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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of Modifications to its SmartMeter™ Program and Increased Revenue Requirements to Recover the Costs of the Modifications (U39M).

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

And Related Matters.

Application 11-03-015
Application 11-07-020

ASSIGNED COMMISSIONER'S RULING AMENDING SCOPE OF PROCEEDING TO ADD A SECOND PHASE

This Assigned Commissioner's ruling amends the scope of this proceeding to add a second phase to the above proceedings. The amended scoping memo and ruling (Amended Scoping Ruling) sets forth issues to be addressed and schedule of the proceeding, and designates the presiding officer pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules).

1. Background

On February 1, 2012, the Commission issued Decision (D.) 12-02-014, which modified Pacific Gas and Electric Company's (PG&E) SmartMeter Program to include an option for those residential customers who did not wish

to have a wireless smart meter¹ Similar decisions were issued for San Diego Gas & Electric Company (SDG&E) in D.12-04-019 and for Southern California Edison Company (SCE) in D.12-04-018.² The Opt-Out Decisions adopted interim fees for those customers electing to participate in the opt-out option and directed that a separate phase be initiated to consider cost and cost allocation issues associated with opt-out options. The decisions also directed that the second phase consider whether the opt-out option should be extended to communities, such as local governments and residents of apartment buildings or condominium complexes.

On April 24, 2012, the assigned Administrative Law Judge (ALJ) issued a ruling that consolidated Application (A.) 11-03-014, A.11-03-015 and A.11-07-020 for purposes of considering the issues identified in the Opt-Out Decisions for Phase 2 and noticed a prehearing conference (PHC). The PHC was held on May 16, 2012.

2. Scope

Parties were provided an opportunity to comment on what issues should be included in the scope of Phase 2 in PHC statements and at the PHC.

PHC statements were filed by:

- Center for Electrosmog Prevention (CEP)
- County of Lake
- EMF Safety Network (Network)
- Jointly by PG&E and SDG&E
- SCE

¹ As used in this proceeding, a wireless smart meter is a digital electric or gas meter that transmits customer usage data through radio transmission.

² D.12-02-014, D.12-04-018 and D.12-04-019 are collectively referred to as the "Opt-Out Decisions."

- Southern Californians for Wired Solutions to Smart Meters
- Utility Consumers' Action Network
- Wilner & Associates (Wilner)

The Opt-Out Decisions identified two main issues as being: (1) cost and cost allocation, and (2) whether to adopt a community opt-out option. Some of the PHC statements propose that the scope of Phase 2 be expanded to consider whether the utilities' deployment of their advanced metering infrastructure projects affected human health. There was also discussion at the PHC on whether it would be appropriate to expand the scope to include the effect of RF emissions from smart meters on health. Various parties argued that cost and cost allocation issues cannot be determined without considering whether the adopted analog meter opt-out option resolves the alleged health concerns raised by some parties and the public.

Upon consideration of the arguments raised, I am not persuaded that it would be appropriate to expand the scope to review the alleged health impacts of smart meters. The purpose of these proceedings is to adopt an opt-out option for residential customers who do not wish to have a wireless smart meter. As stated in the Opt-Out Decisions, the opt-out option is available to all residential customers who wish to have an analog meter instead of a wireless smart meter. Phase 2 is to consider cost and cost allocation issues associated with providing an opt-out option and whether to expand the opt-out option to allow for a community opt-out option. Due to the narrow focus of this phase, it would be inappropriate to expand the scope to consider health issues. Moreover, many of the proposed issues would extend beyond the smart meter itself³ or seek to

³ For example, Wilner proposed that the scope include a review of "what future services will be offered by PG&E, SDG&E and SCE utilizing their SmartMeter

Footnote continued on next page

reconsider prior Commission decisions and policies.⁴ For these reasons, the scope of issues shall be:

1. Cost and cost allocation issues, including:
 - a. What are the utility costs associated with offering an analog meter opt-out option?
 - b. Should more than one opt-out option be offered to customers who do not wish to have a wireless smart meter (e.g., a digital, non-communicating meter)? Consideration of this issue will include determining whether different fees should be assessed based on the type of opt-out meter selected by the customer and, if so, the level of these fees.
 - c. Should all costs associated with the opt-out option be paid by only those customers electing the option, or should some portion of these costs be allocated to all ratepayers and/or to utility shareholders?
 - d. What fees should be assessed on customers who elect the opt-out option and should the fees be assessed on a per meter or per location basis?
 - e. Should there be different fees based on whether the customer is selecting to opt-out of a single commodity or two commodities?
 - f. Should there be an “exit fee” imposed on customers who elect the opt-out option and return to a wireless smart meter?

deployment and mesh networks” (*Wilner and Associates Prehearing Conference Statement* at 3.)

⁴ For example, CEP proposed that the scope include consideration of safety requirements for energy services, California energy policies and smart grid. (*Center for Electrosmog Prevention’s Prehearing Conference Statement* at 3.)

2. Should the opt-out option be extended to local governments and communities?
 - a. Will the costs associated with this option, and the fees to be charged to community opt-out participants, be different than those assessed for individual opt-out participants?
 - b. Are there statutory or contractual restrictions associated with allowing local governments or multi-unit dwellings to participate in a community opt-out option?
 - c. How would non-residential customers, or customers who wish to have a wireless smart meter, be accommodated?

Based on the issues to be considered, there was discussion on whether certain issues could be resolved through workshops or the filing of briefs, rather than evidentiary hearings. I believe that a few aspects of the cost allocation and community opt-out issues are purely legal in nature and could be resolved through the filing of briefs. Several of these aspects were identified by the ALJ at the PHC. Further, although I find that the scope of this phase should not be expanded to include the consideration of health issues, I believe that parties should brief the issue of whether the Americans with Disabilities Act or Pub. Util. Code § 453(b) limit the Commission's ability to adopt opt-out fees for those residential customers who are required to have an analog meter for medical reasons. Consequently, parties are requested to brief the following questions. For each of the questions, the party shall cite to the specific legal or statutory authority in support of its response.

1. Does an opt-out fee, which is assessed on every residential customer who elects to not have a wireless smart meter installed in his/her location, violate the Americans with Disabilities Act or Pub. Util. Code § 453(b)?

2. Do the Americans with Disabilities Act or Pub. Util. Code § 453(b) limit the Commission's ability to adopt opt-out fees for those residential customers who elect to have an analog meter for medical reasons?
3. Can the Commission delegate its authority to allow local governments or communities to determine what type of electric or gas meter can be installed within the government or community's defined boundaries? If so, are there any limitations?
4. How should the term "community" be defined for purposes of allowing an opt-out option?
 - a. Would the proposed definition require modifications to existing utility tariffs?
 - b. Would the proposed definition conflict with existing contractual relationships or property rights?
5. If a local government (town or county) is able to select a community opt-out option on behalf of everyone within its jurisdiction and the opt-out includes an opt-out fee to be paid by those represented by the local government, would this fee constitute a tax?

Along with the legal briefing regarding whether permitting a community opt-out option would be lawful, intervenors advocating adoption of a community opt-out option should include testimony on the following, assuming that a community opt-out option is adopted:

1. What requirements and procedures should the Commission establish to ensure that a community has properly elected to opt-out? Should there be an appeals process before the Commission if a customer within the community's boundaries challenges the determination?
2. How will a community electing to opt-out accommodate residential customers who wish to retain their smart meters (i.e., not opt-out) and commercial customers within its boundaries?

3. Public Participation Hearings

Based on discussion at the PHC, there is interest in holding public participation hearings (PPH) concerning cost and cost allocation issues. Based on the constraints presented by the current State budget, I believe that a maximum of four PPHs should be considered. As directed by the assigned ALJ, Network shall work with the utilities and intervenors to determine the appropriate locations and proposed dates for PPH and provide that information to the assigned ALJ no later than July 16, 2012.

4. Schedule

The applications were consolidated so that the cost and cost allocation issues could be addressed in a comprehensive and efficient manner. In determining the schedule to complete Phase 2, sufficient time must be provided to the utilities to prepare and/or update their cost estimates. I realize that the utilities are at different stages in implementing their opt-out options and, thus, the amount of time required for each utility to have this information ready will differ. Additionally, Southern California Gas Company (SoCalGas), which has not yet commenced deployment of gas smart meters in its service territory, has stated its intent to be a party in this proceeding.⁵ The schedule adopted below takes these matters into consideration, along with parties' scheduling constraints and end-of-year holidays.

It is the desire of this Commission to encourage parties to settle disputed issues. As such, the schedule includes a mandatory settlement conference. The

⁵ On May 11, 2012, SoCalGas filed A.12-05-016 to establish an Advanced Meter Opt-Out Program. The proposed program would be substantially similar to the opt-out options adopted for PG&E, SCE and SDG&E.

utilities are directed to schedule this conference. Parties shall contact the assigned ALJ if they would like a Commission mediator assigned to facilitate. Upon completion of this meeting, parties shall inform the assigned ALJ whether they wish to continue to explore settlement opportunities in this proceeding.

Legal briefing addressing the five questions raised above shall occur first and a proposed decision on the issues raised in those questions shall be issued prior to evidentiary hearings. The schedule for the filing of briefs shall be:

EVENT	DATE
Opening Briefs	June 29, 2012
Reply Briefs	July 13, 2012
Proposed Decision Mailed	August 2012
Comments on Proposed Decision	20 days after mailing
Reply Comments on Proposed Decision	5 days after Opening Comments
Final Commission Decision	September 2012

The evidentiary hearings shall begin on November 5, 2012 in the Commission’s Courtroom at 505 Van Ness Avenue, San Francisco, CA. The first day of hearings will begin at 10:00 a.m.; on all subsequent days hearings will begin at 9:30 a.m.

EVENT	DATE
Prehearing Conference	May 16, 2012
PG&E, SCE, SDG&E and SoCalGas Serve Cost and Cost Allocation Testimony	August 10, 2012
Intervenor Testimony Served	September 28, 2012
Concurrent Rebuttal Testimony	October 19, 2012
Mandatory Settlement Conference	No later than October 26, 2012
Public Participation Hearings	To Be Determined
Evidentiary Hearings	November 5 - 16, 2012 Commission Courtroom State Office Building 505 Van Ness Avenue

	San Francisco, CA 94102
Opening Briefs	December 21, 2012
Reply Briefs	January 14, 2013
Request for Final Oral Argument	January 19, 2013
Anticipated Proposed Decision Mailed	April 2013
Comments on Proposed Decision	20 days after mailing
Reply Comments on Proposed Decision	5 days after Opening Comments
Anticipated Final Commission Decision	May 2013

The Assigned Commissioner or ALJ may modify the schedule as necessary. In any event, we anticipate this proceeding will be resolved within 18 months from the date of this Amended Scoping Memo, pursuant to the requirements of Pub. Util. Code § 1701.5.

5. Hearing Preparation

On or before November 1, 2012, SCE is directed to organize a telephonic meet-and-confer conference with all parties to identify the issues on which the hearings will focus, key disputes, and any stipulations or settlements. Parties should also use the meet-and-confer to discuss witness schedules, time estimates from each party for the cross-examination of witnesses, scheduling concerns, and the order of cross-examination. A list with the witness schedule and cross-examination estimates shall be submitted to the ALJ by 5:00 p.m. on November 1, 2012.

By the conclusion of the hearings, parties must agree on a briefing outline and use that outline for the opening and reply briefs.

6. Discovery

Discovery will be conducted according to Article 11 of the Rules. If the parties have discovery disputes they are unable to resolve by meeting and

conferring, they shall raise these disputes under the Commission's Law and Motion procedure. (*See* Rule 11.3.)

7. Final Oral Argument

Pursuant to Rule 13.13(b), a party in a ratesetting proceeding has the right to make a final oral argument before the Commission if the final oral argument is requested within the time and manner specified in the scoping memo or later ruling. In this proceeding, any party seeking to present a final oral argument shall file and serve a motion within 5 days of the filing date of reply briefs.

The motion shall state the request, the subjects to be addressed at oral argument, the amount of time requested, any recommended procedure and order of presentations, and all other relevant matters. The motion shall contain all the information necessary for the Commission to make an informed ruling on the motion and to provide an efficient, fair, equitable, and reasonable final oral argument. If more than one party seeks the opportunity for final oral argument, parties shall use their best efforts to present a joint motion, including a joint recommendation on procedure, order of presentations, and anything else relevant to the motion. Responses to the motion may be filed.

If no hearings are held in this proceeding, Rule 13.13(b) indicates that a party's right to make a final oral argument ceases to exist. As provided for in Rule 13.13(a), the Commission may still, on its own motion or upon the recommendation of the assigned Commissioner or ALJ, schedule a final oral argument.

8. Filing, Service and Service List

The official service list for Phase 2 was created at the May 16, 2012 PHC and is now on the Commission's website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the

Commission's Process office, the service list, and the judge. Prior to serving any document, each party must ensure that it is using the most up-to-date service list. The list on the Commission's web site meets that definition.

Electronic service is now the standard under Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Parties are reminded that, when serving copies of documents, the document format must be consistent with the requirements set forth in Rule 1.10(a).

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing. All documents formally filed with the Commission's Docket Office must include the caption approved by the Docket Office and this caption must be accurate.

Other documents, including prepared testimony, are served on the service list but not filed with the Docket Office. We will follow the electronic service protocols adopted by the Commission in Rule 1.10, whether formally filed or just served. This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. Additionally, parties shall serve paper copies of all filings on the presiding officer and Assigned Commissioner.

9. *Ex Parte* Communications

In ratesetting proceedings, *ex parte* communications with the assigned Commissioner, other Commissioners, their advisors and the ALJ are only permitted as described in Public Utilities Code Section 1701.3(c) and Rules 8.2, 8.3 and 8.5.

10. Intervenor Compensation

A party who intends to seek an award of compensation pursuant to Pub. Util. Code §§ 1801-1812 should file and serve a notice of intent to claim compensation no later than 30 days after the May 16, 2012 PHC.⁶ Under the Commission's Rules, future opportunities may arise for such filings but such an opportunity is not guaranteed.

In this proceeding, parties intending to seek an award of intervenor compensation must maintain daily record keeping for all hours charged and a sufficient description for each time entry. Sufficient means more detail than just "review correspondence" or "research" or "attend meeting". In addition, intervenors must classify time by issue. When submitting requests for compensation, the hourly data should be presented in an Excel spreadsheet.

As reflected in the provisions set forth in Pub. Util. Code § 1801.3(f) and § 1802.5, all parties seeking an award of intervenor compensation must coordinate their analysis and presentation with other parties to avoid duplication.

11. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to public.advisor@cpuc.ca.gov.

⁶ Pub. Util. Code § 1804(a)(1).

12. Presiding Officer

Pursuant to Public Utilities Code Section 1701.3 and Rule 13.2, ALJ Amy C. Yip-Kikugawa is designated as the presiding officer.

IT IS RULED that:

1. The issues to be resolved in this proceeding are listed in Section 2 of this Amended Scoping Ruling.
2. The procedural schedule is listed in Section 4 of this Amended Scoping Ruling.
3. The prepared testimony in this proceeding shall be electronically served on the entire service list on the dates set forth in the adopted procedural schedule, and hard copies are to be provided to the assigned Commissioner and Administrative Law Judges.
4. Administrative Law Judge Amy C. Yip-Kikugawa is designated the presiding officer for this proceeding.
5. Rules 8.2, 8.3 and 8.5 governing *ex parte* communications apply to this proceeding.

Dated June 8, 2012, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner