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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of Modifications to its SmartMeter™ Program and Increased Revenue Requirements to Recover the Costs of the Modifications. (U39M).	Application 11-03-014 (Filed March 24, 2011)
And Related Matters.	Application 11-03-015 Application 11-07-020

EMF SAFETY NETWORK REPLY BRIEF

Pursuant to Rule 13.11 of the California Public Utility Commission (Commission or CPUC) Rules of Practice and Procedure, the EMF Safety Network (Network) submits this reply brief in response to "Assigned Commissioner's Ruling Amending Scope of Proceeding to Add a Second Phase" dated June 8, 2012. During the November 2012 evidentiary hearings, Administrative Law Judge Amy Yip-Kikugawa amended the filing date for reply briefs to January 25, 2013, and stated requests for oral argument should be included in reply briefs.[1] EMF Safety Network requests an opportunity for oral argument. All page numbers cited in this reply brief refer to a parties opening brief unless noted.

In its Opening Brief, Network recommended the Commission: allow residential

[1] CPUC Administrative Law Judge Amy Yip-Kikugawa, 4 RT 634: 2-13

and commercial customers for any reason to retain or restore analog meters at no cost; require utility company shareholders to bear financial responsibility for Smart Meter opt-out costs; order the utilities to refund opt-out fees already paid by individuals; and open a CPUC proceeding, allow testimony, and hold evidentiary hearings to investigate Smart Meter health and fire safety complaints.

Like Network, other parties in this consolidated proceeding recommend a "no cost"[2] opt-out, including The County of Marin, the Town of Fairfax, the City of Marina, the City of Seaside, the City of Capitola, the City of Santa Cruz, the County of Santa Cruz, and the Town of Ross and the Alliance for Human and Environmental Health (Joint Parties); Center for Electrosmog Prevention (CEP); Ecological Options Network (EON); Consumers Power Alliance (CPA); and Southern Californians for Wired Solutions to Smart Meters (SCWSSM). Aglet Consumer Alliance (Aglet) supports no cost opt-out for customers with medical conditions.

EON and CEP agree with Network's position that utility shareholders bear responsibility for the costs. Aglet and Joint Parties also call for shareholder participation. EON states, *"No costs associated with deployment or opting-out should be born by ratepayers or taxpayers, but should be seen as totally the liability of utilities and their stockholders."* (EON p. 8.) CEP states, *"CEP's position on the opt-out fees has been and remains that there should be none paid by customers, and that shareholders and the utilities should pay."* (CEP p. 5.) Aglet concludes,*"it is just and reasonable to allocate 10% of opt out program costs to shareholders."* (Aglet p. v.) Joint Parties state, "*the Commission should determine the appropriate portion of the costs asserted by each utility that should be borne by the company or its shareholders, because they were not prudently or reasonably incurred.*" (Joint Parties p. 5.)

Aglet recommends all customers who do not demonstrate medical conditions pay $30 initial fee and $3 a month. (Aglet p. v.) The Utility Reform Network (TURN) recommends $55 initial fee and $5 a month. (TURN p. v.) Network disagrees on charging individuals fees to opt-out of Smart Meters and disagrees with requiring a medical demonstration for the reasons stated it its Opening Brief. (Network p. 7.) From

[2]"no cost" meaning no cost to the individual opting-out.

the customer perspective, they have always had analog meters, and many customers feel it's extortion to pay NOT to have a Smart Meter. (Network p. 2.)

TURN mischaracterizes the Smart Meter opt-out program as a benefit for electro-sensitive customers. They state, *"The Commission could socializ[e] some of the costs due to the health concerns of electro-sensitive individuals..."* (TURN p. v); *"... that should provide an affordable option for electro-sensitive individuals to opt-out of the smart meter program."* (TURN p. 10); and they state,*" Generally, TURN would not support the socialization of costs for a purely voluntary service that provides value to the participant but is not essential for safe and affordable utility service and provides no value to non-participating ratepayers."* (TURN p. 9.) Network disagrees with TURN that the opt-out is for electro-sensitives; that an opt-out is not essential for safe utility service; and that it provides no value for non-participants. There are many reasons why customers have refused Smart Meters, including cost, privacy, health, and fire safety reasons[3]. The CPUC decision is based on customer choice, which is a benefit that applies to all ratepayers. TURN's new perspective could also explain why they abandoned their Smart Meter boycott launched in 2009; changed their recommendation that shareholders pay 50% of opt-out costs; and disappointed those TURN members, and their neighborhoods, who boycotted Smart Meters[4]; by recommending customers pay more to have analog meters.

It appears what TURN is really afraid of is too many customers choosing to return to the analog meter and therefore billions of dollars of ratepayer money would be wasted, but this is not based on any tangible showing. It would also be wrong to use money to intimidate customers into not opting-out. TURN writes, "*we have the theoretical possibility that if opt-out costs were fully socialized so that there were no participant fees, a large number of customers could "opt-out" for any reason, and the incremental costs to replace and read those meters would be subsidized by all residential customers... For example, if 20% of customers opted-out, instead of the forecast 1-2%, it would be highly unfair for the remaining ratepayers to pay the resulting hundreds of millions of dollars in additional costs. In the extreme, if all customers opted out, we would*

[3] Public Participation Hearings 6-10 RT
[4] Exhibit EMF-2

essentially have poured five billion dollars down the drain, and then spent untold millions more in an inefficient one-by-one opt-out process." (TURN p. 10.) In Network's view, however, the hundreds of millions of dollars TURN has in mind should not be charged to ratepayers but to shareholders. We should not fear to remedy PG&E's mistakes because correcting them would be too costly.

The Division of Ratepayer Advocates (DRA) did not address cost allocation in its Opening Brief. (DRA p. 1.) However they reiterate a fact Network also states (Network p. 8) that PG&E was already provided with *"hundreds of millions of dollars to cover unforeseen deployment problems."* (DRA p. 2.) They further state*," So, in total, PG&E effectively was given $268 million in contingency allowance, which represents 13% of the AMI project costs."* (DRA p. 13.) This fact supports PG&E shareholders bearing responsibility for opt-out costs as they've already been provided contingency funds for unforeseen deployment problems.

California Large Energy Consumers Association (CLECA) recommends reliance on the principle of cost causation to allocate the costs of the opt-out program. (CLECA p. 4.) EON, CPA, Aglet, Joint Parties, and Network address the cost causation principle from the ratepayers perspective. EON states, *"Cost causation is logically, from the point of view of the customer, borne by the utility who installed the wireless mesh networked 'smart' meters, not the customer wishing to avoid harm*." (EON p. 11.); and "*The costs of a mis-conceived and mis-managed program should be born by its perpetrators, not its victims.*" (EON p. 11.) CPA states, *"Given the options available to the utilities to schedule, structure, and modify their deployment plans, none of which were mandated in detail by the Commission, it is not reasonable for the Commission to find that the sole "cost causers" of opt-out "costs" are consumers electing to opt-out. Many of these costs are instead properly viewed as caused by decisions of the utilities to pursue their own agendas despite growing and multi-faceted concerns expressed by public bodies and consumers."* (CPA p. 10) and *"...the utilities have not met their burden of proof to show causation by only those consumers opting out."* (CPA p. 11.) Aglet points out that cost causation is not the only factor the Commission to determine allocation, stating, *"There are other factors, for example fairness, consistency, rate stability, ability to pay, distribution of benefits, and administrative efficiency.*" (Aglet p. 11-12.) Joint parties state, *"A cost incurred by a utility because of its own imprudent or unreasonable business decisions, even if directly related to the exercise of an opt-out right, should not be allocated to any ratepayers, including those opting out.* (Joint Parties p. 7.) Network stated, *"If the Commission is using the "cost causation" principle for determining allocation, they should apply utility company neglect as the cause of the problem, not the individual customer."* (Network p. 9.)

Aglet and EON agree with Network in recommending the CPUC should hold Smart Meter health and safety hearings stating, *"The Commission should convene hearings on the health impacts of RF emissions, in order to carry out the duty to ensure safe utility service and provide certainty to opt out ratemaking."* (Aglet p. 9-10). EON states, *"Since no legitimate, comprehensive or responsible opt-out policy can be arrived at without consideration of the key reasons for public opposition to 'smart meter' deployment: safety, privacy, health effects and cyber-security. CPUC should hold public evidentiary hearings on these topics as part of its decision-making and policy-setting process."* (EON p. 11.)

Dated: January 25, 2013 at Sebastopol California.

Respectfully submitted,

/s/

Sandi Maurer, Director
EMF Safety Network
P.O. Box 1016
Sebastopol, CA 95473
Telephone (707) 824-0824
emfsafe@sonic.net

Of Counsel:
James R. Hobson
Best Best & Krieger LLP
2000 Pennsylvania Avenue, N.W.
Suite 4300
Washington, D.C. 20006

Joshua Nelson
Best Best & Krieger LLP
500 Capitol Mall, Suite 1700
Sacramento, CA 95814