



**TOWN OF FAIRFAX  
STAFF REPORT  
December 3, 2014**

**TO:** Mayor and Town Council  
**FROM:** Michele Gardner, Town Clerk  
**SUBJECT:** Discussion and Consideration of Proposed CPUC Smart Meter Decision

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**RECOMMENDATION**

Discuss and consider the item

**DISCUSSION**

Vice Mayor Bragman requested that the attached memorandum be added to the agenda for discussion and consideration by the Town Council.

**FISCAL IMPACT**

None

**ATTACHMENT**

Councilmember Memorandum



## Town of Fairfax Councilmember Memorandum

**TO:** Mayor and Town Council

**FROM:** Councilmember Bragman

**DATE:** December 3, 2014

**SUBJECT:** Discussion and Consideration of Proposed CPUC Smart Meter Decision

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It has been over two years since the Town of Fairfax petitioned the California Public Utilities Commission (CPUC) for relief from Pacific Gas and Electric Company's deployment of wireless Smart Meters here in Fairfax. Several other governmental entities joined Fairfax in petitioning for relief including the Town of Ross, the County of Marin, and Santa Cruz County. There were also many private parties that petitioned in opposition to the program.

The primary contentions of the governmental entity petitioners were that local governments have the legal right to collectively opt out of the program under general constitutional principles and that charging customers a fee to opt out violates the Americans with Disabilities Act. Judge Yip-Kikugawa's decision denies the petition and recommends maintaining the current program that was put in place on an interim basis. That program charges fees to customers who wish to opt out.

Not surprisingly, the decision also endorses the assertion that the CPUC's authority trumps local government authority to regulate the installation and deployment of this equipment in spite of the terms and conditions of local franchise agreements to the contrary. For example, Fairfax's franchise agreement specifically gives the town the right to regulate the placement of equipment in the public rights of way.

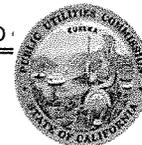
The full CPUC has not adopted the decision and at this writing it is not known when it will come to the Board.

### **ATTACHMENT**

Excerpt from Proposed CPUC Decision

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

**FILED**

10-29-14

03:47 PM

October 29, 2014

Agenda ID #13414

and

Alternate Agenda ID #13429

Ratesetting

TO PARTIES OF RECORD IN APPLICATION 11-03-014, ET AL.:

Enclosed are the proposed decision of Administrative Law Judge (ALJ) Amy Yip-Kikugawa previously designated as the presiding officer in this proceeding and the alternate proposed decision of Commissioner Michael R. Peevey. The proposed decision and the alternate proposed decision will not appear on the Commission's agenda sooner than 30 days from the date they are mailed.

Pub. Util. Code § 311(e) requires that the alternate item be accompanied by a digest that clearly explains the substantive revisions to the proposed decision. The digest of the alternate proposed decision is attached.

When the Commission acts on these agenda items, it may adopt all or part of the decision as written, amend or modify them, or set them aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision and alternate proposed decision as provided in Pub. Util. Code §§ 311(d) and 311(e) and in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Pursuant to Rule 14.3, opening comments shall not exceed [15] pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Yip-Kikugawa at [ayk@cpuc.ca.gov](mailto:ayk@cpuc.ca.gov) and Commissioner Peevey's advisor Manisha Lakhanpal at [ml2@cpuc.ca.gov](mailto:ml2@cpuc.ca.gov). The current service list for this proceeding is available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ TIMOTHY J. SULLIVAN

Timothy J. Sullivan

Chief Administrative Law Judge (Acting)

TJS:dc3

Attachment

### DECISION REGARDING SMARTMETER OPT-OUT PROVISIONS

#### Summary

This decision adopts permanent fees and charges for residential customers in the service territories of Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SoCalGas) who do not wish to have a wireless smart meter.

This decision also grants authority for PG&E to increase its 2012 and 2013 annual revenue requirement, and SCE, SDG&E, and SoCalGas to increase its 2012 through 2014 annual revenue requirements for providing the opt-out option as follows:

Pacific Gas and Electric Company	\$11.789 million
Southern California Edison Company	\$20.463 million
San Diego Gas & Electric Company	\$1.447 million
Southern California Gas Company	\$4.5 million

The utilities may therefore transfer the amounts from the memorandum accounts authorized in Decision (D.) 12-02-014, D.12-04-019, D.12-04-018 and D.14-02-019 to balancing accounts for recovery subject to restrictions specified in this decision.

In view of the utility overstatement of opt-out service revenue requirements in their initial proposals, we adopt a balancing account (*i.e.*, “recorded cost”) approach to setting the revenue requirement for opt-out service until each utility’s next general rate case (GRC). In their initial fee proposals for opt-out service, utilities significantly overestimated the number of opt-out customers. Since opt-out service costs are primarily based on the number of

opt-out customers, the result was that utilities greatly overestimated the costs for opt-out service. Using a balancing account treatment will protect ratepayers against a similar overestimation of uptake and revenue requirements.

We generally allocate opt-out service costs (*e.g.*, costs for manual meter reading) to opt-out customers, and authorize utilities to set their fees and charges for offering the opt-out service based on those costs. However, to mitigate bill impacts we set the opt-out fees and charges at the same levels we established as the interim fees as follows:

For Non-CARE and Non-FERA Customers:

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

For CARE and FERA Customers:

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

We anticipate that over time, the opt-out service costs and participation levels will have stabilized there will be a need to re-assess whether the adopted fees and charges should be adjusted. Accordingly, on a going forward basis, each utility may propose adjustments to the opt-out charges and fees adopted in this decision as part of its GRC application.

This decision also determines that local governments may not collectively opt out of smart meter programs on behalf of residents in their jurisdiction. Similarly, multi-unit dwellings with homeowner and condominium associations may not collectively opt out of smart meter programs on behalf of individual residents who are members of the association. Finally, this decision determines that charging an opt-out fee does not violate the Americans with Disabilities Act or Pub. Util. Code § 453(b).

Applications (A.) 11-03-014, A.11-03-015 and A.11-07-020 are closed.