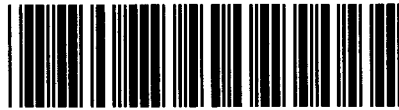


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OPEN MEETING COVER SHEET

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MEETING DATE: April 12, 2012

DATE DELIVERED: April 5, 2012

AGENDA ITEM NO.: 15

CAPTION: **Project No. 40199**, Petition for Initiation of Rulemaking
Proceedings Regarding Smart Meters

ACTION REQUESTED: Discussion and possible action

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Rick Perry
Governor

Donna L. Nelson
Commissioner

Kenneth W. Anderson, Jr.
Commissioner

Rolando Pablos
Commissioner

Brian Lloyd
Executive Director

Public Utility Commission of Texas

Date: April 5, 2012

To: Commissioner Donna L. Nelson
Commissioner Kenneth W. Anderson, Jr.
Commissioner Rolando Pablos

From: Christine Wright, Infrastructure & Reliability Division
Jacob Lawler, Legal Division

Subject: **Item No. 15: Project No. 40199** – *Petition for Initiation of Rulemaking Proceedings Regarding Smart Meters*

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Attached for your consideration is Staff's proposed order in this project. In the petition, Devvy Kidd, John Kidd, and 117 other signatories (Petitioners) request that the Public Utility Commission of Texas (Commission) initiate and conduct rulemaking procedures, both emergency and ordinary, in order to prohibit further deployment, and mandate the removal, of smart meters. Pleading in the alternative, Petitioners ask the Commission to formulate rules that provide for the safe implementation of smart meters and related equipment as well as provide customers the ability to decline participation in the Advanced Metering System program.

Because the petitioners did not propose rule language that would permit the Commission to publish a rule, Staff recommends denial of the petition. However, Staff notes that the Commission has received extensive comments and concerns similar to those made by Petitioners in Project No. 40190, PUC Proceeding to Evaluate the Feasibility of Instituting a Smart Meter Opt-Out Program. Staff concurs that continued examination of these issues in Project No. 40190 is warranted and will be moving forward expeditiously as you have requested.

PROJECT NO. 40199

PETITION FOR INITIATION OF	§	PUBLIC UTILITY COMMISSION
RULEMAKING PROCEEDINGS	§	
REGARDING SMART METERS	§	OF TEXAS

**(STAFF RECOMMENDATION)
ORDER DENYING PETITION FOR
INITIATION OF RULEMAKING PROCEEDINGS**

On February 23, 2012, Devvy Kidd, John Kidd, and 117 other signatories (Petitioners) filed a Petition for Initiation of Rulemaking Proceedings with the Public Utility Commission of Texas (Commission). Petitioners request that the Commission initiate and conduct rulemaking procedures, both emergency and ordinary, relating to the deployment of smart meters by electrical utilities and others as part of their Advanced Metering System (AMS) program.

Petitioners seek an emergency rule that would place a moratorium on continued installation of smart meters until further study and evaluation permits adoption of rules governing smart meters. In addition, Petitioners seek ordinary rulemaking to mandate the permanent prohibition and removal of smart meters and other devices that emit radio frequencies (RF) or electromagnetic fields (EMF). Pleading in the alternative, Petitioners request that the Commission formulate and adopt rules to provide for safe implementation of smart meters, to allow customers to decline participation in the AMS program, and to protect those members of the public at increased risk of injury or death from radiation emitted by neighboring services.

Petitioners further request a public hearing at which Petitioners can present evidence and testimony concerning the effects of the smart meters and the need to ban or closely regulate the use of them.

The petition is subject to TEX. GOV'T CODE §2001.021 and P.U.C. PROC. R. 22.281. The Commission published notice of this petition in the March 9, 2012 issue of the *Texas Register* (37 TexReg 1860) with a comment deadline of March 30, 2012.

Two hundred and seventy seven comments were filed in this project through April 4, 2012. Most comments were filed in support of the petition. Supporting comments expressed one or more concern regarding smart meter deployment. The concerns expressed may be organized by subject into eight categories as listed below.

First, commenters expressed concern about potential negative health effects from exposure to RF or EMF radiation emitted by smart meters. A few commenters stated that they experienced one or more of the following symptoms as a result of a smart meter: insomnia, fatigue, anxiety, tinnitus, headaches, dizziness, nausea, nose bleeds, seizures, elevated heart rate, heart arrhythmias, inability to focus, drainage from the eyes, tingling in the arms, shoulder pain, neck aches, blurred vision, night sweats, joint pain, and aches in knees, legs, and ankles. Many commenters cited to a World Health Organization report that purportedly states that sustained exposure to RF or EMF radiation may cause headaches, insomnia, fatigue, skin rashes, heart arrhythmias, immune system defects, memory loss, infertility, and cancer. Finally, commenters state that prior health studies conducted on this topic 1) are outdated, 2) do not consider cumulative effects of multiple RF or EMF radiating devices, and 3) do not consider the effects of RF or EMF radiation on young children or people who may have implanted electrical medical devices such as pacemakers and defibrillators.

Second, commenters expressed concern over the privacy of their electric use information. Most commenters were unsure of who would be allowed access to this information.

Commenters generally stated that they did not want their information sold to marketing or affiliated companies. Additionally, commenters were concerned that the information would allow the electric utility to know whether a building was occupied as well as what electrical devices were being used within a building.

Third, commenters expressed concern regarding the security of their electric use information. Commenters stated that their electric use information is at risk of being intercepted by unauthorized third parties who may use the information for unlawful purposes. A frequently mentioned example of an unlawful purpose is a burglar who uses the information to know when a resident is away from a house. Moreover, a few commenters stated that the increasing popularity of smart meters will make it easier for foreign organizations to exploit vulnerabilities in the electrical grid and thereby threaten grid reliability.

Fourth, commenters expressed concern over their freedom to use electricity in a manner of their choosing. Several commenters stated that an electric utility might remotely change a resident's thermostat during times of peak demand to reduce the level of air conditioning in the summer or to reduce the heat in the winter. Commenters stated that a smart meter may be used by an electric utility in the future to interfere with a customer's ability to use electricity as the customer desires.

Fifth, a few commenters stated that the inaccuracy of a newly installed smart meter resulted in a substantial increase in their electric utility bill. Commenters who did not offer their own experience of higher than usual electric billing often cited to news articles that reported specific instances of higher than usual electric bills.

Sixth, a few commenters stated concern that smart meters may cause damage to their property. Most commenters who expressed this concern stated that smart meters have purportedly caused electrical surges that have caused appliances to fail. Additionally, a few commenters cited to news articles reporting house fires that may have been caused by smart meters.

Seventh, a few commenters stated concern that smart meters would make it possible for an electric utility to use dynamic time-of-use pricing in the residential market. The commenters believe that such a pricing system would increase the cost of electric service, particularly for customers who are homebound.

Eighth, a few commenters were concerned that the smart meters' automation of reading and transmitting electric use information would result in a reduction of jobs for meter-reading employees and would have a negative effect on the meter-reading employees, their families, and the U.S. economy.

Five parties filed comments opposing the petition: Oncor Electric Utility Company, LLC (Oncor); Centerpoint Energy Houston Electric, LLC (Centerpoint); Texas-New Mexico Power Company (TNMP); Young Energy, LLC (Young Energy); and AEP Texas Central Company and AEP Texas North Company (together, AEP Texas).

Oncor began its comment by listing the benefits of smart meters. Stated benefits included the ability for customers to choose time-of-day rates, enhanced demand response programs, quicker outage detection and restoration, and the ability to easily change retail electric providers. Next, Oncor recommended that the Commission deny the Petitioners' requests because the petition: does not provide a valid basis to warrant an emergency rulemaking; includes claims of fraud, deceit, concealment, undue duress, and unlawful force that are without

merit; seeks to establish a rule contrary to Public Utility Regulatory Act (PURA) § 39.107; would require the Commission to improperly revisit prior final orders; does not comply with P.U.C. PROC. R. 22.281; and does not meet the requirements under P.U.C. PROC. R. 22.282 for a public hearing. As a result, Oncor recommended that the Commission deny Petitioners' request for emergency rulemaking, request for ordinary rulemaking, and request for a public hearing.

Centerpoint's opposed the petition for four stated reasons. First, Centerpoint stated that the petition does not fulfill the requirements of P.U.C. PROC. R. 22.281 by failing to include the statutory authority for any proposed rule, and also by failing to include a complete text for any proposed rule. Second, Centerpoint argued that the petition contravenes the legislature's intent as expressed in House Bill (HB) 2129, HB 3693, and PURA § 39.107(i). Third, Centerpoint stated that the petition's request to increase state regulation of RF emissions from smart meters is preempted by the Federal Communications Commission's (FCC's) federal statutory authority. Fourth, Centerpoint stated that the Commission is already considering the subject of smart meter deployment in two separate projects; additionally, Centerpoint argues that the cost of a smart meter opt-out program would be prohibitively expensive to customers who choose to opt-out as well as produce negative externalities for all customers.

TNMP gave four reasons for its opposition to the petition. First, TNMP stated that the petition fails to comply with P.U.C. PROC. R. 22.281 requiring the petition to provide both statutory authority for a proposed rule as well as the complete text of a proposed rule. Second, TNMP argued that the petition seeks to create a rule contrary to the legislature's intent for rapid deployment of AMS as expressed in PURA § 39.107(i). Third, TNMP stated that regulation of RF emissions from smart meters is preempted by the FCC's authority as a federal regulatory

agency. Fourth, TNMP stated that the petition is an impermissible request to revisit the Commission's prior decisions regarding smart meter deployment.

Young Energy provided two reasons for its opposition to the petition. Additionally, two alternative recommendations were made should the Commission accept the petition. Young Energy first pointed to the petition's failure to provide a complete text of the proposed rule as required by P.U.C. PROC. R. 22.281. Second, Young Energy stated that the petition is untimely and that the petition should have been filed during the rulemakings relating to smart meters. In the alternative, Young Energy recommended that if the petition is accepted, an informal workshop should be held so that interested parties may develop information to assist Commission staff in drafting specific rulemaking proposals. Additionally, Young Energy stated that any change to smart meter deployment would necessitate a revision to P.U.C. SUBST. R. 25.498 so that a retail electric provider may base charges on estimated usage.

AEP Texas adopted the comments of Centerpoint and provided four reasons for its opposition to the petition. First, AEP Texas stated that the Commission has already initiated Project No. 40190 in order to consider the feasibility of a smart meter opt-out program. Second, AEP Texas argued that a permanent ban on smart meter deployment is beyond the Commission's authority as it contradicts PURA § 39.107(i). Third, AEP Texas stated that the petition's request to regulate RF emissions from smart meters is preempted by federal law, because the FCC already comprehensively regulates RF emissions from smart meters. Fourth, AEP Texas concurred with comments arguing that the petition fails to comply with P.U.C. PROC. R. 22.281 by not including a complete text of the proposed rule.

After considering the petition and comments received, the Commission denies the Petition for Initiation of Rulemaking Proceedings, because the Commission has another project

to address Petitioners' concerns about smart meters, Project No. 40190, *PUC Proceeding to Evaluate the Feasibility of Instituting a Smart Meter Opt-Out Program*. In that project, the Commission has received extensive comments that raise concerns like those in the petition in this project. It will be more efficient and effective for the Commission to consider smart meter concerns in one project. The Commission also notes that Petitioners did not meet the requirement set out in P.U.C. PROC. R. 22.281(a)(1) that states, "The petition shall include . . . complete proposed text for the rule. The proposed text for the rule shall indicate by striking through the words, if any, to be deleted from the current rule and by underlining the words, if any, to be added to the current rule." Therefore, consistent with Commission practice, the Commission denies the petition in this project, which will allow it to focus its consideration of concerns about smart meters to Project No. 40190.

SIGNED AT AUSTIN, TEXAS the ____ day of April 2012.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

ROLANDO PABLOS, COMMISSIONER