



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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11-15-10
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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)

**COMMENTS OF EMF SAFETY NETWORK
ON PROPOSED DECISION OF ALJ SULLIVAN**

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, EMF Safety Network (Network) submits these opening comments on the proposed decision (PD) of Administrative Law Judge (ALJ) Timothy Sullivan in Network's application for modification of Decision (D.) 06-07-027 and D.09-03-026. (Agenda ID #9707.) ALJ Charlotte TerKeurst sent electronic notice of the PD to parties of record on October 26, 2010. The due date for opening comments is Monday, November 15. Network will file this pleading electronically on the due date.

The PD, if approved by the Commission, would grant the motion of Pacific Gas and Electric Company (PG&E) to dismiss the application. In compliance with Rule 14.3(c), these comments focus on factual, legal and technical errors in the PD.

1. Summary

The PD relies on PG&E's unsubstantiated, unreliable and grossly underestimated claims that the radio frequency radiation (RF) signals that Smart Meters transmit are 1/6000 of the Federal exposure standard at ten feet away, and therefore too small to pose a health risk. According to the Federal Communications Commission (FCC) there is no RF Federal health standard, contrary to the PD Summary, Conclusion and Finding of Fact. The PD's use of ten feet as a benchmark for safety does not apply to thousands of living situations. The PD's acceptance of apples to oranges comparisons to other RF devices commonly in use today is inapplicable and erroneous. The PD shows preferential treatment and bias in its acceptance of PG&E claims and

dismissal of Network's substantiated health concerns, which are based on science. According to the FCC, this Commission has jurisdiction over RF emissions from PG&E Smart Meters. The ALJ has ignored growing public concern and controversy over Smart Meters and FCC safety standards. The Commission should investigate Smart Meter interference, explosion and fire hazards. It is just and reasonable that the Commission dismiss the findings of the PD and move forward with a public hearing of Network's application.

2. The PD Endorses PG&E's Unreliable RF Emission Figures

PG&E's assessments of RF emissions are technically incompetent and grossly underestimated. PG&E claims that at a distance of ten feet the RF emissions from its Smart Meters are 1/6000 of the FCC RF exposure regulations, which PG&E asserts is 600 microwatts per square centimeter. (PG&E motion for dismissal, Declaration of Daniel Partridge, p. 4, Paragraph 7.) RF emissions from Smart Meters will vary based on numerous factors including duty cycles and co-location of meters. Accepting PGE's RF emission figures, without accounting for the mesh network system, additional emissions from new appliance RF transmitters inside the home, and multiple factors affecting RF emissions, constitutes technical error.

Network has asserted that PG&E's RF figures are, "paltry, inconsistent and contradictory". (Application, p. 9.) To illustrate PG&E's continuing contradictions, in a July 2010 phone conversation, PG&E field representative Austin Sharp stated to a Network representative that a Smart Meter emits 8.8 microwatts per square centimeter at a distance of one foot. However, in a July 2010 response to a Network request for peak RF data, Sharp called back and stated that he spoke with a PG&E RF engineer, Jerry Hinshaw, who said that at one foot the peak RF power is 100 microwatts per square centimeter, and at 10 feet it is 1 microwatt per square centimeter. Therefore, according to PG&E, at ten feet Smart Meter RF emissions are 1/600 of their stated FCC exposure limit, not 1/6000. This is another glaring example of PG&E's inconsistent, contradictory and unreliable information, as Network stated in the Application.

In addition PG&E is now telling the public that Smart Meters transmit only 43 seconds per day in 2-20 millisecond pulses. (PG&E web site.) That amounts to up

to 15 RF bursts per minute. In February 2010, Andrew Tang, PG&E Senior Director of Customer Care, said at a Sebastopol City Council meeting that Smart Meters transmitted RF data once an hour. In April 2010, at a PG&E public Smart Meter forum in Sebastopol, William Devereaux, PG&E Senior Director of the Smart Meter Program, and Michael Herz, PG&E's EMF Program manager, said to a Network representative that Smart Meters transmit once every six hours.

PG&E's claims about Smart Meter RF emissions are untested and inconsistent. The PD wrongly accepts PG&E's unsubstantiated claims that the RF signals Smart Meters transmit are small. The PD's blind acceptance of unreliable information amounts to factual and technical error.

3. According to the FCC, There is No RF Federal Health Standard

The PD concludes that there is a Federal health standard for RF emissions (PD Summary at p.1, Conclusion at p.10, Finding of Fact 3 at p. 11) and that is a factual error. According to the FCC web page, "FCC Consumer Facts on Wireless Devices and Health Concerns," "...there is no federally developed national standard for safe levels of exposure to radiofrequency (RF) energy...."¹ This is an important distinction and should not be overlooked.

4. Acceptance of Ten Feet as a Safety Benchmark is Technical Error

The ALJ's use of ten feet as a safety benchmark is erroneous because it overlooks thousands of living situations. RF emissions increase greatly with proximity to Smart Meters. Many people sleep or spend many hours each day within a few feet of their electric or gas meters. Many customers live or work near banks of multiple meters adjacent to their homes or workplaces. Neither PG&E nor the Commission has evaluated worst-case scenarios for Smart Meter installations.

5. PG&E's Comparisons to Other RF Devices is Inapplicable and Erroneous

The PD finds that Smart Meters "produce RF emissions far below the levels of many commonly used devices." (PD, p. 11, Finding of Fact 3.) The comparison with

¹ <http://www.fcc.gov/cgb/consumerfacts/mobilephone.html>

commonly used devices is untested and without evidentiary support, and is therefore erroneous. The Smart Meter emissions figures used in a chart² distributed by PG&E have been time averaged whereas emissions for other devices are not averaged. Smart Meters transmit RF 24/7. A cell phone or a microwave oven may be used for several minutes, or not at all. Distances from such devices are essentially random (one foot, two inches, one meter, at the head) and devices are used differently. The PD's comparison is like apples to oranges. Consumers should have a choice about exposure to RF devices in their home. Network submits that the Commission should hear factual evidence about RF emissions.

6. The PD Shows Bias Toward PG&E's Claims Over Network's Claims

If the ALJ applied the same discernment to Network's allegations of harm as he did PG&E's claims of safety, the PD would convene a pre-hearing conference and evidentiary hearings. Network has made serious allegations of public and environmental harm, which the PD ignores, based on faith in PG&E's unsubstantiated claims. PG&E's presentation in this application does not justify such faith. This is a clear case of bias. It is the Commission's duty to regulate, not favor, PG&E.

7. The Commission Cannot Trust PG&E's Behavior in This Application

William Devereaux, a PG&E employee who was until recently PG&E's Senior Director of the Smart Meter Program, has attempted to mislead Network by false statements and deception, in order to spy on an adversary in a Commission proceeding.

PG&E recently attempted to infiltrate the California EMF Safety Coalition, which is a discussion group for EMF Safety Network, the applicant in this proceeding. The actions of Devereaux exemplify PG&E's unethical behavior. Devereaux faked his identity and lied about his intentions, in order to infiltrate the California EMF Safety Coalition. PG&E sent the e-mail shown below to Sandra Maurer, who represents Network in the instant application.

²http://www.pge.com/includes/docs/pdfs/shared/edusafety/systemworks/rfsafety/rf_summary_discussion_rat2.pdf

“From: William Devereaux manasota99@gmail.com

Date: November 4, 2010 3:23:49 PM PDT

To: EMF Safety Network <EMFSafe@sonic.net>

Subject: Re: Your interest in joining the California EMF Coalition?

Hi Sandi,

Sorry for the delay in getting back to you, I've been travelling a lot.

I live in Oakland where Smart meters have been sweeping across town and wanted to learn more about them and join the conversation to see what I can do to help out here.

Thanks,
Ralph”

A person using the same e-mail address, manasota99@gmail.com, previously subscribed to at least two other on-line discussion groups of Bay Area activists that oppose PG&E Smart Meters. Those two groups cooperate and coordinate their efforts with Network.

The Senior Director of the \$2.2 billion PG&E Smart Meter program has publicly reassured consumers and city officials across the state that Smart Meters are safe and accurate, and meanwhile lied about his identity to infiltrate a Network discussion group. The PD’s reliance on PG&E safety claims is especially egregious in light of PG&E’s unethical behavior. The Commission should not blindly accept information provided by PG&E in this proceeding. Network deserves a fair hearing on health impacts of Smart Meters.

8. The Commission Has Jurisdiction Over RF Smart Meters

Michael Boyd, of Californians for Renewable Energy, Inc. (CARE), has demonstrated that the FCC believes that regulation of RF Smart Meters is under the jurisdiction of the Commission, not the FCC as the PD claims.³ Boyd filed an online

³ <http://docs.cpuc.ca.gov/efile/REP/126055.pdf>

complaint with the FCC about Smart Meter RF emissions, and the FCC clearly directed Boyd to take his complaint to the Commission.

On November 4, 2010, in order to confirm the FCC's position, Network filed an online complaint with the FCC stating the following:

“PG&E is deploying radio frequency radiation (RF) smart meters throughout its service territory in California. PG&E claims there are no health impacts and states they are safe because they comply with FCC Safety Standards. PG&E has not provided realistic RF specifications like the peak RF power at one foot. We need accurate RF emissions information for their Smart Meters.

“People are reporting health impacts from RF smart meters, including sleep problems, headaches, anxiety, tinnitus, ear pain and more. There are people who are EHS and immune compromised and this is a huge threat to their homes and health. See stories here:

http://emfsafetynetwork.org/?page_id=2292

“Since the FCC is the jurisdictional body that regulates RF emissions we call on you to impose an immediate moratorium on PG&E Smart Meters.

“The FCC complaint form did not include Smart Grid or Smart Meters so I have submitted the category that seemed like the best fit.”

Network expects that the FCC will direct the complaint back to the Commission, as it did with Boyd.

The PD erroneously defers public concerns about RF emissions to the FCC. (PD, p. 9.)

9. The PD Ignores Growing Public Controversy

ALJ Sullivan ignores important facts that the Commission should consider. Cities and counties throughout the nation are calling for the FCC to update its safety standards because they are based only on short term thermal effects.

On July 30, 2010 California Assembly member Jared Huffman requested that the California Council on Science and Technology (CCST) assess whether or not current

FCC RF safety standards sufficiently protect public health. CCST agreed to prepare a study that is due to be released December 15, 2010.

The PD ignores growing tension and controversy over Smart Meters. Cities and counties who are calling for a moratorium based on health and environmental impacts have weighed the claims of safety by PG&E, against the science and RF health concerns of their constituents. Nearly two dozen local jurisdictions have called for a moratorium on Smart Meter installation. The Commission has received more than 8,000 complaints about PG&E Smart Meters. Statewide, the Commission has received more than 2,000 complaints in the past two months (August 15 - October 15, 2010). Many of the complaints include health, safety and environmental concerns.

Thousands of PG&E customers have signs posted on their electric and gas meters stating that PG&E does not have their permission to install Smart Meters on their homes or businesses. In some instances PG&E has bullied people into submitting to Smart Meter installations.

10. Pursuit of Policy Objectives Should Not Trump RF Health Impacts

The PD heralds Smart Meters, stating they will “play an important role in implementing key energy policies adopted by California law, including those directed at using renewable energies, promoting conservation and reducing greenhouse gas emissions.” (PD, p. 9.)

In fact Smart Meters are incompatible with solar photovoltaic panels. PG&E has told Network that Smart Meters do not run backwards. Gas Smart Meters produce no conservation benefits. (D.09-03-026, Finding of Fact 34, p. 191.) Replacing millions of perfectly good utility meters and mandating the installation of new smart appliances amount to a massive campaign of environmental waste, contrary to the PD’s assertions.

The Commission now has an opportunity to hear evidence on rising public concern about Smart Meters. Network has received many, many anguished and credible reports from customers about the health impacts of Smart Meters. The Commission has ignored these people, their situations and thousands of complaints in favor of other policy objectives. Customers and affected citizens are outraged, and they

feel that their lives and well-being are threatened. The PD unfairly and unreasonably dismisses Network's showings on health impacts of RF emissions.

PG&E is deploying thousands of Smart Meters daily. The Commission should not allow this deployment to continue while PG&E ignores the substantiated objections of Network, local communities, and thousands of citizens. Public health concerns and evidence of actual harm justify an immediate moratorium on Smart Meter installations.

11. Other Serious Network Concerns Warrant Investigation

According to the PD, Network inadequately expressed its request for a review of other legitimate Smart Meter problems (PD, p. 10), including billing inaccuracy, privacy and security issues, interference complaints, and explosion and fire hazards. Network recognizes that the Commission is exploring several of these issues (billing, privacy and security) in other proceedings. Network defers its interest to those cases. Network remains concerned about the interference problems and fire hazards, and calls on the Commission to investigate. Network has compiled ample evidence to warrant investigation of Smart Meter fire and explosion hazards being reported nationally and internationally.⁴

12. The PD Denies Network a Fair Hearing on the Validity of PG&E Information

Network's application is based on peer reviewed, published science that the PD has chosen to ignore. A growing number of communities and individual citizens corroborate Network's representation that Smart Meters pose health and environmental risks. The PD has dismissed all of this out of hand.

Network therefore asks that the Commission dismiss the findings of the PD and move forward with a public hearing of Network's application.

* * *

⁴ http://emfsafetynetwork.org/?page_id=1280

Dated November 15, 2010, at Sebastopol, California.

/s/

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APPENDIX

PROPOSED FINDINGS AND CONCLUSIONS

Findings of Fact

1. PG&E informed Network that at one foot the RF peak power of a Smart Meter is 100 microwatt per square centimeter, and at 10 feet it is 1 microwatt per square centimeter.
2. PG&E has provided Network with conflicting information about RF emissions.
3. Network and PG&E offer conflicting information about health risks of Smart Meters.
4. Scoping rulings in A.05-06-028 and A.07-12-009 did not include health risks of PG&E's Smart Meters.
5. There is growing public concern about health risks of Smart Meters.
6. Network alleges that PG&E has attempted to mislead Network by false statements and deception.

Conclusions of Law

1. The FCC is not a health agency.
2. There is no Federal RF health standard.
3. The Commission has a duty to consider health risks of Smart Meters.
4. The Commission should hold an evidentiary hearing in this matter.
5. PG&E's motion to dismiss should be denied.

CERTIFICATE OF SERVICE

I certify that I have by electronic mail this day served a true copy of the original attached "Comments of EMF Safety Network on Proposed Decision of ALJ Sullivan" 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 November 15, 2010, at Sebastopol, California.

/s/
Sandra Maurer