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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of Heather Epps for Modification of  
D.06-07-027 and D.09-03-026

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Application 10-09-\_\_\_\_  
A1009015

**APPLICATION OF HEATHER EPPS FOR MODIFICATION  
OF D.06-07-027 AND D.09-03-026**

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Dated: September 17, 2010

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of Heather Epps for Modification of  
D.06-07-027 and D.09-03-026

Application 10-09-\_\_\_\_

**APPLICATION OF HEATHER EPPS**

**FOR MODIFICATION OF D.06-07-027 AND D.09-03-026**

In accordance with Rules 2.1 and 2.2 of the California Public Utilities Commission (CPUC) Rules of Practice and Procedure, Heather Epps (“Ms. Epps”), on behalf of herself and all PG&E ratepayers, respectfully submits this Application for Modification of Decision (D.) 06-07-027, the CPUC’s final decision regarding the application of Pacific Gas and Electric Company (PG&E) for authority to deploy an Advanced Metering Infrastructure (AMI) project known now as the Smart Meter program, and D.09-03-026, the CPUC’s final decision regarding PG&E’s application to “upgrade” the technology used in the Smart Meter program and recover costs for such upgrade. These decisions by the CPUC were issued in two separate and unconsolidated proceedings.

On September 3, 2010, Ms. Epps tendered to the Commission’s Docket Office a petition for modification of D.06-07-027 and D.09-03-027. The Docket Office rejected the pleading, stating, “Pursuant to the directives from the Administrative Law Judges Division Management, please re-file it as a New application for modification of Decision 06-07-027 and Decision 09-03-026.”

On September 17, 2010, pursuant to instructions from the Commission’s Docket Office,

Ms. Epps submitted a new application for modification. This application was rejected because it was not supposed to be a re-submission. It also improperly had a designated file date. These minor errors have been corrected and are reflected in this re-submission.

## **I. SUMMARY**

Ms. Epps is a customer of PG&E whose residence and principal place of business is in Bakersfield, California. PG&E installed an initial Smart Meter on her home, and soon followed with a second meter installation according to the approved Smart Meter upgrade at issue in this application. Ms. Epps has noticed increases in her PG&E electric bills since a Smart Meter was installed and is concerned for her bills in the future due to the admitted nearly \$500,000,000<sup>1</sup> mistake that PG&E made in installing Smart Meters at the residences of its' customers before appropriate and sufficient testing was completed. She brings this application on behalf of herself and all other PG&E customers.

Ms. Epps respectfully requests that the CPUC create orders that will modify D.06-07-027 and D.09-03-026 to shift all costs related to the Smart Meter program upgrade onto PG&E and its investors, instead of burdening consumers.

This application is brought because of the problem with PG&E's Smart Meters, resulting from PG&E's lack of proper testing and research before implementing Smart Meters. This lack of sufficient testing and research not only caused system-wide problems with billing and service, but also necessitated PG&E's upgrade to the entire Smart Meters system because the original technology lacked needed functionality. The president of the CPUC, Michael Peevey, stated in a presentation to the California Legislature that allowing PG&E to go forward with the Smart

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<sup>1</sup>See <http://abclocal.go.com/kgo/story?section=news/state&id=7332225>

Meters program was a half billion dollar mistake and that ratepayers are the individuals paying for this mistake.<sup>2</sup> Because implementing the PG&E Smart Meters system was a mistake and premature, the costs of the upgrade of the Smart Meter program should be shifted to PG&E and its investors. PG&E is a private company whose net earnings total billions of dollars per year. PG&E should have to pay for its' mistake regarding Smart Meters and the CPUC should modify these two decisions to allow for such a shift of costs to occur, so that PG&E can remedy its' mistake instead of burdening ratepayers with the costly repercussions.

## **II. INTEREST IN PG&E'S SMART METER PROGRAM**

Ms. Epps was not a party to the applications in which the CPUC issued D.06-07-027 and D.09-03-026. However, Ms. Epps and other ratepayers have a clear and compelling interest in the PG&E Smart Meter program, how it is implemented, and how it will impact customers' bills each month. The Smart Meters program has not only been a source of inconvenience and stress for many consumers, but is affecting consumers' every day quality of life because many consumers' PG&E electric bills are accounting for a major portion of these consumers' monthly expenses. A significant rise in customers' bills have come from the increase in rates PG&E has passed on to customers in order to pay for the Smart Meter program, which has proved to now be a colossal mistake. Thus, Ms. Epps and ratepayers who have or eventually will have a PG&E Smart Meter installed on their residence or business have a clear interest in the Smart Meter program.

## **III. COMPLIANCE WITH ARTICLE 2**

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<sup>2</sup>See the Annual Presentation to the California Assembly by the President of the CPUC, Michael Peevey, at the Joint Committees Assembly Utilities & Commerce and Senate Energy, Utilities California State Assembly, which occurred on March 15, 2010.

The application of Heather Epps, 5080 California Ave., Ste. 100, Bakersfield, CA 93309, (661) 396-2141, respectfully shows:

1. The communications in regard to this application are to be addressed to:

Michael Louis Kelly  
Kirtland & Packard  
2361 Rosecrans Ave, Fourth Floor  
El Segundo, CA 90245  
(310) 536-1000

2. Pursuant to Rule 2.1(c), Ms. Epps proposes that the application be categorized as a ratesetting proceeding. Although Ms. Epps does not request any immediate change to PG&E gas or electric rates, the proceeding could result in the adoption of new tariff provisions. According to the definitions set forth in Rule 1.3(a)(d)(e), Ms. Epps does not believe that the application should be categorized as an adjudicatory or quasi-legislative proceeding.

3. Ms. Epps requests that the Commission convene a prehearing conference and evidentiary hearings. The issues to be considered are set forth in Section 4 herein. Ms. Epps proposes the following procedural schedule, but suggests that final scheduling details be determined at the prehearing conference.

|                    |                                       |
|--------------------|---------------------------------------|
| September 23, 2010 | Ms. Epps files application            |
| November 11, 2010  | Application appears in Daily Calendar |
| December 9, 2010   | Protests and Responses Due            |
| January 14, 2011   | Prehearing conference                 |
| February 11, 2011  | Applicant testimony served            |
| March 11, 2011     | Responsive testimony served           |
| April 11-15, 2011  | Evidentiary Hearings                  |
| May 16, 2011       | Opening briefs filed                  |
| June 6, 2011       | Reply briefs filed                    |
| July 11, 2011      | Proposed decision filed and served    |
| August 12, 2011    | Opening comments filed                |
| August 19, 2011    | Reply comments filed                  |
| September 1, 2011  | Decision appears on Commission agenda |

4. Ms. Epps did not participate in Application (A.) 05-06-028 in 2005 and 2006, or in A.07-12-009 in 2008. Ms. Epps was unable to submit an application for modification within one year of D.06-07-027 because the problems related to the Smart Meter program were not fully known within a year of D.06-07-027 and D.09-03-026. In fact, it was not until very recently, on March 15, 2010, that the California Public Utility Commission's President, Michael Peevey, admitted that there had been a \$500,000,000 mistake regarding funds wasted on the Smart Meters program, with ratepayers on the hook to pay for that mistake. Thus, it was impossible for Ms. Epps to bring an Application for Modification within a year of D.06-07-027 or D.09-03-026.

WHEREFORE, Ms. Epps requests, on behalf of herself and other PG&E Smart Meter ratepayers, an order that Decisions D. 06-07-027 and D.09-03-026 be modified to shift all costs related to the upgrade of the Smart Meter program from ratepaying consumers to PG&E and its investors.

#### **IV. REQUESTED RELIEF**

Ms. Epps respectfully requests that the CPUC modify D.06-07-027 and D.09-03-026 to shift all costs related to the upgrade of the Smart Meter program to PG&E and its investors, instead of burdening consumers.

##### **A. Modification Pertaining to Cost Shifting**

###### Proposed Language:

All of PG&E's prior cost recovery proposals that sought recovery of costs from customers for the Smart Meter Program Upgrade shall now be deemed disapproved by the CPUC. The only change to the prior cost recovery proposals approved by the CPUC are that

PG&E will, on its own, pay for the entire Smart Meter Program Upgrade, through its investors or corporate profits. PG&E is forbidden from shifting any costs to customers, through rates or any other means, arising out of or relating in any way to the Smart Meter upgrade.

Rationale:

It is no secret that the initial Smart Meters that were installed according to the D. 06-07-027 have been replaced because they were unable to perform what PG&E now considers to be necessary functions. PG&E then came back to the CPUC in order to recover costs for an upgrade to the Smart Meter program they had only initiated a short time before, which was approved by the CPUC in D.09-03-026. PG&E ratepayers are the individuals who are burdened by both of these decisions because they are the group saddled with the bill at the end of the day, through heightened rates. All the while PG&E enjoys the upside, without sharing in the cost of their mistakes caused by the premature deployment of the first round of Smart Meters proved inadequate. PG&E, through the heightened rates paid by its customers, pressed to be the guinea pig in this new time of rolling out the smart grid program. PG&E did not properly test or research this technology as it should have, as evidenced from the countless complaints and outcry of customers regarding their inappropriately higher bills. PG&E then had to return to the CPUC and request more funds to replace and update the Smart Meters; the first approval by the CPUC in D. 06-07-027 should have never gone forward and thus it is unfair for ratepayers to have to essentially pay for the same program twice because PG&E decided to jump the gun too early in rolling out the Smart Meter program.

The three technological upgrades stated in D.09-03-026, which are the stated reasons for “upgrading” the entire Smart Meter system after only a couple of short years were: incorporating

an integrated load-limiting connect/disconnect switch into all advanced electric meters, incorporating a Home Area Network (HAN) gateway device into advanced electric meters to support in-home HAN appliances; and upgrading PG&E's electric meters to solid state meters to support the above functionality and to facilitate upgrades. Throughout the written decision in which the CPUC approves PG&E's upgrade to the Smart Meters program, there are various reasons explaining the necessity for the aforementioned three technological advances. But, there is no explanation as to why PG&E did not take these technological issues into consideration at the time of the initial installation of their Smart Meters program. These technological developments were either known by PG&E or should have been known by PG&E at the time that PG&E filed Application 05-06-028 on June 16, 2005, regarding the initial roll out of Smart Meters. PG&E either failed to consider these technological advances or wilfully misled the CPUC in the cost/benefit analysis because the expected life span stated in the initial decision by the CPUC was 20 years<sup>3</sup>, which is clearly incomparably longer than the meters were actually in place. Therefore, it is incomprehensible that a real analysis of costs and benefits to ratepayers could have possibly come out in favor of the rate payers in the initial decision; in fact, there was little or no benefit to ratepayers compared to the \$500 million that was spent on the Smart Meter Program. Accordingly, PG&E should bear the burden of all costs associated with the Upgrade at issue because PG&E was in a position of superior knowledge when compared to the CPUC and especially ratepayers, and PG&E has misused this position of superior knowledge to the tune of \$500 million.

This idea, namely that the Smart Meter program was initiated too early and without

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<sup>3</sup> See D. 06-07-027, p. 24: "We find PG&E persuasive that the useful life of the system is 20 years."

proper research and to the detriment of PG&E ratepayers, is supported by the CPUC's very own president. In the Annual Presentation to the California Assembly by the President of the CPUC that was aired in part on ABC 7 News, Michael Peevey, President of the Public Utilities Commission, was asked by Senator Dean Florez, who represents Kern County, "Why wouldn't we have waited to do the third party investigation or third party evaluation first and then roll these [Smart Meters] out after?" Senator Florez then queried, "And PG&E then had to go back to the CPUC and had to ask for an additional 500 million dollars because they did not put on the right Smart Meters, is that correct?" Michael Peevey responded that "Well, yeah, that's a judgment call. What they did was they went first...some people said well maybe it ought to be a little more advanced than what you're doing," but PG&E wanted to go first using these unproven meters and that the PUC eventually "conceded and said go ahead and try this and *it turned out to have been a mistake*." (Emphasis added) When Senator Florez followed up with a question regarding who paid for this "mistake," Peevey stated, "The people. The rate payers."<sup>4</sup> Thus, this half-billion dollar mistake is now burdening PG&E customers and will continue to burden customers through rate increases.

CPUC Decision 09-03-026 states within its text on page 167, "PG&E's cost recovery proposal seeks to recover the entire costs of the SmartMeter Program Upgrade from customers" and the CPUC approved such proposal. In a recent press release issued May 7, 2010<sup>5</sup>, regarding first quarter earnings, PG&E stated that: "PG&E Corporation's (NYSE: PCG) net income after

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<sup>4</sup>This exchange occurred on March 15, 2010, and the relevant portion of the hearings of the Joint Committees Assembly Utilities & Commerce and Senate Energy, Utilities California State Assembly have a time marker of 36 minutes to 43 minutes.

<sup>5</sup>See:  
[http://www.pgecorp.com/news/press\\_releases/Release\\_Archive2010/100507press\\_release.shtml](http://www.pgecorp.com/news/press_releases/Release_Archive2010/100507press_release.shtml)

dividends on preferred stock...was \$258 million, or \$0.67 per share, in the first quarter ending March 31, 2010, as reported in accordance with generally accepted accounting principles (GAAP). In the same period last year, net income after dividends on preferred stock was \$241 million, or \$0.65 per share.” Further, Peter A. Darbee, Chairman, CEO and President of PG&E Corporation explained that, "We delivered solid results in the first quarter and are on track to deliver on our guidance for the year." Though PG&E is a public utility, it is obviously concerned about its bottom line earnings because it is also a money-making business entity. PG&E should not be able to push all of the risks it takes, such as being the first to initiate the Smart Meter program as approved in D. 06-07-027, onto ratepayers simply because it is a public utility. PG&E should, as a business entity with corporate investors and shareholders, have taken on the costs associated with the newly upgraded Smart Meters or should have offered to at least pay back ratepayers for their original mistake of rolling out the first round of Smart Meters prematurely. PG&E has not done so and the CPUC, through its President, has even admitted and verified that this mistake did in fact occur, as shown to thousands of PG&E customers in the recent news broadcast of March 15, 2010. This admission by the CPUC’s president is the only new fact needed in order to review this Application for Modification.

In short, the CPUC was sold a bill of goods regarding PG&E’s initial SmartMeters plan, a plan which was a half-billion dollar mistake. Ms. Epps, on behalf of herself and all other PG&E customers, now asks the CPUC to help in alleviating PG&E rate payers from the ill effects that this mistake is having and will have for years to come on ratepayers’ bills.

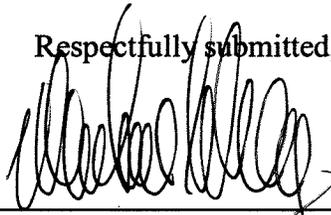
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**V. CONCLUSION**

Ms. Epps, on behalf of herself and other PG&E Smart Meter ratepayers, respectfully applies to the CPUC that Decisions D. 06-07-027 and D.09-03-026 be modified to shift all costs related to the upgrade of the Smart Meter program to PG&E and its investors, instead of burdening consumers.

DATED: September 17, 2010

Respectfully submitted,



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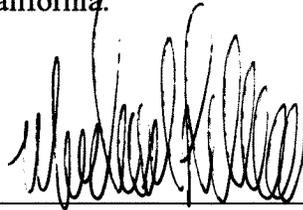
*Counsel for Party, Heather Epps, and All Others  
Similarly Situated*

**VERIFICATION**

I, Michael Louis Kelly, am the attorney for the applicant herein; said applicant is absent from the County of Los Angeles, California, where I have my office, and I make this verification for said applicant for that reason; the statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

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

Dated September 17, 2010, at El Segundo, California.



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## CERTIFICATE OF SERVICE

I hereby certify that I have this day have served a copy of the foregoing **APPLICATION OF HEATHER EPPS FOR MODIFICATION OF DECISION 06-07-027 AND DECISION 09-03-026** regarding Pacific Gas and Electric Company's Smart Meter Program on all known parties in A. 05-06-028 and A. 07-12-009 by electronic mail and by U.S. mail to those parties who have not provided an electronic address to the Commission. The service list of all persons who received a complete document is attached. I will also be sending a hard copy by overnight mail to the Assigned Administrative Law Judges and Assigned Commissioners.

Executed on September 23, 2010, in El Segundo, California.

  
Katherine Maguire



## California Public Utilities Commission

CPUC Home

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**PROCEEDING: A0506028 - PG&E - TO INCREASE R  
FILER: PACIFIC GAS AND ELECTRIC COMPANY  
LIST NAME: LIST  
LAST CHANGED: SEPTEMBER 16, 2010**

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