



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

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

Application No. 10-09-015
(Filed September 17, 2010)

**PACIFIC GAS AND ELECTRIC COMPANY'S PROTEST
TO THE APPLICATION OF HEATHER EPPS
FOR MODIFICATION OF D.06-07-027 AND D.09-03-026**

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

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Pursuant to Rule 2.6 of the Rules of Practice and Procedure of the California Public Utilities Commission (“CPUC” or “Commission”), Pacific Gas and Electric Company (“PG&E”) hereby protests and requests the dismissal of "Application of Heather Epps for Modification of D.06-07-027 and D.09-03-026" ("Application").

I. INTRODUCTION

The Application seeks to reopen PG&E's SmartMeter™ proceedings for the purpose of relitigating the Commission’s approval of PG&E’s SmartMeter™ Program and, in particular, the approved cost recovery for the SmartMeter™ technology upgrade. Specifically, Ms. Epps (the Applicant) requests that the CPUC modify prior Decision (D.) 06-07-027 and D.09-03-026 “to shift all costs related to the SmartMeter™ program upgrade onto PG&E and its investors.” (Application at p. 3) The Applicant alleges that PG&E needed to replace its initial advanced meters because it failed to properly test and research the meters, and because the meters were unable to perform necessary functions. These allegations are false and contrary to the factual records that exist in the two fully-litigated proceedings approving PG&E’s initial SmartMeter™ deployment (D.06-07-027) and SmartMeter™ program upgrade (D.09-03-026). The Application mischaracterizes the

reasons for PG&E's technology upgrade and fails to provide any declaration of new facts that would warrant a modification of PG&E's SmartMeter™ decisions. Accordingly, PG&E requests that the CPUC dismiss the Application.

II. PROCEDURAL BACKGROUND

A. CPUC Approval of PG&E's Original AMI Project (D.06-07-027)

In 2002, the Commission held a rulemaking that directed the utilities to consider programs that would offer customers improved options to reduce their electric use during high-demand periods. The Commission directed the California's investor-owned utilities to explore advanced metering infrastructure (AMI) technologies. In response to this Commission directive, on June 16, 2005, PG&E was the first California utility to apply to the CPUC for regulatory approval to install advanced meters for all of its electric and gas customers. On July 20, 2006, the Commission issued D.06-07-027 approving PG&E's original AMI project.

As part of the Commission approval of the AMI project in D.06-07-027, the Commission determined that there was "sufficient credible evidence to adopt as reasonable a project budget of \$1.7394 billion." (CoL 3, p. 65). The Commission further concluded that it was "reasonable to adopt a 10% shareholder and 90% ratepayer risk sharing of cost overruns not to exceed \$100 million beyond the total project costs...." (p. 66). The Commission concluded that PG&E would not be subject to an ex post reasonableness review of costs within the authorized budget, including the \$100 million sharing band. (id.)

B. CPUC Approval of PG&E's SmartMeter™ Upgrade Project (D.09-03-026)

In December 2007, PG&E filed an application to upgrade its AMI system by replacing the first generation advanced meters with second generation SmartMeter™ technology that used advanced solid state technology and allowed remote connect/disconnect capability and Home Area Network (HAN) interface. On March 13, 2009, the Commission approved PG&E's SmartMeter™ program upgrade in D.09-03-026.

The Commission authorized an incremental budget amount of \$466,760 million as part of its approval of PG&E's SmartMeter™ program upgrade. (D.09-03-026, p.152).

III. THE APPLICATION SEEKS TO REVISIT THE EXACT ISSUES THAT WERE FULLY LITIGATED AND DECIDED BY THE COMMISSION IN FINAL DECISIONS 06-07-027 AND 09-03-026

The Application seeks to revisit issues that were fully litigated and decided by the Commission in D.06-07-027 and D.09-03-026 -- i.e., whether the benefits of PG&E's SmartMeter™ program upgrade would outweigh the costs, and whether PG&E should recover the projected costs of its SmartMeter™ program. The Commission decisions that the Applicant seeks to modify are well-reasoned and based on comprehensive factual records developed through discovery, hearings and extensive briefings over the course of multiple years. The Applicant's request to modify the Commission's Decisions over a year after the Decisions were issued is a misguided attempt to revisit issues that have been conclusively decided by the Commission.

The Application relies on false, unsupported statements as its bases for seeking a modification of the Commission decisions approving PG&E's SmartMeter™ program. The Applicant alleges that PG&E needed to upgrade its first generation advanced metering technology because "PG&E did not properly test or research this technology ..." and because the meters were "unable to perform...necessary functions." (Application, p. 7). These allegations are false and are directly in conflict with the evidentiary record in the AMI and SmartMeter™ upgrade proceedings. (See, e.g., *Opening Brief of Pacific Gas and Electric Company*, in PG&E's Upgrade proceeding (A.07-12-009), stating that "[t]he deployment [of electromechanical advanced meters] has been successful and the meters are working as intended, generating operational benefits as meters are activated.") (August 29, 2008) (p. 29).

The record clearly demonstrates that PG&E sought authority to upgrade its previously approved advanced metering technology because customers would benefit from the substantial innovation and reduction in costs that had rapidly developed in the industry

since the time that PG&E first sought approval for its AMI project. (See D.09-03-026, p. 4.); (See also, PG&E SmartMeter™ Upgrade proceeding (A.07-12-009), Prepared Testimony, Upgrade Technologies and Deployment Plan, Ex. No. 2, stating that “[i]n PG&E’s original AMI Application, PG&E proposed...the deployment of electromechanical electric meters...,”and explaining that PG&E’s proposal to transition to solid state meters was “because the solid state meter [would] be the platform for the intelligent, integrated metering solution that [would] enable PG&E to provide a number of new capabilities including a HAN gateway device...and load limiting disconnect switches.”) (p. 1-6). In fact, the Applicant acknowledges that PG&E’s “stated reasons for ‘upgrading’ the entire Smart Meter™ system...were incorporating an integrated load-limiting connect/ disconnect switch..., incorporating a ...(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....” (See Application, p. 7).

In addition to ignoring the factual record and misrepresenting the reasons for PG&E’s Commission-approved technology upgrade, the Application criticizes and second-guesses the Commission’s cost-benefit analysis underlying the AMI and SmartMeter™ upgrade decisions. (See, e.g., the Applicant criticizing the Commission’s analysis by stating that “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....”) (p. 8) (emphasis added). Contrary to the Applicant’s unsupported statements, the Commission conducted an extensive cost-benefit analysis as part of the proceeding reviewing PG&E’s initial AMI Application, as well as an incremental cost benefit analysis in PG&E’s SmartMeter™ program upgrade proceeding. (See, D.06-07-027, Operational Costs and Benefits Section, p. 29, et al.; and D.09-03-026, Cost-Benefit Analysis Section, pp. 23-34). With respect to the additional costs incurred by PG&E to upgrade to the advanced technology, the Commission found that the adopted costs and benefits of the technology upgrade resulted in a net benefit, and concluded that “the Upgrade is cost effective.”

(D.09-03-026, p.153). The Commission's cost-benefit analysis directly refutes the Applicant's unsupported allegations that ratepayers are not benefitted by PG&E's upgraded technology as compared to the costs. The Commission's Decision is conclusive and should not be subject to attack just because the Applicant disagrees with the Commission's findings.

IV. THE STRUCTURE GROUP'S FINDINGS THAT PG&E'S SMARTMETER™ DEVICES AND RELATED BILLS ARE ACCURATE PROVIDE FURTHER EVIDENCE THAT THE COMMISSION SHOULD REJECT THE APPLICANT'S REQUEST TO MODIFY FINAL COMMISSION DECISIONS

The Applicant's argument that "countless complaints and outcry of customers" is evidence that "PG&E did not properly test or research [its initial advanced metering] technology" (Application, p. 7) is refuted by the Structure Consulting Group's (Structure Group) findings. The Commission retained the Structure Group, an independent third-party investigator, to conduct an end-to-end accuracy assessment of PG&E's SmartMeter™ program in response to consumer complaints about "unexpectedly high bills." (Structure Group Report, p. 11). The Structure Group found, *inter alia*, "that PG&E's SmartMeters™ are accurately recording electric usage...and are being accurately utilized in Customer billing." (p. 13). As part of its assessment, the Structure Group analyzed the increase in customer high bill complaints and identified "no relevant correlation between installed SmartMeters™, impacts to billing on installed SmartMeters™, and residential Customer SmartMeter™ high bill complaints." (p. 15). The Structure Group's findings further expose the speculative nature of the Applicant's allegations. The lack of correlation between increased high bill complaints and alleged systemic problems with SmartMeter™ technology is an additional reason to deny the Applicant's request to modify the Commission's decisions approving PG&E's SmartMeter™ program.

V. THE APPLICANT HAS FAILED TO MEET HER BURDEN OF PROOF REQUIRED TO DEMONSTRATE THAT A MODIFICATION OF A FINAL COMMISSION DECISION IS WARRANTED

The Application seeking to modify the two Commission decisions authorizing PG&E's SmartMeter™ projects is an impermissible collateral attack on final Commission decisions. Public Utilities Code Section 1709 provides that “[i]n all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.” Although currently styled as an Application, the Applicant originally filed her pleading as a Petition to Modify¹ and was directed by the CPUC docket office to refile the pleading as an Application. The substance of Ms. Epps' request for relief remains the same: a “[m]odification of Decision (D.)06-07-027, the CPUC's final decision regarding the application of PG&E for authority to deploy an Advanced Metering Infrastructure (AMI) project..., and D.09-03-026, the CPUC's final decision regarding PG&E's application to ‘upgrade’ the technology used in the SmartMeter program and recover costs for such upgrade.” (Application, p. 2). As such, the Applicant's pleading is substantively an action to attack and modify two final Commission decisions.

Given the relief sought, the Application should be governed by the Commission Rule of Practice and Procedure 16.4. Rule 16.4 provides, in part, that:

- (b) A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. *Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.* (Emphasis added.)

The Application does not include citations to the record and lacks any declaration or affidavit of new or changed facts as required by Rule 16.4. Further, the Commission

¹ On September 3, 2010 Heather Epps submitted to the CPUC docket office for filing a Petition for Modification of D.06-07-027 and D.09-03-027. The docket office rejected the pleading and directed Ms. Epps to refile the document as an Application. Consistent with the docket office guidance, on September 17, 2010, Ms. Epps refilled the pleading as Application of Heather Epps for Modification of D.06-07-027 and D.09-03-027. The filing was again rejected and was resubmitted on September 23, 2010. On September 27, the Application appeared on the CPUC Daily Calendar.

standard for revisiting and modifying final decisions pursuant to Rule 16.4 is a “persuasive indication of new facts or a major change in material circumstances.” (See, *Application of the Exposition Metro Line Construction Authority*, D.09-02-032, issued February 23, 2009). No new material facts exist here. The Applicant can not be permitted to ignore the evidentiary records underlying Commission decisions 06-07-027 and 09-03-026, and to substitute false allegations in their place.

VI. CONCLUSION

The Application is fatally flawed given that the Commission’s final decisions approving PG&E’s SmartMeter™ projects, and authorizing PG&E to recover the adopted costs of the technology upgrade are reasonable and supported by the evidentiary record. The Applicant has not identified any major new facts that would warrant modification of the Commission decisions. Accordingly, PG&E respectfully requests that the Commission summarily deny Heather Epps’ Application as an improper collateral attack on final Commission decisions.

Respectfully Submitted,

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Dated: October 27, 2010

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CERTIFICATE OF SERVICE BY ELECTRONIC MAIL OR U.S. MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, Post Office Box 7442, San Francisco, CA 94120.

On the **October 27, 2010**, I served a true copy of:

**PACIFIC GAS AND ELECTRIC COMPANY'S PROTEST
TO THE APPLICATION OF HEATHER EPPS
FOR MODIFICATION OF D.06-07-027 AND D.09-03-026**

- [XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for **A. 10-09-015, A. 05-06-028 and A. 07-12-009** with an e-mail address.
- [XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service list for **A. 10-09-015, A. 05-06-028 and A. 07-12-009** without an e-mail address.

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

Executed on October 27, 2010 at San Francisco, California.

/s/

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