

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



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Application of EMF Safety Network for
Modification of D.06-07-027 and D.09-03-026.

Application No. 10-04-018
(Filed April 6, 2010)

**PACIFIC GAS AND ELECTRIC COMPANY'S REPLY TO THE
RESPONSE OF EMF SAFETY NETWORK TO MOTION OF PACIFIC
GAS AND ELECTRIC COMPANY TO DISMISS APPLICATION**

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Dated: June 11, 2010

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Pursuant to Rule 11.1(f) of the Rules of Practice and Procedure of the California Public Utilities Commission ("CPUC"), Pacific Gas and Electric Company ("PG&E") hereby replies to the response of EMF Safety Network ("Network") to PG&E's Motion to Dismiss Application 10-04-018. On May 28, 2010 PG&E received authorization to file this Reply from Administrative Law Judge Timothy J. Sullivan via voice message.^{1/}

I. INTRODUCTION

Network effectively concedes PG&E's point about Federal Communications Commission ("FCC") jurisdiction over radio frequency ("RF") emission issues by attempting in its Response to recast the nature of its Application. It now asserts that it merely seeks a generic "review of the health, safety and environmental impacts of the specific SmartMeter™ technologies that PG&E has chosen." (p. 1-2) However, a cursory review of Network's Application and even its Response demonstrates the uncandid nature of this attempted recharacterization. For example, in both pleadings Network complains about the FCC standards related to RF emissions (See e.g. Application at p. 2 and p. 10, and Response p. 2). In its Application it also requests hearings specifically on "RF health, environmental and safety impacts" (p. 2) and seeks relief specifically related to the "RF function of existing Smart Meters".

It is abundantly clear that Network hopes to convince the CPUC to second guess the FCC regarding RF standards and to further convince the CPUC to take various actions

^{1/} According to Rule 11.1 (f), PG&E's Reply is due June 11, 2010, ". . . within 10 days of the last day for filing responses. . . " . . . and the last date for filing Network's response was June 1, 2010.

because of Network's RF emission concerns. However, as discussed in PG&E's motion, the CPUC does not have the power to act in the manner Network suggests because this subject matter has been broadly preempted by the FCC. (See D.06-04-070). For this reason there is no purpose served by proceeding with Network's Application and it should be dismissed

II. ARGUMENT

PG&E will respond briefly to each of Network's seven points.

1. Network first argues that its "application does not ask for regulation of RF by the Commission (CPUC) but for the Commission (CPUC) to ensure the safe delivery of electric and gas service." First, PG&E disagrees that Network is not asking "for regulation of RF". As previously pointed out, Network is indeed seeking specific relief related to RF. Second, Network misapprehends the issue. While generally the CPUC can look at safety issues, the question here is whether or not the CPUC can take action that has the effect of interfering with FCC regulation. That is exactly what would happen if Network's requested relief were granted. As discussed in PG&E's motion, under the doctrine of federal preemption, the CPUC does not have the power to grant the relief Network is requesting.

Network cites §701 of the Public Utilities Code for the proposition that the CPUC has broad powers to regulate utilities. Network fails to mention that the Code also specifically contemplates the effect of federal preemption (See e.g. § 247). No mandate in the Code, however broad, can overcome the effect of federal preemption.

2. Network's second argument essentially makes the same untenable point. The relief Network requests would be at odds with the FCC's regulatory scheme. As is clear from Network's Application, it is seeking to have the wireless SmartMeter™ technology replaced with a wired technology or to return to old analog meters because of its concern about RF emissions. (Application p. 3) However, as discussed in PG&E's Motion, the SmartMeter™ technology has been subject to strict FCC requirements which include evaluation of RF exposure. Each certification report filed with the FCC contains

an analysis of RF fields from the perspective of compliance with FCC RF exposure rules. The SmartMeter™ devices are tested by independent laboratories and must comply with the very strict emission limits set by the FCC that preclude any exposure above the regulatory limits. Thus the CPUC does not have power to second guess FCC certification nor is there any need to do so. Requiring PG&E to replace the SmartMeter™ devices with a wired technology because of RF concerns would be tantamount to second-guessing the FCC.

3. In attempting to limit the debate to "personal wireless service facilities", Network is misunderstanding the thrust of PG&E's argument. PG&E is not relying on the one code section Network is referring to. Rather it is making the point that the entire field of RF emissions is preempted because it falls within the purview of the FCC.

For example, in *Freeman v. Burlington Broadcasters, Inc.*, 204 F.3d, 311, 320 (2000), the court stated: "Of the various forms of federal preemption, the most pertinent to the pending inquiry is so-called 'field preemption': state law is preempted when the 'scheme of federal regulation [is] so pervasive as to make reasonable the inference that Congress left no room for the State to Supplement it'." The court went on to review various statutes related to the FCC's jurisdiction and then concluded because of the statutory examples that the FCC possessed exclusive authority over all technical matters related to radio broadcasting. Clearly, the FCC's jurisdiction is not limited to "just personal wireless service facilities." The statute cited is a specific example of the FCC's intent to occupy the field of RF regulation.

4. Network's fourth argument actually makes PG&E's point. Here Network complains that it is dissatisfied with the FCC's standards. For example, it states: "That these devices meet FCC standards does not mean they are without health and environmental risks." Based upon this assertion, Network goes on to invite CPUC action. However, the law is clear that the CPUC cannot do this. Further, as discussed in PG&E's Motion, the CPUC agrees that it cannot.

5. Network next attempts to encourage the CPUC to act on RF health issues because it previously addressed the electric and magnetic field (EMF) health issue. The EMF issue involves low frequency power lines that are not regulated by the FCC. In contrast, however, SmartMeter™ devices operate at a higher frequency that is regulated by the FCC.^{2/} Thus, the EMF example provided by Network provides no justification for CPUC action on RF issues.

6. Network next requests that the CPUC expand into the RF information gathering business. Network consciously ignores the fact that vast amounts of information on RF are already publicly available through the FCC. It would be a senseless waste of resources for the CPUC to gather information about a subject which it has no expertise in and cannot regulate.

7. Finally, Network quibbles with a statement in the declaration of Daniel M. Partridge, namely that SmartMeter™ radio signals are "blocked by walls from human inhabitants." The magnitude of the signals entering the home will be very substantially diminished because the wall has the effect of attenuating the radio signal. The point PG&E was making is obvious. SmartMeter™ devices provide far less RF exposure than many devices commonly in use in our society.

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^{2/} The power grid in North America typically operates at 60Hz. The FCC regulates 300kHz to 100GHz. <http://www.fcc.gov/oet/rfsafety/>. SmartMeter™ frequencies are discussed in PG&E's Motion.

III. CONCLUSION

The law is clear that the subject of RF emissions is broadly preempted by federal law. The CPUC does not have the power to grant the relief Network requests. Network's Application therefore should be dismissed.

Respectfully Submitted,

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By: _____ /s/

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Dated: June 11, 2010

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PACIFIC GAS AND ELECTRIC COMPANY

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 **June 11, 2010**, I served a true copy of:

**PACIFIC GAS AND ELECTRIC COMPANY'S REPLY TO THE RESPONSE OF EMF
SAFETY NETWORK TO MOTION OF PACIFIC GAS AND ELECTRIC COMPANY
TO DISMISS APPLICATION**

- [XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for **A. 10-04-018** 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. 10-04-018**, 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 June 11, 2010 at San Francisco, California.

/s/
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