



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Application of EMF Safety Network for
Modification of D.06-07-027 and D.09-03-026.

Application 10-04-018
(Filed April 6, 2010)

**RESPONSE OF EMF SAFETY NETWORK TO MOTION
OF PACIFIC GAS AND ELECTRIC COMPANY TO DISMISS APPLICATION**

Pursuant to Rule 11.1(e) of the Commission's Rules of Practice and Procedure, EMF Safety Network (Network) respectfully submits this response to the motion of Pacific Gas and Electric Company (PG&E) to dismiss the application. This pleading also serves as Network's reply to PG&E's protest to the application because PG&E's arguments in the two pleadings are similar. (Rule 2.6(e).) Network requests that the Commission deny PG&E's motion for dismissal.

PG&E filed its protest and the motion for dismissal on May 17, 2010. The due date for Network's reply to the protest is May 27, 2010. The due date for responses to the motion for dismissal is June 1, 2010. Network will file this response electronically on May 27, 2010.

Commission Jurisdiction

PG&E presents a flawed argument in support of its motion, claiming that Network requests that any Commission regulation of radiofrequency radiation (RF) exposures would be unlawful.

First, Network's application does not ask for regulation of RF by the Commission but for the Commission to ensure the safe delivery of electric and gas service. Network has not asked for the Commission to arrogate to itself the statutory responsibilities of the Federal Communications Commission (FCC) as PG&E falsely claims. (PG&E motion, p. 1; see also PG&E protest, p. 1.) Network has asked instead that the Commission undertake a necessary review of the health, safety and environmental

impacts of the specific Smart Meter technologies that PG&E has chosen. Public Utilities Code §701 gives the Commission the authority to do all things that are necessary to supervise and regulate public utilities. The Commission has ample authority to grant the specific relief that Network requests: (1) re-open Commission review of PG&E's Smart Meter program; (2) require PG&E to submit an independently prepared RF Emissions Study; (3) schedule evidentiary hearings on RF health, environmental, and safety impacts; (4) review actual Smart Meter program performance; (5) allow customers to opt out; and (6) impose an immediate moratorium on PG&E installation of new Smart Meters.

Second, PG&E attempts to place decisions regarding use of wireless Smart Meter technology outside the purview of the Commission. This theory is wrong. Nothing in Federal law requires utilities to use – nor regulatory agencies to require use of – RF communications technologies. Again, PG&E seems confused over what Network has requested: not regulation of RF but specification of technology based on a thorough review of health, environmental, safety, performance, and security risks. All of these issues are within the Commission's authority.

Third, PG&E builds its case for Federal pre-emption on the false claim that Smart Meter technology falls under the FCC's regulation of "personal wireless service facilities." (PG&E motion, p. 10.) PG&E is wrong. The meters are the property of PG&E, not the customer. PG&E is not a commercial provider of personal wireless services. Smart Meter technology is a functional element of PG&E's distribution system, not a service to customers. PG&E can at its discretion use another technology for that functional element. Ironically, as things stand, customers cannot use alternate technology, contrary to the common sense understanding of a personal service.

Fourth, PG&E further attempts to buttress its case for dismissal of Network's application by dismissing Network's stated concern for the health and environmental effects of RF exposure through a misleading recitation of commonly used wireless devices that meet FCC standards. (PG&E motion, pp. 3-5.) That these devices meet FCC standards does not mean they are without health and environmental risks. It simply means that those devices meet the FCC standards. The science on this issue is

far from settled. There is ample evidence for a reasonable person to conclude that not only Smart Meters but also the wireless devices that PG&E reassuringly cites do pose health and environmental risks. Further, PG&E does not mention RF exposures from multiple Smart Meters. PG&E fails to acknowledge the RF exposures that will be created once a mesh network is in place, where each meter is an element of a larger operation. Regarding FCC regulation, the FCC has not set RF safety standards for long-term chronic exposures such as those created by Smart Meters. Given the lack of action by the FCC, how could Commission review of long-term exposures be unlawful? Furthermore, after review of mesh networks and their duty cycles, some experts estimate that meter operations might expose people to short-term acute exposures in excess of FCC's current maximum permissible exposures. ([A Perspective on Radio-Frequency Exposure Associated With Residential Automatic Meter Reading Technology](#), Electric Power Research Institute, February 2010.)

Fifth, PG&E ignores Commission interest in health effects. In 2004 the Commission voted unanimously to underground the Jefferson-Martin transmission line to reduce electromagnetic fields (EMFs) in vulnerable areas like schools, parks, and neighborhoods. The Commission stated, "While causation has not been proved definitively, several studies in the intervening years have found correlations that we cannot responsibly ignore. ... While there is no definitive proof at this point, we must proceed with the knowledge that EMF exposure may increase the risk of certain health effects." (Decision 04-08-046, slip op. at 92, 93.)

Sixth, ratepayers need Commission help in obtaining accurate, consistent, technical data about RF exposure and Smart Meters. PG&E employees and consultants have appeared at recent public forums, but they have given Network representatives incomplete and inconsistent information. Considering that PG&E is deploying millions of RF devices, PG&E should provide access to RF technical experts who will produce consistent credible answers to questions from customers.

Seventh, contrary to PG&E's declaration, RF does penetrate through walls. (PG&E motion, Declaration of Daniel Partridge, p. 2, which states that the Smart Meter radio is "blocked by walls from human inhabitants." If RF signals were blocked by walls,

the Home Area Network (HAN), which transmits RF signals from the Smart Meter to an interior display unit and then to appliances inside the home, would be inoperable.

Conclusion

For these reasons Network concludes that PG&E's motion to dismiss is without merit. Network asks that the Commission deny it.

* * *

Dated May 27, 2010, at Sebastopol, California.

/s/

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VERIFICATION

I, Sandra Maurer, represent EMF Safety Network and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters that are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated May 27, 2010, at Sebastopol, California.

/s/

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CERTIFICATE OF SERVICE

I certify that I have by electronic mail this day served a true copy of the original attached "Response of EMF Safety Network to Motion of Pacific Gas and Electric Company to Dismiss Application" on all parties of record in A.10-04-018 or their attorneys of record. I will mail paper copies of the pleading to Assigned Commissioner Michael Peevey and Administrative Law Judge Timothy Sullivan.

Dated May 27, 2010, at Sebastopol, California.

/s/
Sandra Maurer