

Decision 19-01-052

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

**ORDER MODIFYING DECISION 14-12-078
AND DENYING REHEARING OF DECISION, AS MODIFIED**

I. INTRODUCTION

In Decision (D.) 14-12-078,¹ we adopted fees and charges for residential customers, who do not wish to have a wireless Smart Meter, in the service territories of Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”), San Diego Gas & Electric Company (“SDG&E”) and Southern California Gas Company (“SoCalGas”). Timely applications for rehearing of D.14-12-078 were filed by Center for Electrosmog Prevention (“CEP”), EMF Safety Network (“Network”), CALifornians for Renewable Energy, Inc. (“CARE”), and The Ecological Options Network (“EON”) (collectively “rehearing applicants”).

In its rehearing application, CEP asserts: (1) the scoping memo erroneously excluded the consideration of health and safety impacts of smart meters in violation of

¹ Unless otherwise noted, citations to Commission decisions are to the official PDF versions which are available on the Commission’s website at: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>

Public Utilities Code sections 451 and 8360-8389;² and (2) the Decision errs in stating that only the Division of Ratepayer Advocates (“DRA”),³ The Utility Reform Network (“TURN”), and Aglet offered alternatives to monthly meter reads and/or monthly billing for opt-out customers.

In its rehearing application, CARE argues: (1) excluding health and safety impacts of smart meters from the proceeding violates section 451, due process requirements, and federal civil rights under color of state law; (2) the Decision constitutes unconstitutional animus against the exercise of free speech which was caused by the private bias of Commissioner Peevey against anti-smart meter groups, and thus, it has been denied its constitutional rights under the First, Fourth, Fifth, and Fourteenth Amendments; and (3) like CEP, CARE disagrees with the statement in the Decision that only DRA, TURN, and Aglet offered alternatives to monthly meter reads and/or monthly billing for opt-out customers.⁴

In its rehearing application, Network alleges: (1) the “pay to opt out” program does not meet the criteria of just and reasonable under section 451; (2) the Decision fails to comply with a prior Commission decision and the Commission’s Safety Policy; (3) the opt-out fees violate section 453(b) because customers are forced to pay added fees due to medical conditions; (4) the Commission erred in concluding that opt-out fees do not violate the Americans with Disability Act (“ADA”); (5) the opt-out fees violate section 328(b)⁵ by requiring customers to pay fees for using services that protect public or customer safety; (6) the Decision unlawfully interferes with the use of private property; (7) the Commission erred by not considering a community opt-out option;

² All section references are to the Public Utilities Code unless otherwise specified.

³ The Office of Ratepayer Advocates was renamed the Public Advocates Office of the Public Utilities Commission pursuant to Senate Bill No. 854, which was approved by the Governor on June 27, 2018 (Chapter 51, Statutes of 2018).

⁴ CARE appears to have incorporated CEP’s rehearing application into its rehearing application at pages 17-20. Therefore, arguments attributed to CEP are also made by CARE but are not separately cited.

⁵ Network mistakenly cites to section 328.2(b). The correct citation is to section 328(b).

(8) the Decision unlawfully discriminates against some customers; and (9) the opt-out fees constitute extortion in violation of Penal Code section 18.

EON contends: (1) the Decision is unlawful because it was the result of a conspiracy and collusion against public interests, which involved prohibited ex-parte communications; (2) the Commission erroneously asserted superseding jurisdictional authority over locally elected decision-making bodies at the county and municipal levels; and (3) the Decision failed to regulate mesh smart meters networks as a telecommunication function.

SDG&E, SoCalGas and Edison filed a joint response and PG&E filed a separate response to the rehearing applications. Both responses opposed the rehearing applications.

We have reviewed each of the allegations raised in the applications for rehearing of D.14-12-078, and good cause does not exist for the granting of rehearing. However, we will modify D.14-12-078 to make a few minor corrections, as described below. Rehearing of D.14-12-078, as modified, is denied.

II. DISCUSSION

1. **D.14-12-078 does not violate section 451 or other health and safety requirements.**

CEP argues that D.14-12-078 violates sections 451 and 8360-8369⁶ because the scoping memo excluded the consideration of health and safety impacts of smart meters from the proceeding. (CEP Rehg. App. at p. 2.) CEP contends that the Commission is required to consider health impacts in every proceeding to ensure that the public's health and safety are protected. (CEP Rehg. App. at pp. 2-3, 6.) EON and Network make similar arguments. (EON Rehg. App. at p. 4; Network Rehg. App. at p. 5.)

⁶ Section 8360 states in part: "It is the policy of the state to modernize the state's electrical transmission and distribution system to maintain safe, reliable, efficient, and secure electrical service. . . ."

We have previously considered and rejected allegations of health impacts from smart meters. In *Decision Denying EMF Safety Network's Application for Modification of Decisions (D.) 06-07-027 and D.09-03-026* [D.10-12-001] (2010) as modified by *Order Modifying Decision (D.) 10-12-001 and Denying Rehearing of Decision, as Modified* [D.12-06-017] (2012), (herein after "D.10-12-001 as modified") we addressed alleged health and safety impacts raised by Network in an application for modification of prior smart meter decisions.⁷ We concluded that it was not reasonable to reopen our review of smart meters to consider alleged health impacts of radio frequency ("RF") emissions from smart meters. (D.10-12-001 as modified at p. 15 [Conclusion of Law 1].) In rejecting Network's application for modification, we recognized the Federal Communications Commission's ("FCC") expertise and comprehensive regulation of RF devices⁸ and explained that we do not generally delve into technical matters that fall within another agencies expertise. (D.10-12-001 as modified at p. 11.) We found that smart meter radio devices are licensed or certified by the FCC and comply with FCC requirements. (D.10-12-001 as modified at p. 14 [Finding of Fact 2].) In recognizing smart meter compliance with FCC requirements, we noted that the FCC possesses extensive expertise for evaluating the licensing or certifying of smart meters and the FCC regulations were developed and updated with input from independent professional sources. (D.10-12-001 as modified at p. 9.) We further found that "Smart Meters produce RF emissions far below the levels of many commonly used devices" such as "baby monitors, cell phones, garage door openers, wi-fi access points and laptop computers with wi-fi transmitters." (D.10-12-001 as modified at pp. 12-14.) We subsequently upheld the legality of D.10-12-001 in our rehearing decision, D.12-06-017.²

⁷ In A.10-04-018, Network sought to modify D.06-07-027 and D.09-03-026 and have the Commission reopen its review of smart meters to consider alleged health and safety issues.

⁸ 47 C.F.R., § 15 vests the FCC with authority for regulating radio frequency devices.

² On December 14, 2012, the California Court of Appeal, First District, summarily denied EMF Safety Network's Petition for Writ of Review of D.10-12-001 and rehearing order D.12-06-017.

Rehearing applicants cite no law that requires us to reconsider our prior determinations in every proceeding.

Rehearing applicants contend that D.14-12-078 is unlawful because the scoping memo in the smart grid deployment proceeding, A.11-06-006, stated that we would address alleged health issues in this proceeding. (CEP Rehg. App. at p. 6; Network Rehg. App. at p. 5; EON Rehg. App. at p. 3; CARE Rehg. App. at p. 14.) What rehearing applicants do not explain is that the A.11-06-006 scoping memo also stated that we were excluding health issues from that proceeding because broad health issues were currently before us in an application for rehearing of D.10-12-001 and including such issues would duplicate that work. Subsequent to the issuance of the A.11-06-006 scoping memo, we issued D.12-06-017, our decision on the application for rehearing of D.10-12-001, which had rejected Network's application to reopen review of smart meter safety. In D.12-06-017 we denied rehearing stating that we have properly exercised our authority of health and safety when we considered the FCC's regulation of RFs and PG&E's compliance with the regulations. We recognized that the FCC's comprehensive regulation of RF devices and found there was uncontested evidence of smart meter compliance. Because we have already considered alleged health impacts, further consideration would be duplicative and unnecessary in this proceeding.

CEP and CARE contend it was necessary for us to consider alleged health and safety impacts of smart meters to address the scoping memo issues concerning the ADA and other applicable discrimination laws. (CEP Rehg. App. at pp. 4-5; CARE Rehg. App. at p. 14.)¹⁰ CEP and CARE do not explain how this is legal error. Rehearing applicants are required under section 1732 to "set forth specifically the ground or grounds on which the applicant believes the decision or order to be unlawful." (Pub. Util. Code, §

¹⁰ CEP contends that it is being denied intervenor compensation, contrary to section 1801, because footnote 5 of D.14-12-078 stated that testimony and briefing on health and safety issues contributed nothing to the Decision and that would be kept in mind when evaluating intervenor compensation claims. (CEP Rehg. App. at pp. 3-4.) Intervenor compensation is not addressed in this Decision and was subsequently addressed in D.14-12-078.

1732.) We have ruled that “[s]imply identifying a legal principal or argument, without explaining why it applies in the present circumstances does not meet the requirements of Section 1732.” (D.10-07-050 at p. 19.)¹¹ An application for rehearing must contain specific claims because the application’s purpose is “to alert the Commission to a legal error, so that the Commission may correct it expeditiously.” (Commission Rule of Practice and Procedure 16.1(c).)¹² As we have explained, “we should not be forced to guess how our decisions might be in error by extrapolating from such claims. . . . If the parties do not explain, with specificity, in their applications for rehearing why a decision is in error, we have no opportunity to correct our decisions.” (D.10-07-050 at p. 20.) CEP and CARE have failed to comply with section 1732 and rule 16.1(c) by not providing any discussion of, or support for, how this was legal error.

Moreover, CEP and CARE are mistaken in their opinion that we needed to consider alleged health and safety impacts of smart meters to address the scoping memo issues concerning the ADA. The scoping memo issue asked parties to address whether the ADA or section 453(b) limited the Commission’s ability to adopt opt-out fees for customers who require analog meters for medical reasons. This issue assumed that health effects existed. We concluded that no court or agency has found that radio frequency sensitivity is a disability or psychological disorder subject to the ADA and thus the opt-out fee does not violate the ADA. (D.14-12-078 at p. 77 [Conclusions of Law 28 & 30].) Further, we concluded that the utilities’ provision of an opt-out service does not fall within the scope of Title III of the ADA. (D.14-12-078 at p. 77 [Conclusion of Law 29].) We did not need to consider alleged health impacts to make these legal conclusions.

¹¹ *Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006 - Order Modifying Decision (D.) 07-10-013 and Denying Rehearing of the Decision as Modified* [D.10-07-050] (2007).

¹² Unless otherwise noted, citations to rules are to the Commission’s Rules of Practice and Procedure.

Network contends that D.14-12-078 violates section 451 because the “pay to opt out” program does not provide relief to all customers,¹³ and it is therefore not just and reasonable.¹⁴ (Network Rehg. App. at p. 4.) Network provides no further discussion or analysis and thus does not comply with section 1732 and rule 16.1(c). Nothing in section 451 prevents the Commission from authorizing different services to different customer classes. Network has not explained how authorizing opt-out fees for the residential customer class is legal error.

Network also alleges that opt-out charges are not just and reasonable because the utility does not incur new meter costs for these opt-out customers and because customers with multiple utilities may be charged multiple opt-out fees. (Network Rehg. App. at p. 6.) Network has not alleged legal error. Opt-out fees and charges are based on opt-out costs, such as manual meter reading, which we reviewed and authorized in D.14-12-078.¹⁵ (D.14-12-078 at p. 2.) Network fails to explain how the our determination to permit the utilities to charge customers fees based upon the actual cost of the opt-out program is not reasonable.

¹³ Examples Network cites are business customers and customers who cannot afford the fees, live in multi-unit dwellings with co-located antennas in multiple meter installations, or are surrounded by neighbors with smart meters. (Network Rehg. App. at p. 4.)

¹⁴ We do not address Network’s contention that section 1002 requires us to consider the impact of a utility’s service on health and safety as section 1002 involves certification proceedings.

¹⁵ D.14-12-078 states:

We generally allocate opt-out service costs (*e.g.*, costs for manual meter reading) to residential opt-out customers, and authorize utilities to set their fees and charges for offering the opt-out service based on those costs. However, to mitigate bill impacts we set the opt-out fees and charges at the same levels we established as the interim fees.

...

We limit the collection of the monthly charge from residential opt-out customers to three years from the date they choose to opt-out. The remaining portion of revenue requirements that exceed the revenues collected from the opt-out charges are to be allocated to the residential customer class as a whole.

CEP and Network argue that D.14-12-078 violates our recently adopted Safety Policy by not considering health and safety in the proceeding. (CEP Rehg. App. at p. 6; Network Rehg. App. at pp. 4-5.) Under our Safety Policy, a Commissioner commits to certify through his/her signature that safety is properly addressed in the scoping memo and will be considered fully in the proposed decision. Again, as discussed above, we have already considered the health impacts of smart meters. Nothing in our Safety Policy requires us to reconsider prior decisions absent new evidence.

Network contends D.14-12-078 is unlawful because it does not comply with ordering paragraph 1 of a 1995 decision, D.95-11-017, which required our advisory staff to hold informal cellular electric and magnetic fields (“EMF”) and RF radiation workshops as additional developments occur. (Network Rehg. App. at pp. 5-6.) Network is not correct.

In D.95-11-017, we consider the potential health effects of RF and EMF radiation generated by cellular utilities’ cellular transmission facilities, excluding cellular headsets.¹⁶ We declined to adopt numeric standards in association with cellular utilities’ EMF and RF radiation measurements because there was no scientific evidence of any relationship between prolonged lower-level RF radiation exposure and increased mortality or morbidity. (*Re Potential Health Effects of Electric and Magnetic Fields of Utility Facilities* [D.95-11-017] (1995) 62 Cal.P.U.C.2d. 227, 230 [Finding of Fact 11].) We required our staff to hold informal cellular EMF and RF radiation workshops as additional health information becomes available. (*Id.* at p. 231.) Nothing in D.95-11-017 requires us to reconsider the alleged health impacts of smart meters in this proceeding.

¹⁶ D.95-11-017 did not consider cellular handsets stating that the FCC had exercised preemptive authority over cellular handsets. (*Re Potential Health Effects of Electric and Magnetic Fields of Utility Facilities* [D.95-11-017] (1995) 62 Cal.P.U.C.2d. 227, 228.)

2. The Commission has jurisdiction over smart meter deployment.

EON contends that we unlawfully asserted superseding jurisdiction over locally elected decision-making bodies at the county and municipal levels. (EON Rehg. App. at p. 6.) EON cites to sections 2901 and 2902 to contend there is shared jurisdiction over smart meters.¹⁷ (EON Rehg. App. at p. 6.) EON provides no further discussion or analysis. Again, EON has failed to comply with section 1732 and rule 16.1(c) by not providing any discussion of, or support for, how the Decision violates sections 2901 and 2902.

Moreover, EON is not correct. As the California Supreme Court has expounded, the Commission is a state agency of constitutional origin with far-reaching duties, functions and powers. (Cal. Const., art. XII, § 1-6.) The Constitution confers broad authority on the Commission to regulate utilities, including the power to fix rates, establish rules, hold various types of hearings, award reparation, and establish its own procedures. (Cal. Const., art. XII, §§ 2, 4, 6.) The Commission's powers are not restricted to those expressly mentioned in the Constitution. "The Legislature has plenary power, unlimited by the other provisions of this constitution but consistent with this article, to confer additional authority and jurisdiction upon the commission (Cal.

¹⁷ Section 2901 states:

Any municipal corporation may retain or surrender to the commission the powers of control vested in it to supervise and regulate the relationship between any one or more classes of public utilities, and their present or prospective customers, consumers, or patrons, and, if it has retained such powers over any class of public utilities, may thereafter surrender such powers to the commission.

Section 2902 states:

This chapter shall not be construed to authorize any municipal corporation to surrender to the commission its powers of control to supervise and regulate the relationship between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets, and the speed of common carriers operating within the limits of the municipal corporation.

Const., art. XII, § 5.)” (*Consumers Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891, 905; *San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 914-915. The Legislature has conferred broad regulatory powers to the Commission. Section 701 provides, “The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.”

“A county or city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” (Cal. Const., art. XI, § 7.) However, “A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the Commission.” (Cal. Const., art. XII, § 8.) “Thus, under the Constitution, as to matters over which the PUC has been granted regulatory power, the PUC’s jurisdiction is exclusive.” (*Southern Cal. Gas Co. v. City of Vernon* (1995) 41 Cal.App.4th 209, 215.) California courts have found that the construction, design, and operation of public utility facilities are of statewide concern and that local regulatory efforts are thus pre-empted by Commission regulation. (See *Pac. Tel. & Tel. Co. v. City and County of S.F.* (1959) 51 Cal.2d 766, 768, 774; *California Water and Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 28-29, 30.)

3. D.14-12-078 does not violate ADA laws or section 453(b).

Network argues that D.14-12-078 errs by concluding that opt-out fees do not violate ADA laws.¹⁸ (Network Rehg. App. at p. 9.) Again, EON has failed to comply with section 1732 and rule 16.1(c) by not providing any discussion of how the fee violates the ADA.

¹⁸ Network incorrectly cites to Finding of Fact 20. The correct citation is to Conclusion of Law 30, which states, “The opt-out fees and charges do not violate the ADA.”

It appears that Network may be challenging Conclusion of Law 28, which states, “No court or agency has found that RF sensitivity is a ‘disability’ or ‘psychological disorder’ subject to ADA. Network argues that the United States Access Board (“Access Board”)¹⁹ has declared that “[M]ultiple chemical sensitivities and electromagnetic sensitivities may be considered disabilities under the ADA if they so severely impair the neurological, respiratory or other functions of an individual that it substantially limits one or more of the individual's major life activities.” (Network Rehg. App. at p. 9, emphasis omitted.) Network is not correct. The Access Board did not create any provisions in its rules for electromagnetic sensitivities and only noted that such sensitivities *may* be a disability if they are so severe to impair other neurological, respiratory or other functions that limits an individual’s major life activities. (Network Rehg. App. at p. 9, emphasis added.)

Network contends that opt-out fees are discriminatory under section 453(b) because customers are forced to pay added fees due to medical conditions. (Network Rehg. App. at p. 6.) Network is not correct. Section 453(b) states in relevant part: “No public utility shall prejudice, disadvantage, or require different rates . . . from a person because of . . . [a] medical condition . . . or any characteristic listed or defined in Section 11135 of the Government Code.” In D.14-12-078, we directed utilities to impose the opt-out fees equally on all customers without regard to reason. Thus, utilities must charge opt-out fees based solely on whether a customer chooses an analog meter or a wireless meter.

Network contends that the opt-out fees are discriminatory because customers whose homes must have analog meters because the wiring is not compatible with smart meters are not charged opt-out fees. (Network Rehg. App. at p. 10.) Again, Network is not correct as there is no discrimination because similar customers are treated

the same. Only customers that have chosen to have analog meters are charged opt-out fees.

4. D.14-12-078 does not violate section 328.

Network contends that D.14-12-078 violates section 328 because smart meters cause fires and customers should not have to pay a fee to reject having a smart meter. (Network Rehg. App. at p. 8.) Section 328 states in pertinent part, “The Legislature finds and declares . . . (b) No customer should have to pay separate fees for utilizing services that protect public or customer safety.”

Section 328, *et seq.*, established incumbent gas utilities as the providers of basic gas service and prevented them from separately charging for services like investigating gas leaks, relighting pilot lights, checking for carbon monoxide leaks, etc. By authorizing the utilities to charge smart meter opt-out fees, we are not authorizing the utilities to charge separate fees for services that protect the public or customer safety.

5. Opt-out fees do not violate property laws.

Network contends property owners have a vested property right to be free from pulsed electromagnetic radiation (“EMR”). (Network Rehg. App. at p. 10.) Network, therefore, contends that smart meter use by the utilities without property owner’s permission is a trespass or nuisance. (Network Rehg. App. at p. 10.) Network argues that requiring customers to pay opt-out fees to avoid smart meter installation on their property constitutes a de facto seizure of private property in violation of long-standing property and nuisance statutory and case law. (Network Rehg. App. at p. 10.)

Contrary to Network’s claim, smart meter use by utilities is not a trespass or nuisance, but rather is part of our broad authority to regulate public utilities. (Cal. Const., art. XII, § 1-6.) In *San Diego Gas and Electric Co. v. Superior Court (Covalt)* (1996) 13 Cal.4th 893, the Court held that a plaintiff has no cause of action for trespass for electric and magnetic fields arising from power lines as there is no physical damage to the property. (*Id* at p. 936.) The Court further found that a cause of action for nuisance from electric and magnetic fields arising from power lines was foreclosed as such action

was barred because it interfered with the Commission's regulatory policy which determined that there was no reasonable belief that electric and magnetic fields present a substantial risk of physical harm. (*Id.* at p. 939.)

The deployment of smart meters and related opt-out fees is part of our regulatory authority of utility practices, equipment, appliances, facilities, and service. (Pub. Util. Code, § 761; *Dyke Water Co. v. Public Utilities Com.* 156 Cal.2d 105, 116.) Moreover, smart meter deployment is consistent with state policy to modernize the state's electrical transmission and distribution system and to require electric corporations to develop smart grid modernization plans for Commission approval. (Pub. Util. Code, §§ 8360, 8364.) These smart grid plans include smart meter technology requirements. (Pub. Util. Code, §§ 8360, 8366.)

6. D.14-12-078 does not misstate CEP's contribution.

CEP contends that the statement on page 49 of D.14-12-078 "that only DRA, TURN, and Aglet 'offer alternatives to monthly meter reads and/or monthly billing for opt-out customers'" is erroneous. (CEP Rehg. App. at p. 6.) CEP contends that they led these recommendations in their testimony and briefs and in cross-examination.

CEP misstates the decision. The decision does not state that *only* these parties offered alternatives. The Decision states "TURN, DRA, and Aglet propose that utilities offer alternatives to monthly meter reads and / or monthly billing for opt-out customers." (D.14-12-078 at p. 49.) We are not required to summarize all parties' testimony in our decisions. However, we modify the decision in the ordering paragraphs below to clarify that other parties also raised alternatives to monthly billing.

7. There was no conspiracy or collusion against rehearing applicants.

EON and Network contend that there was a conspiracy between the Commission and PG&E to delay the consideration of health impacts of smart meters until they were deployed fully. (EON Rehg. App. at p. 4; Network Rehg. App. at p. 1) EON and Network cite certain improper ex parte communications between former Commission President Peevey's office and former PG&E Executive Brian Cherry, in a different

proceeding, A.07-12-009,²⁰ to demonstrate President Peevey's bias against citizen groups. (EON Rehg. App. at p. 4; Network Rehg. App. at p. 1; CARE Rehg. App. at p. 14.) CARE contends that D.14-12-078 is based on an unconstitutional animus in retaliation for rights exercised by CARE. (CARE Rehg. App. at p. 6.)

Again, EON, Network, and CARE have failed to comply with section 1732 and rule 16.1(c) by not providing discussion of, or support for, how the Decision is unlawful. EON, Network, and CARE's arguments have no merit. EON, Network, and CARE have failed to demonstrate that any decision in this proceeding was subject to or influenced by any improper ex parte communications.

8. Testimony on the community opt-out option was not necessary.

Network contends that D.14-12-078 is unlawful because community opt-out was an issue in the scoping memo but the proceeding was closed without taking testimony on the issue. (Network Rehg. App. at pp. 11-12.) Network believes that testimony was necessary for us to make an informed decision on the matter. Network is not correct.

The scoping memo recognized that some aspects of the community opt-out option were purely legal in nature and set a briefing schedule regarding whether permitting a community opt-out option would be lawful. (Scoping Memo at pp. 6, 8.) We determined that we could not delegate our authority to regulate public utilities to another entity or public agency absent statutory authorization. (D.14-12-078 at p. 74 [Finding of Fact 20, to be renumbered 21].) Because we determined that we could not allow local governments and entities to exercise the opt-out options on behalf of individual residents, no community opt-out option was authorized and no testimony was necessary. The scoping memo was clear that testimony addressing community opt-out

²⁰ *Application of Pacific Gas and Electric Company for Authority to Increase Revenue Requirements to Recover the Costs to Upgrade its SmartMeter™ Program (U39E).*

options would only be necessary if we adopted the community opt-out option. (Scoping Memo at p. 6.) Thus, there was no legal error.

9. Other issues.

Rehearing applicants raise a number of additional issues where they have failed to meet the requirements of section 1732 and rule 16.1(c) to “set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous and [] make specific references to the record or law.”

Rehearing applicants also raise issues that were beyond the scope of the proceeding, which was to consider cost and cost allocation issues associated with opt-out options, to determine whether the opt-out options should be extended to communities, and to determine whether the ADA or section 453(b) limited our ability to adopt opt-out fees. (Scoping Memo at pp. 2 & 5.) These issues, which do not demonstrate legal error, are summarized below.

Network contends that opt-out fees constitute extortion in violation of Penal Code section 18. (Network Rehg. App. at pp. 3, 13.) Other than citing to the Penal Code, Network does not explain, nor can it, how our regulation of smart meters can be considered a wrongful use of force as required to demonstrate extortion.

Network argues that we should grant rehearing to restore public trust and confidence. Network has not alleged legal error.

Network argues that D.14-12-078 is unlawful because the opt-out fee has customers subsidizing smart meter failure. Network does not explain how the decision is unlawful and does not cite to record evidence. In addition, this issue is beyond the scope of the proceeding as we authorized smart meter deployment in prior decisions.

EON contends that the Decision is unlawful because it failed to regulate mesh smart meters networks as a telecommunication function. (EON Rehg. App. at pp 7-8.) We approved smart meter deployment in prior decisions and this issue is beyond the scope of this proceeding.

CARE contends that the Decision erroneously finds that we have no authority over health and safety. (CARE Rehg. App. at p. 14.) D.14-12-078 makes so such finding.

10. Other errors.

In reviewing the applications for rehearing, we noticed that the last five Findings of Fact were missing numbers and Finding of Fact 20 mistakenly contained two findings. We renumber these Findings of Fact in the ordering paragraphs below.

III. CONCLUSION

As discussed above, we modify D.14-12-078 to make a minor clarification and to make numbering changes to the Findings of Fact. Rehearing of D.14-12-078, as modified, is denied as no legal error has been shown.

THEREFORE, IT IS ORDERED that:

1. D.14-12-078 is modified to replace the word “Aglet” in the first sentence of section 5.2 on page 49 with the words “other parties”.
2. Finding of Facts 20 and 21 are renumbered Findings of Fact 20 to 27:
 20. Adopting bi-monthly meter reading may result in lower recurring meter reading costs.
 21. Pursuant to Article XII, Sections 3 and 8 of the California Constitution, the Commission cannot delegate its authority to regulate public utilities to another entity or public agency without statutory authorization.
 22. The Legislature has granted the Commission authority over a public utility’s infrastructure, including the installation of electric or gas metering equipment.
 23. Residential electric service is offered only at a customer’s location, not in a public, physical facility.
 24. It is unclear that an RF-enabled electric or gas meter is a public, physical facility subject to the ADA.

25. The opt-out fees and charges are imposed on all customers, regardless of disability status.
 26. Opt-out fees and charges are assessed to recover costs associated with providing opt-out customers with a different service from the standard service established for utility customers.
 27. RF sensitivity is not defined as a characteristic protected under Gov. Code § 11135.
3. Rehearing of 14-12-078, as modified, is denied.

4. This proceeding, Application (A.) 11-03-014 is closed.

This order is effective today.

Dated: January 31, 2019, at Sacramento, California.

MICHAEL PICKER
President
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners

I abstain.

/s/ GENEVIEVE SHIROMA
Commissioner