

CASE NO. _____

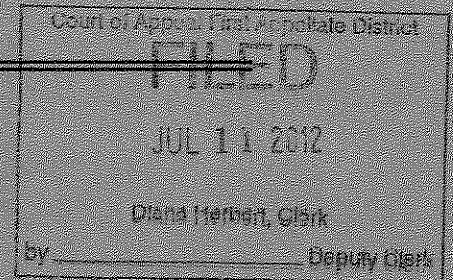
IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

EMF SAFETY NETWORK,
Petitioner,

vs.

**THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA,**
Respondent.



PACIFIC GAS & ELECTRIC COMPANY,
Real Party in Interest.

**PETITION FOR WRIT OF REVIEW AND
SUPPORTING MEMORANDUM OF POINTS AND
AUTHORITIES
(Rule 8.496)**

Challenging Decision 12-06-017 of the PUC, Dismissing EMF Safety
Network's Application to Reopen D.06-07-027 and D.09-03-026 related to
PG&E's Smart Meter program, and Denial of Rehearing

James Hobson, SBN#50760
Harriet Steiner, SBN#109436
Joshua Nelson, SBN#260803
Best Best & Krieger LLP
500 Capitol Mall, Suite 1700
Sacramento, California 95814
Telephone: (916) 325-4000
Facsimile: (916) 325-4010

Attorneys for Petitioner EMF Safety Network

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**Court of Appeal
State of California
First Appellate District**

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case Number: _____

Division _____

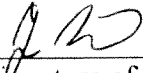
Case Name: EMF Safety Network v. Public Utilities Commission, State of California

Please check the applicable box:

- ☐ There are no interested entities or persons to list in this Certificate per California Rules of Court, rule 8.208(d)(3).
- ☒ Interested entities or persons are listed below:

Name of Interested Entity or Person	Nature of Interest
1. Pacific Gas & Electric Company	party of record before the CPUC
2. Public Utilities Commission, State of Cal.	regulatory agency
3. City of Capitola	intervenor of record before the CPUC
4. EMF Safety Network	party of record before the CPUC

Please attach additional sheets with Entity or Person information if necessary.



Signature of Attorney/Party Submitting Form

Printed Name: Joshua Nelson

Address: Best Best & Krieger LLP, 500 Capitol Mall,
Suite 1750, Sacramento, CA 95814

State Bar No: 260803

Party Represented: EMF Safety Network

***IF SUBMITTED AS A STAND-ALONE DOCUMENT, SUBMIT A SEPARATE PROOF OF SERVICE
ON ALL PARTIES WITH YOUR CERTIFICATE.***

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TO THE HONORABLE PRESIDING AND ASSOCIATE JUSTICES OF
THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST
APPELLATE DISTRICT

INTRODUCTORY STATEMENT

Petitioner, the EMF Safety Network (“Network”) respectfully submits this petition for writ of review of the decision by the California Public Utilities Commission (“CPUC” or “Commission”) to grant a motion by Pacific Gas & Electric (“PG&E”) to deny the Network’s Application for Modification of D.06-07-027 and D.09-03-026 related to PG&E’s Smart Meter program (“Application”).

Pursuant to Section 1756 of the Public Utilities Code,¹ the Network seeks this Court’s review of Decision Number (“D.”) 12-06-017 (“Decision”), submitted through the accompanying *Petitioner’s Appendix of Exhibits to Petition* as Exhibit 18.

The decision granting PG&E’s motion and denying the Network Application should be vacated and remanded to the Commission for the following reasons:

1. The Commission abused its discretion and/or acted in a manner not in accordance with the law by departing from its mitigation policies and practices of twenty years, concerning electromagnetic fields (“EMF”) emanating from regulated utility facilities, without a legally sufficient explanation.

¹ Unless otherwise noted, all future statutory references are to the California Public Utilities Code.

2. The Commission did not proceed in the manner required by law when it excluded evidence of Smart Meter safety hazards and ignored Network's evidence.

3. The Commission's findings in the decision are not supported by substantial evidence in light of the whole record as the evidence offered in support of PG&E's Motion fails to demonstrate that Smart Meters are safe and fulfill FCC requirements.

VERIFIED PETITION

By this Verified Petition, Petitioner EMF Safety Network alleges as follows:

1. This is a Petition for Writ of Review, filed as an original proceeding in this Court pursuant to Public Utilities Code § 1756, to challenge D.10-12-001 of the Public Utilities Commission, initially issued on December 6, 2011, dismissing the Network's Application to reopen D.06-07-027 and D.09-03-026 related to PG&E's Smart Meter program. On June 11, 2012, the Commission issued an Order Modifying D.10-12-001 and Denying Rehearing of the Decision As Modified, in response to the Network's Application for rehearing. Accordingly, this Petition is timely filed pursuant to Public Utilities Code § 1756.

2. Petitioner EMF Safety Network, a project of Ecological Options Network ("Network"), an incorporated, non-profit advocacy organization, was a party of record in the proceedings below and, as an advocacy organization for RF and Smart Meter safety, is an aggrieved party pursuant to Public Utilities Code § 1756. EMF Safety Network is headquartered in Sebastopol, California, and venue is proper in this Court pursuant to Public Utilities Code § 1756.

3. The Respondent to this Petition is the Commission.

4. Pacific Gas & Electric Company was a respondent in the proceedings below before the Commission, and is named in this Petition as a Real Party in Interest. PG&E is an investor owned utility. It is based in San Francisco, and provides electric and natural gas service to customers in California.

5. On April 6, 2010, the Network filed the Application, requesting that the Commission modify D.06-07-027 and D.09-03-026, in part, to reopen its review of Smart Meters, order an immediate moratorium on the deployment of Smart Meters, schedule public evidentiary hearings that allow interested parties to present evidence and testimony on health and safety impacts and require an independent study regarding RF emissions to ensure the Smart Meter program is consistent with the delivery of safe gas and electric service. As discussed more fully in the Application, Smart Meters are electric and natural gas meters that electronically transmit usage information through radio frequency (“RF”) emissions. (App. 1, Ex. 1)²

6. On April 28, 2010, the Application was reassigned from Administrative Law Judge (“ALJ”) Timothy Kenney to ALJ Timothy J. Sullivan. (App. 1, Ex. 3.)

7. On May 17, 2010, PG&E filed a protest to the Application raising a number of alleged defects with the Application and filed a Motion for Immediate Dismissal of the Application (“Motion”) arguing that the Commission was preempted by federal law from considering RF safety as such matters were delegated to the Federal Communications Commission (“FCC”).

8. On May 27, 2010, the Network submitted a response to the Motion, and on June 11, 2010 (App. 1, Ex. 6), PG&E submitted a reply (App. 1, Ex. 7).

² All further references to the Appendix of Exhibits filed herewith will be cited as App. Followed by volume number, exhibit number and sometimes page number (i.e. App. 1, Ex. 1, p. 1).

9. On July 23, 2010, the City of Capitola submitted a response to the Application, supporting in and joining the Application. (App. 1, Ex. 8.)

10. On October 26, 2010, ALJ Sullivan submitted a proposed decision granting the Motion. The Commission's Division of Ratepayer Advocates ("DRA"), PG&E and the Network then submitted comments on the proposed decision. (App. 2, Exs. 12, 13, 14.) DRA's comments explained why the Commission was not preempted from considering RF emissions in Smart Meters and had the legal obligation to ensure Smart Meter safety. DRA also encouraged the Commission to conduct evidentiary hearings on Smart Meter safety.

11. On December 6, 2010, the Commission, with Commissioner Nancy Ryan dissenting, issued its decision, D.10-12-001 ("Commission Decision") granting the Motion and closing the proceeding. A true and correct copy of the Commission Decision is included as Exhibit 18. This decision was made without issuing a scoping memo for the proceeding, conducting hearings or any other procedures normally conducted for these types of CPUC proceedings.

12. On January 5, 2011, the Network timely filed its Application for a Rehearing, and PG&E replied January 20, 2011. (App. 2, Ex. 19.)

13. After rehearing and on June 11, 2012, the Commission issued Decision ("D") 12-06-017, which modified the Commission Decision but still granted the Motion and closed the proceeding. A true and correct copy of the Commission's "Order Modifying Decision D. 10-12-001 and Denying Rehearing of the Decision, as Modified," (hereinafter the "Final Decision") is included as Exhibit 21. The Commission Decision, as modified by the Final Decision, concludes that the Commission has the

authority to regulate RF emissions but defers to FCC guidelines and certifications.

14. Under Public Utilities Code § 1757(a), the Commission is responsible for compiling a certified record for this Court's review. Petitioner has compiled a concurrently filed "Appendix of Exhibits." This appendix includes all of the documents filed in the proceeding with the addition of two documents incorporated by reference (Exhibits 22 and 23) in a document filed by Network in the proceeding.

15. Petitioner Network files this Petition seeking review of the Commission Decision, as modified by the Final Decision, granting PG&E's Motion and closing the proceeding on the grounds cited above.

16. Relief is warranted in this case because the Commission has abused its discretion and has failed to proceed in the manner required by California law. Moreover, the Commission's findings in the decision are not supported by substantial evidence in light of the whole record. (See §1757.)

PRAYER

WHEREFORE, EMF Safety Network prays as follows:

1. That this Court grant this Petition, overturn and/or remand the Decision of the CPUC granting PG&E's motion and order that the Commission enter a new order and decision consistent with this Court's opinion, expressly including, conducting evidentiary hearings on Smart Meter public health and safety RF impacts consistent with the Public Utilities Code;

2. That the Network be awarded its attorneys' fees and costs in this proceeding; and

3. That the Network be granted such other and further relief as the Court may deem appropriate and just.

Dated: July 11, 2012

Respectfully submitted,

BEST BEST & KRIEGER LLP

By: 

JAMES HOBSON
HARRIET STEINER
JOSHUA NELSON
Attorneys for Petitioner
EMF SAFETY NETWORK

VERIFICATION

I, Sandra Maurer, declare as follows:

1. I am the founder of the EMF Safety Network ("Network") and have participated in this proceeding on behalf of the Network.

2. I have personally reviewed the decisions of the Public Utilities Commission that are the subject of this Petition, as well as the other records and decisions referred to herein. I have read the foregoing Petition, and know the facts set forth therein to be true and correct.

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

This Verification was executed on July 11, 2012 in Sebastopol, California.

Sandra Maurer
Sandra Maurer

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF REVIEW

I.

INTRODUCTION

On June 11, 2012, the California Public Utilities Commission (“Commission” or “CPUC”) issued Final Decision (“D”) 12-06-017, which modified Commission Decision D. 10-12-001 (collectively the “Decisions”) and denied the EMF Safety Network’s (“Network”) request for a rehearing. These Decisions, without the benefit of formal evidentiary hearings, the opportunity for the submission of prepared testimony or even the issuance of a traditional Commission scoping memorandum, granted a motion by Real Party in Interest Pacific Gas & Electric (“PG&E”) to dismiss the Network application to reopen the Commission’s investigation into PG&E’s Smart Meter program. The Decision granted the Motion on grounds other than those requested by PG&E and on the basis of a single, self-interested declaration submitted by PG&E. The California Legislature has adopted Public Utilities Code Section 1756³ which permits aggrieved parties in Commission proceedings like the Network to appeal Commission decisions by submitting petitions for writs of review. Thus, this proceedings presents a compelling case for immediate writ review.

II.

STANDARD OF REVIEW

Pursuant to Section 1757, this Court reviews certain Commission decisions “to determine, on the basis of the entire record ... whether any of the following occurred:

³ Unless otherwise noted, all future statutory references are to the California Public Utilities Code.

- (1) The commission acted without, or in excess of, its powers or jurisdiction.
- (2) The commission has not proceeded in the manner required by law.
- (3) The decision of the commission is not supported by the findings.
- (4) The findings in the decision of the commission are not supported by substantial evidence in light of the whole record.
- (5) The order or decision of the commission was procured by fraud or was an abuse of discretion.
- (6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution.”

The Commission classified Network’s Application for Modification of D.06-07-027 and D.09-03-026 related to PG&E’s Smart Meter program (“Application”) as a ratemaking proceeding. (App. 2, Ex. 2, Resolution ALJ-176, Schedule, p. 27.) Accordingly, Section 1757 applies because the Application was directed at a specific party, PG&E.

III.

ISSUES FOR REVIEW

1. Did the Commission abuse its discretion and/or act in a manner not in accordance with the law by departing from its EMF mitigation policies and practices of twenty years without legally sufficient explanation?
2. Did the Commission proceed in the manner required by law when it ignored or excluded evidence of Smart Meter safety hazards?

3. Are the Commission's findings that Smart Meters comply with FCC requirements supported by substantial evidence in light of the whole record?

A. The Commission Has Abused Its Discretion and Failed to Proceed in the Manner Required by Law by Shifting its EMF Policy Without Any Explanation.

Nearly 20 years ago, in D.93-11-013, the Commission adopted a low-cost/no cost policy to mitigate EMF exposure for new and upgraded facilities requiring certification under General Order 131.⁴ (See, e.g., App. 2, Ex. 19, Application for Rehearing, p. 234-235.) Then, as now, the biological effects on humans of powerline and other electrical facility radiation were thought by some to be obvious, and by others to be uncertain but nevertheless troubling. The CPUC's actions then, and again in 2006 with D.06.01-042,⁵ contrast sharply with its inaction in the orders on appeal.⁶

D.93-11-013 was the result of an investigation by the Commission into the health effects of EMF exposure. The history of this investigation included concerns regarding EMF from cellular phone facilities. (*In re Potential Health Effects of Electric and Magnetic Fields of Utility*

⁴ *In re Potential Health Effects of Electric and Magnetic Fields of Utility Facilities* (D.93-11-013) (1993) 52 Cal.P.U.C.2d. 1, 9.

⁵ *Opinion on Commission Policies Addressing Electromagnetic Fields Emanating from Regulated Utility Facilities*, D.06.01.042 (2006), __ Cal. P.U.C. 3d __, at 1 (slip op.) (App. 2, Ex. 23, p. 287.)

⁶ These actions are similarly inconsistent with Commission's investigations into RF emissions. (App. 2, Ex. 19, Application for Rehearing, p. 234.) For these emissions, the Commission recognized the public perception of harm, warned financial interests should not trump health impacts, and ordered workshops on the subject. (*Ibid.*)

Facilities, supra, 52 Cal.P.U.C.2d. at p. 3.) Based on scientific research conducted at that time, the Commission determined that "... the body of scientific evidence continues to evolve. However, it is recognized that public concern and scientific uncertainty remain regarding the potential health effects of EMF exposure." (*Id.* at p. 10.) Based on this, the Commission implemented a "low-cost/no cost" mitigation policy that required utilities to implement low (i.e., 4% or less of total project cost) and no cost EMF mitigation efforts into projects. (*Id.* at p. 83.) The decision further recognized that future research was necessary into the health effects of EMF exposure. (*Id.* at p. 80.)

The low-cost/no cost mitigation policy was modified in D.06.01-042. (App. 2, Ex. 19, Application for Rehearing, p. 236.) This decision arose out of an inquiry to determine whether improvements should be made to existing Commission rules and regulations concerning EMF associated with transmission lines and other electric facilities. (App. 2, Ex. 23, CPUC Decision D.06.01-042, p. 305.) After receiving comments from interested parties, the Commission emphasized that it retained exclusive jurisdiction to determine health-related impacts from EMF exposure from electrical facilities. (See *id.* at p. 307.) It also decided to continue the low-cost/no cost policy of mitigating EMF exposure while recognizing that future research into the health effects of EMF exposure would warrant reexamining the issue. (*Id.* at p. 305-306; see *id.* at p. 288 ["Should such studies indicate negative EMF health impacts, we will reconsider our EMF policies, and open a new rulemaking if necessary."]) Until the Commission received such new information, it wished to "... emphasize that our continuing EMF policy is one of prudent avoidance, and application of low-cost/no-cost principles to mitigating EMF exposure." (*Id.* at p. 304.)

Against this backdrop of past Commission concern, it is legally insufficient for the Commission to dismiss Network's petition with the conclusory statement: "PG&E's Smart Meters are not transmission or substation project[s] to which our low-cost/no cost policy was directed." (App. 2, Ex. 21, Final Decision, p. 276) The distinctions between Smart Meters and transmission or substation projects are not the point. The point is that both produce EMF of potentially dangerous human bioeffects, for which the past policy of prudent avoidance out not be ignored, and deserves at least the respect of an explanation if it is not to be followed. (See App. 2, Ex. 19, Application for Rehearing, p. 229, 236.)

Under the California Supreme Court's decision in *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, court review of quasi-legislative acts – such as formulating safety regulations – is meant to determine whether the action was "arbitrary, capricious, entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires." (See *Klajic v. Castaic Lake Water Agency* (2001) 90 Cal.App.4th 987, 994; see also *PG&E Corp. v. Public Utilities Com.* (2004) 118 Cal.App.4th 1174 [generally applying Yamaha to Commission proceeding].) In determining whether an agency's action has been arbitrary and capricious, the trial court cannot substitute its independent judgment, but nonetheless must ensure the agency has adequately considered all relevant factors and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute. (*Kucharczyk v. Regents of University of California* (1996) 946 F.Supp.1419, 1438; see also *US v. SWRCB* (1986) 182 Cal.App.3d 82, 113.) As one federal court noted, an agency must be faulted when it "has not really taken a 'hard look' at the salient problems, and has not genuinely

engaged in reasoned decision-making.” (*Greater Boston Television Corp. v. FCC* (D.C. Cir. 1970) 444 F.2d 841, 851 (cert. denied (1971) 91 S. Ct. 2229, 2233).)

In the present case, as the Commission’s underlying EMF policy was a quasi-legislative decision, the challenged orders fail to demonstrate a rational connection between any of the salient factors underlying the policy shift regarding EMF regulations. Rather, the Commission merely notes, without any underlying discussion, that Smart Meters are not covered by the low-cost/no cost EMF emissions policy. (App. 2, Ex. 21, Final Decision, p. 276) Since Smart Meters are at least nominal “electrical facilities,” the Commission must present some reason why a 20-year-old policy of prudent avoidance is not to be applied in this case. (App. 2, Ex. 19, Application for Rehearing, p. 236.) Because it has failed to do so, the Commission’s decision must be overturned.

B. The Commission Improperly Excluded Evidence and Failed to Consider Network’s Evidence as Required by Law

The Commission asserts “Network does not cite to any record evidence to support its contentions that Smart Meters violate FCC safety regulations.” (App. 2, Ex. 21, Final Decision, p. 277) The assertion hangs on the CPUC’s finding that the Declaration of Cynthia Sage appended to Network’s Petition for Hearing is not part of the record of the proceeding. Network respectfully disagrees and asks that the court accept the Declaration.

Earlier in its Final Decision, at p. 3, the Commission claims that “Network and DRA did not allege new or changed facts supported by a declaration, affidavit or proposed testimony of an expert witness challenging such compliance.” (App. 2, Ex. 21, p. 275.) This is not

correct. The Declaration of Cynthia Sage was properly submitted in due course, and PG&E was provided notice and opportunity to be heard on this evidence. (App. 2, Ex. 20, Response of PG&E, p. 262.)

The Commission's refusal to accept the Sage Declaration amounts to a "catch-22." First, the CPUC faults Network for not submitting a declaration, then refuses to accept the document when filed. This is arbitrary and capricious. The Commission is free to evaluate the content of the declaration. It is not permitted to invite, then ignore, evidence upon which PG&E was given notice and opportunity to reply – an opportunity which PG&E exercised.

Even if the CPUC refusal to accept the Sage and Maurer Declarations is correct, its assertion that Network provided no other record evidence is wrong. Responding to the Commission's repeated reliance⁷ on PG&E's claim that RF radiation measured at 10 feet from a Smart Meter was only 1/6000 of the limit in FCC regulations, Network noted that "multiple factors affect RF exposure in the environment, including duty cycle, reflections and number of nearby meters." (App. 2, Ex. 13, Network Comments on Proposed Decision, p. 163.)

Duty cycle⁸ is a factor in assessing cumulative time of exposure of a human subject to the radiation from Smart Meters. The FCC's RF radiation safeguards, relied on by the CPUC,⁹ create charts of "maximum permissible exposures" ("MPEs") based on "averaging times" of exposure at different

⁷ See App. 2, Ex. 18, Commission Decision, p. 210; App. 2, Ex. 21, Final Decision, p. 282.

⁸ FCC Office of Engineering & Technology, Bulletin 65, Glossary, 2. http://transition.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet65/oet65.pdf

⁹ App. 2, Ex. 21, Final Decision, p. 277.

frequencies for both occupational (“controlled”) and general population (“uncontrolled”) exposures. (47 C.F.R. §1.1310.) Radiation on a low duty cycle will take longer to reach a given exposure limit than the emissions from an antenna sending or receiving 100 per cent of the time.¹⁰

Network appropriately raised the issue of longer-term exposure to RF radiation – beyond the 30 minutes averaging time shown in the tables at Section 1.1310 of the FCC’s Rules – in its Response to the PG&E Motion to Dismiss: “Regarding FCC regulation, the FCC has not set RF safety standards for long-term chronic exposures such as those created by Smart Meters.” (Ex. 6, Network Response, p. 3.) At the same time, it corrected the statement of PG&E’s chief technical declarant, Daniel Partridge, that RF radiation from Smart Meters is blocked by residential walls to which meters are affixed. (*Ibid.*) Finally, Network’s alerts to “incomplete and inconsistent information¹¹” from PG&E about its Smart Meters proved prophetic when, in a related proceeding, the CPUC called for clarification on duty cycle and resulting times of exposure.¹²

All of these points should have raised for the Commission some concern that an exposure from a Smart Meter of 1/6000 of the FCC limit, for an averaging time of 30 minutes, would not be sufficient to evaluate, for

¹⁰ OET Bulletin, note 8 *supra*.

¹¹ To support this claim, Network submitted evidence regarding a July 2010 phone conversation with PG&E field representative Austin Sharp in which he 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, Mr. 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. (See App. 2, Ex. 13, Network Comments on Proposed Decision, p. 163.)

¹² ALJ Ruling Seeking Clarification, A.11-03-014, October 18, 2011.

example, the radiation absorbed cumulatively by an individual sleeping perhaps eight hours with his head to a wall outside which a Smart Meter had been attached.

It should be borne in mind that Network was not asking the Commission to declare that Smart Meters are definitively and always unsafe. Rather, it was asking for a public proceeding in which experts other than employees of electric and gas utilities could present their views. Nevertheless, the CPUC, in both its orders, either ignored Network's comments or conclusorily judged them to be unpersuasive. For example, Network presented scientific studies, which demonstrated evidence of potential harm from RF emissions.¹³ (App. 1, Ex. 1, Application, p. 2-3, 10-16.) Network also presented evidence of local government concerns with potential safety hazards from Smart Meters and requests for further Commission investigation into their potential hazards. (App. 2, Ex. 2, Application for Rehearing, p. 240.) Lastly, Network presented evidence of numerous public complaints and concerns regarding potential safety hazards from RF emissions. (*Ibid.*) The Court should remand so that the Commission can pay closer attention to these calls for a broader investigation.

C. Commission's Findings are Not Supported by Substantial Evidence.

In the present case, the Commission granted PG&E's Motion essentially based on a single, contradictory declaration submitted by a

¹³ Although Network recognizes this information is not part of the record in this proceeding, the World Health Organization ("WHO") finalized its Interphone study and the International Agency for Research on Cancer, an arm of the WHO, classified RF as a potential 2B carcinogen in May 2011. (See http://www.iarc.fr/en/media-centre/pr/2011/pdfs/pr208_E.pdf.)

PG&E employee. Even under the deferential “substantial evidence” test, the evidence does not support this determination.

Findings will be upheld if they are supported by any substantial evidence in the record. (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733.) However, substantial evidence is not synonymous with “any” evidence; the evidence supporting the judgment must be credible, reasonable in nature, and of solid value. (*Sasco Elec. v. FEHC* (2009) 176 Cal.App.4th 532, 535; *Estate of Teed* (1952) 112 Cal.App.2d 638, 644; see, e.g., *People ex rel Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567 [expert testimony does not constitute substantial evidence when based on conclusions or assumptions not supported in record, matters not reasonably relied on by other experts, or speculative, remote, or conjectural factors].) The word “substantial” refers to the quality of the evidence, not the quantity. (*Hope v. California Youth Auth.* (2005) 134 Cal.App.4th 577, 589.)

Under this weighty standard, the Decisions cannot stand. As with the matter of cumulative time of exposure to RF radiation under FCC rules, the CPUC orders rely entirely on PG&E’s Partridge Declaration for their conclusion that “PG&E’s Smart Meters are licensed or certified by the FCC and comply with all FCC requirements . . .” (App. 2, Ex. 21, Final Decision, p. 277.) In reply, Network repeated its reminders that “the FCC Grants of Equipment Authorization, which govern the rules upon which FCC compliance is based, warn that RF exposure compliance depends on [fulfillment of] specific conditions.” (App. 2, Ex. 19, Application for Rehearing, p. 237.)

Among these are to assure a distance separation of 20 centimeters (eight inches); professional installation of the meters; and provision to

installers and end-users of antenna installation and transmitter operating conditions for satisfying RF exposure compliance.¹⁴ On none of these conditions did the CPUC bother to inquire beyond the Declaration of Daniel Partridge on PG&E's behalf, to determine if the meters were in fact safe. Thus, the Commission could not have satisfied itself of PG&E's subsequent fulfillment of the conditions on its Smart Meter authorizations. The court should remand this proceeding to the CPUC for the purpose of assurance of PG&E compliance and public health and safety.

¹⁴ App. 2, Ex. 16, p. 191. To illustrate, we attach, as Exhibit 22, an Equipment Authorization dated March 20, 2009 and ask for its official notice by the Court.

IV.

CONCLUSION

For the reasons stated above, the court should grant the writ of review and remand this proceeding to the CPUC.

Dated: July 11, 2012

BEST BEST & KRIEGER LLP

By: 

JAMES HOBSON
HARRIET STEINER
JOSHUA NELSON
Attorneys for Petitioner
EMF SAFETY NETWORK

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, Rule 8.204(c)(1), counsel for Petitioner EMF Safety Network hereby certifies that this brief is produced using 13-point Roman type including footnotes and contains 3,850 words, which is less than the total words permitted by the Rules of Court. Counsel relies on the word count feature of the computer program used to prepare this brief.

BEST BEST & KRIEGER LLP

Dated: July 11, 2012

By: 

Joshua Nelson
Attorneys for Petitioner
EMF Safety Network

Court of Appeal Case No. _____

PROOF OF SERVICE

I, MONIQUE MONCEBAIZ, the undersigned, hereby declare as follows:

1. I am over the age of 18 years and am not a party to the within cause.
2. I am employed by Best Best & Krieger LLP located in the City of Sacramento, California.
3. My business address is 500 Capitol Mall, Suite 1700, Sacramento, California 95814. My electronic email address is monique.moncebaiz@bbklaw.com.
4. On July 11, 2012, in the city where I am employed, I served a true copy of the document titled exactly PETITION FOR WRIT OF REVIEW AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES (Rule 8.496) AND APPENDIX OF EXHIBITS FILED IN SUPPORT OF THE PETITION FOR WRIT VOLUMES 1 AND 2 by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the **United States mail** at Sacramento, California addressed as set forth below:

Chonda J. Nwamu, Esq., Pacific Gas & Electric Company 77 Beale Street, B30A San Francisco, CA 94177 <i>Attorney for Real Party in Interest Pacific Gas & Electric Company</i>	General Counsel California Public Utilities Commission 505 Van Ness Avenue San Francisco, CA 94102 <i>General Counsel for Respondent CPUC</i> Executive Director California Public Utilities Commission 505 Van Ness Avenue San Francisco, CA 94102 <i>Executive Director for Respondent CPUC</i>
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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of July, 2012, at Sacramento, California.


Monique Moncebaiz