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Application 11-03-014

(Filed March 24, 2011)

Application of Pacific Gas and Electric Company (U 39 M) for Approval of Modifications to its Smart Meter Program and Increased Revenue Requirements to Recover the Costs of the Modifications.

PROTEST OF Alameda County Residents Concerned About Smart Meters

1. Introduction

Pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure, Alameda County Residents Concerned About Smart Meters (ACRCASM) submits this protest to the application of Pacific Gas and Electric Company (PG&E) for approval of modifications to its Smart Meter program which would allow residential customers to "opt out" of the program. ACRCASM objects to granting the approval sought in the application.

PG&E filed the application on March 24, 2011. Notice of the application appeared in the Commission's Daily Calendar on March 25. The due date for protests is Monday, April 25. ACRCASM will file this protest electronically on the due date.

2. Category of Proceeding

ACRCASM **does not concur** with PG&E's request to categorize the application as a ratesetting proceeding. (Application, p. 9.) It is, instead, a fee setting procedure, and is thus illegitimately categorized as ratesetting.

3. Grounds for Protest

3.1 The **first issue** is the injurious nature of Smartmeters to the health and well-being of some people. If the Smartmeter program is potentially injurious to the health of an increasing number of people, then the PG&E proposal to charge

individuals for deactivating that aspect of the Smartmeter that is injurious puts the cart before the horse by cynically admitting that the Smartmeter is possibly injurious while proceeding to install it anyway. Instead, recognition of the possibly injurious nature of the Smartmeter should lead to a cessation of the program and a redesign of the Smartmeter.

The exact nature and full extent of damage to the health of those individuals who react negatively to the microwave emissions from Smartmeters has yet to be studied. It remains a contested issue, which is in itself illegitimate. Those who suffer no adverse or injurious effects from exposure to Smartmeter radiations do not have the right, in a democracy, to speak for those who claim to have such adverse or injurious effects. While some scientific studies claim to find no physiological damage from low level microwave radiation, what needs to be studied carefully are the cases of those who claim damage. This cannot be done statistically, or in a laboratory. It must be done with respect to those specific cases in which the subject has launched a complaint. Those who suffer headaches, insomnia, ringing in the ears and other ailments (attributable to a Smartmeter insofar as the ailment disappears when the Smartmeter is wrapped in foil or otherwise shielded) are the ones who must be the subjects of study. And it is a fact that people have been driven from their homes by the unlivable conditions created by these Smartmeters, forced to find other domiciles where they will be free of microwave radiation.

It is necessary to understand that these Smartmeters radiate pulsed microwaves continuously, because they function in a mesh network. When PG&E states that they broadcast only once every 15 minutes (in one of their accounts), they are being disingenuous, because ignoring the mesh network operation. In addition, the mesh network emissions, because pulsed, are above FCC standards, though PG&E claims they are within FCC standards because only an average is taken and counted. Documentary proof of all this is extensive and extant, and will be brought a hearing on the matter.

Comprehensive studies of how pulsed microwaves effect human physiology have not been completed, though they are now in progress. Until that is done, with antidotes or cures developed, then the complaints have to be given standing as

heuristic data. Nevertheless, the studies that have been done can be brought to a public hearing, and will be.

To knowingly proceed with installation of these Smartmeters in full awareness of their possible injurious effects is to commit a criminal act. For PG&E to apply for a modification of such a program only makes that modification illegitimate before the fact. To the extent that PG&E knows that the Smartmeter is possibly injurious, which it admits by proposing its "opt-out" modification of the program, it should rather simply require the permission of the customer involved for installation. But that would not amount to a modification of the program, but its cessation at the boundary of the property that refuses installation.

There is a growing archive of personal accounts of the injurious effects of Smartmeter emissions on individual's lives. We, as an organization, are prepared to bring individuals to testify in open hearing to the damage to their well-being and style of life done by these Smartmeters. In addition, we are prepared to bring in affidavits testifying to this same damage from those who cannot come to testify in person. The numbers of people in this category of those suffering damage to their well-being is well into the hundreds in the Bay Area alone. Both PG&E and the CPUC have records of the myriad complaints, along with demands that the Smartmeter be removed. The exact number of those who have complained can be ascertained by discovery.

It is in recognition of this fact that a growing number of local governments, cities and counties, have taken a stance, either through prohibiting ordinance or resolution, calling for a halt of installation of these Smartmeters until their injuriousness can be studied, ascertained, and understood.

3.2 The **second issue** is the illegitimacy of installation of Smartmeters, given the limits of PG&E's rights, without the homeowner's permission. If the initial program is illegitimate, then its modification remains illegitimate as well.

According to the law, PG&E has the right to enter the property of any individual to read and to maintain its meters. This is called an easement. Electric and gas meters remain the property of PG&E. However, there is nothing in PG&E's easement

that legitimizes its installation in or on a residence of a sending and receiving antenna without the express consent of the owner. And this is emphatically the case where the installation of such a transmitting antenna as the Smartmeter uses proves to be injurious to the inhabitant of a residence.

To date, the costs of pursuing legal redress on this matter have been an obstacle to bringing PG&E and the CPUC to accounts before this element of the law. But should it ever get to court, it will be found that modification of PG&E's easement will require a vote of the people, either by initiative or by representative. Be assured that when the resources are acquired to bring this issue to court, it will also include the constitutional issue of the Smartmeters being an invasion of privacy in providing PG&E with hourly data on an individual's power usage.

In light of PG&E having overstepped its easement in installing Smartmeters without express permission of its customers, then its proposal to modify its Smartmeter program by allowing them to "purchase" the deactivation of the Smartmeter is itself illegitimate.

3.3 The **third issue** is the discriminatory nature of the imposed fees for "opting-out" of PG&E's Smartmeter program. To impose an additional tariff on a customer who refuses a Smartmeter is discriminatory against those of low income. It will amount to a higher percentage of their income than that of high income customers. It will therefore amount to a regressive tax on those who can least afford it. Since discrimination on the basis of class (measured by income) is prohibited in the US, except in the case of measures democratically authorized by vote (such as local or state sales taxes), PG&E's proposal is in violation of the laws of this land and the principles of this society, and should be voluntarily rescinded by PG&E in order to keep itself within the law and within our social ethics.

3.4 There is a **fourth issue**, another legal question that impacts PG&E's proposal to modify its Smartmeter program. I have already addressed the injuriousness to the health of some people, and made mention of the fact that the

detail of Smartmeter data collection can be interpreted as an invasion of privacy. A third factor is the vulnerability to which the Smartmeter subjects a residence. This results from the fact that these Smartmeters are hackable from the outside, meaning that an individual capable of doing so can tell when no one is home, and perhaps invade the residence at such a time.

This fourth issue concerns the actual nature of PG&E's response to these three negative aspects of its Smartmeters. In its proposal, PG&E will allow customers to "opt-out" of the program if they pay PG&E certain additional fees. Let me paraphrase what this implies. PG&E is saying to people, "we will install a device on your property that is possibly injurious to your health, is an invasion of your privacy, and which will constitute a vulnerability to your safety, and if you don't want us to do that, you will have to pay us money."

It is quite obvious which laws and statutes, at both the state and federal levels, are violated by this. Such a stance is easily recognized as extortion. Extortion is a felony. It is committed when an individual or agency threatens the well-being of an individual if some form of payment is not made to that agency. This is not simply the withdrawal of services in response to non-payment. If I purchase something (voluntarily) and do not pay, then what I have purchased can be legitimately repossessed. The extortionate character of PG&E's proposal lies in the fact that Smartmeter installation is involuntary from the perspective of the customer. And to the extent that the Smartmeter is injurious to the well-being of an individual, then its installation constitutes a threat. It is in the context of that threat that PG&E's proposal to charge fees to have the Smartmeters deactivated constitutes extortion, in a literal and legal sense.

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For the above reasons, ACRCASM believes that the specific relief requested in PG&E's application is not justified.

This can be further spelled out as follows.

1- No Smartmeter should be installed by PG&E without the homeowner/customer's explicit consent, a condition that would render PG&E's

proposed modification of its Smartmeter program moot, since non-permission would mean that PG&E could not extend its program to the property of the refusing party, and thus would have nothing to modify.

2- Restitution should be paid to those PG&E customers who have been injured, or whose life-style has been damaged, by PG&E's Smartmeter program, and that whatever costs PG&E has incurred in removing a Smartmeter from the residence of someone who has been so injured should be counted toward the costs of that restitution.

3- PG&E should voluntarily withdraw its proposal from consideration by the CPUC in the name of remaining a legitimate business that does not stand in violation of state or federal anti-discrimination law. It should voluntarily withdraw its proposal in the interest of not committing a felony, to wit, imposing an extortionary demand (a "protection racket") on its customers, in violation of the law. In place of its proposal, it should cease installation of Smartmeters wherever a customer refuses one, and remove all Smartmeters from residences in which the customers do not wish to have such a device on their property, replacing them by the former analog meters.

4. Effect of the Application on ACRCASM Members

ACRCASM has members that are residential customers of PG&E. ACRCASM believes that if the Commission grants PG&E's application, then

1- its members, and other people in California, will be subject to discriminatory procedures, should they agree with PG&E's proposed fees for "opting-out";

2- said members, as well as other people in California, would become victims of extortion;

3- its members, and other people in California, are already subject to an illegitimate procedure involving the installation of a Smartmeter where one is not wanted, in violation of PG&E's easement; and

4- after deactivation, its members, as well as other people in California, would face the insecurity inherent in the possibility that the Smartmeter could be reactivated

at PG&E's whim and will, resulting in possible injurious health effects, an invasion of privacy, and residence insecurity. (If PG&E is willing to commit extortion, then who can say what other unethical procedures, or violations of agreement, it might also be willing to commit.)

5. Request for Hearing

ACRCASM requests an evidentiary hearing in this matter. If a hearing is granted, ACRCASM intends to address the following issues at hearing:

1- a public recognition of the many cases in which injury to health, well-being, and style of life has occurred.

2- an investigation into precisely what the boundaries of PG&E's easement are, involving a public inquiry into the legitimacy of PG&E's program, and its having overstepped its easement.

3- an inquiry into the discriminatory nature (on the basis of class or income) of PG&E's proposal.

4- an investigation into the motivations and economic interests involved and at stake in PG&E's proposal to impose its extortionate procedure (in the name of "opting-out") on a victim populace.

The procedural schedule recommended by PG&E (Application, p. 11, with hearings) does not provide adequate time for discovery, preparation of testimony by intervenors, or preparation of a proposed decision. The Commission should consider the procedural schedule at a prehearing conference in this matter.

6. Conclusion

The Commission should not modify PG&E's requested relief, but instead totally reject PG&E's proposal for the purpose of preventing PG&E from committing illegal acts, protecting the people of California from becoming victims of PG&E's proposed illegal acts, and protecting the people of California from PG&E's injurious behavior

toward the health and well-being of the people in the interest of justice and legality. Instead, the Commission should call upon PG&E to institute a real "opt-out" alternative to its installation of Smartmeters, one which would entail simply leaving the analog meter installed, which would not involve a modification of its program but simply non-installation. In addition, the Commission should call upon PG&E to replace the original analog meter in those cases where the customer does not wish to have a Smartmeter, in the interest of legality and democracy.

The Commission should allow a reasonable time for discovery and analysis of PG&E's showing, followed by evidentiary hearings on contested issues. ACRCASM intends to participate in the hearings.

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Dated April 25, 2011, at Berkeley, California.

/s/ Steve Martinot

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CERTIFICATE OF SERVICE

I certify that I have by electronic mail this day served a true copy of the original attached "Protest of Alameda County Residents Concerned About Smart Meters" on all parties of record in this proceeding or their attorneys of record. I will mail paper copies of the pleading to Assigned Commissioner Michael Peevey, and Administrative Law Judge Timothy Sullivan.

Dated April 28, 2011, at Berkeley, California.

/s/ Steve Martinot

Steve Martinot