE states, however, that it has structured the proposed fee structure for opt-out participants to allow for the full recovery of program costs from the opt-out program participants. *Id.* p. 22.

² Resolution ALJ 176-3278, Ratification of preliminary determination of category adopted, July 28, 2011.

³ See Rules 7.3(a) and 7.5 of the Commission’s Rules of Practice and Procedure.

⁴ Public Utilities Code § 1705.

proceeding, the court’s review includes determining whether “[t]he findings in the decision of the Commission are not supported by substantial evidence in light of the whole record,” or if “[t]he decision of the Commission is not supported by the findings.”⁵ Obviously, if the Commission fails to enter any evidence into the record, then there cannot be substantial evidence in the record to support findings or a decision to approve recovery in rates of a determined Opt-Out Program revenue requirement.

To date, the Assigned Administrative Law Judge has not given parties an opportunity to be heard or to present any evidence in this proceeding, nor has any evidence been formally entered into the record. SCE’s Opt-Out “compliance filing” is not “evidence” that could be used to support the findings—indeed it would be improper to admit the filing as evidence into the record pursuant to § 1705:

No documents or records of a public utility or person or corporation which purport to be statements of fact shall be admitted into evidence or shall serve as any basis for the testimony of any witness, unless the documents or records have been certified under penalty of perjury by the person preparing or in charge of preparing them as being true and correct.⁶

SCE’s Opt-Out Proposal was prepared and filed by SCE’s attorneys and is not verified, and it would be improper to admit the Opt-Out Proposal as evidence of a revenue requirement. Further, allowing parties to file comments on SCE’s unverified proposal does not provide parties with an “opportunity to be heard.”⁷

Thus, if the Commission does not conduct hearings and make findings about the proposed opt-out program costs, DRA recommends that the instead of approving a revenue requirement the Commission authorize SCE to establish a two-way

⁵ Public Utilities Code § 1757(a)(3) – (4).

⁶ Public Utilities Code § 1710. References to code are to the Public Utilities Code sections (PUC §) unless otherwise noted.

⁷ California Trucking Association v. PUC, 19 Cal. 3d 240, 244 (1977) (“The phrase ‘opportunity to be heard’ implies at the very least that a party must be permitted to prove the substance of its protest rather than merely being allowed to submit written objections to a proposal.”)

memorandum account. This account would allow the utility to seek recovery of net opt-out program costs in a future application, subject to a reasonableness review and with the opportunity for hearings at which interested parties may be heard and introduce evidence.

DRA further recommends that, if the Commission authorizes SCE to implement an Opt-Out Program for SCE and establish a memorandum account, then the decision should include the same protections for ratepayers as recommended in DRA's Comments on Pacific Gas & Electric's Opt-Out Program.⁸ The protections should include requiring SCE to provide certain pre-defined participation and cost information in any application for recovery of the net costs of the opt-out program. This information would provide an important starting point for ratepayer advocates and other parties to participate in a reasonableness review of program costs. Based on SCE's Reply Comments to the Proposed Decision relating to PG&E's SmartMeter Opt-Out Option, it should not object to providing such information.⁹ Contrary to SCE's suggestion, however, an order requiring this information would not determine SCE's burden of proof or guarantee that the information would be sufficient to allow for a "full review of the reasonableness of" opt-out program costs.¹⁰ Parties must have an opportunity to conduct discovery, present witnesses, and rebut SCE's testimony on the reasonableness of opt-out costs.

2. The Commission should consider additional issues before determining which opt-out program elements to authorize or require.

The Commission should expressly consider and clarify the following issues in any decision that authorizes a Smart Meter opt-out program for SCE:

⁸ Comments of the Division of Ratepayer Advocates on the November 22, 2011 Proposed Decision of Commissioner Peevey Modifying Pacific Gas and Electric Company's Smart Meter Program to Include an Opt-Out Option, A.11-03-014 (Dec. 12, 2011), p. 9-14.

⁹ Reply Comments of SCE on Decision Modifying PG&E's SmartMeter Program to Include an Opt-Out Option, A.11-03-014 (Dec. 19, 2011), p. 4 ("SCE reports DRA's recommendation" to require PG&E to provide certain cost and participation information in an ERRA application rather than an advice letter in the opt-out proceeding).

¹⁰ Id. p. 4.

- Whether analog meters should be offered as an opt-out option, either in the short-term or as a permanent alternative.
- Whether it is prudent to require or authorize interval data collection now given that it will increase meter-reading costs compared to monthly consumption reads.
- Whether to require customer self-reading as an option that may significantly reduce total opt-out program costs.

These issues are likely to have significant impacts on opt-out program costs as well as on customer's satisfaction with, and acceptance of, the opt-out alternatives.

- (a) The Commission should require an analog meter opt-out option, at least in the near-term.

DRA believes that SCE should be required to offer an analog meter alternative, either as temporary or permanent opt-out option. SCE opposes offering an analog meter opt-out option.¹¹

First, the Commission should determine if PG&E will provide an analog meter as an opt-out alternative. In response to ongoing customer concerns and in a reversal of its prior position, PG&E is now asking the Commission to authorize an analog meter alternative for opt-out customers in addition to the radio-off SmartMeter.¹² SCE customers who are concerned about the potential impacts of radio frequency emissions from Smart Meters may not be satisfied if SCE's opt-out program fails to allow for use of an analog meter, but they may be particularly dissatisfied if PG&E's customers are given the option. Ongoing opposition and legal challenges to SCE's approved opt-out program would create uncertainty as to the finality of program elements, which could result in excessive costs and inefficiencies if decisions are later modified to require additional alternatives.

Second, DRA supports adopting the lowest-cost opt-out program that is consistent with California's energy policies. This may be an analog meter solution. SCE's filing

¹¹ SCE's Opt-Out Proposal, p. 12.

¹² PG&E's Reply Comments on Proposed Decision of Commissioner Peevey modifying its SmartMeter Program to include an Opt-Out Option, A.11-03-014 (Dec. 19, 2011), p. 1-2.

indicates that providing analog meters as the opt-out alternative would cost less than the radio-off or digital meter (radio-out) options.¹³

On the other hand, there is no need to determine today that interval data must be collected from opt-out participants. Currently there are no mandatory time-variant rates for residential customers,¹⁴ and residential customers must have the opportunity to opt-out, without penalty, of any default time-variant pricing that may be approved by the Commission.¹⁵ Further, 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. As other parties have suggested in response to the PG&E PD, there may be little to no impact on residential load shifting or participation in demand response if opt-out customers also opt-out of time variant pricing.¹⁶ Thus, it appears that an analog meter opt-out program would be entirely consistent with the state's goals to deploy a SmartGrid.¹⁷

At the very least, the Commission should not require the collection of interval data from opt-out customers unless it determines such data is necessary and warranted in light of the significant additional costs to implement the functionality.

¹³ SCE's Opt-Out Proposal, Attachment A. The Summary page shows an estimated "revenue requirement" of \$614 per customer for the analog meter option, compared to \$705 for the radio-off Smart Meter and digital meter options. The estimated monthly meter reading costs are also lower for the analog meter (\$11.47, p. 1B "Analog Read") compared to radio-off and digital meters (\$16.06, p. 2B and 3B). Like the other utilities SCE asserts that it would incur additional costs related to offering multiple opt-out options, but did not specify any cost categories or specific costs that it would incur.

¹⁴ PU Code § 745 (b).

¹⁵ PU Code § 745(d)(1).

¹⁶ See Comments of the Utility Reform Network on Proposed Decision of President Peevey Authorizing a SmartMeter Opt-Out Program, A.11-03-014 (Dec. 12, 2011), p. 5; Comments of Aglet Consumer Alliance on Proposed Decision of Commissioner Peevey, A.11-03-014 (Dec. 12, 2011), p. 5.

¹⁷ D.11-11-007, Conclusion of Law No. 2 ("[t]he opt-out alternative or alternatives adopted should be technologically feasible, offered at a reasonable cost to those customers opting out and consistent with the state's goals to deploy a Smart Grid.")

- (b) The Commission should not authorize interval meter reads unless an opt-out customer participates in a time-variant pricing tariff.

The Commission should not authorize mandatory interval meter reading at this time, because it will increase opt-out program costs and is not necessary. SCE's cost filing indicates that implementing an analog meter option with consumption meter reads would substantially reduce the ongoing meter-reading costs for an opt-out program. According to SCE's data, conducting an interval meter read via a hand held probe increases the monthly meter reading costs 40% compared to monthly consumption reads of an analog meter.¹⁸ For a radio-off or radio-out option with interval data collection, meter-reading costs comprise 40% of the opt-out program costs for the first two years,¹⁹ versus 33% of the costs for the analog meter solution for 2012–2014.²⁰ SCE's data is also consistent with statements by PG&E and SDG&E that costs to conduct interval meter reads for a non-communicating SmartMeter are higher than consumption reads. Accordingly, even if the Commission authorizes SCE to provide a radio-off or radio-out smart meter that is *capable* of interval data collection, it should not authorize SCE to collect interval data unless and until it becomes necessary to support opt-out customers' participation in time-variant pricing tariffs.

- (c) The Commission should further investigate potential cost savings of allowing customers to conduct self meter-reads with true-ups.

Further investigation is needed on the potential cost savings of allowing an option for customer self meter-reads with quarterly or semi-annual true ups before the Commission rules-out a self-read program. In its Opt-Out Proposal SCE admits that allowing for customer self-reads would reduce opt-out program costs by an estimated \$4/month per customer (quarterly SCE manual meter read) to \$6/month per customer (semi-annual SCE manual meter read). SCE may have understated the potential cost

¹⁸ SCE's Opt-Out Proposal, Appendix A, pp. 1B, 2B, and 3B.

¹⁹ Id. Appendix A, pp. 2D and 3D (total meter read costs (\$29,516,371) over total radio-off or radio-out meter option costs (\$73,024,528) = 40% of estimated program costs for 2012-2014).

²⁰ Id. p. 1D (total meter read costs (\$21,083,122) over total analog meter option costs (\$64,045,780) = 33% of estimated program costs for 2012-2014).

savings available from allowing customer self-reads because it has “offset” potential savings by additional undisclosed costs “associated with billing exceptions, estimated bills, customer support costs, and other operational costs.”²¹ Even so, the minimum cost savings of a self-read program would range from \$48 to \$72 per year per opt-out customer (totaling \$2,920,896 to \$4,381,344 every year assuming 60,852 opt-out participants). The Commission should conduct fact finding on this issue and implement a self-read program if it will reduce ongoing opt-out program costs.

Respectfully submitted,

/s/ CANDACE J. MOREY

Candace J. Morey
Staff Counsel

Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-3211
Email: cjm@cpuc.ca.gov

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²¹ Id., p. 18.