



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Application of Pacific Gas and Electric Company
(U 39 M) for Approval of Modifications to its
Smart Meter Program and Increased Revenue
Requirements to Recover the Costs of the
Modifications.

Application 11-03-014
(Filed March 24, 2011)

**COMMENTS OF EMF SAFETY NETWORK ON PROPOSED DECISION OF
COMMISSIONER PEEVEY**

December 12, 2011

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1. Introduction

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 Commissioner Peevey in the application of Pacific Gas and Electric Company (PG&E) for approval of modifications to its Smart Meter program. The due date for opening comments is Monday, December 12, 2011. Network will file this pleading electronically on the due date.

The PD, if approved by the Commission, would grant a modified version of the PG&E Smart Meter program to include an opt-out option. In compliance with Rule 14.3(c), these comments focus on factual, legal and technical errors in the PD.

2. Summary

It is premature and unreasonable to conclude the proceeding at this time. The investigation into Smart Meter problems, including radio frequency radiation (RF) and cost data is incomplete. Evidentiary hearings are needed to provide parties the opportunity to evaluate PG&E's showing and cross-examine its witnesses, and to present their own expert testimony. Time of use rates are not mandatory,¹ therefore retaining analog meters is justified. The Commission should immediately order a moratorium on further Smart Meter deployment, provide relief to customers by allowing them retain or restore analog meters at no additional cost, and reject the PD.

3. Evidence to support an analog meter option

The PD would eliminate an analog meter option, and it proposes charging customers² a \$90 upfront fee and \$11 a month for a radio off Smart Meter. The PD at page 30 states, "Our determination that the SmartMeter Program should include an opt-out option is in response to customer demands." However, the PD errs greatly in ignoring the very demands it claims it's responding to.

¹ Public Utilities Code § 745(d)(1) relevant part: "Residential customers have the option to not receive service pursuant to time-variant pricing and incur no additional charges as a result of the exercise of that option."

² PD, Ordering Paragraph 2.d lists an \$11 monthly fee; however the PD Summary at p.2 states \$15.

A. Letters sent to the Commission

More than 885 California utility customers, many from PG&E, sent letters to the Commission's Public Advisor asking for a restoration of the analog meters at no cost. In addition, over two thousand online letters sent to the CPUC Public Advisor stated customer opposition to having RF meters on their home. Radio off meters still emit RF from the switching mode power supply.³

B. Radio off meters are not the only reasonable option

The PD page 21 claims the analog meter "...is the only option that is unable to track interval energy consumption data." This is an error because radio off meters do not collect time of use data.⁴ It is unnecessary and wasteful to replace analog meters with radio off meters. The Commission cannot guarantee that time-of-use rates will ever be mandatory, or if PG&E will have the technology to convert radio off meters to time-of-use. The PD errs by gambling on unknown policy and technology at ratepayer expense.

C. Network safety impacts survey

Network conducted a Wireless Utility Safety Impacts Survey⁵, circulated online between July and September 2011. Ed Halteman, PhD statistics, of Survey Design and Analysis, evaluated the results.

- Of the 443 people who took the survey 68% were PG&E customers.
- Of the 111 people who complained to their utility provider 96% were unsatisfied or very unsatisfied with how the utility handled their complaint.
- 96% of those who complained to the utilities commission were unsatisfied or very unsatisfied with how the commission handled their complaint.
- 94% of respondents want to retain or restore the analog meters and 92% do

³ PD pg. 16 "...various parties have asserted that this [analog meter] option is necessary due to the alleged effect of RF emissions on human health."

⁴ PD pg. 8 "... certain electric SmartMeter functions would be disabled." PD pg. 9, list number 9 including: "Time-of-Use (TOU) profiled energy useage data collection ..."

⁵ See Attachment to this pleading; <http://emfsafetynetwork.org/wp-content/uploads/2011/09/Wireless-Utility-Meter-Safety-Impacts-Survey-Results-Final.pdf>.

not believe they should pay more to do so.

- 41% of respondents had one or more Smart Meters installed on their home.
- 35% of those with Smart Meters on their home had increase billing charges.
- 26% experienced some type of electrical interference and 8% experienced burnt out appliances or damaged electronics.
- 318 people responded to questions about changes in health since the wireless meters were installed on or near the home. The reported health complaints included sleep problems (49%), stress (43%), headaches (40%), ringing in the ears (38%) and heart problems (26%).⁶

Dr. Haltemans concluded, *“Statistical testing shows the top health symptoms are positively associated with EMF [electromagnetic field] Sensitivity and wireless meters on the home.”*

D. Community backlash

The PD ignores the major problems associated with the Smart Meter deployment. This has been a forced deployment, imposed on consumers without RF disclosure, without informed consent and despite massive public protest.⁷ Requests for a moratorium and local bans were ignored by PG&E and the Commission, and stealth installations proceeded.

Hundreds of people have written to the Network complaining of biological effects – sleep disturbance, headaches, tinnitus – since the new meters were installed⁸. People have reported being intimidated and threatened by installers and PG&E. Desperate to protect their homes and families people locked their meters and built cages around their meters to block Smart Meter installations. Some people⁹ whose

⁶ See webcast of December 1, 2011 Commission business meeting for personal accounts from people suffering. <http://www.californiaadmin.com/cpuc.shtml>

⁷ Forty seven California cities and counties opposed, banned or requested evidentiary hearings or the right to opt out. List available here: http://emfsafetynetwork.org/?page_id=872.

⁸ Some of these health complaints are posted here: http://emfsafetynetwork.org/?page_id=2292. Health complaints are also submitted to SmartMeterHelp.com.

⁹ KION news report: “Angry customers return SmartMeters” <http://www.kionrightnow.com/story/16214043/angry-customers-return-smart>

pleadings for help were ignored restored the analog meters themselves despite threats from PG&E to cut off their power.¹⁰

4. Evidence to support no cost opt-out

The proposed opt-out charges will not provide relief to people who live near banks of meters, people who have multiple meters on their home, or EMF sensitive people in neighborhoods who cannot expect neighbors to pay to opt out. PG&E shareholders should bear the cost of reparations. PG&E customers have already paid for Smart Meters through rate hikes; charging a customer with an analog meter to pay again for a radio off meter is double charging, which is unlawful.¹¹ The following comment illustrates how people feel about the proposed charges:

“We should not have to pay for NO CHANGE in electric service. We don’t pay for not getting cable. We don’t pay for not getting satellite. We don’t pay for gas if we don’t use gas appliances. What the heck is going on when we have to pay MORE for something we don’t want, don’t need, won’t use and can’t get out of. When the vacuum salesman comes to the door, and I don’t want to buy a vacuum, I don’t buy it and he doesn’t get into my wallet.” Anonymous Survey comment

5. The Commission neglected its own order to hold RF hearings

Decision 95-11-017 pg. 2 states, “This order addresses the cellular phase of our EMF investigation, which considers the Commission's role in mitigating health effects, if any, of RF radiation generated by cellular utilities within the Commission's jurisdiction. Article XII, Section 6 of the California Constitution empowers the Commission to establish rules for the utilities it regulates.”¹² Public Utilities Code Sections 451¹³

¹⁰ In a letter dated December 2, 2011 to Monise Sheehan, PG&E writes, “Given the public safety issues, if we do not hear from you, we will have no choice but to terminate your electric service.”

¹¹ Public Utilities Code § 451 “All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.”

¹² Footnote added: California Constitution Article XII Section 6 “The commission may fix rates, establish rules, examine records, issue subpoenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction.”

¹³ Footnote added: Public Utilities Code § 451 in part “Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including

and 1002 require the Commission to consider the impact of utilities' services on the environment and human health and safety. ...” Ordering Paragraph 2 states, “CACD [Commission Advisory and Compliance Division] shall hold informal cellular EMF and RF radiation workshops as additional health information becomes available and upon preparation of any updated EMF reports, and shall report the results of such workshops to the Commission through the resolution process.”^{14,15}

In April 2010 Network filed Application 10-04-018, which brought additional RF health information to the Commission and the Commission neglected their own mandate to hold more hearings on RF health effects. PU Code § 14 states “shall” is mandatory and “may” is permissive.” Californians are entitled to a hearing on the RF health effects of RF Smart Meters.

6. List of problems still needing resolution

The PD on page 39 states in error, “This decision revises the preliminary determination concerning the need for hearings and finds that no evidentiary hearings are necessary as there are no disputed factual issues material to the resolution of this application.” Network believes there are many disputed factual issues needing resolution, including but not limited to the following points:

- The FCC Grants of Authorization for PG&E electric meters state the meters transmit at 1 watt with no mention of antenna gain. PG&E now admits¹⁶ their electric meters transmit at a peak power of 2.5 watts, and meters transmit on average 10,000 RF pulses per day. How does this new information affect FCC compliance?

telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.”

¹⁴ Footnote added: D.95-11-017, Ordering Paragraph 2.

¹⁵ Footnote added: D.95-11-017 is not directly available on the Commission’s web site. See 1995 Cal. PUC LEXIS 842; 165 P.U.R.4th 403.

¹⁶ PG&E response to Administrative Law Judge October 18, 2011 ruling directing it to file clarifying radio frequency information.

- The FCC wrote in a letter to Congresswoman Lynn Woolsey¹⁷: *"The devices normally transmit for less than one second a few times a day and consumers are normally tens of feet or more from the meter face."* In light of the new RF data PG&E provided, Network wrote to Congresswoman Lynn Woolsey and is awaiting the FCC's response.
- Constant pulsed radiation is assessed at 100% exposure according to FCC OET Bulletin 65. PG&E has only stated the time averaged peak. Peak power figures at 20 cm. are needed to confirm FCC compliance.
- The PD refers to D.10-04-018 as proof of FCC compliance which is an error, based on PG&E's new RF data figures provided to the ALJ. No hearing was held in the underlying proceeding, and the PG&E information provided was never tested through cross-examination.
- Is the FCC safety guideline for allowable RF emissions (49.0 dB μ V/m) for unintentional radiators a cumulative total or allowable per device? (If Smart Meters are using up 4/5ths of the allowable limit they may exceed the FCC limit in most homes.)
- Smart Meters can violate both FCC safety standards and FCC installation conditions for RF safety¹⁸. These issues are unaddressed in the PD.
- Analog meters have two to three times the expected life span of Smart Meters, and they do not require technology upgrades. This is a cost consideration which should be addressed in hearings.
- Installing RF transmitters on gas lines might affect safety in case of a gas leak or an earthquake. RF transmitters should not be installed on gas lines, nor should customers pay to opt out of this hazard.¹⁹

¹⁷ <http://emfsafetynetwork.org/wp-content/uploads/2011/04/FCC-letter-Smart-Meters.pdf>

¹⁸ Network Protest p. 3.

¹⁹ Public Utilities Code § 328(b) The Legislature finds and declares both of the following: ... (b) No customer should have to pay separate fees for utilizing services that protect public or customer safety.

- RF information provided by Southern California Edison Company and San Diego Gas & Electric Company vary greatly from PG&E's data; parties need an opportunity to question their findings.
- The risks of fire hazards from electric Smart Meters installed on homes with older wiring²⁰ should be immediately investigated.

7. Other errors in the PD

- The PD ignores people who are suffering biological effects from Smart Meters, stating it is beyond the scope of the proceeding²¹.
- The PD fails to adequately address gas or water meters.
- The PD fails to address concerns of local jurisdictions where installation may violate or burden local laws and ordinances. The Commission should provide relief to whole communities²².
- The PD fails to address Smart Meter infrastructure environmental impacts.
- The PD on page 19 states, "we must balance the concerns expressed by customers against California's overall energy policy." It is wrong to value policies over public health and safety.
- On page 10 in the PD, PG&E is said to believe analogs are no longer manufactured. That is factual error. Analog meters are still available²³.
- The PD footnote 26, in reference to justifying FCC compliance 47 C.F.R. § 15.247(c)(3)&(4) does not exist. The correct code section might be 47 C.F.R. § 15.247(b)(3)&(4).

²⁰ http://emfsafetynetwork.org/?page_id=1280.

²¹ PD pg. 16 "...the issue of whether RF emissions from SmartMeters have an effect on individuals is outside the scope of this proceeding."

²² General Order 159A requires that "affected citizens, organizations and local government are given reasonable notice and opportunity for input into the review process" and that "public health, safety, welfare, and zoning concerns of local government are addressed."

²³ AC Killowatt-Hour Meter available from Real Goods (707) 472-2407 and other online sources.

- Deactivating the radio systems of existing Smart Meters will not satisfy ratepayers who have no way of knowing whether or not the meter is turned off.

8. Conclusion

President Peevey's proposed decision would approve a punitive "opt out" program that reveals his blatant disregard for customer interests. Customers need to have the choice of an analog meter restored immediately at no additional cost. The Commission should reject the PD, continue fact finding in this proceeding by holding evidentiary hearings, and provide relief to California utility customers. Ultimately Network believes the Smart Meter Program should be banned and dismantled.

* * *

Dated December 12, 2011, at Sebastopol California.

/s/

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PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

1. PG&E was directed by Commissioner Peevey to submit a proposal that would allow some form of opt-out for PG&E customers who did not wish to have a smart meter. ~~with RF transmission.~~

5. Customers seeking an opt-out option have expressed concerns that a radio-off option would not ~~reduce~~ eliminate the level of RF emissions.

6. ~~The FCC has authority over technical aspects of radio communications and regulates guidelines on~~ human exposure to RF emissions ~~in order to protect public health and safety~~ consider only 30 minute thermal exposures and are inadequate to protect California ratepayers against RF emissions from Smart Meters.

7. Analog and radio off meters are unable to track interval energy consumption data.

8. Collection of interval energy consumption data from every PG&E customer is not critical to the Commission's policies to implement a demand response program and TOU rates.

10. PG&E provided cost information for the radio out, analog meter and wired smart meter opt-out/options in response to an ALJ Ruling. However, parties have not had a fair opportunity to test that information or make their own showings.

12. The record in this proceeding is inadequate to authorize a Smart Meter opt out program for PG&E.

Conclusions of Law

1. A residential or business customer should be allowed to opt out of a wireless SmartMeter for any reason, or for no reason.

~~2. D.10-12-001 determined that PG&E's Smart Meter technology complies with FCC requirements.~~

4. The best opt-out option to be adopted must balance honor the concerns complaints expressed by customers and local jurisdictions against California's overall energy policy and ensure safe and reliable utility service.

5. Allowing residential customers an opportunity to retain or restore the analog meter ~~opt out of receiving a wireless SmartMeter does not mean that customers electing this option would not be subject to ongoing state energy objectives~~ would be sound public policy.

6. It is not important that the selected opt-out option has the capability for every residential customer to take advantage of smart grid benefits in the future.

~~8. It is appropriate to adopt a non-communicating meter as the opt-out option.~~

~~9. The non-communicating meter (radio off or radio out) should have the capability of capturing interval energy consumption data by January 1, 2014.~~

~~10. PG&E's proposed radio-off opt-out option is reasonable only if it will allow PG&E to collect interval data and use this data for billing purpose as of January 1, 2014.~~

~~11. It would not be reasonable to allow the opt-out option to be exercised by local entities and communities.~~

12. Due to significant cost uncertainties associated with providing an opt-out option, it would be ~~premature to make any determination concerning the reasonableness of PG&E's revenue requirements.~~ it is important to hold evidentiary hearings in this proceeding.

13. Since PG&E's implementation of the SmartMeter program is ~~consistent with the requirements of D.06-07-027, it should be allowed to recover the costs associated with the opt-out option to the extent those costs are found appropriate, reasonable and not already being recovered in rates.~~ mired in controversy the discussion on rates should continue to be investigated in evidentiary hearings.

14. A residential or business customer selecting the opt-out option should ~~be assessed an initial charge to install the non-communicating meter and a monthly charge.~~ be allowed to retain or restore the analog meter at no additional charge.

15. The costs for the opt-out option should ~~not be the sole responsibility of those customers selecting the option.~~ paid by PG&E shareholders.

16. ~~It would be reasonable to have a portion of the opt-out costs allocated to all residential ratepayers.~~

17. A discount ~~should be provided to customers enrolled in the CARE and FERA programs.~~ is unnecessary because there are no customer costs associated with this program.

20. The modifications to the SmartMeter program should be implemented as ~~quickly as possible.~~ only after thorough review, and evidentiary hearings to ensure interested parties and the public have had a full opportunity to be heard.

21. The September 21, 2011 Assigned Commissioner's Ruling directing the utilities to allow residential customers to be placed on a delay list should ~~no longer be applicable for PG&E~~ remain in effect.

22. All outstanding motions should be ~~denied.~~ addressed by the ALJ in this proceeding.

23. ~~No hHearings were~~ are necessary as there ~~were no~~ are disputed factual issues material to the resolution of this application.

24. A.11-03-014 should be ~~closed~~ continued.

* * *