

Before the Public Utilities Commission of the State of California

Application of Pacific Gas and Electric Company for Approval of Its Modifications to its SmartMeter™ Program and Increased Revenue Requirements to Recover the Costs of Its Modifications (U39M)      Application 11-03-014  
(Filed March 24, 2011)

And Related Matters.      Application 11-03-015  
Application 11-07-020

## PEOPLES INITIATIVE FOUNDATION COMMENTS ON PROPOSED DECISION

Pursuant to the CPUC Rules of Practice and Procedure, Rule 14.3 Peoples Initiative Foundation submits these timely filed comments on the proposed decision. Rules 14.3 states that comments shall focus on factual, legal or technical errors in the proposed or alternate decision and in citing such errors shall make specific references to the record of applicable law.

The CPUC also no legal authority to override the ADA which clearly states that charging someone not to exacerbate their disability is illegal. The CPUC is acting as a rogue agency, violating its own mission statement on the home page of its website and favoring utility profits over public and environmental health and safety. Chairman of the CPUC is currently being investigated for illegal colluding with PG&E, therefore CPUC decisions for all of these smart meter hearings may be deemed invalid due to conflict of interest and collusion.

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The Peoples Initiative considers the proposed CPUC decision on charging smart meter “opt out fees” and disallowing community wide opt outs and disregarding ADA rules and regulations as **illegal** based on the following grounds:

- 1) CPUC Chairman Michael Peevey may be in Violation of RICO and racketeering laws and is currently being investigated for collusion with PG&E and other conflicts of interest which could render all of his CPUC decisions on this issue invalid.
- 2) Violates Energy Policy Act of 2005
- 3) Violates The HUD Fair Housing Act
- 4) Violates CA Government Code Section 11135-11139.7
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- 24) Malice and Aforethought
- 25) Chairman Peevey and Other CPUC Employees Should Be Held Liable for Punitive Damages and may be personally sued along with the utilities under 42 U.S.C section 1983 which provides for relief under the following context...

“Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.”

Furthermore, the CPUC is in violation of it's own mission statement on its website which states:

<http://www.cpuc.ca.gov/puc/>

**“The CPUC serves the public interest by protecting consumers and ensuring the provision of safe, reliable utility service and infrastructure at reasonable rates, with a commitment to environmental enhancement and a healthy California economy.”**

The CPUC is acting as a rogue agency, violating its own mission statement and favoring utility profits over public and environmental health and safety.

The CPUC also has no legal authority to override the ADA which clearly states that charging someone not to exacerbate their disability is illegal.

Violation of these laws cannot be ignored and should not be tolerated by the public, local, state and federal authorities and governments.

Pages 2 - 7 (of actual filing - not PDF page #), Chairman Peevey

A.11-03-014 et al. COM/MP1/sbf/dc3 ALTERNATE PROPOSED DECISION

**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:

A.11-03-014 et al. COM/MP1/sbf/dc3  
ALTERNATE PROPOSED DECISION

4 - 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 Public Utilities Code Section 453(b).

**2. Issues before the Commission**

The Scoping Memo identified the following issues to be resolved:

1. Cost and cost allocation issues associated with offering an analog opt-out option.
2. Whether the opt-out option should be extended to allow communities and local governments to opt out on behalf of their residents.
3. Whether the Americans with Disabilities Act or Pub. Util. Code § 453(b) limit the Commission's ability to adopt opt-out fees for those residential customers who are required to have an analog meter for medical reasons.

The Scoping Memo expressly excluded consideration of health and safety impacts of smart meters from this phase of the proceeding.<sup>5</sup>

Accordingly, we will not address the alleged health and safety impacts of smart meters here. Neither will we entertain renewed arguments that there should be no charges associated with opt-out programs. The items enumerated above, as further defined in the Scoping Memo, are addressed in this decision.

## **Peoples Initiative Initial Comments On CPUC Recommendations**

This statement from the above CPUC decision excerpts...

*"Accordingly, we will not address the alleged health and safety impacts of smart meters here."*

...is in direct conflict with the stated purpose of these hearings set up by the CPUC on the issue of opt outs and fees and the proposed decision which was to consider this question...

*"3. Whether the Americans with Disabilities Act or Pub. Util. Code § 453(b) limit the Commission's ability to adopt opt-out fees for those residential customers who are required to have an analog meter for medical reasons."*

One cannot possibly consider ADA without considering health, nor can one consider fees in association with an "opt out" program without considering the ADA (in addition to other basic human rights laws on this issue). The CPUC has not only misled the public into thinking they were going to consider ADA in these hearings, when in fact apparently they had no intention of doing so, but the CPUC has in essence, also over ridden the ADA and all the protective laws that must be abided by, by IGNORING the ADA in their proposed opt out fee assessment decision. The CPUC in essence is attempting to re-write the law with this decision claiming they can disregard the ADA in addition to health and safety. **Enacting of this decision would render The CPUC's actions both un-Constitutional and illegal.**

Furthermore, this statement from the CPUC...

*"Neither will we entertain renewed arguments that there should be no charges associated with opt-out programs."*

...flies in the face of Question #1,

*"1. Cost and cost allocation issues associated with offering an analog opt-out option."*

Cost and allocation issues associated with analog opt outs are a part of these hearings. Again, the CPUCs refusal to consider no fees is refusing to consider question #1.

Peoples Initiative asserts that these consistent inconsistencies within the CPUCs own agenda for these hearings and their proposed decision not to answer or address their own questions they put forth in their own agenda for these hearings and this proposed decision, raises questions regarding the validity of these hearings and proposed decisions. It also portrays the CPUCs general disregard for the publics time and energy in attending the many hearings held around the state on this issue, in addition to the time it takes the public to address these issues created by the CPUC in these written arguments and comments. The CPUCs refusal to answer its own questions is contradictory and unacceptable to public process and these hearings.

Additionally, by virtue of the CPUC considering only the “cost” to utilities as opposed to the cost to the customers who do not wish to be harmed in their on homes, offices or neighborhoods or have their privacy invaded by these smart meters, the CPUC is showing extreme bias in favoring only the utility’s pocket book and none of the customer basic needs. This violates the basic premise of the mission statement posted on their website.

Customer costs include doctors bills, re-location costs (if they can even find safe housing that is not exposed to these smart microwave pulses) and other costs of attempts at shielding their home and surroundings from the microwave pulses the smart meters emit. The PUC is also not considering doctors bills for customers who are now, have been and will be in the future, affected by the radiation the meters put out, even though the CPUC has received thousands of health complaints from “smart” meters.

Both ALJ Yip-Kikugawa and CPUC Chairman Michael have violated their duty as ALJ and Chairman in that in their decisions failed to take into account the THOUSANDS of public’s comments against fees for opt outs, for which ALJ Yip-Kikugawa went around the state evidently pretending to listen to affected customers who opposed to the fees, whose reasons ranged from severe health effects, to privacy invasion, to property de-valuation to over billing, to **already paying for smart meters in embedded fees in their bills even though they didn’t want a smart meter and already paying for meter readers salaries in embedded fees in their bills, so charging more fees on top of those fees would be over billing or “double dipping”**, to other illegalities which will be named in this filing. The CPUCs recommendations and decisions only incorporated the utilities desire to make money on its customers, even at the expense of violating the law, which is what both the CPUC and the utilities are currently doing by charging opt out fees and also by propagating this dangerous and multi faceted, violating program.

In the above CPUC citation of their decision, the CPUC claims local governments, multi unit dwellings, home owners, condo owners, local governments and people with disabilities have no legal right to protect their constituencies, homes, health, well being, families and privacy. The CPUC has

no legal authority to strip these basic constitutional and legal rights from citizens.

Further more, condos and multi unit dwellings are known to expose residents to hundreds or thousands of times the amount of radiation exposure than they would get from one smart meter. This can not only exceeds the already inadequate FCC guidelines for this radiation exposure, but also puts those condos or multi unit apartment dwellers at further risk of their health by exposing them exponentially to more radiation than their single family unit counter parts. None of these scenarios are fair to the condo or multi unit dweller or home owner.

Furthermore, the CPUC did not mention the fact that customers who opt out due to health effects are actually in most cases still being adversely affected whether by their neighbors meters or by the collector meters that are put up near the opt out home or that the utility maintains a seamless signal in their mesh network of microwaves being propagated by the smart meters. In many cases, the collector or Medusa meters have the power “cranked up” so as to make sure the opt out home is still penetrated with the meters signal. This completely defeats the purpose of the opt out and nullifies it.

On page 3...

*“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.”*

Utility customers are already paying meter readers in embedded fees in their bills. The utilities have not given this money back to smart meter customers being as they no longer will need meter readers. So the utilities are pocketing that money. In addition to pocketing that money, they are now claiming they need to be paid AGAIN in other words, double billing for meter readers.

On Page 21...

*SCE admits...“as a result of the Opt-Out Program, SCE will require additional communicating devices, such as range extenders or cell relays.”*

This is proof that when a customer “opts out” they are still being hit with the radiation they are trying to avoid and in fact being charged to avoid. This extra irradiation of the opt out customers area, nullifies the opt out customers choice not to be irradiated and is proof that opting out does not cut it when it comes to health and safety with regard to the “smart” program.

Page 42

*“...utilities greatly overestimated the costs for opt-out service.”*

This statement is ludicrous as the CPUC gave the go ahead to CHARGE customers who wished to retain their health, life and privacy by “opting out” of a legally “opt in only” smart meter program per the 2005 Energy Policy Act, thereby drastically reducing the amount of opt outs the utilities would receive as most people cannot or find it morally reprehensible to be charged extortion fees to retain their Constitutional rights to health life and privacy.

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*“For relocation of banks of meters, there is already a tariff regarding relocation. Will need to comply with terms of the tariff for relocation, including payment of costs to move meters. This is an additional cost borne by just those customers in the community.”*

This statement assumes that the utilities are otherwise in compliance with the law, which they are not with regard to smart meters and smart grid. So the law that applied to the above statement on tariff for relocation of the old fashioned hard wired, analog meters, would not apply to the new smart meters since they are out of compliance with ADA, HUD, COUC rules and regulations, state and Constitutional law, etc.

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*“In support of delegation of decisions regarding meters to local governments, Counties cites General Order (GO) 159-A, governing the process for approving transmitting sites for cellular carriers, which “acknowledges that the public interest can be served by the involvement of local governments in decisions concerning construction of cellular radio transmitting facilities.”<sup>174</sup> Counties requests a similarly designed delegation program be implemented here.<sup>175</sup> PG&E and Utility Consumers Action Network (UCAN) argue that both the California Constitution and the Public Utilities Code prohibit the Commission from delegating authority over public utilities to allow local governments or communities to determine the type of electric or gas meter installed within the government or community’s defined boundaries.<sup>176</sup> Additionally, the utilities note that the Commission retains exclusive authority over*

*regulation of public utility services and rates, and may not delegate this authority to local governments or communities.<sup>1</sup>*

The “Commission” may have authority over electric and gas meters, however, smart meters are not merely electric and gas meters anymore...they are in fact, wireless telecommunications facilities and equipment and therefore should also fall within jurisdiction of local government decisions, not just PUC decisions.

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*“SCE claims that delegating authority to local governments to determine the types of meters to be installed would violate the doctrine of separation of powers because the Commission retains exclusive regulatory power over this matter.”*

Furthermore, Smart meters are also marketing tools for the utilities who will be harvesting and selling the information to third parties for a profit. Clearly these meters are no longer merely used for the customer to measure their electricity. They are multifaceted in use to the utilities and therefore fall outside of the older boundary imposed by the PUC who no longer have exclusive regulatory authority over them because of the nature of them being wireless telecommunications facilities and equipment. Local governments rights to regulate placement and actual implementation need to be adhered to because of this change in what these meters actually do and what they are.

Page 62

Although the CPUC claims there is no scientific evidence that RF causes health effects, the ADA considers headaches to be a disability. There is no scientific proof that someone has a headache when they say they do, therefore this argument from the CPUC is null and void. Additionally, the FDA...

<http://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/HomeBusinessandEntertainment/CellPhones/ucm116311.htm>

and the American Heart Association...

[http://www.heart.org/HEARTORG/Conditions/Arrhythmia/PreventionTreatmentofArrhythmia/Devices-that-may-Interfere-with-Implantable-Cardioverter-Defibrillators-ICDs\\_UCM\\_448464\\_Article.jsp](http://www.heart.org/HEARTORG/Conditions/Arrhythmia/PreventionTreatmentofArrhythmia/Devices-that-may-Interfere-with-Implantable-Cardioverter-Defibrillators-ICDs_UCM_448464_Article.jsp)

...have statements on their websites on medical devices interacting with RF devices, resulting in a health effect in the person with the medical device. Smart meters can cause a serious risk to the health and life of all medical device implant patients. Therefore, smart meters violate the ADA in the most basic way when not even considering biological impacts but merely devices interacting with medical devices implants. The CPUC argument that there is no scientific proof showing health effects with regard to smart meters and the ADA is simply uninformed, incorrect and again, illegal and a violation of the ADA.

Page 63

*“We agree that it is unclear that an RF-enabled electric or gas meter is a public, physical facility subject to the ADA.”*

If the CPUC has so many questions about whether or not this program is subject to ADA (and I do not know of ANY federally funded program that is NOT subject to ADA), then why doesn't the CPUC err on the side of caution since it has received so many health complaints from the public and is aware that there are thousands of scientific studies showing adverse health effects? Again, the CPUC sides with the utility industry as opposed to public health and safety.

*“Parties have thus failed to show the applicability of ADA and/or state anti-discrimination law to the subject of exposure to smart meter RF/EMF emanations. On the contrary, California law has found a variety of benefits, including environmental benefits, which will accrue to customers due to programs that make use of smart meter technology.<sup>225</sup>”*

This statement is a direct slap in the face to public health and safety. Customers should not have to trade their health and life to help cut greenhouse gas emissions. They should not have to risk cancer, birth defects, heart attack, neurological illnesses or any of the other serious illnesses associated with RF radiation that have been spoken about ad infinitum by all parties objecting to smart meters on the basis of health and safety. The CPUC is CHOOSING to ignore all these health effects and thus violating ADA.

Page 65

*“As observed by Counties' Brief, the Commission “has broad authority to determine whether the service or equipment of any public utility poses any danger to the health or safety of the public, and if so, to prescribe corrective measures and order them into effect.”<sup>230</sup> The absence of empirical evidence in the various proceedings leading to smart meter installation regarding whether and/or what level of RF emissions may impact individuals at what distance, frequency and duration prevents us from identifying RF and/or EMF emanations as a trigger for ADA compliance.<sup>231</sup>”*

Clearly the CPUC is not a health agency and has zero expertise in this area and absolutely ludicrous for the CPUC to assume this position and pre-empt ADA. There is not absence of evidence, but there is a predominance of evidence regarding various levels of RF and the various health effects associated with the many different pulse modulations, frequencies and power densities. Just because the CPUC refuses to acknowledge these studies does not mean they do not exist...

<http://www.bioinitiative.org/>

But again, in true CPUC contradictory form, they previously state this...

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*“The Commission is hopeful that such analysis may provide relevant evidence regarding safe levels of RF/EMF exposure.”*

The CPUC cannot have it both ways. The CPUC either believes what they say on page 65 and other pages, that RF radiation is totally safe, or they believe what the GAO says...

<http://apps.fcc.gov/ecfs/document/view?id=7520929860>

...and what they stated on page 63 of their legal brief, that RF radiation suggested guidelines need revision to better gage public health and safety with regard to RF emissions.

Again, in true contradictory form the CPUC states at the beginning of their brief, that they will not address ADA because it does not fall within the scope of these proceedings, yet it has spent pages and pages in its brief trying to discredit ADA with regard to smart meters. Which statement is true? This one from the opening of the CPUC brief...

*"The Scoping Memo expressly excluded consideration of health and safety impacts of smart meters from this phase of the proceeding.5*

*Accordingly, we will not address the alleged health and safety impacts of smart meters here."*

...or these multiple pages that we are now addressing dealing with ADA and the CPUC position that it is invalid? It seems the CPUC "wants to have its cake and eat it too." It claims to invalidate ADA at the front of their legal brief and excuse themselves from even addressing ADA, yet spend pages and pages attempting to invalidate it. Surely the CPUC has inner conflict on this issue that it needs to straighten out within itself so that it does not contradict itself so often within its own legal brief.

Page 65

*"In addition, the opt-out fees are not based on any customer's medical condition; they are based solely on whether a customer chooses an analog meter or a wireless meter, without regard to the reason for doing so."*

The CPUC makes our point exactly. We finally agree on something!! When customers opt out of smart meters for health and ADA reasons, there cannot legally be a charge for that. Here the CPUC openly admits to ignoring the reason for the customers opting out of the smart meter and charges people regardless of if they have a medical or health condition or not. Shame on the CPUC for this brazen admission of flagrant disregard for ADA and medical conditions.

Page 66

*"Section 15 of the C.F.R. clearly vests the FCC with authority over the licensing of RF emitting devices and the setting of permissible exposure limits attendant to transmissions.237We have recognized the FCC's expertise in this area, as well as its legitimate and comprehensive role in regulating RF."*

Yet elsewhere in their brief the CPUC recognizes there are currently federal agency questions about safe levels of RF exposure...

Page 63

*“The Commission is hopeful that such analysis may provide relevant evidence regarding safe levels of RF/EMF exposure.”*

If the CPUC sees the FCC as a legitimate RF regulator, then it must acknowledge that the FCC has been issued a request from the GAO to revise its RF safety guidelines. The CPUC cannot believe RF to be totally safe yet also be hopeful that they be provided with new safe levels of exposure from the FCC. An acknowledgment that these new safe levels of RF exposure should be forthcoming from the FCC is an acknowledgement that there are serious questions about the safety of RF and that the guidelines need revision. Again, the CPUC contradicts its own stance that RF is perfectly safe.

Page 67

*“No court or agency has found that RF sensitivity is a disability” or “physiological disorder” subject to the ADA, nor have parties produced any cases finding that RF sensitivity exacerbated an existing ADA-established disability.”*

This statement is simply not true. Case in point...

### **United States Access Board**

<http://www.access-board.gov/research/completed-research/indoor-environmental-quality/introduction>

**“The Board recognizes...electromagnetic sensitivities may be considered disabilities under the ADA if they so severely impair the neurological, respiratory or other functions on an individual that it substantially limits one or more of the individual’s major life activities”** Additionally, in 2005, the National Institute of Building Sciences, an organization established by the U.S. Congress in 1974, issued an Indoor Environmental Quality Report which concluded:

**“For people who are electromagnetically sensitive, the presence of cell phones and towers, portable telephones, computers,... wireless devices, security and scanning equipment, microwave ovens, electric ranges and numerous other electrical appliances can make a building inaccessible.**

### **IEQ Indoor Environmental Quality**

[http://web.archive.org/web/20060714175343/ieq.nibs.org/ieq\\_project.pdf](http://web.archive.org/web/20060714175343/ieq.nibs.org/ieq_project.pdf)

A project of the National Institute of Building Sciences (NIBS) with funding support from The Architectural and Transportation Barriers Compliance Board (Access Board)

National Institute of Building Sciences (NIBS), is authorized by Congress as an authoritative source in service of the public's interest, and with funding from The Architectural and Transportation Barriers Compliance Board (Access Board), 2005; which is the guidelines arm of the ADA.

...In addition, during building design particular attention must be paid to **choice of electrical appliances, equipment and products that may produce higher than necessary electromagnetic fields. The NIBS-IEQ Materials Committee recognizes that there are selections that can be made during building design and construction that can provide a more healthful environment for persons with electromagnetic sensitivities.** A few of these considerations are:

- **Incorporation of a foil vapor barrier or other metal shielding feature into the walls around electric equipment can reduce certain electromagnetic fields.**

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- **Wireless (“bluetooth” type) connections should be avoided, or areas of their use should be “contained” by using foil-backed drywall or other incorporation of a foil or metal barrier.**
- New construction should use twisted metal clad wiring and/or twisted wire placed in metal conduit.
- **Fiber optic connectivity is preferred for computer networks communication because these data lines may be run without concern for stray emissions...(Pg.88)**

## List of Legal Violations of CPUCs Proposed Decision to Charge Customers “Opt Out Fees” – Although There May be More

### Civil Rights, An Overview

[http://www.law.cornell.edu/wex/civil\\_rights](http://www.law.cornell.edu/wex/civil_rights)

“A civil right is an enforceable right or privilege, which if interfered with by another gives rise to an action for injury. Examples of civil rights are freedom of speech, press, and assembly; the right to vote; **freedom from involuntary servitude; and the right to equality in public places. Discrimination occurs when the civil rights of an individual are denied or interfered with because of their membership in a particular group or class.** Various jurisdictions have enacted statutes to prevent discrimination based on a person's race, sex, religion, age, previous condition of servitude, **physical limitation**, national origin, and in some instances sexual orientation.”

**BY CHARGING CUSTOMERS “OPT OUT” FEES, THE CPUC IS IN DIRECT VIOLATION OF THE FOLLOWING LEGAL AND CONSTITUTIONAL LAWS AND STATUTES:**

**1) CPUC Chairman Michael Peevey may be in Violation of RICO and racketeering laws and is currently being investigated for collusion with PG&E and other conflicts of interest which could render all of his CPUC decisions on this proceeding and previous proceedings, invalid.**

<http://www.utilitydive.com/news/investigation-reveals-cpuc-chair-peevey-failed-to-disclose-donations-from-p/332691/>

**2) Energy Policy Act of 2005** which clearly states...

<http://www.gpo.gov/fdsys/pkg/PLAW-109publ58/pdf/PLAW-109publ58.pdf>

“(14) Time-based metering and communications, -(A) Deadline. Not later than 18 months after the date of enactment of this paragraph, each electric utility shall **offer** each of its customer classes, **and provide individual customers upon customer request**, a time-based rate schedule, under which the rate charged by the electric utility varies during different time periods and

reflects the variance, if any, in the utility's costs of generating and purchasing electricity at the wholesale level."

Not only was it WELL after 18 months from the date of that Congressional Act, but extorting customers who do not wish to have a smart meter is not a part of that Act, nor is forcing them to have a smart meter and shutting their electricity off if they refuse which is what they did until public embarrassment and the media forced PG&E to tell the CPUC to issue a paid opt out.

### 3) The HUD Fair Housing Act which states:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_op/FHLaws](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_op/FHLaws)

#### Fair Housing Laws and Presidential Executive Orders

**Fair Housing Act** □ Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended, **prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on** race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18), and **disability**.

**"Section 504 of the Rehabilitation Act of 1973** □ Section 504 **prohibits discrimination based on disability in any program or activity receiving federal financial assistance.**"

**Title II of the Americans with Disabilities Act of 1990** □ Title II **prohibits discrimination based on disability in programs, services, and activities provided or made available by public entities.** HUD enforces Title II when it relates to state and local public housing, housing assistance and housing referrals.

**Architectural Barriers Act of 1968** □ The Architectural Barriers Act requires that buildings and facilities designed, constructed, altered, or leased with certain federal funds after September 1969 must be accessible to and useable by handicapped persons.

**Age Discrimination Act of 1975** □ The Age Discrimination Act prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.

(The elderly have weaker immune systems, more implanted medical devices which can interact with smart meters and in general are in poorer health than younger people).

All IOUs in the state of CA who are within the jurisdiction of the CPUC have received federal financing for their smart meter/smart grid program and therefore must abide by the HUD Fair Housing laws, as must the CPUC.

Violation of these laws cannot be ignored and should not be tolerated by the public, local, state and federal authorities and governments.

#### **4) CA GOVERNMENT CODE SECTION 11135-11139.7**

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=11001-12000&file=11135-11139.7>

11135. "(a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, **or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state...**"

(c) (1) As used in this section, "disability" means any mental or physical disability, as defined in Section 12926.

#### **5) CALIFORNIA CODE OF REGULATIONS Title 2. Administration Div. 4. Fair Employment & Housing Commission**

[http://www.dfeh.ca.gov/res/docs/FEHC%20Disability%20Regs/Adopted\\_10-2-12\\_Disability\\_Regs.pdf](http://www.dfeh.ca.gov/res/docs/FEHC%20Disability%20Regs/Adopted_10-2-12_Disability_Regs.pdf)

(2) "Physical Disability," as defined at Government Code section 12926, includes, but is not limited to, having any anatomical loss, cosmetic disfigurement, physiological disease, disorder or condition that does both of the following:

10-2-12 ADOPTED Disability Regulations with all changes from original Page 3 of 30§7293.6(d)(2)(A). Definitions, cont'd.

(A) affects one or more of the following body systems: neurological; immunological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; circulatory; skin; and endocrine; and

(B) limits a major life activity.

(C) "Disability" includes, but is not limited to deafness, blindness, partially or completely missing limbs, mobility impairments requiring the use of a wheelchair, cerebral palsy, and chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, multiple sclerosis and heart disease.

#### **6) California Public Utilities Code Section 453:**

<http://law.onecle.com/california/utilities/453.html>

**(a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.**

**(b) No public utility shall prejudice, disadvantage, or require different rates or deposit amounts from a person because of ancestry, medical condition, marital status or change in marital status, occupation, or any characteristic listed or defined in Section 11135 of the Government Code...** A person who has exhausted all administrative remedies with the commission may institute a suit for injunctive relief and reasonable attorney's fees in cases of an alleged violation of this subdivision. If successful in litigation, the prevailing party shall be awarded attorney's fees.

**(c) No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.**

#### **7) Public Utilities Code Section 328-328.2**

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=00001-01000&file=328-328.2>

**Code 328.2(b) "No customer should have to pay separate fees for utilizing services that protect public or customer safety."**

#### **8) SB 17, CPU (PU) Code 8360-69**

[http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb\\_0001-0050/sb\\_17\\_bill\\_20091011\\_chaptered.html](http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sb_17_bill_20091011_chaptered.html)

“It is the policy of the state to modernize the state’s electrical transmission and distribution system to maintain **safe**, reliable, efficient and secure electrical service...”

## 9) United States Access Board

<http://www.access-board.gov/research/completed-research/indoor-environmental-quality/introduction>

“**The Board recognizes...electromagnetic sensitivities may be considered disabilities under the ADA if they so severely impair the neurological, respiratory or other functions on an individual that it substantially limits one or more of the individual’s major life activities**” Additionally, in 2005, the National Institute of Building Sciences, an organization established by the U.S. Congress in 1974, issued an Indoor Environmental Quality Report which concluded:

“**For people who are electromagnetically sensitive, the presence of cell phones and towers, portable telephones, computers,... wireless devices, security and scanning equipment, microwave ovens, electric ranges and numerous other electrical appliances can make a building inaccessible.**

## 10) IEQ Indoor Environmental Quality

[http://web.archive.org/web/20060714175343/ieq.nibs.org/ieq\\_project.pdf](http://web.archive.org/web/20060714175343/ieq.nibs.org/ieq_project.pdf)

A project of the National Institute of Building Sciences (NIBS) with funding support from The Architectural and Transportation Barriers Compliance Board (Access Board)

National Institute of Building Sciences (NIBS), is authorized by Congress as an authoritative source in service of the public’s interest, and with funding from The Architectural and Transportation Barriers Compliance Board (Access Board), 2005; which is the guidelines arm of the ADA.

...In addition, during building design particular attention must be paid to **choice of electrical appliances, equipment and products that may produce higher**

than necessary electromagnetic fields. The NIBS-IEQ Materials Committee recognizes that there are selections that can be made during building design and construction that can provide a more healthful environment for persons with electromagnetic sensitivities. A few of these considerations are:

- Incorporation of a foil vapor barrier or other metal shielding feature into the walls around electric equipment can reduce certain electromagnetic fields.

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- **Wireless (“bluetooth” type) connections should be avoided, or areas of their use should be “contained” by using foil-backed drywall or other incorporation of a foil or metal barrier.**
- New construction should use twisted metal clad wiring and/or twisted wire placed in metal conduit.
- **Fiber optic connectivity is preferred for computer networks communication because these data lines may be run without concern for stray emissions...(Pg.88)**

**11) CAL. PUC. CODE § 394.25 : California Code - Section 394.25**

<http://codes.lp.findlaw.com/cacode/PUC/1/d1/1/2.3/12/s394.25>

**(b) An electric service provider may have its registration suspended or revoked, immediately or prospectively, in whole or in part, for any of the following acts:**

- (1) Making material misrepresentations in the course of soliciting customers, entering into service agreements with those customers, or administering those service agreements.**
- (2) Dishonesty, fraud, or deceit with the intent to substantially benefit the electric service provider or its employees, agents, or representatives, or to disadvantage retail electricity customers.**
- (3) Where the commission finds that there is evidence that the electric service provider is not financially or operationally capable of providing the offered electric service.**
- (4) The misrepresentation of a material fact by an applicant in obtaining a registration pursuant to Section 394.**

**12) CAL. PUC. CODE § 2106 : California Code - Section 2106**

<http://codes.lp.findlaw.com/cacode/PUC/1/d1/1/11/s2106#sthash.z1nLcL5s.dpuf>

**“Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, any law of this State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting there from. If the court finds that the act or omission was willful, it may, in addition to the actual damages, award exemplary damages. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person.”**

### **13) The 4<sup>TH</sup> Amendment of the US Constitution**

[http://www.law.cornell.edu/constitution/fourth\\_amendment](http://www.law.cornell.edu/constitution/fourth_amendment)

**“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”**

### **14) The 5<sup>th</sup> Amendment to the US Constitution**

[http://www.law.cornell.edu/wex/fifth\\_amendment](http://www.law.cornell.edu/wex/fifth_amendment)

“The [Fifth Amendment](#) of the [U.S. Constitution](#) provides, “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; **nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.**”

### **15) The 10<sup>th</sup> Amendment to the US Constitution**

[http://www.law.cornell.edu/constitution/tenth\\_amendment](http://www.law.cornell.edu/constitution/tenth_amendment)

“The powers not delegated to the United States by the Constitution, nor

prohibited by it to the states, are reserved to the states respectively, **or to the people.**”

## 16) The 14th Amendment to the US Constitution

<http://www.law.cornell.edu/constitution/amendmentxiv>

**“...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the US; nor shall any State deprive any person of life, liberty, or property, without due process of law... “**

## 17) Public Endangerment

<http://en.wikipedia.org/wiki/Endangerment>

**Public endangerment** is a [criminal act](#) that can be [prosecuted](#) in a [court](#). It is usually applied to crimes which place the public in some form of danger, although that danger can be more or less severe according to the crime.

## 18) Wanton And Reckless Disregard for Human Life and The Rights of Citizens Under the Constitution

<http://legal-dictionary.thefreedictionary.com/wanton>

*Grossly careless or negligent; reckless; malicious.*

**The term *wanton* implies a reckless disregard for the consequences of one's behavior. A *wanton act* is one done in heedless disregard for the life, limbs, health, safety, reputation, or property rights of another individual.** Such an act is more than [Negligence](#) or gross negligence; it is equivalent in its results to an act of willful misconduct. A *wanton injury* is one precipitated by a conscious and intentional wrongful act or by an omission of a known obligation with reckless indifference to potential harmful consequences.

## 19) Exemplary Damages

<http://legal-dictionary.thefreedictionary.com/exemplary+damages>

“Exemplary damages n. often called punitive damages, these are damages requested and/or awarded in a lawsuit when the defendant's willful acts were malicious, violent, oppressive, fraudulent, wanton, or grossly reckless.”

## **20) Negligence**

<http://legal-dictionary.thefreedictionary.com/negligence>

**“Conduct that falls below the standards of behavior established by law for the protection of others against unreasonable risk of harm. A person has acted negligently if he or she has departed from the conduct expected of a reasonably prudent person acting under similar circumstances.”**

## **21) Gross Negligence**

<http://legal-dictionary.thefreedictionary.com/Gross+negligence>

**“An indifference to, and a blatant violation of, a legal duty with respect to the rights of others.”**

## **California Civil Jury Instructions (CACI)**

<http://www.justia.com/trials-litigation/docs/caci/400/425.html>

**Gross negligence is the lack of any care or an extreme departure from what a reasonably careful person would do in the same situation to prevent harm to oneself or to others. A person can be grossly negligent by acting or by failing to act.**

## **22) Fraud**

A false representation of a matter of fact—whether by words or by conduct, by false or misleading allegations, or by concealment of what should have been disclosed—that deceives and is intended to deceive another so that the individual will act upon it to her or his legal injury.

## **23) Misrepresentation**

<http://legal-dictionary.thefreedictionary.com/Misrepresentation>

**“An assertion or manifestation by words or conduct that is not in accord with the facts.”**

***These meters were represented as SAFE to consumers before, during and after they were rolled out and even after the utilities received all of the health complaints.***

***Nearly 100% of these documented complaints to the California and Texas PUC were first made to the utilities themselves to no avail.***

#### **24) Malice and Aforethought**

<http://legal-dictionary.thefreedictionary.com/malice+aforethought>

A predetermination to commit an act without legal justification or excuse. A malicious design to injure. An intent, at the time of a killing, willfully to take the life of a human being, or **an intent willfully to act in callous and wanton disregard of the consequences to human life**; but malice aforethought does not necessarily imply any ill will, spite or hatred towards the individual killed.

#### **25) Chairman Peevey and Other CPUC Employees May Be Held Liable for Punitive Damages and personally sued along with the utilities under 42 U.S.C section 1983 which provides for relief under the following context...**

**“Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.”**

## **Peoples Initiative Recommendations**

- 1) All utility customers must have free opt outs, as the state of Vermont has set up and all opt outs be to hard wired, analog only as opposed to digital but RF radiation emitting “non smart” meters.
- 2) All utility customers who have opted out but are still affected by the collector meters or neighbors meters be accommodated and have those offending smart meters switched to hard wired analog meters at no cost to the customer.
- 3) A fund be set up with funding coming from both the utilities and the CPUC to help the thousands of CA utility customers who are now and/or will be in the future adversely affected and unable to tolerate the radiation being put out by the smart or collector meters, in order to pay for their doctors bills and re-location costs.
- 4) All fees already paid be sent back to the customers with interest.
- 5) Any and all communities, whether it be a condominium, group of buildings or dwellings, town, city or otherwise, be able to BAN smart meters AND SMART GRID with zero opt out fees.
- 6) All fees embedded in utility bills that go towards the smart meter program be allocated back to the opt out customer.
- 7) All meter reading fees that are already embedded in utility bills of the smart meter customers be allocated back to the smart meter customer.
- 8) This program needs to be dismantled and made safe via hard wired analog smart meters so that they are not a health risk to anyone and then OFFERED to customers with the customers full consent and knowledge regarding the invasion of privacy that the meters bring along with other risks to their personal information.