



FILED

04-25-11

02:12 PM

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

Application of PACIFIC GAS AND ELECTRIC
COMPANY for Approval of Modifications to its Smart
Meter Program and Increased Revenue Requirements to
Recover the Costs of the Modifications

Application 11-03-014
(Filed March 24, 2011)

PROTEST OF THE COUNTY OF LAKE

Pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure, the County of Lake ("County") hereby submits this protest to the Pacific Gas and Electric Company's ("PG&E") Application for Approval of Modifications to its Smart Meter Program and Increased Revenue Requirements to Recover Costs of the Modifications ("Application") filed on March 24, 2011. Pursuant to Rule 2.6(a), protests to this Application are due Monday, April 25, 2011; thus, this filing is timely.

I. INTRODUCTION

On March 24, 2011, PG&E filed an application requesting Commission approval of modifications to its Smart Meter Program, Application 11-03-014. On April 14, 2011, the Commission ordered a preliminary determination that the Application belongs in a ratesetting category and a hearing is needed.

Based on the Application, PG&E, in summary, requested the following:

- (a) Approve PG&E’s proposed modifications to its existing Smart Meter Program (i.e., the “radio-off” option);
- (b) Approve as reasonable PG&E’s proposed up-front and monthly customer fees/rates, and “exit” fee for the Smart Meter radio-off option;
- (c) Adopt PG&E’s proposed balancing account to track up-front charges and ongoing fees/rates and the capital and expense revenue requirements associated with implementing the proposed “radio-off”-related modifications to the existing Smart Meter Program;
- (d) Approve the proposed forecasted incremental revenue requirements for 2012-2013 as presented in this Application as the starting point for up-front and ongoing fees/rates and determine that cost recovery and associated revenue requirements for the period after December 2013 shall be addressed in PG&E’s 2014 GRC Phase 1 and subsequent GRCs; and
- (e) Approve PG&E’s ratemaking proposals and mechanisms for the proposed modifications to PG&E’s existing Smart Meter Program, including establishing two-way balancing accounts in which to record the actual electric and gas revenue requirements and actual fees/revenue collected for the program, and authorizing PG&E to increase electric and gas rates effective on the date that PG&E implements the “radio off” option, to recover the costs of offering the option subject to annual true-up of the costs and forecasted revenue requirements.

II. IDENTIFIED ISSUES

County intends to conduct discovery and review PG&E’s applications, prepared testimony, and workpapers. While it is still too early to identify all issues, based on a preliminary

review of the application materials, County identifies the issues below in support of its protest. County reserves the right to raise any additional issues it finds over the course of discovery.

A. Fees Charges and Increase in Charges for the “Radio-Off” Option.

“All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.” Public Utilities Code Section 451.

The Commission is specifically required to fix just, reasonable, and sufficient rates and classifications for any public utility if after a hearing it finds that they are insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential. Public Utilities Code Section 728. The Commission has a mandate to protect the public interest in its oversight of utility actions and ensure that customers receive adequate service at just and reasonable rates. *PG&E Corp. v. Public Utilities Commission* (2004) 118 Cal.App.4th 1174, 1198 [13 Cal.Rptr.3d 630, 647-648].

The California Alternate Rates for Energy (CARE) program is a legislatively-mandated, financial assistance program to help low-income electric and gas customers pay for their utility bills. *See* Public Utilities Code Sections 739.1 and 739.2.

In order to meet legitimate needs of electric and gas customers who are unable to pay their electric and gas bills and who satisfy eligibility criteria for assistance, recognizing that electricity is a basic necessity, and that all residents of the state should be able to afford essential electricity and gas supplies, the Commission shall ensure that low-income ratepayers are not jeopardized or overburdened by monthly energy expenditures.

Public Utilities Code Section 382(b).

The Application’s proposed fee structure arbitrarily implements a twenty percent (20%) discount on CARE customers without applying any discount to customers enrolled in the Family

Electric Rate Assistance (FERA) program. PG&E justifies this twenty percent (20%) discount by way of covering for the “costs PG&E incurs to implement the program,” and none of the costs covered in the Application took into consideration the effect of these additional charges to CARE and FERA customers who were enrolled in these programs specifically to avoid additional charges to their electric bill. Eligible CARE customers currently receive a twenty percent (20%) discount from their electric bill. Charging an upfront \$105.00 to \$215.00 along with the \$11.00 to \$16.00 monthly charge would defeat the purpose of these low-income programs, as these additional charges would place these low-income customers at the same rate as Non-CARE customers who do not opt to have the radios in their Smart Meters turned off. Even with the Application’s proposed discount, the proposed fee structure for CARE customers would inevitably eliminate the discount that is already in place for CARE customers.

The Application claimed that the proposed charges would be used to pay for PG&E’s costs for implementing the program. However, the Application failed to show its monthly breakdown of costs and how the proposed charges would adequately cover these costs, and this leads to a potential overcompensation to PG&E at the expense of customers. Also, PG&E had every opportunity to account for these costs in its cost recovery proposal when it applied for the implementation and installation of Smart Meters. *See* Application 07-12-009. To claim that the option of turning off the radios was never contemplated in its application is unreasonable due to the fact that the “radio-off” option has always been available even when PG&E submitted its Application 07-12-009 for proposing the Smart Meter upgrade. To have its customers bear these extra charges for PG&E’s failure to account for them at the start of its Smart Meter upgrade application would be an unreasonable charge and burden on the customers.

B. Health, Privacy, Security, and Environmental Impacts of Smart Meters.

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 a necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public. Public Utilities Code Section 451.

A January 1, 2011 study by Sage Associates concluded that contrary to the findings of past studies on the health effects of Smart Meters, FCC compliance violations are likely to occur under widespread conditions of installation and operation of Smart Meters and collector meters in California. Sage Associates Environmental Consultants, *Assessment of Radiofrequency Microwave Radiation from Smart Meters* (January 1, 2011), at page 50. The study also recognized that

[p]eople who are afforded special protection under the federal Americans with Disabilities Act are not sufficiently acknowledged nor protected in the installation of Smart Meters. People who have medical and/or metal implants or other conditions rendering them vulnerable to health risks at lower levels than FCC [Federal Communications Commission] RF [i.e. radiofrequency radiation] limits may be particularly at risk. This is also likely to hold true for other subgroups, like children and people who are ill or taking medications, or are elderly, for they have different reactions to pulsed RF.

...

In summary, no positive assertion of safety can be made by the FCC, nor relied upon by the CPUC, with respect to pulsed RF when exposures are chronic and occur in the general population. Indiscriminate exposure to environmentally ubiquitous pulsed RF from the rollout of millions of new RF sources (smart meters) will mean far greater general population exposures, and potential health consequences. Uncertainties about the existing RF environment (how much RF exposure already exists), what kind of interior reflective environments exist (reflection factor), how interior space is utilized near walls), and other characteristics of residents (age, medical condition, medical implants, relative health, reliance on critical care equipment that may be subject to electronic interference, etc) and unrestrained access to areas of property where meter is located all argue for caution.³

Sage Associates Environmental Consultants, *Assessment of Radiofrequency Microwave Radiation from Smart Meters* (January 1, 2011), at pages 50-55. The Division of Ratepayer

Advocates also recognized this study in its January 31, 2011 report and recommended that the Commission address health risk issues raised by the Sage Associates as well as the other health risk factors not addressed by the California Council on Science and Technology. Division of Ratepayer Advocates (January 31, 2011), *Report on “Health Impacts of Radio Frequencies for Smart Meters”* at pages 1-3.

In its June 24, 2010 decision (D.100-60-47), the Commission ordered PG&E, Southern California Edison, and San Diego Gas & Electric to file an application no later than July 1, 2011 submitting its Smart Grid Deployment Plan, which must address security and privacy concerns present in the use of Smart Meters. As part of this plan, PG&E must address issues related to the collection, sharing, protection, retention, and access of customer data coming from the Smart Meters. *Id.*

The policy provisions of the California Environmental Quality Act (Public Resources Code §§ 21000 and 21001) apply to rate proceedings, and the public utilities Commission will consider potential environmental impact in rate matters. *In re Environmental Impact Reports* (1973) 75 Cal.P.U.C. 133. It is the policy of the state to

- (b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.
...
- (d) Ensure that the long-term protection of the environment, consistent with the provision of a decent home and suitable living environment for every Californian, shall be the guiding criterion in public decisions.
...
- (f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.
- (g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

Public Resources Code Sections 21001(b), (d), (f) and (g).

The mandatory installation of radiation-emitting Smart Meters violates basic rights granted by the State of California, overburdens utility easements, and violates local laws. The California Constitution, Article 1, Declaration of Rights, Section 1 states, “All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.” Mandatory installation of Smart Meters infringes on people’s rights to protect their property, life and liberty. The radiation emitted by Smart Meters is an environmental toxin which infringes on people’s rights to obtain safety. Existing utility franchise agreements generally lack specific provisions regarding RF emissions. PG&E’s installation of Smart Meters and associated infrastructure goes far beyond the intentions of utility easements incorporated into most if not all franchise agreements. Furthermore, standard homeowner’s insurance policies explicitly exclude RF damage from coverage, putting ratepayers at risk for hazards not contemplated in utility franchise agreements.

The Application proposes to charge all individuals who choose to have the “radio-off” option in the Smart Meter Program, but it fails to account for the potential, health, privacy, security, and environmental issues for those customers who want to utilize this “radio-off” option but do not have the means to pay the proposed additional charges. The study conducted by Sage Associates shows the latest health risks presented by Smart Meters in violation of Federal Communications Commission Regulations. The Commission has a responsibility to all consumers, and it has recognized that some customers with health concerns need an opt-out provision to the Smart Meter program. To allow PG&E to charge these customers would inevitably exclude those at-risk customers who cannot afford the extra charges for the opt-out. These health concerns, along with the lack of environmental impact recognition by PG&E in any

of its Smart Meter applications and the pending unresolved privacy and security issues discussed in the Commission's June 24, 2010 Decision 100-60-47, all show the inadequacy of PG&E's installation of Smart Meters and its associated fee structures.

III. PROCEDURAL MATTERS

In light of the discussion above regarding the health, privacy, and environmental issues of Smart Meters, the County believes that the Application should not be classified as rate-setting.

At this time, County expects that evidentiary hearings may be necessary. The primary issues to be considered are those discussed in Section II, although additional issues may arise during discovery.

IV. PROPOSED SCHEDULE

PG&E proposed a schedule that proposed a prehearing conference on April 7, 2011. In response, the Commission scheduled a prehearing conference for May 6, 2011. In light of County's need to conduct a meaningful review, County proposes the following schedule:

Application Filed	March 24, 2011
Protest Filed	April 25, 2011
Replies to protests and responses due	May 5, 2011
Prehearing Conference	May 6, 2011
County Testimony	June 6, 2011
PG&E Reply Testimony	July 6, 2011
Hearings begin (if necessary)	August 6, 2011
Opening Briefs	September 6, 2011
Reply Briefs	September 20, 2011
Proposed Decision	October 6, 2011

Comments on Proposed Decision

October 20, 2011

Reply Comments

October 25, 2011

Final Decision

November 4, 2011

V. CONCLUSION

For the reasons discussed above, County requests that the Commission impose a moratorium on the installation of Smart Meters pending the resolution of this proceeding due to the aforementioned health, privacy, security, and environmental concerns for customers who want the “radio-off” option but do not have the means to pay for the additional charges. In order to ensure that the proposed charges are just and reasonable and to promote the health, comfort, and convenience of the public, the Commission should impose such moratorium until such time that PG&E makes the “radio-off” option available to all customers or until the Commission resolves the health, privacy, security, and environmental concerns of these Smart Meters.

Respectfully submitted,
ANITA L. GRANT
County Counsel

By: /s/ LLOYD C. GUINTIVANO
Lloyd C. Guintivano
Deputy County Counsel
Attorney for the County of Lake
255 North Forbes Street
Lakeport, CA 95453
Telephone: (707) 263-2321
Facsimile: (707) 263-0702

April 25, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the “**PROTEST OF THE COUNTY OF LAKE**” on the service list for **A.11-03-014** by serving a copy to each party by electronic mail, or by mailing a properly addressed copy by first-class mail with postage prepaid to each party unable to accept service by electronic mail.

Executed on April 25, 2011, at Lakeport, California.

/s/ LLOYD C. GUINTIVANO
Lloyd C. Guintivano

NOTICE

Parties should notify the Process Office, Public
Utilities Commission, 505 Van Ness Avenue, Room 2000,
San Francisco, CA 94102, of any change of address and/or email
address to insure that they continue to receive
documents. You must indicate the proceeding number on the
service list on which your name appears.

SERVICE LIST FOR A.11-03-014

******PARTIES ******

Chonda Nwamu
PACIFIC GAS AND ELECTRIC
COMPANY
cjn3@pge.com

******STATE EMPLOYEE ******

Vanessa Vallarta
City Attorney
CITY OF SALINAS
vannesav@ci.salinas.ca.us

Karen P. Paull
Legal Division
kpp@cpuc.ca.gov

Hon. Timothy J. Sullivan
ADMINISTRATIVE LAW JUDGE
DIVISION
RM. 2106
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
tjs@cpuc.ca.gov

******INFORMATION ONLY ******

CALIFORNIA ENERGY MARKETS
cem@newsdata.com

Andrew Weisel
MACQUARIE CAPITAL
andrew.weisel@macquarie.com

MRW & ASSOCIATES, LLC
mrw@mrwassoc.com

Case Coordination
PACIFIC GAS AND ELECTRIC
COMPANY
regrelcpuccases@pge.com

Christopher Warner
PACIFIC GAS AND ELECTRIC
COMPANY
cjw5@pge.com

Sudi Scull
78 PERALTA STREET
SAN FRANCISCO CA 94110
(415) 282-8185