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

Order Instituting Rulemaking to Consider Smart
Grid Technologies Pursuant to Federal Legislation
and on the Commission's own Motion to Actively
Guide Policy in California's Development of a
Smart Grid System.

(U39E)

Rulemaking 08-12-009
(Filed December 18, 2008)

**OPENING COMMENTS OF PACIFIC GAS AND
ELECTRIC COMPANY (U 39 E) ON PROPOSED
DECISION ADOPTING RULES TO PROTECT
CUSTOMER PRIVACY AND SECURITY**

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Dated: June 2, 2011

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

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) provides its opening comments on the May 6, 2011, Proposed Decision (PD) adopting rules to protect the privacy and security of customer electricity usage data.

PG&E commends the Assigned Commissioner, the ALJs, the Commission staff and the parties for contributing to a well-reasoned, balanced proposal that will update California’s customer privacy rules and demonstrate that California is a national leader in implementing “best practices” in consumer privacy protection consistent with the national Fair Information Practice (FIP) principles. Subject to clarifications as discussed below, PG&E supports the PD and urges the Commission to adopt it. The PD is fully supported by the record, balanced, and realistic in the policies and rules it proposes for protecting customer privacy and security pursuant to Senate Bill (SB) 1476 (Padilla), the Energy Independence and Security Act of 2007, and FIP principles.

II. EXECUTIVE SUMMARY OF RECOMMENDED CHANGES TO PD

PG&E’s recommended clarifications address primarily the PD’s requirements which go beyond the customer privacy and security rules, such as the new requirements that the utilities (1) implement “pilot studies”, “trials” and revised tariffs on Home Area Network (HAN) -

enabled consumer devices, (2) provide customers with “real time” consumer price information, and (3) provide third-party access to customer-specific energy usage information. (PD, Ordering Paragraphs 6, 8 and 10, pp. 137- 138.) As discussed in more detail below, PG&E recommends that the Commission clarify these requirements as follows:

1. **Cost Recovery for Incremental Costs.** To the extent that the new privacy rules and the “pilot studies,” “trials” and revised privacy tariffs require the utilities to incur incremental costs not previously approved in prior Commission decisions or included in existing approved rates, the PD should be revised to authorize the utilities to recover those incremental implementation costs.

2. **Design and Timing of HAN Pilots.** Given the delay in adoption of national HAN standards, the PD should be clarified to provide flexibility in the timing, design and scope of the mandated HAN “pilot studies” and “trials,” in order to manage the risk of duplicative HAN implementation costs if the national standards are further delayed.

3. **Third Party Access to Customer-Specific Usage Information.** The PD correctly conditions the implementation of third-party access to customer usage information on the third-parties and the utilities fully conforming their third-party access programs to the new and updated customer privacy and security rules adopted by the PD. (PD, Ordering Paragraph 8.) However, the PD proposes that utilities file their third-party access tariffs within six months. (*Id.*) In order to provide coordination between these two obligations, PG&E recommends that the PD be clarified to authorize recovery of incremental costs of implementing the new privacy tariffs as well as the third-party access program. The PD should also allow the utilities, potential third-party users of the access system, and Commission staff to engage in a technical workshop and working group to discuss and affirm requirements approved in the Open ADE standards forum for the third-party access and develop consensus around costs, third-party participation, likely customer participation, and possible alternative methods for providing the access consistent with protecting customer privacy and security while at the same time avoiding excessive implementation costs.

4. Pilot Studies to Explore “Near-Real Time” or “Real Time” Access to Price

Information. PG&E expects that evaluation of the feasibility and cost-effectiveness of alternative methods of providing “real time” or “near-real time” access to pricing and usage information will need to precede “pilot studies” using actual customers. PG&E requests that the PD be clarified to provide flexibility in the design of the pilot studies, and also clarify that incremental costs of the pilot studies may be recoverable.

PG&E’s revisions to the PD’s proposed findings of fact, conclusions of law and ordering paragraphs are provided in Appendix A.

III. COMMENTS ON PROPOSED PRIVACY RULES

A. Information to be Covered, and Distinction Between Primary and Secondary Uses

As the PD indicates, PG&E supports the revised definitions of “covered entities,” “primary purposes,” and “secondary purpose” in the proposed privacy rules.^{1/} PG&E also supports the clarification of the definition of “customer” proposed by SCE.

However, in re-reviewing the proposed definitions as part of these comments, PG&E found a potential “glitch” in the definition of “covered entity” that it recommends be clarified. Specifically, the definition of “covered entity” includes both jurisdictional utilities and third party non-utilities that collect covered information, including third parties who are collecting the information for utility operational purposes as contractors or agents of the utility. Based on this definition of “covered entity,” all the obligations in the rule, such as customer notice, purpose specification, customer access to covered information, etc, appear to apply to both utilities and to their third party contractors and agents even where the third party contractor or agent is using the information for utility operational purposes or another “primary purpose.” An unintended

^{1/} The PD correctly states that the Commission itself is not a “covered entity” under the proposed rules, nor is information collected by the Commission “covered information” for purposes of the rules. However, the Commission should revise the PD to affirm that the Commission will apply internal administrative rules ensuring that customer-specific information collected by the Commission will be under privacy protections no less stringent than would apply to utilities and other covered entities under the rules.

consequence of this could be significant customer confusion because third parties under contract with the utilities could be required to provide notices, purpose specifications and information access to utility customers that duplicate the same notices, purpose specifications and access requirements that the utilities themselves will be providing.

In order to avoid this customer confusion and duplicative customer notices and communications, PG&E requests that the Commission clarify in the PD that such customer notices, communications and interactions need only be provided through the utility, where the third party covered entity is engaged in use of covered information for a primary utility operational purpose as contractor or agent of the utility. On the other hand, a third party who obtains customer information for a secondary purpose unrelated to utility operations or primary purposes would remain separately obligated to provide the required customer notices, purpose specifications and access.

B. Transparency and Notice

As the PD indicates, PG&E supports the customer notice and transparency requirements in the proposed rules, including the clarification by SCE that electronic notice will suffice.

C. Purpose Specification

As the PD indicates, PG&E and SCE both requested that the purpose specification rules allow the utilities to list the categories of third parties receiving customer information, rather than the names of each entity. With this change, PG&E supports this rule in the PD.

D. Customer Access and Control of Data

As the PD indicates, PG&E supports this rule, including the revision requested by SCE to provide flexibility for certain situations, such as emergencies. Also, PG&E supports the flexibility requested by SCE regarding annual reports. As the PD also points out, other needed clarifications can be worked out in the tariff advice filings regarding the time frame for responses to customers.

E. Data Minimization

PG&E appreciates the PD's affirmation that the data minimization rule will not impose or create any new liability on utilities or third parties regarding the duration of data retention. (PD, p. 64.) As the PD notes, public utilities are different from non-utilities in the sense that utilities must retain customer-specific billing and service data for long periods of time, in order to fulfill their obligation to serve reliably and reasonably. For this reason, PG&E supports the "rule of reason" approach to data minimization included in this proposed rule.

F. Use and Disclosure Limitations

The PD rejects the requests by PG&E and SCE that the responsibility of utilities to enforce compliance with these rules should not extend to third parties with whom the utilities have no contractual or agency relationship. (PD, pp. 68- 71.) PG&E remains skeptical of the PD's "chain of responsibility" approach to enforcing the privacy rules against such third parties that are acting totally independent of any direct relationship with the utilities. For these reasons, PG&E understands that the intent of this rule is *not* to require utilities to directly contract with all third parties who receive covered information through "subsequent disclosure," but instead to place the legal burden and liability on the entity that is providing the "subsequent disclosure." (PD, pp. 74- 75, referencing Rule 6(c)(1) and (2).) PG&E interprets the rule as providing that a "covered entity" is not deemed to have provided an "initial disclosure" under subsection (a) merely because a third party has indirectly received the information in a "subsequent disclosure" under subsection (b). This interpretation will avoid the need for utilities to directly contract with all third parties to enforce compliance with the rule, including entities further down the "chain of responsibility."

Nevertheless, PG&E notes that the "chain of responsibility" approach to policing the compliance of third parties through utility oversight of third party contracts will inevitably lead to questions and the need for clarification of mutual rights and responsibilities among customers, utilities and the third party "covered entities." For this reason, it may be useful for the Commission staff and interested parties to meet informally to develop guidelines regarding "real

world” questions on how the respective responsibilities of utilities and third parties should be allocated under the new rules.

PG&E also appreciates the PD’s clarification in proposed Rule 6(g) that utilities are authorized to disclose non-customer-specific aggregated energy usage data to third parties without being restricted by the privacy rules. PG&E does not generally sell or transfer such proprietary information to third parties, and would comply with the Commission’s rules under Public Utilities Code section 851 to the extent such information constitutes an intangible asset or intellectual property subject to review under that section.

G. Data Quality, Integrity and Security

The PD rejects PG&E’s request that the rules not include a separate, “catch-all” requirement that all information must be “reasonably accurate and complete or otherwise compliant with applicable rules and tariffs.” (PD, pp. 77- 79.) However, PG&E now understands the rule to only establish a “catch-all” separate standard in the event that existing rules and tariffs do not otherwise establish the level of accuracy or quality required. Because PG&E’s billing and customer service tariffs already establish standards regarding the quality and integrity of customer information, PG&E does not object to the privacy rules incorporation of those standards by general reference.

PG&E also supports the data security rule, including the requirement that utilities provide for automatic and annual notifications of significant security breaches involving covered information. PG&E understands that the required notifications and annual reports can be made in confidence to the Commission under Public Utilities Code Section 583, in order to protect the security sensitivity of such notifications. In addition, the utilities remain under the public disclosure obligations already imposed on businesses in general under so-called state and federal “red flag” laws and rules.

H. Accountability, Reporting and Auditing

PG&E supports the PD’s proposed accountability, reporting and auditing rules,

particularly the alignment of required security and privacy audits with the utilities' general rate cases after 2012. PG&E requests that the PD be revised to authorize tracking and recovery of any additional reasonable costs for these new requirements in its next general rate case.

In one respect, the reporting and accountability rule should be clarified, consistent with the customer notice requirements: the reporting rule proposes that utilities be required to make available to the Commission upon request or audit “the identities of agents, contractors and other third parties” to which covered information is disclosed. As the PD notes regarding the availability of similar information in notices to customers, it is extremely burdensome for a utility to maintain and communicate a comprehensive list of all the vendors and contractors with whom it is sharing customer-specific information for primary utility operational purposes. Instead, PG&E recommends that Rule 9(a)(3) be narrowed somewhat to limit the list of individual entities to those who have received covered information for a “secondary purpose” and whether any specific entity identified by the Commission by name has received covered information. Here is the proposed revised language:

9. ACCOUNTABILITY AND AUDITING

(a) **Generally.** Covered entities shall be accountable for complying with the requirements herein, and must make available to the Commission upon request or audit –

(3) the categories of agents, contractors and other third parties to which they disclose covered information, **the identities of agents, contractors and other third parties to which they disclose covered information for a secondary purpose**, the purposes for which **all such** information is disclosed, indicating for each category of disclosure whether it is for a primary purpose or a secondary purpose. **A covered entity shall make available to the Commission upon request information indicating whether a specified agent, contractor or other third party has received covered information from the covered entity.**

PG&E recommends this clarification as a more reasonable approach to maintaining and making available information to the Commission on the identities of third parties receiving covered information from utilities.

IV. THE PD SHOULD CLARIFY THE REQUIREMENTS AND PILOT STUDIES REQUIRED TO PROVIDE CUSTOMERS WITH PRICE AND USAGE INFORMATION

A. The PD Should Be Clarified to Provide for Cost Recovery of Incremental Costs Incurred to Comply with the PD

To the extent that the new privacy rules, “pilot studies,” “trials” and revised tariffs require the utilities to incur incremental costs not previously approved in prior Commission decisions or included in existing approved rates, the PD should be revised to authorize the utilities to recover those incremental implementation costs pursuant to a memorandum account and recovery in the utilities’ next general rate cases. This is especially important for the implementation costs associated with providing third-party access to customer-specific energy usage data, which could be millions dollars for each utility. Contrary to the assumptions in the PD, PG&E estimates that its costs of implementing a centralized data clearinghouse for third-party access to customer energy usage data consistent with the OpenADE standard would likely be in the millions of dollars. For these reasons, the PD should be revised to authorize utilities to recover the reasonable incremental costs of providing this third-party access.

B. PG&E Supports the HAN Pilots Mandated by the PD, but the PD Should Acknowledge that the Pilots Create the Risk of Stranded HAN Costs Because of the Status of Smart Energy Protocol 2.0

PG&E supports the PD’s restatement of the Commission’s policy rationale for the utilities to continue testing, evaluating and scaling up Home Area Network (HAN) connectivity: “[T]o determine the best and most timely way of providing California customers with secure, private, and direct access to the disaggregated data available in Smart Meters.” (PD, p. 103.). To this end, the PD would require each of the utilities to work with Commission staff to develop and commence pilot projects within six months that connect HAN-enabled devices to Smart Meters. (*Id.*)

PG&E is committed to providing customers with the information, tools and the capability to manage their energy use and understand their choices and options. The SmartMeter provides

interval data as a platform for building awareness. HAN capability is an important emerging capability. The sector is evolving rapidly and markets for HAN devices and services are seen as promising, high growth markets.

Consequently, the adoption of national standards is a key enabler of markets for mass marketed high technology devices such as HAN-enabled devices. For these reasons, PG&E's deployment of HAN connectivity is now focused on enabling devices that conform to the SEP 2.0 standard. For PG&E, this provides the most cost effective and scalable retail HAN enablement strategy, while simultaneously providing a more scalable, secure, interoperable architecture between meters and HAN devices.

Because of the flexibility of the SmartMeter technology deployed in PG&E's territory, PG&E is well positioned to avoid being locked into a higher cost, lower flexibility and proprietary platform such as SEP 1.x that could be problematic to scale in the retail channel and may not meet the requirements of the National Institute for Standards & Technology (NIST) Smart Grid Interoperability Panel (SGIP).

Unfortunately, SEP 2.0 has not yet been adopted as the national HAN standard, and may not be adopted in time for SEP 2.0 HAN devices to be commercially available on the schedule for HAN pilots proposed by the PD. Consequently, PG&E and its customers may be exposed to the risk of duplicative costs if the PD requires the utilities to move forward with HAN pilots that rely solely and prematurely on 1.x devices. In addition, HAN-enabled in-home displays are now facing competition with, and the potential to be superseded by, broadband-based internet-connected and mobile applications, as the PD recognizes in its support for pilot studies on providing real time or near-real time energy pricing information through means other than HAN-enabled in-home display devices. (PD, p. 96; Ordering Paragraph 10.a), p. 138.).

In light of these developments on national HAN standards and in HAN markets, PG&E requests that the PD be revised to acknowledge the risk of duplicative costs associated with SEP 1.x pilots and therefore endorse the utilities continuing to be involved in getting SEP 2.0 adopted as the industry standard as part of their HAN-enablement plans. In order to mitigate duplicative

cost risks, PG&E intends to continue to collaborate and share information with the other California utilities and Commission staff on HAN testing and pilot studies. PG&E also will work with Commission staff to design and commence a HAN pilot in PG&E's service territory on the schedule proposed by the PD, but in a manner that expressly acknowledges the risk that the costs of such a pilot may be duplicative if it is commenced prior to adoption of the national SEP 2.0 standard.

C. The PD Should Clarify that a Technical Workshop and Working Group Should Develop Specifications for Third-Party Access Programs in order Ensure Cost Effectiveness and Customer Convenience

The PD correctly conditions the implementation of third-party access to customer usage information on the third-parties and the utilities fully conforming their third-party access programs to the new and updated customer privacy and security rules adopted by the PD. (PD, Ordering Paragraph 8.). However, the PD proposes that the utilities implement third-party access programs only 90 days after filing revised tariffs implementing the new privacy rules, including those applicable to third-parties contracting with the utilities for access to customer-specific information. PG&E believes that the new privacy rules proposed by the PD will likely require a reassessment of the security systems and programs each utility will need to include as part of its third-party access programs. This reassessment, as well as the baseline program required to provide customer-authorized access to customer-specific usage information, are likely to require significant incremental costs and a user-based fee arrangement for recovering those costs from the third-parties using the program. Since the third-party access issue was first teed up in PG&E's initial AMI cases, PG&E has continuously monitored developments in the marketplace as well as in the Open Automated Data Exchange (OpenADE) national standard-setting discussions. We believe that there may be new alternatives for third-party access that may provide more cost-effective, convenient and secure methods for providing customer-authorized access than the original approach envisioned in recent years. For these reasons, PG&E recommends that the PD be clarified to require that the utilities, potential third-party users

of the access system, and Commission staff engage in a technical workshop and working group to develop consensus generic specifications for the third-party access program that take into account costs, third-party interest, likely customer participation, and alternative systems for providing the access consistent with protecting customer privacy and security while at the same time avoiding excessive implementation costs. PG&E believes this “technical working group” approach would be more in the interests of customers than simply mandating tariff filings by each of the utilities to implement third-party access.

D. The PD Should Clarify the Requirement for Pilot Studies on “Real Time” or “Near-Real Time” Customer Information Consistent with Marketplace Developments on Alternative Methods of Communicating Such Information

The PD appears somewhat ambivalent in its proposed new mandate that utilities commence pilot studies within 180 days to provide “price information to customers in real time or near-real time.” On the one hand, the PD acknowledges that real time or near-real time price information will become most useful *after* the deployment of HAN-enabled devices and implementation of dynamic pricing programs, neither of which events have occurred yet. (PD, p. 96). Accordingly, the PD refrains from ordering real time pricing information at this time, and instead states the Commission’s intent to reexamine the issue after HAN deployment. (*Id.*)

On the other hand, the PD goes ahead and orders the utilities to each initiate pilot studies to “explore useful and cost-effective ways to provide price information in real-time or near real-time.” (*Id.*)

PG&E supports the objective of further evaluation of alternative methods for providing real time and near-real time pricing information to customers, particularly alternatives that may be more cost effective, convenient and feasible than relying on utility HAN-enabled devices. Therefore, PG&E supports the PD’s objective. However, PG&E expects that testing and evaluation of the feasibility and cost-effectiveness of these alternative methods will need to precede “pilot studies” using actual customers. With that understanding as well as the potential for recovery of any incremental costs of the pilot studies, PG&E looks forward to working with

Commission staff and the other utilities to scope and initiate the studies.

V. CONCLUSION

PG&E commends the Assigned Commissioner, the ALJ, and CPUC staff for their national leadership on development of robust, effective customer privacy and security rules under SB 1476 and other laws. With the clarifications requested in these comments, PG&E urges Commission adoption of the PD.

Respectfully Submitted,

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By: _____ /s/
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Dated: June 2, 2011

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Appendix A – Recommended Changes to Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs

Findings of Fact

6. It is reasonable to require PG&E, SCE, and SDG&E to adopt policies applying to themselves and those with whom they contract in the provision of operational services that comply with SB 1476 and the privacy rules adopted in this decision. **Where the privacy rules require covered entities to notify customers regarding covered information, it is reasonable to authorize the utility to provide such notifications on behalf of all covered entities that are using covered information for primary purposes under contract with the utility.**

ORDER

IT IS ORDERED that:

2. Within 90 days of the mailing of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company must each file a Tier 3 advice letter including whatever tariff changes are necessary to conform its corporate policies concerning customer usage data to the Rules Regarding Privacy and Security Protections for Energy Usage Data in Attachment D of this decision. **The reasonable incremental costs of implementing the Rules shall be recorded in a memorandum account established by the advice letter and recoverable in the rates of each utility in its next general rate case.**

4. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company must each conduct independent audits of its data privacy and security practices, as required by Rule 9(d) of the Rules Regarding Privacy and Security Protections for Energy Usage Data in Attachment D of this decision, and must report the audit findings as part of each general rate case application filed after 2012. **The reasonable incremental costs of each audit shall be recorded in the memorandum account established under Ordering Paragraph 1 and recoverable in each utility's next general rate case.**

6. Pacific Gas and Electric Company and Southern California Edison Company shall continue to provide customers with price and usage data. Within six months of the mailing of this decision, Pacific Gas and Electric Company and Southern California Edison Company must each file a Tier 3 advice letter including tariff changes to make price, usage and cost information available to its customers online and updated at least on a daily basis, with each day's usage data, along with applicable price and cost details and with hourly or 15-minute granularity (matching the time granularity programmed into the customer's smart meter), available by the next day. The tariff changes must offer residential

customers bill-to-date, bill forecast data, projected month-end tiered rate, a rate calculator and notifications as the customers cross rate tiers as part of the pricing data provided to customers. The prices must state an “all in” price the customers pay for electricity. **The reasonable incremental costs of complying with this requirement shall be recorded in the memorandum account established under Ordering Paragraph 1 and recoverable in each utility’s next general rate case.**

7. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall each work with the California Independent System Operator in developing a methodology to make wholesale prices available to customers on each company’s website, and shall include the provision of wholesale prices in the advice letters required by Ordering Paragraphs 5 and 6 above. **The reasonable incremental costs of complying with this requirement shall be recorded in the memorandum account established under Ordering Paragraph 1 and recoverable in each utility’s next general rate case.**

8. Within six months of the mailing of this decision, Pacific Gas and Electric Company and Southern California Edison Company must each file a Tier 3 advice letter including tariff changes that proposes to provide third parties access to a customer’s usage data when authorized by the customer. The program and procedures must be consistent with the policies adopted in Ordering Paragraphs 6 and 7 and the Rules Regarding Privacy and Security Protections for Energy Usage Data in Attachment D of this decision. **Prior to the tariff filing, Commission staff shall hold a workshop to allow the utilities and interested parties to make recommendations on specifications for third party access programs in order to ensure cost-effectiveness and customer convenience, and in order to take into account developments in the marketplace and adoption of the OpenADE national standard. The reasonable incremental costs of complying with this requirement shall be recorded in the memorandum account established under Ordering Paragraph 1 and recoverable in each utility’s next general rate case.**

10. Within six months of the mailing of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company must each:

a) commence a pilot study to provide price information to customers in real time or near-real time. The pilot study shall be of a size that yields statistically meaningful results **and shall be designed and scheduled to take into account any necessary testing and evaluation of the feasibility and cost-effectiveness of alternative methods for providing such price information to customers.**

b) commence a pilot study and trial that permit Home Area Network enabled devices to be connected directly with Smart Meters. The pilot study and trial shall be of a size that yields statistically meaningful results **and shall be designed and scheduled to be consistent with the**

adoption of the Smart Energy Protocol 2.0 national HAN standard .
The reasonable incremental costs of complying with these pilot studies shall be recorded in the memorandum account established under Ordering Paragraph 1 and recoverable in each utility's next general rate case.