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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY (U-39-E) for Authority to Increase Revenue Requirements to Recover the Costs to Upgrade its SmartMeter™ Program	Application No. 07-12-009 (Filed December 12, 2007)

PREHEARING CONFERENCE STATEMENT OF THE CITY AND COUNTY OF SAN FRANCISCO

INTRODUCTION

The City and County of San Francisco ("City") submits this Prehearing Conference Statement, pursuant to the Administrative Law Judge's Ruling Setting Prehearing Conference dated August 6, 2010 ("ALJ Ruling"). The City is authorized to state that the County of Santa Cruz, and the Cities of Santa Cruz and Scotts Valley join in this Prehearing Conference Statement.

The California Public Utilities Commission ("Commission") should act now and grant the City's request for a temporary suspension of SmartMeter deployment by Pacific Gas and Electric Co. ("PG&E"). There is no need to wait until The Structure Group has issued its report, nor are there any factual disputes or legal issues that require any hearings before the Commission could suspend PG&E's SmartMeter deployment. Almost 60 days have passed since the City filed its petition, and during that time PG&E has probably installed more than 425,000 additional SmartMeters.[1] The Commission

[1] As of August 8, 2010, PG&E estimates that it has installed 6,431,626 SmartMeters. (*See* http://www.pge.com/myhome/customerservice/smartmeter/programupdates). On June 18, 2010, the day after the City filed its Petition, PG&E estimated that it had installed 6,007,536 SmartMeters. (*See* http://www.pge.com/includes/docs/pdfs/myhome/customerservice/meter/smartmeter/SmartMeterProgramData_7-06-10.pdf.)

must act now in order to prevent any further harm to ratepayers, and to assuage increasing customer concern over the accuracy and safety of SmartMeters.

THE CITY'S PETITION FOR MODIFICATION

On June 17, 2010, the City filed a petition to modify Decision ("D.") 09-03-026 ("Petition"). In D.09-03-026, the Commission granted PG&E's application to increase revenue requirements and recover the costs to upgrade its SmartMeter Program. In its Petition, the City has asked the Commission to modify D.09-03-026 by temporarily suspending PG&E's deployment of its SmartMeters until the Commission's investigation of that deployment is complete.[2] The City filed its Petition because of mounting evidence that PG&E's SmartMeter deployment was harming ratepayers.

THE CITY'S RESPONSE TO THE QUESTIONS CONTAINED IN THE ALJ RULING

The ALJ Ruling establishes a prehearing conference and invites parties to file prehearing conference statements addressing three specific issues. Each of those issues is discussed below.

1. Do available facts support the immediate suspension of PG&E's program of installing SmartMeters™?

Yes, available facts support the immediate suspension of the SmartMeter installation program. In its Petition, the City provided extensive evidence of the problems PG&E has had with its SmartMeter deployment.[3] Those facts were taken almost entirely from reports that the Commission had ordered PG&E to make available to the general public. Those reports demonstrate that the Commission's

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[2] The Cities of Capitola, Santa Cruz, Monte Sereno, and Scotts Valley, the Town of Fairfax, the County of Santa Cruz, and TURN all joined in the City's petition.
[3] *See* Petition, pp.3-7.

immediate suspension of PG&E's SmartMeter deployment is necessary in order to prevent further harm to ratepayers.[4]

There is also no evidence that a moratorium would impose unreasonable costs on PG&E's ratepayers. As the Division of Ratepayer Advocates notes, a "temporary suspension of deployment pending the Commission's investigation would have cost consequences, but there are potential cost consequences to not suspending deployment, too."[5] PG&E asserts that suspending SmartMeter deployment "could trigger a variety of operational expenses and impacts"[6], but PG&E has not substantiated that claim even though it had ample opportunity to do so. This information should be readily available to PG&E. If the facts supported the Commission denying the City's Petition simply because it was too expensive, PG&E should have provided the Commission with evidence to support that assertion. Its failure to do so is telling.

2. Should the Commission defer action until receipt of the report researching the new meters and the installation program? Is it possible to commence with this proceeding in a way that permits the incorporation of the projected Commission report?

In answer to the first question, no. The Commission should not defer action on the City's Petition until after the investigation is complete. While the report is due at the end of the summer, there is no guarantee that it will be completed on time. Meanwhile, PG&E continues to install hundreds of thousands of SmartMeters each

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[4] In its opposition to the City's petition, PG&E does little to refute those facts. Rather, PG&E simply asserts – with limited citation to the record – that "available evidence" demonstrates that "PG&E's SmartMeter™ technology is accurate and reliable, already is helping customers to better manage their power usage, and is a considerable improvement over PG&E's legacy metering technology." PG&E's Opposition to the City's Petition to Modify Decision 09-03-026 ("PG&E Opposition"), p.3.

[5] DRA Response to the City's Petition to Modify Decision 09-03-026, p.1.

[6] PG&E Opposition, p.5.

month.[7] If the Commission fails to act now, PG&E could continue to subject thousands of new PG&E customers to the problems that have already arisen in many communities where PG&E has deployed SmartMeters. Furthermore, the Commission does little to assuage ratepayer concerns by allowing the installations to continue despite the pending investigation. The record before the Commission is sufficient to establish the need for immediate Commission action.

In fact, the Commission's failure to act on the City's Petition has led at least one community to take action on its own. The Town of Fairfax recently imposed its own six-month moratorium on the installation of SmartMeters.[8] The Town Council expressed concerns about both the accuracy of PG&E's SmartMeters and electromagnetic frequency radiation emitted from the SmartMeters.[9] In adopting the moratorium as an "urgency ordinance," the Town Council found that "[t]here is a current and immediate threat to the public health, safety and welfare." [10] Violations of the moratorium are punishable as a misdemeanor.[11]

In answer to the second question, it may be *possible* for the Commission to move forward with this proceeding in a way that incorporates The Structure Group's report. Nonetheless, doing so would limit the Commission's ability to use the report to protect ratepayers.

As discussed above, while the Commission waits for the report PG&E will continue to install tens of thousands (or possibly hundreds of thousands) of new SmartMeters. Only by suspending the installation of SmartMeters *now* will the

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[7] According to PG&E, in an average week PG&E installs over 60,000 SmartMeters. (*See* PG&E SmartMeter Report, p.7 (June, 2010).)

[8] A copy of the Town of Fairfax Ordinance No. 752 is attached hereto. The Town chose six months with the expectation that the Commission will have acted on the City's Petition by then. Ordinance No. 752, § I.J.

[9] Ordinance No. 752, §§ I.F, I.H, I.I.

[10] Ordinance No. 752, § I.K.

[11] Ordinance No. 752, § II(2).

Commission ensure that its investigation will be more than just a forensic exercise. The Commission should not waste this opportunity to correct problems with PG&E's SmartMeter deployment now – while there are still millions of SmartMeters yet to be deployed.[12]

3. If the Commission elects to consider this Petition further, what should be the scope and timetable of its review of the SmartMeter™ program. If hearings are recommended, what are the factual issues in dispute? What, if any legal issues are implicated?

The City respectfully requests that the Commission act on the City's Petition immediately. Hearings are not required. There are no factual or legal issues that need to be resolved at a hearing for the Commission to suspend PG&E's SmartMeter deployment as requested in the Petition.

As a factual matter, the City's Petition provides the Commission with ample evidence to modify D.09-03-026 by suspending SmartMeter deployment.[13] PG&E's admittedly poor installation history, public concern over the efficacy of meters, and the pending Commission investigation provide good cause to issue a temporary stay. Furthermore, the proceedings before the Commission on the City's Petition have provided PG&E with an adequate opportunity to address the City's assertions.

As a legal mater, it is appropriate for the Commission to grant temporary relief without an evidentiary hearing.[14] In addition, the Commission has recognized its authority and duty to stay a decision that results in confusion or uncertainty, pending

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[12] According to PG&E, as of July 23, 2010 PG&E has installed over 6.3 million SmartMeters and has some 3.2 million to go before its deployment is complete. (*See* http://pge.com/includes/docs/pdfs/myhome/customerservice/meter/smartmeter/SmartMeterProgramData_8-10-10.pdf.)

[13] *See* Petition, pp.3-7.

[14] *See* D.10-05-018, *Order Instituting Rulemaking to Develop Additional Methods to Implement the California Renewables Portfolio Standard Program* (May 6, 2010) (Commission order staying D.10-03-021).

Commission resolution of those issues.[15] The City showed both in its Petition and in its Reply to PG&E's Opposition that this is such a case.[16]

For the reasons stated in the record of this proceeding, the Commission should grant the City's request for a temporary suspension of SmartMeter installations.

Dated: August 16, 2010

Respectfully submitted,

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[15] *See* D.04-04-018, *In the Matter of the Application of Southern California Water Company (U 133-W), for an Order Authorizing it to Increase Rates for Water Service*, 2004 Cal. PUC LEXIS 113 (April 1, 2004).

[16] *See* Petition, p.11; City's Reply to PG&E's Opposition to the City's Petition, pp.2-3.

CERTIFICATE OF SERVICE

I, **KIANA DAVIS,** declare that:

I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within action. My business address is City Attorney's Office, City Hall, Room 234, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102; telephone (415) 554-4698.

On August 16, 2010, I served the attached **PREHEARING CONFERENCE STATEMENT OF PETITIONER THE CITY AND COUNTY OF SAN FRANCISCO** by electronic mail on the CPUC Service List, Proceeding No. A0712009.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 16, 2010, at San Francisco, California.

/S/

KIANA DAVIS