BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for approval of Modifications to its Smart Meter™ Program and Increased Revenue Requirements to Recover the Costs of the Modifications (U39M).	Application 11-03-014 (Filed March 24, 2011)
And Related Matters.	Application 11-03-015 Application 11-07-020

OPENING BRIEF OF SOUTHERN CALIFORNIANS FOR WIRED SOLUTIONS TO SMART METERS ("SCWSSM") (LFB) [with 2 Attachments]

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OPENING BRIEF OF SOUTHERN CALIFORNIANS FOR WIRED SOLUTIONS TO SMART METERS ("SCWSSM") (LFB) [with 2 Attachments]

I.

INTRODUCTION

Pursuant to Rule 13.11 of the California Public Utilities Commission ('Commission') Rules of Practice and Procedure, the SOUTHERN CALIFORNIANS FOR WIRED SOLUTIONS TO SMART METERS ("SCWSSM") is filing this opening brief pursuant to the schedule set by Assigned Commissioner's "Ruling Amending Scope of Proceeding to Add a Second Phase" issued on June 8, 2012 as amended. The consolidated proceeding involves customers of Pacific Gas & Electric ("PG&E"), San Diego Gas & Electric ("SDG&E") and Southern California Edison ("SCE") .

The Commission requested legal briefs regarding the Americans with Disabilities Act, 42 U.S.C. section 12101 et.seq. (ADA) and California Public Utilities Code section 453(b), (" section 453(b)") as it pertains to the Commission and the utilities charging opt out fees on all customers including those who must opt out because of a

disability ('qualified disabled customer')and/or medical condition. ('medical condition customer')

SCWSSM will limit its briefing to questions 1 & 2 applied to the Commission only.[1] [Assigned Commoner's Ruling Amending Scope of Proceedings to Add a Second Phase issues June 8, 2012 at page 5&6]:

> "1. Does an opt-out fee, which is assessed on every residential customer who elects to not have a wireless smart meter installed in his/her location, violate the Americans with Disabilities Act or section 453(b)
>
> 2. Do the Americans with Disabilities Act or section 453(b) limit the Commission's ability to adopt opt-out fees for those residential customers who elect to have an analog meter for medical reasons?"

While the Commission limited its request for analysis of the ADA and section 453(b), it should be noted that numerous other constitutional, federal and state provisions also apply to the Commission's supervisory and regulatory responsibilities. The Commission must act consistent with its constitutional and statutory mandate to ensure the delivery of safe and reasonable utility services. Pub. Util. Code section 451, SDG&E v. Superior Court (1996) 13 Cal.4th 893

II.
FACTUAL BACKGROUND

The Commission is a state agency and indisputably receives California state funds causing Government Code section 11135 to apply which prohibits discrimination. Also the Commission was awarded federal funds by the Department of Energy ('DOE') from the *State Assistance on Energy Policy* in the amount of $1,686,869 thereby bringing its actions under the federal Rehabilitation Act of 1973 section 504 which also prohibits discrimination by recipients of federal funds. Similarly, PG&E, SDG&E and SCE

[1] Title II, III Rehab. Act of 1973 section 504, Government Code section 11135, Civil Code sections 51 et. seq, 54 et seq. and other Constitutional, federal and state laws also apply to conduct of the utilities.

("utilities") have been awarded federal funds by the DOE under the Smart Grid Reg. and Energy Storage Demonstration Project [EISA 1304] and Smart Grid Investment Grant Program [EISA 1306]. The total awards of federal grants to all three California utilities total well over one hundred million dollars ($100,000,000). SCWSSM asks the Commission to take judicial notice of this data published on the DOE government website*: http:/energy.gov/downloads/recovery-act-recipient-data*

The records in the underlying proceedings reveal that no CEQA study was performed, notwithstanding requests for the Commission to authorize such a study regarding environmental impacts of the smart meter program. The Commission denied EMF Safety Network's and Wilner and Associate's request for a hearing on health impacts of smart meters in proceeding A.11-03-014. The Commission also denied SCWSSM's Motion for a Health Investigation by The California Department of Health Services, regarding the smart meter program in both proceedings A.11-03-015 & A.11-07-020. SCWSSM requests the Commission to take judicial notice of NETWORK's, Wilner & Associates and SCWSSM's filings for health hearings and investigations filed in above referenced proceedings.

The Commission and all utilities received hundreds of smart meter health complaints from the public, many with physicians' letters attached requesting accommodation. SCWSSM asks the Commission to take judicial notice of the business records of smart meter health complaints on file with the Commission and the documents admitting health complaints by the utilities in both transcripts and documents filed in these consolidated actions prior to consolidation. [i.e. A-11-03-014, A-11-03-015 and A-11-07-020].

Numerous utility customers became ill, sent physician's letters to the utilities requesting the smart meter to be removed from their home and/or removing meters around their home ('zone of safety' *see footnote 8 infra*). In most instances the utilities refused to remove the meters.

On February 1, 2012 the Commission issued Decision D. 12-02-014, modifying PG&E's smart meter program to include an opt out provision, applying to all residential customers. On April 19, 2012 the Commission issued similar decisions for San Diego Gas & Electric Company (SDG&E) in D.12-04-019 and Southern California Edison (SCE) in D.12- 04-018. The Commission's decisions also authorized charges to all customers opting out of the gas and electric smart meter programs.

On April 24, 2012 the assigned ALJ issued a ruling that consolidated Applications of all three utilities as referenced above.

On May 16, 2012 a pre conference hearing was held. Parties renewed requests for health studies and modifications to accommodate 'qualified disabled customers' and 'medical condition customer'.

On June 8, 2012 the assigned Commissioner issued an Amended Ruling, to consider, including but not limited to, whether opt-out options should be extended to communities, such as local governments and residents of apartment buildings or condominium complexes. The Commissioner requests five questions to be briefed.

SCWSSM will respond to questions 1 &2 to the extent they relate to the Commission's duties under the law in relationship to 'qualified disabled customers' under Title II, and 'medical condition customers' under CPUC section 453(b). *(for purposes of this brief each category 'qualified disabled customer and "medical conditions customer is separated into Class 1 (medical conditions) and Class 2(radiation illness) disabled individuals: see definitions at footnote 5 infra.)*

SCWSSM is informed and believes that the Commission and utilities are subject to the Rehabilitations Act of 1973 section 504 and California Government Code 11135 because both are recipients of federal and state funds for operations and/or for services programs that are the subject of this proceeding.

The Commission did not request briefing of constitutional provisions or state and federal laws that are applicable to these facts. This does not relieve the Commission or

the utilities of duties under the law. Recipients of federal funds waive immunity for any conduct that is discriminatory toward, including but not limited to, the disabled. [2]

III.

JURISDICTION

The Commission is a state agency of constitutional origin with far reaching duties functions and powers. California. Constitution., Art XII section 1-6. The Commissions powers are not restricted to those expressly mentioned in the Constitution. [3] The legislature has plenary power, unlimited by the other provisions of this Constitution but consistent with this article, to confer additional authority and jurisdiction on the Commission. Cal Const. Art. XII section 5; SDG&E v. Superior Court, 13 Cal.4th 893 at 914 et. seq.

Pursuant to this constitutional provision the legislature enacted the Public Utilities Act (sections 201 et. Seq.). That law vests the Commission with broad authority to "supervise and regulate every public utility in the State" (section 701) and grants the Commission numerous specific powers for the purpose. SDG&E v. Superior Court at pg. 915, supra.

The Commission's broad authority extends to whether services or equipment of any public utility poses any danger to the health or the safety of the public, and if so

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[2] Quote from DOE Application for Recovery Act Funds, signed by SDG&E, Judicial Notice requested as available on the DOE website: "In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy. Civil Rights Act of 1964 (Public Law 88-352); Section 16 of the Federal Energy Admin Act of 1974 (Pub.L. 93-275); Section 401 of the Energy Reorganization Act of 1974 (Pub. L 93-438); Title IX of the Educational Amendments of 1972, as amended PL 92-318; PL 93-568; PL 94-482; Section 504 of the Rehabilitation Act of 1973 (PL 93-112), the Age Discrimination Act of 1975 (PL 94-135);Title VIII of the Civil Rights Act of 1968 (PL 90-284); the Dept of Energy Organization Act of 1977 (PL 95-91); and the Energy Conservation and Production Act of 1976, as amended (PL 94-385); Title 10 of Code of Federal Regulations Part 1040.

[3] There are also U.S. Constitutional corresponding responsibilities, 5th and 11th and 14th amendments..

prescribe corrective measures and order them into effect. section 451, SDG&E v. Superior Court, 13 Cal.4th 893

Persons with disabilities are part of the "public" therefore the Commission must also consider, not just the danger to health and safety of the general healthy public, but also the dangers to health and safety of qualified persons with disabilities and those with medical conditions.(*see footnote 5 infra*)

The Commission and the utilities are bound to comply with all federal and state laws pertaining to 'qualified disabled customers' and 'medical condition customers'. SDG&E v. Superior Court supra.

The Commission must refrain from violating these laws in its supervisory and regulatory role and in implementing its policies practices and procedures which includes rulings and decisions.[4]

The Commission's authority extends to determining whether services or equipment of any public utility poses a danger or threat to the health and safety of the public and if so, prescribe corrective measures and order them into effect. section 451, SDG&E v. Superior Court supra.

The Commission's Rulings violate laws pertaining to commercial ratepayers and their customers, which prohibit barriers to access of services and programs to 'qualified disabled customers' and 'medical condition customers' as described under federal and state constitutions and laws, including but not limited to, section 453(b), Civil Code 51,

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[4] Section 2106 of Utilities Act; authorizes a private remedy for damages brought by injured party in superior court or municipal court against a public utility that does an act prohibited, or omits to do an act required by the Constitution, any law of this State, or any order of decision of the commission (cite 2106) The Commission's only duties are to avoid discriminatory policies, practices and procedures in it Rulings, Decisions and order in regulating and supervising utilities.
Not within the scope of this briefing but important to not violating the law includes modifications and accommodations that prohibit of all wireless tech related to the smart meter mesh network in the designated "zone of safety " around the homes of qualified person with disabilities and those with covered 'medical conditions as well as implement modification and accommodation for commercial ratepayers and their customers who are qualified individuals with disabilities and have covered 'medical conditions'],

54, Government Code 11135 and the ADA Rehabilitation Act of 1973 section 504, and other applicable constitutional provisions and laws.

SCWWWM requests the Commission to take judicial notice of each Attachment 1 and 2 as proper subject for judicial notice. These are true and correct copies of what they are represented to be with the exception of Attachment 1 had a color picture deleted.

IV.

RULINGS ALTHOUGH FACIALLY NEUTRAL HAVE A DISPARATE IMPACT ON 'QUALIFIED DISABLED CUSTOMERS' UNDER THE ADA TITLE II AND 'MEDICAL CONDITION CUSTOMERS' UNDER CPUC SECTION 453(b) THUS VIOLATE BOTH TITLE II OF THE ADA AND CALIFORNIA CPUC SECTION 453(b)

The Commission's Ruling entered on February 2, 2012 and April 19, 2012, ['Rulings'] while facially neutral, discriminate as applied causing a disparate impact on those 'qualified disabled customers' as defined under the ADA and section 452(b). [5]

Title II of the ADA prohibits formal policies and actions which although neutral on their face, have a more burdensome effect upon persons with disabilities than upon

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[5]*** 'QUALIFIED DISABLED CUSTOMER' under the ADA and 'MEDICAL CONDITIONS CUSTOMER' under California CPUC 453(b) refers to two classes of disabled customers BOTH under the ADA and CPUC 453(b):

CLASS 1. Those customers that have a qualified disability resulting from a medical condition such as listed in California Government Code section 12926 that is exacerbated or triggered by EMF/RF given off by the smart meters and mesh network and

CLASS 2. Those customers who experience radiation illness resulting from exposure to the mesh network and those who already had radiation illness and whose condition is exacerbated from the smart meter and mesh network emissions.

Also a class 1 or 2 customer may have a disability newly result from exposure to the smart meter mesh network or an existing condition exacerbated by the EMF/RF emitted by the mesh network. It also should be noted Class 2 customer's condition results in conditions listed in both the ADA and Govt. Code 12926 such as autonomic nervous system, neurological, pulmonary, arrhythmias, cognitive or emotional difficulties etc.

The analysis is the same in both classes of customers relating to legal arguments as to discrimination set forth in the federal ADA section of this brief and the California CPCUC 453(b) section of this brief.

others. 42 U.S.C. section 12112(b) (3) (Supp.III 1992).

This is true even though the Commission has no intention to discriminate, as can be seen by the ADA's legislative history which shows that Congress intended Title II to prohibit more than intentional discrimination. The House Education and Labor Committee said that this statutory language "incorporates a disparate impact standard . . . consistent with the interpretation of section 504 by the U.S. Supreme Court in . . . Choate . . ." House Report Part II at 61, reprinted in 1990 U.S.C.C.A.N. at 343. Clearly then, Congress both believed that Alexander v. Choate 469 U.S. 287, 301 (1985) prohibits, under section 504, policies, practices, and procedures that have a disparate impact upon persons with disabilities, and intended section 202 of the ADA to prohibit such policies, practices, and procedures as well.

Although the language of the Commission's Rulings do not appear to discriminate on their face, because the language applies to all residential customers, the effect of the Rulings to 'qualified disabled customers" and 'medical conditions customers is to [6] cause a barrier to access of their electric service because the EMF/RF emitted by the mesh network either 1.) exacerbates an existing medical condition or 2.) makes them ill, (see footnote 5 supra) and in many cases requires the 'qualified disabled customer' to abandon their home, in which case they are among other things, denied the benefit of their electric service. If removing the smart meter resolves the problem for the 'qualified disabled customer(s)', they still have pay opt out fees in order gain the benefit of electric services where a healthy customer does not. This violates Title II of the ADA[7] by putting the 'qualified disabled customers' in the position of having no choice BUT to pay ordered fees to prevent harm.

Moreover 'qualified disabled customers' whom are adversely affected by the EMF/RF emitted from the mesh network are discriminated against by the Commission's failure to make modifications to its policies, practices and procedures, to allow an

[6] (and those with medical conditions under California law)

[7] (and section 504 of Rehab Act 1973)

accommodation without charge and/or to allow a "zone of safety"[8] around the 'qualified disabled customer's' home. (*see footnote 8 for definition of "zone of safety")*

Many qualified disabled customers have not been able to access their electric service or their home because of the severe medical effects of the smart meter mesh network around their home. This is also true of situations where there are banks of meter on condos or multi-family dwellings next to a residence or a qualified disabled customer that lives in a condo or multifamily property.[9] [www.aaemonline.org/AAEMEMFmedical conditions.pdf at pages 1 & 2 of AAEM guidelines for those disabled by emissions from smart meters as more fully set forth in Section VI. Infra.]

There is no choice for a qualified disabled customer in these situations and the consequences are to abandon one's home, go without electricity and/or pay a fee to be in the same position as a healthy customer.[10]

The more severely impacted qualified disabled customers, who are not accommodated by simply removing the smart meter from their home, and need a "zone of safety" around there home, have an even narrower choices. Even if they pay to have the meter removed from their home, without a "zone of safety" they either suffer physical and emotional injury or are denied access to their home and electric services.

The discrimination resulting, from the Commission's failure to address the unique needs of qualified disabled customers in the smart meter opt-out Rulings, is by reason of their disabilities. Because of the Commission's failure to make modifications in its Rulings (policy, practice and procedures) qualified disabled customers and medical conditions customers are burdened "in a manner different and greater than it burdens others." Crowder v. Kitagawa 81 F.3d 1480, (1996) at 1484.

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[8] 'zone of safety' refers to removal of smart meters and wireless pole technology related to the smart meter mesh network from an area around a 'qualified disabled customers' home, sufficient to relieve the ill effects to the customers disability or medical condition. The details of such a policy modification would have to be determined on a case by case basis.

[9] Applicable to questions 3 page 6 of amended scoping ruling.

[10] These arguments also apply to those with covered Class 1 and Class 2 'medical conditions' under California laws.

For example although the Commission provided an opt-out, it requires payment for such accommodation to give the qualified disabled customer the benefit of having electric service. The Commission also fails to consider a 'zone of safety'[11] or other accommodations to qualified disabled customers who will still not be able to benefit from their electric service because of inaccessibility to their home, the entire neighborhood, and commercial properties such as grocery stores, doctors offices etc., due to the mesh network in the neighborhood.

The Title II regulation Section 35.130 of the regulation lists several forms of conduct which constitute unlawful discrimination under title II. Among them is use of criteria or methods of administration "[t]hat have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability."[12] 28 C.F.R. section 35.130(b) (3) (i) (1993). The regulation's preamble explains that

> "[t]he phrase 'criteria or methods of administration' refers to official written policies of the public entity and to the actual practices of the public entity. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with disabilities an effective opportunity to participate". [28 C.F.R. App. A (1993).]

The Commission violates Title II of the ADA, (and Rehab. Act of 1973 section 504) by not making modifications in its Rulings to accommodate qualified disabled

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[11] "Zone of Safety" includes removing smart meters and taking wireless technology off poles within a specified distance from a qualified disabled customer's home.

[12] Elsewhere in the same regulation specific forms of conduct are prohibited because they have a discriminatory effect upon individuals with disabilities. The use of criteria or methods of administration which "have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities" is prohibited. 28 C.F.R. section 35.130(b) (3) (ii) (1993). A public entity's selection of a site for its services, programs, or activities cannot "have the effect of" excluding individuals with disabilities from participation, denying them benefits, or otherwise subjecting them to discrimination, and cannot have the "purpose or effect" of defeating or substantially impairing the accomplishment of the objectives of the services, program, or activity, with respect to persons with disabilities. 28 C.F.R. section 35.130(b) (4) (i) and (ii) (1993). Finally, subsection 8 of the regulation says that a public entity "shall not impose eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity" unless the criteria are necessary for provision of the service, program, or activity. 28 C.F.R. section 35.130(b) (8) (1993).

customers by, including but not limited to, removing smart meters at no cost and providing a "zone of safety" around a disabled persons home at no cost.

V.

IT IS AN ADA VIOLATION FOR THE COMMISSION'S RULINGS TO AUTHORIZE THE UTILITIES TO CHARGE 'QUALIFIED DISABLED CUSTOMERS' OPT OUT FEES FOR AN ACCOMMODATION

A. THE COMMISSION IS SUBJECT TO ADA TITLE II AND THE REHABILITATION ACT OF 1973 SECTION 504.

As a state administrative agency created by the California Constitution to regulate public utilities (Cal. Const. art. XII), the Public Utilities Commission (Commission) is a public entity which pursuant to 42 U.S.C. section 12131, provides that Title II entities include "any department, agency, . . . of a state . . . ." 42 U.S.C. section 12131. As a public entity, the Commission is subject to Title II and the implementing regulations. The Rehabilitation Act of 1973 section 504 ("section 504") states that a violation of the ADA is a violation of section 504. The only additional requirement is receipt of federal funds. As noted in section II. Supra. at page 7, according to the DOE government website, the Commission was awarded federal funds under *State Assistance on Energy Policy, therefore* is subject to section 504.

Congress enacted the ADA "to remedy widespread discrimination against disabled individuals." PGA Tour, Inc. v. Martin 532 U.S. 661, 674 (2001). Title II of the ADA, in particular, prohibits discrimination against individuals with disabilities in the provision of services, programs, or activities by public entities, stating at pertinent part that: "no qualified individual with a disability shall, because of the disability, be excluded from participating in or denied the benefits of services, programs or activities of a public entity or be subject to discrimination by such an entity." 42 U.S.C. section 12132.

Issuing Rulings that authorize the charging of an opt-out fee to a customer who opts out as a result of a disability is disability discrimination in violation of the ADA Title II and section 504 of Rehab. Act as described supra. [13].

B. TITLE II OF THE ADA PROHIBITS DISCRIMINATION AGAINST 'QUALIFIED INDIVIDUALS WITH DISABILITIES' ('QUALIFIED DISABLED CUSTOMERS')

Title II prohibits discrimination against a "qualified individual with a disability" as defined in 42 U.S.C. section 12131, which states:

> "The term 'qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation and programs or activities provided by a public entity."

42 U.S.C. section 12102 defines **disability as a physical or mental impairment** [14]that substantially limits at least one **major life activity**, or has a record or is regarded as having such impairment such[15] as caring for oneself, performing manual tasks, seeing, hearing, reading, concentrating, thinking, communicating and working. **Major life activity also includes operation of major bodily function** such as immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions".

Medical literature establishes that EMF/RF such as that emitted by the smart meter and its mesh network, affect certain physical and mental disabilities by impacting, among other things, the immune system, normal cell growth, digestive, neurological, brain, respiratory, reproductive function. The American Academy of Medicine has recently released recommendations regarding electromagnetic and radio frequency effects on specific mental and physical disabilities and medical conditions, which include,

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[13] The analysis of section 504 is the same as a Title II ADA analysis except for the additional element of receipt of federal funds.

[14] California law at Govt. Code Section 12926 also includes: social activity

[15]California law expands this to "limits" (*rather than, "substantially limits" as in ADA*) or makes major life activity difficult. Government Code section 12926.

neurological, brain, respiratory, reproductive functions. (See www.aaemonline.org/AAEMEMFmedicalconditions.pdf and Attachment 1, Carpenter M.D., to this brief)

A "qualified individual with a disability" under the ADA, would be a "qualified disabled customer" in the present case, entitled to accommodation in the services, activities and programs of the Commission including its regulation of the delivery of electrical service, if accommodation is necessary for the qualified disabled customer to obtain the benefits of the electric services, regulated and supervised by the Commission. If the EMF/RF emitted by the smart meter and or mesh network causes a barrier to access to one's home and electric service it is discrimination for the Commission to fail to modify its practice policies and procedures to accommodate these qualified disabled customers at no charge.

C. 'QUALIFIED DISABLED CUSTOMERS' ADVERSLEY AFFECTED BY THE EMF/RF EMITTED FROM THE MESH NETWORK ARE ENTITLED TO THE ACCOMODATION OF AN ANALOG METER AND 'ZONE OF SAFETY' WITHOUT OPT OUT FEES.

1. THE COMMISSION MUST AFFORD EQUAL BENEFITS OF SERVICE TO 'QUALIFIED DISABLED CUSTOMERS'

The regulations adopted by the U.S. Department of Justice to implement Title II of the ADA are contained in 28 C.F.R. parts 35. Imposing an opt-out fee on a person who opts-out on the basis of a qualifying condition and/or disability violates numerous provisions of the implementing regulations. Under the regulations, a public entity may not:

(1.) Afford a qualified individual with a disability an opportunity to participate in and benefit from a service that is not equal to that afforded others. 28 C.F.R. §35.130(b) (1) (ii); and

(2.) Provide a qualified individual with a disability a service that is not as effective in affording equal opportunity to obtain the same result, gain the same benefits or reach the same level of achievement as that provided to others. 28 c.f.r. section 35.130(b) (1) (iii).

An able bodied customer receiving electrical service by way of a Smart meter is afforded the full benefits of the electrical service and is afforded the same benefit of such service provided to all others. On the other hand, a 'qualified disabled customer' who is adversely affected by the EMF/RF emitted by the smart meter/mesh network is not afforded the same benefit of such electric service provided to all others because the service exacerbates disabilities of a customer as described in footnote 5 supra.. The mesh network can worsen physical conditions of qualified disabled customers, to the point they have to abandon their home and consequently the electric service. [Please see section VI. infra which provides additional details][16]

To require a 'qualified disabled customer' to pay an the opt-out fee to remove the smart meter or additional smart meters surrounding their home, when the reason they are required to opt out is their disability, denies them electric service equal to that afforded others and requires an additional payment in order to gain the same benefit.

For the Commission to make Rulings that authorize such a fee constitutes discrimination since the Commission as a public entity would, through its regulatory activities, treat 'qualified disabled customer' differently than able bodied customer because they would have to pay extra to receive the same electric service.

2. THE COMMISSION'S FAILURE TO MAKE REASONABLE MODIFICATIONS TO ITS POLICIES PRACTICES AND PROCEDURES CONSTITUTES DISCRIMINATION UNDER TITILE II OF THE ADA

The prohibition against discrimination contained in the implementing regulations also requires a public entity to make reasonable modifications when the modifications are necessary in order to avoid discrimination on the basis of disability. This requirement is contained in 28 C.F.R. 35.130(b) (7) which provides:

[16] "Because smart meters produce radiofrequency emissions, it is recommended that patients with the above conditions and disabilities be accommodated to protect their health. The AAEM recommends that no Smart Meters be on these patients' homes, that Smart Meters be removed within a reasonable distance of patients' homes….and that no collection meters be placed near patients' homes….": pg. 2 of the AAEM *Recommendations Regarding Electromagnetic and Radio Frequency Exposure-Released* July 12, 2012 www.aaemonline.org/AAEMEMFmedicalconditions.pdf]

> "A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity."

A 'qualified disabled customer' whose medical condition is exacerbated by the installation and operation of a Smart Meter and/or its mesh network, who requests a reasonable modification, by the installation of an analog meter and/or a "zone of safety" would be requesting a reasonable modification to the policies, practices and procedures of the Commission in its regulation of the transmission and delivery of electrical service. For the Commission to fail to accommodate these reasonable modifications in the form of a request for an analog meter and/or "zone of safety", based on a person's disability, would violate section 35.130(b)(7).

In this circumstance, the reasonable modification, by providing the analog meter and/or "zone of safety", rather than a Smart meter, is necessary to avoid discrimination. [17]

3. THE COMMISSION'S RULINGS AUTHORIZING THE UTILITIES TO CHARGE A SEPARATE FEE TO OPT OUT FOR QUALIFIED DISABLED CUSTOMER IS DISCRIMINATION

The regulations also provide that a surcharge or fee cannot be charged to a particular individual with a disability or group of individuals with a disability to cover cost measures such as providing alternative program accessibility when required to provide an individual or group with a non-discriminatory treatment required by the ADA or the implementing regulations. This prohibition is found in 28 C.F.R. §35.130(f) which provides. "The imposition of any surcharge on an individual with a disability or a group

[17] .or under California law, covered 'medical condition' Government Code section 12926

of individuals with a disability to cover the costs of alternative means to provide accessibility to electrical service violates this provision."

The Commission cannot impose an opt-out fee on a qualified disabled customer to cover the cost of providing electromechanical analog meter and/or a 'zone of safety', when providing this accommodation is required in order to provide the safe delivery of electrical service in a non-discriminatory manner.

VI.

THE COMMISSION'S RULINGS AUTHORIZING THE UTILITIES TO CHARGE 'MEDICAL CONDITION CUSTOMERS', AN OPT OUT FEE IS A VIOLATION OF CPUC SECTION 453(b)

California's disability definition is broader than the ADA and the California Legislature requires that if the federal ADA provides more protection, it should be followed. Government Code section 12926(m). Therefore, Title II found at 42 U.S.C. section 12112 (b) (3) (Supp. III 1992), which prohibits policies and actions which although neutral on their face, have a more burdensome effect upon persons with disabilities than upon other, also applies under California disability law. [See section IV. supra]

Many of the California statutes dealing with disability rights include the same general description or definition of disability as found in Government Code section 12926. For example section 453(b) is such a statute.

Charging a fee as a result of a person's 'medical condition' is discriminatory and prohibited by section 453(b). Section 453(b) states:

> " No public utility shall prejudice, disadvantage, or require different rates or deposit amounts from a person because of …., medical condition, or any characteristic listed or defined in Section 11135 of the Government Code"

Government Codes section 11135 states at (c) (1)

> "As used in this section, "disability" means any mental or physical disability, as defined in Government Code section 12926."[18]

Therefore in the present case, section 453(b) applies to both classes of 'medical condition customers'.[19] *(see footnote 5 for full definitions Class 1 and 2)* Class 1 medical conditions customer, with existing medical condition, such as pregnancy, heart, respiratory or brain that are adversely affected, or class 2 medical conditions customers, with newly sustained or exacerbated radiation illness adversely effected. It should be

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[18] The California Legislature further broadened the definition of disability at Government Code section 12926.1 (c) where it includes in the definition of physical and mental disabilities " **chronic or episodic** conditions, hepatitis, epilepsy, seizure disorder, diabetes, **clinical depression**, bipolar disorder, multiple Sclerosis, and **heart disease**."

Additionally California requires a "limitation" of a major life activity and **does not require,** as does the federal ADA, a **"substantial**" limitation. The distinction is meant to result in broader coverage in California law.

[19] "Disability" includes but is not limited to, "any mental or physical disability as defined in Government Code section 12926(l)."

This statute defines "physical disability" including but not limited to, physiological disease, disorder, condition….that affects at least one "body system such as **neurological,** immunological, **musculoskeletal,** special sense organs, **respiratory, …cardiovascular, reproductive, digestive, genitourinary**, hemi and **lymphatic, skin** and endocrine, that limits a "major life activity" (without regard for mitigating measures such as medication…..,) **or makes the major life activity "difficult" to achieve**, which is not found in the federal ADA.

"Major life activity" is broadly construed to include in addition to the physical and mental as found in the ADA but also "social activities and working" Government Code section 12926 (B) (iii)

Government Code 12926 also includes not only having a d**isease, disorder or condition** but having a "**record or history**" or "**regarded as** having" such impairment which is known to . . ."other entity covered by this part" **that makes "achievement of major life activity difficult."**

"Mental Disability" is having any mental or psychological disorder or condition such as …**organic brain syndrome, specific learning disabilities** or emotional or mental illness that limits a major life activity. This is without mitigating factors applied like physical disabilities above. It is limiting a major life activity if the condition makes **achievement of the major life activity difficult**. This includes limitations on **social** activities and working as well as physical and mental function. Government Code section 12926(1)(A)(B)(C) **Even if a mental or psychological disorder or condition has no present disabling effect, but that may become a mental disability as described, it is covered.**

Government Code section 12926 (k) states that "discrimination based on physical disability, mental disability, **medical condition**, genetic information…..are enumerated in this part.

noted that Class 2 'medical conditions customers', with radiation illness, may have similar symptoms to Class 1 'medical conditions customers' [See; AAEM Recommendations, at page 1 &2 at www.aaemonline.org/AAEMEMFmedicalconditions.pdf]

The AAEM Recommendations assist in seeing how Government Code section 12926 applies to the both Class 1 and Class 2, 'medical conditions customers' because it lists the medical conditions apart from radiation illness that are also affected adversely by the smart meter and its mesh network. SCWSSM requests the Commission to take judicial notice of this business record on AAEM Recommendations which is displayed at: www.aaemonline.org/AAEMEMFmedicalconditions.pdf

The Commission's Rulings, which authorize fees charged to 'medical condition customers', so they can benefit and receive electric service is discriminatory, because they require different rates or deposit amounts, thus, but for, the medical condition the customer could keep the smart meter, not need a 'zone of safety' (defined at footnote 8 supra at page 14.) and not incur the proposed fees for opting out etc.

A. THE COMMISSION RULINGS AUTHORIZING OPT-OUT FEES FOR CUSTOMERS THAT ELECT TO HAVE AN ANALOG METER FOR MEDICAL REASONS VIOLATES CPUC 453(b)

The list of 'medical conditions' that are recognized as protected from discrimination in California, under Government Code section 12926 are the same medical conditions that the medical profession recognizes as adversely affected by EMF/RF emissions.[20] 'Medical conditions customers' from class 1, do not have radiation illness,

[20] AAEM recommendations dated July 12, 2012 at www.aaemonline.org/AAEMEMFmedicalconditions.pdf,
County of Santa Cruz Health Services Report, Poky Stewart Nanking, M.D. M.P.H Health Officer; www.santacruzhealth.org/resources/categories/3health_statistics_and_reporting.htm#reports

IEQ Indoor Environmental Quality Project of National Institute of Building Sciences (NIBS) with funding from the Access Board; *American Medical Association*

Attachment-1: *Smart Meter: Correcting the Gross Misinformation* , David O. Carpenter M.D.;
Attachment-2: CCST technical comment, by Rick Kreutzer M.D.,California Department Public Health;

yet they are still adversely impacted by EMF/RF with conditions such as heart arrhythmias, headache, difficulty sleeping, fatigue etc. . . . As for Class 2 customers who have radiation illness, their condition is also covered under the definition of 'medical condition' set forth in Government Code 12926. Class 2 'medical condition customers' also experience physical and mental symptoms as a result of their underlying radiation illness, such as heart arrhythmia, neurological deficit, autonomic nervous system disorders, sleep disturbance, respiratory difficulties etc. (*See footnote 20 supra and Attachments 1 & 2)*

The medical conditions exacerbated by the EMF/RF emitted by the smart meter and the mesh network, cause a customer to experience physical or mental limitations, and to have difficulty achieving one or more major life activities, for example, seizures, cancer, impaired immune function, breathing, cardiac arrhythmia, joint pain, muscle weakness, socializing. (Class 2 'medical conditions customers, with radiation illness, often exhibit the same symptoms as Class 1 customers.)

1. THE COMMISSION'S RULINGS CANNOT AUTHORIZE A FEE BE CHARGED TO 'MEDICAL CONDITION CUSTOMERS' WHO OPT-OUT FOR MEDICAL REASONS IF THEIR MEDIAL CONDITION IS COVERED UNDER GOVERNMENT CODE 12926.

All that is necessary under section 453(b) is a medical condition that makes one or more "major life activities" "difficult to achieve". 'Medical conditions customers' that have 'medical conditions' adversely affected by EMF/RF emission from the mesh network, are also delineated in Government Code section 12926 and it is a violation of section 453(b) to enter a rulings that discriminates against these customers. [21]

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[21] *County of Santa Cruz Health Services Report,* Poky Stewart Nanking, M.D. M.P.H Health Officer, www.santacruzhealth.org/resources/ categories/3health_statistics_ and_reporting htm#reports ; *Smart Meter: Correcting the Gross Misinformation* , David O. Carpenter M.D. Attachment 1; CCST technical comment, by Rick Kreutzer M.D., California Department Public Health- Attachment 2; http://web.archive.org/web/20060714175343/ieq.nibs.org/ieq_project.pdf ;-IEQ Indoor Environmental Quality Project of National Institute of Building Sciences (NIBS) with funding from the Access Board.

Many of the 'medical conditions' found in the AAEM Recommendations are identical to those set forth in Government Code section 12926 as covered 'medical conditions'. Many medical experts have identified 'medical conditions' adversely affected by EMF/RF such as that emitted by the mesh network. For example:

The American Academy of Environmental Medicine ("AAEM") recently published Recommendations …delineating those patients that are at higher risk of harm or exacerbation of their physical and mental disease or condition by exposure to electromagnetic fields and/ radio frequency such as that given off by smart meters and its mesh network.[www.aaemonline.org/AAEMEMFmedicalconditions.pdf] As you can see below, the AAEM references what are termed in this brief, "Class 1 and Class 2" 'medical conditions customers'.

For example AAEM states:

> "Physicians of the American Academy of Environmental Medicine recognize that patients are being adversely impacted by electromagnetic frequency(EMF) and radiofrequency(RF) fields and are becoming more electromagnetically sensitive." … Based on double-blinded, placebo controlled research in humans, medical conditions and disabilities that would more than likely benefit from avoiding electromagnetic and radiofrequency exposure include *but are not* limited to: *Neurological conditions, Musculoskeletal effects, Heart disease and vascular effects, arrhythmias, Pulmonary conditions, gastrointestinal conditions, autonomic nervous system dysfunction..genetic defects, pregnancy, attention deficit disorder, anxiety and depression, headaches, sleep disruption, fatigue, visual disruption, liver disease…."[*Page one of AAEM Recommendations www.aaemonline.org/AAEMEMFmedicalconditions.pdf]

Moreover, AAEM states at page 2 of its Recommendations that:

> "Because smart meters produce radiofrequency emissions, it is recommended that patients with the above conditions and disabilities be accommodated to protect their health. The AAEM recommends that no Smart Meters be on these patients' homes, that Smart Meters be removed within a reasonable distance of patients' homes….and that no collection meters be placed near patients' homes…." AAEM *Recommendations Regarding Electromagnetic and Radio Frequency Exposure-Released* July 12, 2012 [www.aaemonline.org/AAEMEMFmedicalconditions.pdf,]

Other medical and scientific opinions have confirmed that those with a wide variety of medical conditions such as those listed in section 12926, are at higher risk of harm and/or harmed by EMF/RF such as emitted by the smart meter and its mesh network.

County of Santa Cruz Health Services Agency on January 12, 2012, published "Health risks associated with Smart Meters" (www.santacruzhealth.org/resources/categories/3health_statistics_and_reporting.htm#reports attachment B to the County Santa Cruz Report) stating at pertinent part that:

> "There is a large body of research on the health risks of EMFs. … much data is concentrated on cell phone usage and as Smart Meters occupy the same energy spectrum as cell phones and … can exceed the whole body radiation exposure of cell phones.... all available peer-reviewed, scientific research data can be extrapolated to apply to SmartMeters taking into consideration the magnitude and the intensity for the exposure." "…The research carried out by independent, non governmental or non-industry affiliated researchers, suggests potentially serious effects from many non ionizing radiation exposures…naming cancer, DNA breakage, brain glucose metabolism alterations, increased risk of brain cancer, acoustic neuroma, salivary gland tumors, eye cancer etc."

The Santa Cruz County Health Services went on to say at attachment B page 5 that:

> "Meeting the current FCC guidelines only assures that one should not have heat damage from SmartMeter exposure….It says nothing about safety from the risk of many chronic diseases …such as cancer, miscarriage, birth defects, semen quality, autoimmune diseases, etc..Therefore when it comes to non thermal effects of RF, FCC guidelines are irrelevant and cannot be used for any claims of SmartMeter safety unless heat damage is involved…… metal and medical implants..can be effected by localized heating and electromagnetic interference for medical wired implanted devices (EMI)" [See: full copy at government website, www.santacruzhealth.org/resources/categories/3health_statistics_and_reporting.htm#reports at page 4,5 of Attachment B of the Santa Cruz County Health Department Report] [Also see FCC website at www.fcc.gov/consumer warning of risks to persons with implanted medical devices from radiofrequency and EMF's] SCWSSM requests the commission to take judicial notice of both these government websites and incorporate by reference full copy of these documents.

Another medical opinion was published in a widely circulated news publication on July 11, 2012[22], David O. Carpenter, former founding dean of the University at Albany (NY)'s School of Public Health, commented on a letter that claimed smart meters pose no risk to public health, published in the Montreal daily, *Le Devoir* on May 24, 2012. It is noteworthy that some forty (40) international experts contributed to the rebuttal quoted below and while not a peer reviewed publication, many peer reviewed publications are cited as references to this article. [see Attachment 1 to this brief.] At page 3 paragraph 1 states:

> "…more than a thousand studies done on low intensity, high frequency, non ionizing radiation, going back at least fifty years, show that some biological mechanisms of effect to not involve heat…This radiation sends signals to living tissue that stimulate biochemical changes, which can generate various symptoms and may lead to diseases such as cancer"

The article goes on to state at page 4:

> "Wireless smart meters typically produce atypical relatively potent …pulsed RF/microwaves……a peak level emission two and a half times higher than the stated safety signal, as the California Utility Pacific Gas & Electric recognized before the State's Public Utilities Commission. Thus people in proximity to a smart meter are at risk of significantly greater aggregate exposure than with a cell phone, not to mention the cumulative levels of RF/microwaves that people living near several meters are exposed to….With smart meters, the entire body is exposed to the microwaves, which increases the risk of overexposure to many organs."[Attachment 3, Montreal daily *Le Devoir* July 11, 2012 , *Smart Meters: Correcting the Gross Misinformation*, by David O. Carpenter M.D. citing articles on DNA damage, Effects on the Blood Brain Barrier et.al.-Attachment 1]

Another credible medical opinion by Rick Krietzer M.D commented to the CCST report January 11, 2011 states:

[22] SCWSSM represents that this is a true and correct copy of what it is represented to be that except a color picture was deleted for ease of reducing size to e-mail, that this is accurate, published in a recognized widely circulated newspaper and proper subject for judicial notice and SCWSSM requests the Commission to take judicial notice of this Attachment to this brief.

> "The representation of Smart Meter emissions is based upon controlled conditions and not real world conditions. The Commission should consider doing an independent review of the deployment of smart meters to determine if they are installed and operating consistent with the information provided to the consumer." [Rick Kreutzer M.D. Department of Health in California Technical comment on CCST report Health Impacts of Radio Frequency from Smart Meters, released January 11, 2011, Attachment 2]

The U.S. government funded publication stated in the Final Report, dated July 14, 2005, *a project of the National Institute of Building Sciences with funding support from the Architectural and Transportation Barriers Compliance Board (Access Board*) many key facts relevant to "medical conditions" that can be impaired further by electromagnetic and radiofrequency fields, such as those found with smart meters and its mesh network. [see at page 8 where it states:

> "The presence of electromagnetic fields from office equipment and other sources is a barrier for those with electromagnetic sensitivities. Noise and vibration can adversely affect some people with chemical and/or electromagnetic sensitivities and trigger seizures in susceptible individual"

The Final Report goes on to say at page 11 that:

> " For people who are electromagnetically sensitive, the presence of cell phones and towers, portable telephones, computers, fluorescent lighting, unshielded transformers and wiring, battery re-chargers, wireless devices, security and scanning equipment, microwave ovens, electric ranges and numerous other electrical appliances can make a building inaccessible(emphasis added)…

Also the National Institute for Occupational Safety and Health (NIOSH) notes that, in the report, scientific studies have raised questions about the possible health effects of EMF's. NIOSH recommends the following measures for those wanting to reduce EMF exposure—informing workers and employers about possible hazards of magnetic fields, increasing workers' distance from EMF sources, using low-EMF designs wherever possible (e.g. layout of office power supplies), and reducing EMF exposure times. [NIBS IEG Final Report dated 7/14/05*, a project of the National Institute of Building Sciences with funding support from The Architectural and Transportation*

Barriers Compliance Board-http://web.archive.org/web/2006071 4175343/ieq.nibs.org /ieq_project.pdf

On a similar scientific note, the American Medical Association (AMA) released a position paper June 2012 showing that body systems can be disrupted with something seemingly as innocent as blue light from the LED computer screen. The policy statement recognized that certain aspects of extended use of various electronic media, and blue light from screens:

> "….can disrupt sleep or exacerbates sleep disorders, especially in children and adolescents." [American Medical Association Policy Release June 2012]

Also, this month the Women's College Hospital, a major Toronto hospital, reports it is treating more patients for electromagnetic radiation poisoning from overexposure to wireless sources such as smart phones, cell phone towers, wireless Internet routers, **smart meters**, cordless phones and power lines of all sorts have all been recognized as possible contributors to an environmental health condition called electromagnetic hypersensitivity (EMS) caused by significant exposure 'The hospital's Environmental Health Clinic is also holding educational workshops on the subject of wireless radiation exposure for doctors. It's partly in the hopes also to develop more awareness among treating agents and better care programs for those suffering from exposure to wireless radiation. The hospital reports that patients can complain of disrupted sleep, headaches, nausea, dizziness, heart palpitations, memory problems, and skin rashes. [www.womenscollegehospital.ca/assets/legacy/wch/pdfs/.pdf]

As attested to above by both scientist and medical experts, both Classes of 'medical conditions customers' have conditions that are created or exacerbated by EMF/RF, and are persons with "medical conditions" as defined in Government Code section 12926. [23] Major life activities are affected and made more difficult because of

[23] 'Some of the medical conditions covered in Government Code section 12926, that are identical to those listed by the AAEM [www.aaemonline.org/AAEMEMFmedicalconditions.pdf,] Conditions such as

their medical condition . Often both physical, mental, social activities are compromised. Therefore the Commission's Rulings, charging fees for an analog meter replacement or a failing to designate a 'zone of safety' at no charge to accommodate these customers is a violation of CPUC section 453(b) and other federal and state laws.

Therefore customers suffering as a result of the EMF/RF emissions from the smart meter and its mesh network are disabled and have covered medical conditions as defined under CPUC 453(b) and it is discriminatory for the Commission to enter these Rulings that treat these 'medical condition customer' prejudicially, disadvantageously or charge fees that are, a result of their disability.

2. THE COMMISSION'S RULINGS CANNOT AUTHORIZE OPT-OUT FEES THAT PREJUDICE, DISADVANTAGE OR CHARGE DIFFERENT RATES TO CUSTOMERS BECAUSE OF A MEDICAL CONDITION WITHOUT VIOLATING CPUC 453(b).

The Commission's Rulings that assess opt-out fees on all customers, including those with Class 1 and Class 2 medical conditions, has a discriminatory impact by placing a disproportionate burden on those with disabilities and medical conditions. This is because 'medical conditions customers' haven no choice but to 'opt out' and be charged a fee, because the consequences of not doing so, are exacerbated disabilities and health conditions or complete loss of use of home (or business premise) and receiving no ability to benefit from receiving electric services. This constitutes prejudice and disadvantage because they are impacted and consequently treated differently than other customers because of their 'medical condition.'(ie. charged for access to electric services). [24]

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cancer, heart disease, musculoskeletal, neurological, autonomic nervous system, respiratory, cardiovascular, reproductive, digestive, genitourinary and skin, to name a few. These are 'medical conditions' that limit or make more difficult one or more major life activity as defined in Government Code section 12926, 11135 and apply to section 453(b).

[24] such as: *Genetic defect, Cancer, Neurological conditions such as paresthesias, somnolence, cephalgia, dizziness, unconsciousness, depression, Musculoskeletal effects including pain, muscle tightness, spasm, fibrillation, Heart disease and vascular effects including arrhythmia, tachycardia, flushing, edema , Pulmonary conditions including chest tightness, dyspnea, decreased pulmonary function, Gastrointestinal*

3. SUGGESTIONS TO THE COMMISSION TO MAKE REASONABLE MODIFICATIONS TO ITS POLICIES, PRACTICES AND PROCEDURES TO MAKE ACCOMMODATIONS FOR CUSTOMERS WITH COVERED 'MEDICAL CONDITIONS'

Recommend that the Commission make modifications in its policies, practices and procedures and order utilities to:

a.) Remove smart meter from home of person with covered medical conditions and replace with an electromechanical analog meter with no communication capabilities, at no charge.

b.) Remove smart meters in area surrounding home of person with medical condition and replace with electromechanically analog meters with no communication capabilities, at no charge to the customers. (distance around home to be determined by customers' perceptions and symptoms)

c.) Remove all wireless technology related to smart meters and smart grid within same circumference of home of person with covered medical condition

d.) Removal of any collector meter surrounding home of person with medical condition similar distance to b.) And c.) above.

e.) Notify all customers of possible adverse affects from EMF/RF from the smart

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conditions including nausea, Autonomic nervous system consensus by forty (40) scientists and physicians rebutting misinformation put out by the *dysfunction (dysautonomia).* [See www.aaemonline.org/AAEMEMFmedicalconditions.pdf, and Attachment 1to this brief] .

meters and its mesh network in personal letter apprising them of accommodations available to those customers with 'medical conditions' covered under Government Code section 12926.

f.) Utility pay for shielding of customers with a covered' medical condition' per independent environmental consultant's recommendations.

g.) The AAEM recommends in its guidelines to physicians that certain accommodations are afforded customers with the aforementioned disabilities, physical conditions and mental conditions.

These recommendations include but are not limited to*:* "Because Smart Meters produce Radiofrequency emissions, it is recommended that patients with the above conditions and disabilities be accommodated to protect their health. The AAEM recommends: that no Smart Meters be on these patients' homes, that Smart Meters be removed within a reasonable distance of patients' homes depending on the patients' perception and/or symptoms, and that no collection meters be placed near patients' homes depending on patients' perception and/or symptoms." [www.aaemonline. org/ AAEMEMFmedicalconditions.pdf,]

SCWSSM also suggests that reasonable modifications to the Commission policies, practices and procedures be instituted to accomplish these accommodations.

VII.

OTHER VIOLATIONS OF CALIFORNIA LAW.

While we were not asked to brief other California Constitutional or statutory violations the Commission and/or the utilities have violated by charging fees to persons with medical conditions, it is noteworthy to look to by way of example but not complete list:

A. California Civil Code Section 51 et. seq., the Unruh Act, which states a violation of the ADA is a violation of this Act;

B. California Government Code 11135-- Section 11135 prohibits any program or activity receiving financial assistance from the state from denying "full and equal" access to or discriminating against individuals with disabilities. This section is identical to the Rehabilitation Act except that the entity must receive State financial assistance rather than Federal financial assistance. D.K. v. Solano County Office of Educ, 667 F. Supp. 2d 1184, 1190-91 (E.D. Cal. 2009) It is undisputed that the CPUC receives state funding for its administrative agency. By its policies practices and procedures in ordering the Utilities to charge fees to qualified persons with disabilities to prevent harm is a violation.

C. California Civil Code section 54 et. seq. Disabled Persons Act which provides:" "individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, and facilities" Cal. Civ. Code section 54.1. A violation of the ADA also constitutes a violation of the CDPA, See Cal. Civ. Code Section 54(c); see also Hubbard v. SoBreck, 554 F.3d 742, 745 (9th Cir. 2009.

VIII.

CONCLUSION

For all the aforementioned reasons, SCWSSM respectfully requests the Commission to modify its policies, practices and procedures to accommodate those customers that are qualified persons with a disability under the ADA and those who have 'covered medical conditions' that are adversely affected by the EMF/RF emissions of the smart meter and its mesh network, pursuant to CPUC section 453(b) as set forth in Government Code section 12926.

Date: July 19, 2012 Submitted By:_____/s/____Barbara Schnier
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irector SCWSSM