



675 Wildwood Avenue

Rio Dell, CA 95562

(707) 764-3532

TO: Honorable Rio Dell City Council
FROM: Ron Henrickson, City Manager
DATE: January 4, 2011
SUBJECT: Temporary Moratorium Regarding Installation of SmartMeters
ATTACHMENT: Ordinance Establishing Temporary Moratorium on Installation of SmartMeters

Council Action:

- A. By motion, move to approve the ordinance
- B. By motion, move to deny the ordinance

Background:

On December 7, 2010, the City Council discussed the pending installation of SmartMeters by PG&E within the City of Rio Dell. Numerous questions and issues were raised for which the Council did not have adequate information to determine whether SmartMeters were in the general welfare of the citizens, related in part to matters concerning the public health, safety and consumer protection.

Subsequent to discussion the Council directed the City Manger to bring forth an emergency temporary moratorium for Council's consideration. The urgency ordinance was presented to the City Council at a Special Meeting held on December 14, 2010. Passage of an urgency ordinance requires passage by a minimum four-fifths (4/5) vote of the City Council and since there were only three

Council members present at that meeting action to approve the ordinance was deferred to the January 4, 2011 regular meeting.

Representatives from PG&E will be present to provide a presentation and answer questions of the Council and public.

ORDINANCE NO. 270-2011

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIO DELL ADOPTED AS AN URGENCY MEASURE ESTABLISHING A TEMPORARY MORATORIUM ON THE INSTALLATION OF SMARTMETERS AND RELATED EQUIPMENT WITHIN THE CITY OF RIO DELL OR IN, ALONG, ACROSS, UPON, UNDER AND OVER THE PUBLIC STREETS AND PLACES WITHIN THE CITY OF RIO DELL, AND DECLARING THE URGENCY THEREOF

The City Council of the City of Rio Dell, California does ordain as follows:

Section I. Findings:

- A. The City of Rio Dell (the "City"), through its police powers granted by Article XI of the California Constitution, retains broad discretion to legislate for public purposes and for the general welfare, including but not limited to matters of public health, safety and consumer protection.
- B. In addition, the City retains authority under Article XII, Section 8 of the Constitution to grant franchises for public utilities, and pursuant to California Public Utilities Code section 6203, "may in such a franchise impose such other and additional terms and conditions..., whether governmental or contractual in character, as in the judgment of the legislative body are to the public interest."
- C. Further, Public Utilities Code section 2902 reserves the City's right to supervise and regulate public utilities in matters affecting the health, convenience and safety of the general public, "such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets, and the speed of common carriers operating within the limits of the municipal corporation."
- D. Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and may be installing these meters in Rio Dell in the very near future. PG&E did not comply with Section XIV of General Order 131-D of the California Public Utilities Commission (the "CPUC"), which requires a utility to consult with the local jurisdiction on land use matters prior to locating its facilities.
- E. Concerns about the impact and accuracy of SmartMeters have been raised nationwide, leading the Maryland Public Service Commission to deny permission on June 21, 2010 for the deployment of SmartMeters in that state. The State of Hawaii Public Utility Commission also recently declined to adopt a smart grid system in that state. The CPUC currently has pending before it a petition from the City and County of San Francisco, the Town of Fairfax and other municipalities, seeking to delay the implementation of SmartMeters until the questions about their accuracy can be evaluated.
- F. Indeed, major problems and deficiencies with SmartMeters in California have been brought to the attention of the Rio Dell City Council, including PG&E's confirmation that

SmartMeters have provided incorrect readings costing ratepayers untold thousands of dollars in overcharges and PG&E's records outlined "risks" and "issues" including an ongoing inability to recover real-time data because of faulty hardware originating with PG&E vendors.

- G. The ebb and flow of gas and electricity into homes discloses detailed information about private details of daily life. Energy usage data, measured moment by moment, allows the reconstruction of a household's activities: when people wake up, when they come home, when they go on vacation, and even when they take a hot bath. SmartMeters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of the use of electrical power without adequately protecting that data from being accessed by unauthorized persons or entities and as such pose an unreasonable intrusion of utility customers' privacy rights and security interests. Indeed, the fact that the CPUC has not established safeguards for privacy in its regulatory approvals may violate the principles set forth by the U.S. Supreme Court in *Kyllo v. United States* (2001), 533 U.S. 27.
- H. Significant health questions have been raised concerning the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in SmartMeters, which will be in every house, apartment and business, thereby adding additional man-made EMF to our environment around the clock to the already existing EMF from utility poles, individual meters and telephone poles.
- I. FCC safety standards do not exist for chronic long-term exposure to EMF or from multiple sources, and reported adverse health effects from electromagnetic pollution include sleep disorders, irritability, short term memory loss, headaches, anxiety, nausea, DNA breaks, abnormal cell growth, cancer, premature aging, etc. Because of untested technology, international scientists, environmental agencies, advocacy groups and doctors are calling for the use of caution in wireless technologies.
- J. The primary justification given for the SmartMeters program is the assertion that it will encourage customers to move some of their electricity usage from daytime to evening hours; however, PG&E has conducted no actual pilot projects to determine whether this assumption is in fact correct. Non-transmitting time-of-day meters are already available for customers who desire them, and enhanced customer education is a viable non-technological alternative to encourage electricity use time-shifting. Further, some engineers and energy conservation experts believe that the SmartMeters program--in totality--could well actually increase total electricity consumption and therefore the carbon footprint.
- K. Because the potential risks to the health, safety and welfare of Rio Dell residents are so great, the Rio Dell City Council wishes to adopt a twelve month moratorium on the installation of SmartMeters and related equipment within the Rio Dell City Limits. The twelve month period will allow the CPUC petition process referenced in Recital E above to be completed and for additional information to be collected and analyzed regarding potential problems with SmartMeters.

- L. There is a current and immediate threat to public health, safety and welfare because, without this urgency ordinance, SmartMeters or supporting equipment will be installed or constructed or modified in the City without PG&E's complying with the CPUC process for consultation with the local jurisdiction, the City's Code requirements, and subjecting residents of Rio Dell to the privacy, security, health, accuracy and consumer fraud risks of the unproven SmartMeter technology.
- M. The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or installation of any facilities and, in fact, imposes greater restrictions on such construction and installation in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

Section II. Moratorium

1. No SmartMeter may be installed in or on any home, apartment, condominium or business in Rio Dell, and no equipment related to SmartMeters may be installed in, on, under, or above any public street or public right of way in the City for twelve months from the date of this Ordinance, at which time the Rio Dell City Council, shall consider whether to extend or terminate this prohibition in light of the then-current data on SmartMeter privacy, safety, accuracy and health effects.

2. Violations of this Moratorium may be charged as infractions or misdemeanors or as administrative citations, in the discretion of the City. In addition, violations shall be deemed public nuisances, with enforcement by injunction or any other remedy authorized by law.

3. The Rio Dell City Manager is hereby authorized to direct all City Departments, including the City Attorney, to facilitate compliance with the purpose and intent of this Ordinance using the enforcement powers described in the preceding paragraph.

Section III. Effectiveness

This Ordinance, being adopted as an urgency measure for the immediate protection of the public safety, health, and general welfare and containing a declaration of the facts constituting the urgency, upon passage by a minimum four-fifths (4/5) vote of the City Council, shall take effect immediately upon its adoption and shall continue in effect until modified or rescinded.

Section IV. Severability

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application, and to this end the provisions of this chapter are severable.

Section V. Publication

Copies of the foregoing ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the City of Rio Dell.

The foregoing ordinance was duly adopted on the 4th day of January, 2011 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

JULIE WOODALL, MAYOR

Attest:

KAREN DUNHAM, CITY CLERK