

**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 COMMENTS ON PROPOSED DECISIONS OF
COMMISSIONER PEEVEY AND ADMINISTRATIVE LAW JUDGE YIP-
KIKUGAWA**

November 18, 2014

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1. Introduction and Summary

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, EMF Safety Network (Network)¹ submits these opening comments on the proposed decisions (PDs) of Commissioner Peevey and Administrative law judge (ALJ) Amy Yip-Kikugawa in the consolidated proceeding A.11-03-014 et al. The due date for opening comments is Tuesday, November 18, 2014. Network will submit this pleading on the due date.

The PD², if approved by the Commission, will require permanent fees for residential customers "*who do not wish to have a wireless smart meter.*"³ The PD gives millions of dollars to the utilities; denies community and business opt out; and states the fees do not violate the Public Utilities Code (PUC) § 453(b) and the Americans with Disabilities Act (ADA). In compliance with Rule 14.3(c), these comments focus on factual, legal, and technical errors in the PD.

It is not legally sufficient for the PDs to call the proposed opt-out fees of \$75/\$10 a reasonable compromise. PG&E asked to continue the interim fees (\$75/\$10). Most parties asked for no fees, and Aglet and TURN called for lower fees. The DRA did not address cost allocation.⁴ The PDs provide no reason for this lack of compromise.

The Commission should vote against both PDs because they contain fatal errors and violations of law:

- Requiring customers to pay opt out fees is coercion by exaction, extortion.
- A "pay to opt out" program does not provide relief to all customers.
- President Peevey made contradictory rulings regarding CPUC actions on smart meter health and safety review.

¹On PD p.56 our group is called "Electro Magnetic Field Safety Network (EMF)". We have never stated, written, nor spelled out this name in any of our many pleadings filed in this proceeding. This is an error that needs to be corrected by inserting the real name of our group, which is the EMF Safety Network (Network).

² In this pleading Network will cite page numbers for the ALJ's PD, unless indicated otherwise.

³ PD Summary pg.2

⁴ Exhibit DRA-1, 1-1: 17-19

- Adopting a decision without a safety review is unlawful.
- Enough evidence has been submitted to the CPUC to warrant evidentiary hearings on smart meter health and safety impacts.
- Requiring customers to pay opt out fees who want to avoid harm, or the threat of harm, from pulsed electromagnetic radiation is a violation of utility laws including: PUC §§ 451, 453(b), 328.2(b).
- Ruling the ADA does not apply is an unlawful conclusion.
- Charging fees for meter readers to some customers and not others is discrimination.
- Opt out fees violate core principles of private property law.
- It would be illegal to close this proceeding without taking testimony on community opt out.
- The responsibility for the cost of the opt out program should rest with the true cost causers: the utilities and the CPUC.
- The utilities have been given substantial risk-based allowances. The PDs irresponsibly allocate millions more.

The Commission should reject both PDs; rescind smart meter opt out fees; order all interim fees refunded to customers; ban co-located antennas in multiple meter installations; and keep the proceeding open to 1) hold evidentiary hearings on smart meter health and safety and 2) take testimony on community and commercial opt out.

2. Extortion

Despite what the Commission calls “*compelling stories of alleged medical problems*”⁵ from smart meters, the PDs provide no just relief for customers. Customers are forced to choose between paying to avoid harm, or the threat of harm⁶ from the

⁵ PD pg 60

⁶ The World Health Organization (IARC) classifies EMR a possible carcinogen, in the same category as DDT and lead. (May 2011)

pulsed electromagnetic radiation (EMR) smart meters emit, or lose essential utility service. People have had fires at their homes due to smart meter installation. Customers are denied just and reasonable choices through coercion by exaction. Coercion and exaction are synonyms for extortion. The opt out fee would become a government-imposed exaction whose purpose and effect is to coerce payment.

Extortion is defined as (California Penal Code Section 518): “Extortion is the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.” Another definition is this comment by a PG&E customer: *“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.”*

Transcripts from the Public Participation Hearings (PPH) held between November 13th and November 20th, 2012 illustrate the outrage and frustration utility customers are feeling towards Smart Meters and being charged not to have them. Over 200 utility customers spoke to Administrative Law Judge Amy Yip-Kikugawa in five California cities.⁷ Twenty speakers refer to the opt-out fees as “extortion”.⁸ Other descriptions⁹ include: “a theft”, “a scam”, “un-American”, “criminal”, “tyranny”, “pay not to be harmed”, “abuse of power”, “a penalty”, “coercive”, “highway robbery”, and “an assault”. Perception of CPUC abuse is so pervasive that customers outrage, indignation, and strong language is fully justified as Mr. Holz in Santa Barbara stated, “in self defense I would smash every single f***ing one of them.”¹⁰

⁷ PPH were held in Bakersfield, Santa Barbara, San Clemente, Los Angeles and Santa Rosa RT 6-10

⁸ PPH speakers Ms. Rose, 10 RT 1105: 17-19; Ms. Feral, 10 RT 1036: 3; Mr. Horn, 10 RT 1017: 24; Ms. Lee, 10 RT 1001: 24; Mr. Bercich, 9 RT 934: 25; Mr. Frank, 9 RT 929:18; Ms. Taar, 9 RT 942:16; Ms. Ho- man, 9 RT 944:3; Ms. Schlicht, 9 RT 954:14; Ms. Bruce, 8 RT 848: 28; Ms. Gregory, 8 RT 851:21; Mr. Grey, 8 RT 857:14; Mr. Sosenko, 8 RT 862:19; Ms. Barton, 8 RT 861:25; Mr. McSpadden, 8 RT 872:21; Ms. Brunoehler, 8 RT 877:10; Berit Sten, 7 RT 731:13; Sasha Letterman, 7 RT 753:22; Shirley Force, 7 RT 798:27; and Veronica Haverbeck, 7 RT 811:18

⁹ Descriptions from various participants taken from PPH transcripts, 6-10 RT

¹⁰ PPH speaker Mr. Holz, 7 RT 759: 8-10

3. PUC § 451¹¹

A “pay to opt out” program does not provide relief to all customers. For example, some customers cannot afford the fees, live in multi-unit dwellings with co-located antennas in multiple meter installations, or are surrounded by neighbors’ smart meters. In consequence, some have been forced from of their homes. Many commercial customers do not want a smart meter on their business; the PDs deny businesses the right to the opt out granted residential customers. A “pay to opt out” program does not meet the criteria of just and reasonable under PUC § 451.

The recent Safety Policy adopted by the CPUC on July 10, 2014, states that the Commissioners: “*Certify through signature on Proposed Decisions that the findings, conclusions, and actions laid out in proceedings can meet the CPUC’s overarching goals and expectations, and assure that each vote on proceedings, resolutions, ratemaking, or other decisions of the CPUC addresses the CPUC’s overarching goals and expectations regarding safety and resiliency.*” Therefore adopting a decision without a safety review as indicated by the PDs statement¹² “*we will not address the alleged health and safety impacts of smart meters here*” contravenes the CPUC action.

It is wrong to to obviate statutory obligations for ensuring safety. President Peevey appointed himself to lead smart meter proceedings, and made contradictory rulings. On June 8, 2012 President Peevey’s scoping memo in A.11-03-014 ruled the proceeding would not include a health and safety review¹³. On July 25, 2013 President Peevey’s Decision (D.)13-07-024 states “*...health issues raised by certain parties were under consideration in other active proceedings before the Commission...*”¹⁴ The scoping memo referred to in that July 25, 2013 decision indicated it was A.11-03-014 in which a review of health issues related to EMR smart meters was before the Commission. To the

¹¹ 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 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.”

¹² PD p.6

¹³ A.11-03-014 scoping memo issued on 6/8/2012

¹⁴ D.13-07-024 p.5

extent the Commissioners and the public were misled by President Peevey's contradictory rulings, D.13-07-024 is flawed. The public has been denied both the important and lawful right of public participation, and review of smart meter health and safety impacts.

D.95-11-017 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.... Public Utilities Code Sections § 451, and §1002¹⁵ require the Commission to consider the impact of utilities' services on the environment and human health and safety. ... 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."^{16,17} PUC § 14 states "Shall" is mandatory and "may" is permissive.

In D.95-11-017 Appendix A, the CACD warned the Commission, "The economic considerations of this issue are significant. CACD raises the equally, if not more important issue of health and safety of the public. ... The Commission is clearly responsible for ensuring that the utilities it regulates are providing service and facilities that do not constitute a threat to the public or the environment."¹⁸

Refusal to consider the health and safety impact of the smart meters program in this proceeding is contrary to these CPUC decisions and mandates.

¹⁵ Public Utilities Code §1002, "(a) The commission, as a basis for granting any certificate pursuant to Section 1001 shall give consideration to the following factors: (1) Community values.(2) Recreational and park areas.(3) Historical and aesthetic values. (4) Influence on environment, except that in the case of any line, plant, or system or extension thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (Chapter 55 (commencing with Section 4321) of Title 42 of the United States Code) or similar state laws in the other state, the commission shall not consider influence on the environment unless any emissions or discharges there from would have a significant influence on the environment of this state."

¹⁶ D.95-11-017, Ordering Paragraph 2.

¹⁷ 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. The document can be found at the web address in footnote 16 herein.

¹⁸ D.95-11-017, Appendix A, p. 11

The question of reasonableness also applies to customers who retained the analog meters. Where the utility will not incur new meter costs, customers are entitled to a credit.^{19 20} Customers who have two or more utility companies should not be double or triple charged to opt-out.²¹

4. PUC § 453(b)

The permanent opt-out fees are unlawful under Public Utilities code § 453(b).²² Customers are forced to pay added fees due to medical conditions. Smart meters can interfere with implanted medical devices. Smart meters have caused many people health problems. The PDs offer insufficient evidence that PUC code 453(b) does not apply.

The PDs assert that parties failed to provide the evidence necessary to determine what effects EMR has on the public.²³ This is both disingenuous and contradictory; the scoping memo disallowed a health and safety review, yet asserts the necessity to provide such evidence. Despite obvious attempts to stifle testimony, substantial evidence of EMR harm was presented to the Commission in both phases of this proceeding, including the following:

Dozens of Public Participation Hearing (PPH) speakers provided evidence on health problems since smart meter installation: headaches, tinnitus, sleep problems, heart problems, anxiety, nose bleeds, nausea, and more. Some wept as they stated they had been forced to move to avoid co-located antennas in multiple meter installations, and neighborhoods fully deployed with smart meters. For example, Dr. Toril Jelter, a board certified pediatrician and general practitioner with over thirty years experience, stated *“When my neighbors got smart meters I developed severe tinnitus, fatigue, and neuropathy at home and at work.”* In consequence she had to close her practice and move

¹⁹ Exhibit EMF-1 3: 5-17

²⁰ Exhibit Aglet-1 19:15-19

²¹ PG&E witness Raymond Blatter, 3 RT 352: 5-12

²² No public utility shall prejudice, disadvantage, or require different rates or deposit amounts from a person because of ancestry, medical condition, marital status or change in marital status, occupation, or any characteristic listed or defined in Section 11135 of the Government Code. A person who has exhausted all administrative remedies with the commission may institute a suit for injunctive relief and reasonable attorney's fees in cases of an alleged violation of this subdivision. If successful in litigation, the prevailing party shall be awarded attorney's fees.

²³ PD p.60

her home to a low EMR area.²⁴

International health experts are recommending the public reduce their exposure to EMR, and advising against installation of, or exposure to smart meters.²⁵ It is well known in May 2011, the International Agency for Research on Cancer, an arm of the World Health Organization, classified EMR as a 2b carcinogen.²⁶

Network conducted a Wireless Utility Safety Impacts Survey in 2011²⁷. The top reported health complaints for people with a smart meter on their home included sleep problems (49%), stress (43%), headaches (40%), ringing in the ears (38%) and heart problems (26%).²⁸

The California Council on Science and Technology (CCST) report on smart meter safety²⁹ concluded, *“The topic of potential health impacts from RF exposure in general ... continues to be of concern”*. California Department of Public Health (CDPH) commented on the CCST study, *“CDPH suggests further review of the literature on non-thermal effects, which is complicated and controversial, but does not support a claim of no non-thermal health effects from radio frequency electromagnetic fields. [emphasis added]”*

Discussing the threat of public harm from increasing and additive smart meter exposure, Poki Stewart Namkung, M.D. M.P.H, Santa Cruz County public health officer provided to the Santa Cruz County Board of Supervisors a report stating EMR *“... is additive and consumers may have already increased their exposures to radiofrequency radiation in the home through the voluntary use of wireless devices ...It would be*

²⁴ PPH speaker Ms. Toril Jelter, 10 RT 1098

²⁵ Exhibit EMF 1 9: 4-10 footnote 31 American Academy of Environmental Medicine calls for a halt to wireless smart meters <http://emfsafetynetwork.org/?p=6985>, Smart Meters: Correcting the Gross Misinformation <http://maisonsaine.ca/smart-meters-correcting-the-gross-misinformation/>, Health Risks Associated With SmartMeters Poki Stewart Namkung, M.D. M.P.H 2012, and Sage Reports 2011, <http://sagereports.com/smart-meter-rf/>

²⁶ Exhibit EMF-1 4:22-24

²⁷<http://emfsafetynetwork.org/wp-content/uploads/2011/09/Wireless-Utility-Meter-Safety-Impacts-Survey-Results-Final.pdf>

²⁸See webcast for personal accounts from people suffering. December 1, 2011 CPUC business meeting <http://www.californiaadmin.com/cpuc.shtml>

²⁹Health Impacts of Radio Frequency Exposure from Smart Meters, 2011

*impossible to know how close a consumer might be to their limit, making uncertainty with the installation of a mandatory SmartMeter.”*³⁰ Other parties in this proceeding also submitted evidence of public health impacts.

5. PUC § 328.2(b)

PUC § 328.2(b) states: “No customer should have to pay separate fees for utilizing services that protect public or customer safety.” Fires, burned out appliances, and electrical failures related to smart meters are reported in California, Florida, Georgia, Illinois, Maine, Pennsylvania, Texas, Australia, and Canada. Fire departments’, safety and elected officials’ and customers’ accounts of these incidents are included in media reports.³¹ On such a record, a customer could be justified in rejecting a Smart Meter for safety reasons and should not be charged a separate fee for asserting that protection.

At the Santa Rosa PPH Mr. Patrick Wrigley stated he was a former PG&E meter reader for nine and a half years in the Marin office when he was fired because he was not willing to conceal smart meter problems he witnessed. Mr. Wrigley said, *“The fact that PG&E knows that they do catch on fire when they are remotely turned back on when a customer who is delinquent in their bill finally pays their bill. These meters catch fire. They know it, and they are covering it up.”*³² Another speaker, Ms. Moskow stated, *“I had terrible electric problems in my house once the smart meter was installed, fire coming out one of the outlets, many outlets not working.”*³³

6. ADA

The PDs err in their conclusion that the fees do not violate ADA laws.³⁴ The U.S. Access Board, a federal entity assisting in ADA implementation, 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

³⁰Health Risks Associated with Smart Meters, 2011 p. 3 <http://emfsafetynetwork.org/?p=6959>

³¹ Exhibit EMF-1 9: 22-24 to 10:1-4 footnote 16, Network has compiled reports of Smart Meters Fires and explosions (including PG&E meters): http://emfsafetynetwork.org/?page_id=1280

³² PPH speaker Mr. Patrick Wrigley 10 RT 1024:18-28 to 1025:1-2

³³ PPH speaker Ms. Moskow 10 RT 1014: 5-9

³⁴ PD Finding of fact 20, P.68

functions of an individual that it substantially limits one or more of the individual's major life activities.”³⁵ People who are forced to relocate, or close their businesses due to major health effects from EMR smart meters are proof of functional disability in major life activities.

The statutory language is not confined to particular types of disability, but speaks broadly to interference with major life activities.³⁶ Notably, by reference to Section 11135 of the Government Code, Section 453(b) extends its protection against discrimination to “any program or activity that is conducted, operated, or administered by the state or by any state agency.” The opt-out fees and attendant forced acceptance of smart meter installation, if enacted by the CPUC, would qualify as a program, service or activity engaged in by a public entity under Title II, and thus be amenable to judicial review for lawfulness.³⁷

California law provides that any violation of the ADA would also constitute a violation of California civil rights laws concerning disability discrimination. If litigation is pursued, there would be other causes of action, including trespass, negligence, nuisance, and intentional infliction of emotional distress.

7. Discrimination

The PD (p.3) states, “We generally allocate opt out service costs (e.g., costs for manual meter reading) to opt out customers...” Some homes still have analog meters because the homes’ wiring is incompatible with smart meters. These customers are not being charged fees to retain an analog meter. This is both discriminatory and a recognition of potential hazards created by smart meter installation.

Full public disclosure on smart meter failures is warranted. Approximately 9.4 million PG&E smart meters were deployed by the end of June 2012. PG&E reports³⁸,

³⁵ IEQ Indoor Environmental Quality; a project of the National Institute of Building Sciences (NIBS) with funding support from The Architectural and Transportation Barriers Compliance Board (Access Board) <http://access-board.gov/news/ieq.htm>. (emphasis supplied)

³⁶ Moreover, California prides itself for going beyond the ADA in its concern for persons with disabilities. (Government Code Section 12926.1)

³⁷ See, Opening Brief of Marin County, 11-12.

³⁸ Twelfth Semi-Annual Assessment Report on the Deployment of Pacific Gas and Electric Company's Advanced Metering Infrastructure Program and Twelfth Quarterly Report on the Implementation Progress of

3,738,000 meters were not “activated” and still required meter reading. Smart meters are failing, and requiring ongoing maintenance by meter readers. Fees for the cost of meter readers, like infrastructure costs for the smart meter program, must be allocated equitably. The PDs enable discriminatory fiscal practices.

Ruling against the right of business customers to avoid a smart meter, whereas residents have that right, is discrimination against business customers.

8. Property Law

Property owners have a vested, existing property right to: be safe and to enjoy their private lives within the sanctity of their homes; not to have EMR devices installed on their homes and property; and not to be bathed in pulsed EMR emanating from their property. This right is rooted in the California Constitution,³⁹ our democratic beliefs, and long standing property and nuisance statutory and case law⁴⁰.

A radiation transmission device owned by someone other than the owner of the home to which it is attached is a “use” in the property of the homeowner.⁴¹ If such use is with the consent of the property owner the use is a license or an easement.⁴² If it is neither, it is a trespass or a nuisance.⁴³ If the use is for a governmental purpose, it is a taking, requiring due process of law, for which compensation must be made.⁴⁴ In any of these cases the import is the same, one cannot seize a use in the property of another without the owner’s consent, that is, an easement, or the payment of compensation in a proceeding in eminent domain.

Smart meter fees imposed on those who do not want the living spaces of their homes subject to EMR from smart meters attached to their homes or installed on their

the Smart Meter Program Upgrade. October 1, 2012, p. 2

³⁹ Cal. Const. Art 1, §1

⁴⁰ Cal. Civ. Code §§ 654, 658, 662, 13 Witkin, Summary of Cal. Law (10th ed. 2005) Equity, § 133, p. 453

⁴¹ Cal. Civ. Code § 801(6), 803, 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 382, p. 446

⁴² 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, §§ 429, 430, pp. 500-501

⁴³ 5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 693, p. 1018, 13 Witkin, Summary of Cal. Law (10th ed. 2005) Equity, § 133, p. 453

⁴⁴ U.S. Constitution, Amend. V, Cal. Const. Art 1, § 19.

property violates these core principles of private property ownership. For many, smart meters are adjacent to living areas, the thickness of a wall away, and when there are multiple meters attached to the wall, the unwelcome radiation exposure is multiplied accordingly. Smart meters are a nuisance, a means of illegal trespass, and an unconstitutional interference with owners' peaceful use and enjoyment of homes and properties.

Neither PGE nor the CPUC has the right to use private property for installation of smart meters without the owner's consent or due process of law. If non-consenting property owners retain their property right of excluding smart meters, but must pay a fee to do so, this constitutes a de facto seizure of private property in violation of the above principles.

9. Community Opt Out

Communities have a legal responsibility, and the legal and vested power to protect residents from harm and the threat of harm⁴⁵. At least fifty seven California municipalities, (cities and counties) have asked for some type of relief from smart meters, including no fee opt outs, smart meter health and safety review, and a dozen criminalized smart meter installation.

Community opt out was part of the scoping memo in this proceeding. Testimony on community opt out was granted deferment by the ALJ.⁴⁶ The PD rules against community opt out, and closes the proceeding. This legal conclusion is premature because community opt out testimony remains to be taken, and the proceeding cannot close.

The decision that communities and multi-unit dwellings cannot opt out is a false and misleading conclusion. The CPUC is attempting to sweep public participation under the rug, deny community rights, restrict participation, and apparently expects no pushback.

⁴⁵ For legal statutes see City of Sebastopol ordinance here: <http://emfsafetynetwork.org/wp-content/uploads/2013/10/DRAFT-Smart-Meter-Moratorium-Ordinance-For-2-21-2013-.pdf>

⁴⁶ On 9/28/2012 ALJ Kikugawa email granted the Motion regarding community opt out testimony a deferment

A “pay to opt out” program does not protect customers in multi-unit housing who have co-located antennas in multiple meter installations. The record is lacking information that would serve the CPUC to make better legal decisions. Intervenor testimony on community opt out is warranted and necessary.

10. Cost Causation

The Commission is shifting⁴⁷ the utilities’ responsibility to provide safe utility service onto the customer, forcing the customers to subsidize a major failure of the smart meter program. Major problems with the smart grid modernization have been ignored and downplayed to protect the project and utility profits. The responsibility for the cost of customers refusing smart meters should rest with the true cost causers: the utilities and the CPUC who did not issue a moratorium on the deployment despite thousands of complaints.

The Commission, in concert with the utilities, forced smart meters onto customers. There is no federal⁴⁸ or state law that mandates all utility customers must have smart meters, or pay not to have smart meters.⁴⁹ D.09-03-026 which approved smart meters is both flawed and negligent because it was silent on customer rights of choice; never fully vetted or disclosed the technical specifications of the EMR meters; failed to file a California Environmental Quality Act (CEQA) exemption;⁵⁰ never held public participation hearings; failed to obtain ratepayers informed consent; and ignored their no and low cost EMF policy, which included EMR.⁵¹

The purpose of opt out fees is protection of the smart grid project and increased utility profits. A utility survey⁵² showed the more money people were forced to pay to opt out, the fewer people would opt out. The utilities do not want customers to opt out because the smart meter mesh network relies on customers participating.

⁴⁷PD p.12 , 37

⁴⁸ PG&E witness James Meadows, 3 RT 469: 7-9

⁴⁹ Exhibit EMF-1 6: 6-8

⁵⁰ PG&E witness James Meadows 3 RT 463:14-20

⁵¹ Exhibit EMF-1 6: 9-12

⁵² SDGE survey see p. 1-2 Network Reply Comments 12/2011 <http://emfsafetynetwork.org/wp-content/uploads/2012/11/156140.pdf>

A “pay to opt out” program is coercion by exaction, an unlawful taking. Where the process also conceals project failings from full public scrutiny, it is unlawful and demonstrable cronyism.⁵³ The CPUC reported to the Governor that it did an investigation of smart meter fires, but did not make the report available to the public.⁵⁴ On November 11, 2014, Network sent a records request to obtain it, plus additional information.

PG&E was already provided \$128.8 million in risk-based allowance, included in the original smart meter program.⁵⁵ The PDs will give 37 million dollars⁵⁶ or more to the utilities for the opt out program. The PDs claim, “*customers have remedies available for excessive or improper expenditures. Similarly, intervenors have various recourses if they become aware of such excesses going forward.*”⁵⁷ Is the Commission willfully blind to these excesses? If shareholders paid for opt out costs, more accountability in the future would be assured.

11. Conclusion

The Commission should reject both PDs; rescind smart meter opt out fees; order all interim fees refunded to customers; ban co-located antennas in multiple meter installations; and keep the proceeding open to 1) hold evidentiary hearings on smart meter health and safety and 2) take testimony on community and commercial opt out. The CPUC must take these actions to ensure safe and reliable utility service at reasonable rates to California customers or fail in its stated mission.

Dated November 18, 2014, at Sebastopol California.

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⁵³President Peevey is under scrutiny for alleged favoritism toward PGE.

⁵⁴ <http://www.cpuc.ca.gov/NR/rdonlyres/2F5149C6-885A-4211-8CBA-A4F88F02CEA7/0/SmartGridAnnualReport2013final.pdf>

⁵⁵ Exhibit EMF-1 5: 22-23 to 6:1-3

⁵⁶ PD p. 2

⁵⁷ PD p.46

Appendix

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

12. The opt-out option should be ~~is not~~ available to non-residential customers and the record in this proceeding ~~does not have~~ requires additional sufficient evidence. ~~that non-participants should bear any portion of the costs associated with the opt-out option.~~

15. ~~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.~~

17. It would be illegal to impose ~~The~~ opt-out fees and charges ~~are imposed~~ on all customers, regardless of disability status.

18. ~~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.~~

19. ~~Some of the comments submitted by parties fall outside the scope of the issues to be considered, were previously litigated, or lack sufficient legal or factual bases necessary for their consideration.~~

20. RF sensitivity ~~is not~~ can be a recognized disability under Gov. Code § 11135.

Conclusions of Law

9. ~~PG&E's proposal to split the capital costs of the new hand-held meter readers 50/50 between the opt-out option and current operations is reasonable.~~

10. ~~PG&E's revenue requirement should be decreased by \$4,240,185 to reflect the \$11,403,300 disallowance in Program Costs, prorated over the years 2012-2013.~~

11. ~~SCE's proposed revenue requirements should be decreased by \$312,900 to disallow costs associated with meter "turn-offs."~~

~~12. SDG&E's proposed revenue requirement should be decreased by \$27,934 to account for the recovery of legacy meter costs authorized in D.13-05-010.~~

~~13. Customers should not have to subsidize the failures of the smart meter program. Utility shareholders should bear the costs of the opt out program. PG&E should be authorized to increase its 2012 and 2013 annual revenue requirements by \$11,789,770 for providing the opt-out option.~~

~~14. SCE should be authorized to increase its 2012 through 2014 annual revenue requirements by \$20.463 million for providing the opt-out option.~~

~~15. SDG&E should be authorized to increase its 2012 through 2014 annual revenue requirements by \$1.447 million for providing the opt-out option.~~

~~16. SoCalGas should be authorized to increase its 2012 through 2014 annual revenue requirements by \$4.5 million for providing the opt-out option.~~

~~17. A rate cap on opt-out fees and charges should be established to ensure that customers are not unreasonably deterred from electing this option.~~

~~18. The opt-out fees adopted in D.12-01-014 strike a are coercive and reasonable balance between requiring opt-out customers should not have to pay fees to avoid harm or the threat of harm. to pay for costs for electing this option and maintaining service affordability.~~

~~19. The initial Opt-out fees are coercive, and should be rescinded. Should be set at \$75 for Non-CARE customers and \$10 for CARE customers.~~

~~20. Opt-out costs should be paid by the cost causers: the CPUC and the utilities. The monthly opt-out cost should be set at \$10 for Non-CARE customers and \$5 for CARE customers.~~

~~21. Each utility should collect opt-out fees and charges on a per location, not per meter, basis.~~

~~22. For dual commodity utilities, the opt-out fees and charges should be imposed~~

~~regardless of whether the customer opts-out of an electric smart meter, a gas smart meter, or both.~~

~~23. For customers served by two utilities, separate opt-out fees and charges shall be paid to each utility that serves them.~~

~~24. Exit fees should not be assessed upon opt-out customers.~~

~~25. The utilities should not offer alternatives to monthly meter reads and billing for customers selecting the opt-out option.~~

~~26. Local governments and entities such as condominiums and other multi-unit dwellings should not be allowed to exercise the opt-out option. on behalf of individual resident.~~

~~27. The opt-out fees and charges are not an impermissible surcharge required only of persons who opt-out for medical reasons.~~

~~28. The opt-out fees and charges do not violate the ADA.~~

~~29. The opt-out fees and charges do not violate Pub. Util. Code § 453(b).~~

~~30. Applications 11-03-014, 11-03-015 and 11-07-020 should be closed.~~

31. Co-located antennas in multiple meter installations should be banned.

32. Smart meter opt out fees should be rescinded, and interim fees should be refunded.

33. Applications 11-03-014, 11-03-015 and 11-07-020 should remain open to hold evidentiary hearings on smart meter health and safety, and to take testimony on community and commercial opt out.