

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Application of Utility Consumers' Action
Network for Modification of Decision
07-04-043 so as to Not Force Residential
Customers to Use Smart Meters.

A.11-03-015
(Filed March 24,2011)

**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON
SAN DIEGO GAS & ELECTRIC 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's served by e-mail on the parties to the above-captioned proceeding, the Division of Ratepayer Advocates ("DRA") respectfully submits Comments on the Proposal of San Diego Gas & Electric Company for Customers to Opt-Out of Wireless Smart Meters filed November 28, 2011 ("SDG&E's Opt-Out Proposal").

1. The Commission should not approve a revenue requirement for SDG&E's opt-out program without first allowing for hearings and a reasonableness review.

The Commission should reject SDG&E's request for approval in this proceeding of a revenue requirement and its request for authorization to establish two new two-way balancing accounts to track charges and revenues associated with implementing an opt-out program.¹ The Commission should not approve an opt-out program revenue requirement or guarantee recovery by SDG&E of all opt-out program costs based solely on SDG&E's Opt-Out Proposal or the comments filed in response. Instead, any approved cost recovery mechanism for SDG&E's Smart Meter opt-out program should

¹ SDG&E's Opt-Out Proposal pp. 21-22.

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 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,” and 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.

² Resolution ALJ 176-3272, Ratification of preliminary determination of category adopted, April 14, 2011.

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

⁴ Public Utilities Code § 1705. References to code are to the Public Utilities Code sections (PUC §) unless otherwise noted.

⁵ PU Code § 1757(a)(3) – (4).

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. SDG&E’s Opt-Out Proposal 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

SDG&E’s Opt-Out Proposal was prepared and filed by SDG&E’s attorney 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 SDG&E’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 SDG&E to establish a two-way 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 SDG&E to implement an Opt-Out Program and to seek recovery of net opt-out costs in a subsequent application, then the decision should include the same protections for ratepayers as

⁶ PU Code § 1710.

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.”)

recommended in DRA’s Comments on Pacific Gas & Electric’s Opt-Out Program.⁸ The protections should include requiring SDG&E 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, though it would not determine SDG&E’s burden of proof or guarantee recovery or a finding of reasonableness of program costs. Parties must have an opportunity to conduct discovery, present witnesses, and rebut SDG&E’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 SDG&E:

- Directing SDG&E to avoid unnecessary duplicative visits to customer sites in implementing the opt-out program.
- Providing analog meters as an opt-out option, either as a short-term or permanent alternative.
- Declining to authorize interval data collection now given that it will increase meter-reading costs compared to monthly consumption reads.
- Determining the potential to reduce ongoing opt-out program costs by allowing customer self-reads of meters.

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 not authorize SDG&E’s proposal to implement a “two-step” approach for implementing a radio-off opt-out program.

SDG&E’s opt-out cost filing is deficient because it presents only “near-term” costs for the opt-out and fails to estimate the full costs that would be needed to complete

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.

the “two-step approach (near-term and long-term)” to implement the radio-off Smart Meter solution.⁹ SDG&E states that its preferred opt-out solution is a non-communicating solid state meter with an interval read capability, which would be achieved by installing a smart meter with radio transmission turned off. But such meters are not currently available – the “long-term smart meter with radio transmission turned off alternative” is not expected to be available until “around the 4th quarter of 2012.”¹⁰ SDG&E would thus replace existing analog and wireless smart meters immediately with the “short term” solution – smart meters whose radios have been disabled in the meter shop.¹¹ SDG&E would have to make a second visit to each customer premise to swap-out the “short term” meter after “the future firmware upgrade is available and implemented.”¹²

SDG&E’s cost estimates are deficient because they not present the full costs to implement both steps of the “two-step” proposal. Instead, SDG&E states that “SDG&E will provide its projected costs comparisons on a near-term alternative,” and that “SDG&E’s response will be based on just the near-term smart meter with radio off alternative.”¹³ SDG&E provides no explanation for this glaring deficiency except a realization that “the Commission is considering implementing an opt-out program as soon as reasonably possible.”¹⁴ Even still, SDG&E projects its preferred “radio-off” will cost more than the analog meter solution; a complete workup of the radio-off implementation costs would likely reveal SDG&E’s two-step proposal to be the most expensive opt-out solution.¹⁵ The Commission should not authorize SDG&E to

⁹ SDG&E’s Opt-Out Proposal, pp. 19-20.

¹⁰ Id. p. 5

¹¹ Id. p. 10 (“Initially for the smart meter with radio turned off option, SDG&E will provide a near-term solution until future firmware functionality is available and installed around the 4th quarter of 2012.”)

¹² Id. p. 11.

¹³ Id. p. 5.

¹⁴ Id.

¹⁵ At the very least, SDG&E should incur a second “electric installation cost” of \$132,263 to replace the short-term meters with the long-term radio-off Smart Meter. Id. p. A11. It also seems possible that SDG&E would incur additional meter equipment cost (the costs to develop and purchase the long-term

needlessly increase opt-out program costs in this way. Instead, the Commission should order SDG&E to propose alternatives to decrease its total estimated opt-out program implementation costs, such as allowing customers to retain an analog meter as the near-term solution.

- (b) The Commission should further consider requiring SDG&E to offer an analog meter opt-out alternative.

SDG&E appears to oppose offering an analog meter option.¹⁶ Notably, 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 the radio-off SmartMeter.¹⁷ DRA supports allowing customers PG&E’s customers to maintain existing analog meters, at least as a near-term option, because it could reduce the total costs to implement the opt-out program.¹⁸ The same concerns apply to SDG&E, given that SDG&E does not have the “long-term” radio-off Smart Meter ready for immediate deployment. (SDG&E estimates that this solution will not be available for implementation until the 4th quarter of 2012.¹⁹)

Further, SDG&E customers who are concerned about the potential impacts of radio frequency emissions from Smart Meters may not be satisfied if SDG&E’s opt-out program fails to allow for use of an analog meter, particularly if PG&E’s customers are given this option. Ongoing opposition and legal challenges to SDG&E’s approved opt-out program would create uncertainty as to the finality of program elements, which could

radio-off meters that are capable of collecting interval data) or additional electric meter shop costs to turn the “short-term” radios back on once they are removed from the opt-out customer premise (the estimated cost to turn radios off in the meter shop is \$72,083).

¹⁶ SDG&E’s Opt-Out Proposal, p. 16-17.

¹⁷ 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.

¹⁸ Comments of the Division of Ratepayer Advocates on the November 22, 2011 Proposed Decision of Commissioner Peevey Modifying PG&E’s SmartMeter Program to Include an Opt-Out Option, A.11-03-014 (Dec. 12, 2011), p. 15.

¹⁹ SDG&E’s Opt-Out Proposal, p. 20.

result in excessive costs and inefficiencies if decisions are later modified to require additional alternatives.

- (c) The Commission should approve the analog meter solution because it is the least expensive solution and appears to be consistent with California’s energy policies.

DRA supports adopting the lowest-cost opt-out program that is consistent with California’s energy policies. This may be the analog meter solution. 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.

As an initial matter, SDG&E’s cost filing indicates that providing analog meters as the only opt-out alternative would cost less than implementing just the first step of SDG&E’s radio-off solution, and less than the digital (radio-out) solution.²⁰ Indeed, this solution should cost even less than SDG&E estimates. SDG&E inflates the analog meter option costs by claiming that SDG&E would need to conduct a field visit to put a sticker or other identifying tag on the legacy analog meters.²¹ DRA believes this cost can and should reasonably be eliminated. The fact that the meter is an analog meter—not a smart meter—would be readily apparent to any meter reader, technician, or customer. This would eliminate the costs associated with a truck roll to place a sticker on the analog meter and should further reduce SDG&E’s analog solution cost estimates.

Further, percentage of opt-out participants who will still have an analog meter installed when they elect to opt-out could be higher than SDG&E has estimated. SDG&E “estimated a small savings based on analog meters already installed at a premise,” which will reduce the number of new analog meters that SDG&E would purchase.²² SDG&E forecasted that approximately half of the opt-out customers would still have an analog

²⁰ Id., p. A3 (Summary of Results for 2012-2014). SDG&E 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.

²¹ Id. p. 9.

²² Id. pp. 8-9, A15 (\$64,171 cost adjustment for previously installed meters).

meter, but the rate (and the cost savings) could be higher. For example, as of early November, 2011, SDG&E had 499 customers on delay list and 121 customers who requested replacement of an already-installed smart meter with a non-smart meter.²³ This suggests a possible 80%—not 50%—of opt-out participants might still have an analog meter. Further, as of early November SDG&E had not yet deployed approximately 3,800 Smart Meters due to access and other issues.²⁴ (SDG&E assumes an opt-out participation rate of 3,000 customers.) If some of the “access” issues were caused by customers blocking installation of a smart meter on their property, they too may comprise opt-out customers that still have an analog meter. Although this requires speculation, it is at least possible that the analog solution could cost even less than SDG&E has estimated.

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,²⁵ 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.²⁶ 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.²⁷ Thus, it appears that an analog meter opt-out program would be entirely consistent with the state’s goals to deploy a SmartGrid.²⁸

²³ Id. p. 5.

²⁴ Id. p. 6.

²⁵ PU Code § 745 (b).

²⁶ PU Code § 745(d)(1).

²⁷ 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.

²⁸ 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.”)

The Commission should not approve an opt-out program that allows for interval data collection without first determining if the requirement is necessary or otherwise warranted in light of the additional costs to implement the functionality.

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

The Commission should specify that SDG&E is not authorized to conduct interval meter reading for opt-out customers because it will increase opt-out program costs and is neither necessary nor mandatory at this time. It is indisputable based on SDG&E's Opt-Out Proposal that costs to collect interval data are higher than for simple consumption reads. According to SDG&E's filing, performing interval reads (via an onsite meter probe) would add an estimated \$4.16 per month to the monthly meter reading costs for opt-out customers.²⁹ This would increase SDG&E's estimated meter reading costs for opt-out customers by 48% each year, further increasing SDG&E's estimated "total radio-off meter solution costs."³⁰ There is currently no need or justification for imposing these higher costs on opt-out customers or any other ratepayers. Accordingly, even if the Commission authorizes SDG&E to provide a radio-off or radio-out smart meter that is *capable* of interval data collection, it should not authorize SDG&E to collect interval data unless and until it becomes necessary to support an opt-out customer's participation in time-variant pricing tariffs.

- (e) 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. SDG&E asserts that total meter reading costs would actually *increase 16-20%* with phone-in of self-reads and quarterly or semi-annual

²⁹ Id., p. 14 (estimated average monthly cost of \$8.65 per opt-out customer for consumption read by utility employee every month), p. 16 (estimated average monthly cost of \$12.81 per opt-out customer for interval read by utility employee every month).

³⁰ Id., p. A11. Note that SDG&E's estimated "Total Radio-Off Meter Solution Cost" assumes consumption reads, not interval data reads.

true-ups by the utility meter reader.³¹ The basis for the increase is not clear from SDG&E’s filing, but it seems counter-intuitive.³² In any event DRA is skeptical and believes SDG&E may be overstating the additional costs required to administer a self-read program. The Commission should require further data on this issue and implement a self-read program if it will reduce ongoing opt-out program costs.

Respectfully submitted,

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³¹ *Id.* p. A5, A9, A13 (SDG&E assumes higher meter reader labor costs and labor burden for the quarterly and semi-annual true ups).

³² The only source of potential increase that SDG&E identified is that it “will need to hire additional support personal [sic] to handle a phone-in program.”